

Montana Supreme Court: Insurer Not Bound by Insured's Settlement

In *Draggin' Y Cattle Co., Inc. v. Junkermier, et al.*¹ the Montana Supreme Court held that where an insurer defends its insured and the insured subsequently settles the claims without an insurer's participation, a court *may* approve the settlement as between the underlying plaintiff and underlying defendant, but the settlement will *not* be presumed reasonable as to the insurer. Therefore, an insurer who defends its insured cannot be bound by a stipulated settlement that the insurer did not expressly consent to.

The case involved Draggin' Y Cattle Company (the "Cattle Company"), a ranching and cattle business that utilized the services of an accounting firm, Junkermier, Clark, Campanella, Stevens, P.C. ("Junkermier"), to structure the sale of real property to take advantage of favorable tax treatment. It was discovered that Junkermier's employee misinformed the Cattle Company's owners of the tax consequences of the sale. The Cattle Company's owners subsequently filed suit against Junkermier and its employee and alleged nearly \$12,000,000 in damages due to the error. Junkermier's insurer, New York Marine, provided a defense for Junkermier and its employee.

The Cattle Company's owners offered to settle the claims against Junkermier and its employee for \$2,000,000, the policy limit of the New York Marine policy. New York Marine refused to give its consent or tender the policy's limit. Subsequently, Junkermier, its employee, and the Cattle Company entered into their own settlement agreement for \$10,000,000. The settlement was contingent upon a reasonableness hearing to approve the stipulated agreement.

New York Marine moved to intervene and challenged the stipulated settlement. The trial court, relying on *Tidyman's Mgmt. Svs. Inc. v. Davis*, 330 P.3d 1139 (Mont. 2014), held that New York Marine had effectively abandoned its insured when it had refused to settle the claim in good faith and therefore it was "as if it had breached the duty to defend." The trial court concluded that the settlement was reasonable and entered judgment against Junkermier.

On appeal to the Montana Supreme Court, New York Marine argued that a stipulated judgment, entered into without the insurer's consent or participation, is only reasonable when the insurer has refused to provide a defense, effectively abandoning the insured. New York Marine noted that it provided its insureds with a defense throughout the relevant proceedings.

¹Case no. DA 17-0731, 395 Mont. 316 (April 24, 2019).

The Montana Supreme Court agreed with New York Marine and held that if parties decide to settle without the insurer's participation, a court *may* approve the stipulated judgment as between the underlying plaintiff and the underlying defendant, but it will *not* be presumed reasonable as to the insurer. The judgment against Junkermier and the proceedings were reversed and remanded to the lower court for further proceedings.

This case underscores the importance of involving coverage counsel in settlement negotiations when a defending insurer refuses to agree to a reasonable settlement. Montana policyholders should also consider whether a declaratory judgment action is necessary if their insurer has reserved its rights as to any indemnity owed.

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