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Reasonableness Is A Critical Factor In Evaluating An Award Of Attorneys' Fees

Two recent New Jersey decisions addressed the issue of attorneys' fees. The common theme in the two cases was reasonableness, i.e., if the contract at issue permits recovery of fees, the prevailing party will only collect fees that are reasonable.

Litton Industries, Inc. v. IMO Industries, Inc. involved the alleged breach of a Purchase and Sale Agreement that provided for recovery of attorneys' fees. At trial, Plaintiff Litton asserted breaches of two provisions of the Agreement, and a claim for fraud. The jury awarded Litton $2,100,000 for breach of only one provision of the Agreement, and rejected all other claims. Litton thereafter filed a motion to recover $6,411,354 in attorneys' fees. The trial court appointed a Special Master to address the attorneys' fee issue.

The Special Master found that despite only proving a breach of one provision of the Agreement, the claims relating to both contract provisions arose from a common core of facts and were so interrelated that Litton should be able to recover attorneys' fees relating to both claims – not just the prevailing claim. The Special Master, however, reduced Litton's fee request by 1/3, based on a proportionality analysis of the unsuccessful fraud claim, to $3,664,321. The trial court agreed that both contract provisions arose from a common core of facts. However, the trial court rejected the Special Master's finding that the fraud claim represented an equal 1/3 amount of legal work, and therefore reduced Litton's fee request by only 10%, to $5,975,903. The Appellate Division affirmed the award of legal fees.

The New Jersey Supreme Court held that the trial court correctly awarded fees relating to both contract provisions agreeing that both arose form a common core of facts. The Court also held that the trial court correctly identified and denied fees relating to the unsuccessful fraud claim. However, the Court found that the trial court failed to conduct an analysis of the substantial difference between the fee requested (excess of $6 million) and damages actually recovered ($2.1 million). The Court held that fees must be reasonable. The Court held that in a contract action, the relationship between the fee requested and the damages recovered is a factor to be considered because proportionality is integral in order to meet the reasonable expectations of the parties. The Court remanded for an analysis of this issue.

In *Intermodal Management System, LLC v. Worldwide Express, Inc.*, Plaintiff Intermodal sued on a simple book account for $3,829.40. The underlying contract provided for the award of attorneys' fees to the prevailing party. After very limited discovery, the parties proceeded to a bench trial which took only 2 ½ hours. Intermodal succeeded and thereafter moved for $12,303.65 in counsel fees. The trial court awarded only $1,300.00 in fees without explanation. On appeal, the Appellate Division affirmed the $1,300.00 in fees based on the reasonableness requirement. The Court stated that the "determination of reasonableness requires consideration of the time and labor required, the novelty and difficulty of the issues involved, the skill required to deal with such issues, the amount involved, the fees customarily charged in the locality for similar legal services, and the like." In holding the $1,300 fee award reasonable, the Court noted that the entire lawsuit lasted only three months with only one simple book account claim in dispute, discovery was minimal, and trial was less than 3 hours.

Both of the above cases teach that if the contract at issue permits the recovery of fees, the victor at trial will only collect fees that are reasonable. ■

New Jersey Appellate Division Affirms Dismissal of LAD Wage Claim Holding That The Continuing Violation Doctrine Was Inapplicable

Plaintiffs, three long-time female Seton Hall University professors, filed suit against the University alleging pay discrimination based on sex and age in violation of the New Jersey Law Against Discrimination ("LAD"). Plaintiffs filed a complaint on July 27, 2007. LAD claims are subject to a two year statute of limitations. Plaintiffs concede that their claims are based on reports compiled by the University in 2004 and 2005 which allegedly evidence that men were paid more than their women counterparts. The trial court dismissed the suit on statute of limitations grounds relying on the United States Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.* The trial court found that the pay setting decision was a discrete act that triggered the statute of limitations, and that the pay setting decision occurred beyond the two years prior to filing the complaint.

Plaintiffs appealed urging the Court to find that the ongoing discriminatory pay disparities constitute a continuous violation, permitting Plaintiffs to recover beyond the limitations period based on paychecks received during the period. Plaintiffs argued that regardless of when the actual pay setting decision was made, each paycheck was a discrete act that should reset the statute of limitations. The Appellate Division affirmed the dismissal. The Court applied the same reasoning as the U.S. Supreme Court in *Ledbetter* and found there was no pay setting decision or discrete act during the limitations period. The Court further noted that although Congress enacted a federal law after the *Ledbetter* decision to recognize that a discriminatory act occurs every time compensation is paid pursuant to a discriminatory compensation decision, no such law has been passed in New Jersey. The Court reasoned that "[i]f each new paycheck stemming from an out-of-time discriminatory act constituted a new violation, there would be no meaningful statute of limitations so long as the plaintiffs were being paid." ■

For more information about any of the topics covered in this issue of the Business Litigation Alert, please contact:

Stephen R. Knox, Esq.
sknox@bressler.com

Michael T. Hensley, Esq.
mhensley@bressler.com

BRESSLER, AMERY & ROSS
A PROFESSIONAL CORPORATION

17 State Street
New York, NY 10004
212.425.9300

325 Columbia Turnpike
Florham Park, NJ 07932
973.514.1200

2801 SW 149th Avenue
Miramar, FL 33027
954.499.7979

www.bressler.com