COURT OF APPEALS DECISION DATED AND FILED

June 15, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. ***See*** **WIS. STAT. § 808.10 and RULE 809.62.**

Appeal No. 2010AP1732

Cir. Ct. No. 2008CV430

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

JUDITH S. GOLZ,

PLAINTIFF-RESPONDENT,

BRUNSWICK RETIREE MEDICAL PLAN,

INTERVENING-INVOLUNTARY-PLAINTIFF,

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

DEFENDANT-APPELLANT,

HUMANA INSURANCE COMPANY,

DEFENDANT.

APPEAL from an order of the circuit court for Winnebago County: WILLIAM H. CARVER, Judge. *Reversed and cause remanded with directions.*

Before Brown, C.J., Reilly, J., and Hoover, P.J.

¶1 PER CURIAM. State Farm Mutual Automobile Insurance Company appeals an order for judgment entered upon a jury verdict in favor of Judith Golz. The question is whether State Farm issued a valid statutory offer of judgment to Golz, pursuant to WIS. STAT. § 807.01 (2009-10).[1] The trial court said no, and so denied State Farm its taxable costs. We disagree and reverse.

¶2 The facts are undisputed. Golz was injured in an accident while a passenger in a vehicle driven by her husband, Jack. State Farm is Jack's insurer. State Farm served Golz with a $15,000 statutory offer of judgment stating:

> Defendant, State Farm Mutual Automobile Insurance Company does hereby, pursuant to Sec. 807.01(1) Wis. Stats., offer to allow judgment to be taken against them by plaintiff Judith Golz in the amount of Fifteen Thousand Dollars ($15,000.00), together with taxable costs and disbursements, on the condition that plaintiff Judith Golz indemnify or otherwise satisfy any and all related claims (whether derivative, ERISA, subrogation, Worker's Compensation or otherwise) and/or liens (whether legal, medical or otherwise) pursuant to ***Staehler v. Beuthin***, 206 Wis. 2d 610, 557 N.W.2d 487 (Ct. App. 1996).

Brunswick Retiree Medical Plan and Humana Insurance Company asserted subrogation claims totaling $40,538.88 for health claims paid on Golz's behalf. Golz did not accept State Farm's offer.

¶3 Golz then served upon State Farm her own offer of judgment in the amount of $30,000 which likewise was conditioned upon her indemnification of

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless noted.

State Farm against any related subrogated claims. State Farm did not accept Golz's statutory offer and the matter went to trial.

¶4 The jury returned a verdict finding Jack twenty percent negligent and total damages of $36,724. As Jack's insurer, State Farm, was found liable for twenty percent of the verdict, or $7,344.80—about half of State Farm's $15,000 pretrial offer of judgment.

¶5 Because Golz had rejected State Farm's timely offer of judgment and then failed to recover a more favorable verdict at trial, on motions after verdict State Farm sought its taxable costs and to have them offset against Golz's award. *See* WIS. STAT. § 807.01(1). Golz opposed the motion, arguing that she could not independently evaluate State Farm's statutory offer of judgment because it was significantly less than the $40,538.88 medical payments lien the subrogated parties had asserted.[2] The trial court agreed:

> [S]omehow this seems unfair for [Golz] to absorb all of these costs. And I keep going back to the offer here that somehow requires [Golz] to take this $15,000 offer to the lien holders, the subrogated parties that are kind of standing on the sideline here with their hands out waiting for part of the recovery, and she would have had to recover substantially more than that to satisfy the liens.

It ruled State Farm's offer invalid and denied its motion for taxable costs.[3] With no judgment entered in that regard, the clerk of circuit court did not tax costs in favor of State Farm under WIS. STAT. § 814.10(1). State Farm appeals.

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[2] Golz also opposed the motion as to State Farm's bill of costs on the basis that no judgment was entered entitling State Farm to tax costs.

[3] The court also denied Golz's postverdict motion for a new trial or, in the alternative, to change the answers to two special verdict questions regarding the other driver's negligence.

¶6 We review the validity of a statutory offer of judgment de novo. *See* ***Staehler v. Beuthin***, 206 Wis. 2d 610, 624, 557 N.W.2d 487 (Ct. App. 1996). An offer that is ambiguous or does not comply with WIS. STAT. § 807.01 is invalid. *See* ***Prosser v. Leuck***, 225 Wis. 2d 126, 136-37, 592 N.W.2d 178 (1999). To be valid, the offer must allow full and fair evaluation from the offeree's own independent perspective in the context of the circumstances at the time the offer was made. *See* ***Ritt v. Dental Care Assocs., S.C.***, 199 Wis. 2d 48, 75-76, 543 N.W.2d 852 (Ct. App. 1995).

¶7 State Farm argues that its offer of judgment allowed Golz to fully and fairly evaluate it because she knew that it offered $15,000 and that it was conditioned upon her satisfying any subrogated claims and she knew of the existence, as well as the amount, of those claims. In support, State Farm directs us to ***Staehler***, the case cited in its offer of judgment. There, Beuthin, the defendant, made a $25,000 offer of judgment to Staehler, the plaintiff, with the condition that Staehler would indemnify Beuthin against "any existing" subrogated claims. ***Staehler***, 206 Wis. 2d at 624. Staehler's health insurer was joined as a party based on its subrogated interest. ***Id.*** at 625-26. After recovering less than the offer at trial, Staehler argued that she could not evaluate what was being offered to her. *See* ***id.*** at 616, 624. This court disagreed. We reasoned that a plaintiff who receives an offer of judgment that includes the obligation to satisfy a subrogated claim and who is aware of the amount of the subrogee's claim is able to fully and fairly evaluate the offer. *See* ***id.*** at 625-26. We concluded that Beuthin thus was entitled to taxable costs. ***Id.*** at 626. State Farm asserts that, like Staehler, Golz, too, had all the information necessary to allow her to fully and fairly evaluate the offer.

¶8 Golz responds that she could not independently appraise State Farm's offer to her because she did not know how much, if any, of the $15,000 would go toward Brunswick's and Humana's separate, and significantly larger, claims. Noting that in ***Staehler*** the subrogee's claim was less than the $25,000 offer of judgment such that she still could have received part of the settlement, Golz argues that here State Farm's offer minus the liens "results in a negative number." Without a duty to negotiate a deal with the subrogees, Golz asserts that accepting the $15,000 also would have extinguished or compromised the subrogees' claims.

¶9 Golz's acceptance of State Farm's offer would not extinguish or compromise Brunswick's and Humana's claims; it simply would leave them unsatisfied until Golz honored her obligation to pay them. *See* ***Ritt***, 199 Wis. 2d at 77. We thus fail to see why any of these points render the offer invalid instead of simply undesirable. And if State Farm's offer was invalid for being less than the subrogated claims, Golz's offer to State Farm—also less—was equally flawed.

¶10 Golz also attempts to distinguish the language of the two offers. The ***Staehler*** offer was conditioned on satisfying *existing* subrogated claims, while the State Farm offer of judgment included the condition that Golz would satisfy "*any and all* related claims ... and/or liens." Golz contends that we already have rejected that precise phrase in ***Bockin v. Farmers Insurance Exchange***, 2006 WI App 220, ¶15, 296 Wis. 2d 694, 723 N.W.2d 741, when we said that ***Staehler*** "provides no support" for offer of judgment conditions written "so broadly" as to require the plaintiff to satisfy "any and all related claims … and/or liens."

¶11 The context of ***Bockin*** clarifies that statement. Bockin and her minor son each brought claims for injuries suffered in an accident. ***Id.***, ¶2. The

defendant insurer made offers of judgment to both the mother and the son; each offer contained a condition requiring the offeree to indemnify or otherwise satisfy "any and all" related subrogated claims. ***Id.***, ¶¶3, 6. The offer of judgment to the son thus created a responsibility for him to satisfy "any and all" claims, even his medical expenses, for which his mother, not he, was legally responsible. ***Id.***, ¶¶12, 14. Because the ***Staehler*** subrogation claims were not expenses a parent incurred on behalf of a minor child, ***Staehler***'s "any and all" language "invited confusion" in ***Bockin*** and was deemed too broad to pass muster. *See* ***id.***, ¶¶14-16.

¶12 That is not the case here. State Farm's offer of judgment accounted for Brunswick's and Humana's subrogated claims because it plainly conditioned payment on Golz's indemnification of "any and all" subrogated claims. *See* ***Hadrian v. State Farm Mut. Auto Ins. Co.***, 2008 WI App 188, ¶8, 315 Wis. 2d 529, 763 N.W.2d 215. Beyond that, Golz had stipulated to the amounts of the claims. With that information, Golz could fully and fairly evaluate the offer.

¶13 We conclude that State Farm's statutory offer of judgment was unambiguous and that Golz was in a position to fully and fairly evaluate it. Indeed, its clarity may explain her decision to reject it. Because Golz's recovery did not meet or exceed the offer, State Farm is entitled to an offset of its taxable costs and fees against the jury award of $7,344.80 to Golz. We reverse the order for judgment on the verdict to the extent that it denied State Farm's postverdict motion for an offset of taxable costs and fees pursuant to WIS. STAT. § 807.01 and remand for taxation of costs. *See* WIS. STAT. § 814.10.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.