

STATE OF MICHIGAN
COURT OF APPEALS

FOREMOST FABRICATIONS, INC.,

Plaintiff-Appellee,

v

ACKER WORGESS INSURANCE AGENCY,
INC.,

Defendant-Appellant.

UNPUBLISHED
March 10, 1998

No. 196198
Isabella Circuit Court
LC No. 89-005229-CK

Before: Neff, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from an amended judgment entered for plaintiff in this negligence action. We affirm.

This is the second time that a panel of this Court has addressed an issue involving the judgment entered in this case. Plaintiff manufactures woodchippers. The underlying negligence action was based upon plaintiff's claim that defendant had acted negligently when procuring a products liability insurance policy for plaintiff. Plaintiff based its damage award on two claims brought against it by individuals injured using its woodchippers. At the time of trial, only one of those personal injury claims had been settled. The jury found that defendant was seventy-five percent negligent and that plaintiff was twenty-five percent comparatively negligent. On December 29, 1994, a panel of this Court held that the judgment should "be amended to provide for a maximum of \$500,000 for damages entered in the unresolved suit and seventy-five percent of the defense cost." *Foremost Fabrications, Inc v Acker Worgess Ins Agency, Inc*, unpublished opinion per curiam of the Court of Appeals, issued 12/29/94 (Docket No. 153419). The instant appeal is based upon the amended judgment entered after the second claim had been settled. As part of the settlement, defendant paid the underlying claimant more than seventy-five percent of the total settlement.

Defendant first argues that the trial court erred when, in amending the judgment, it awarded plaintiff \$67,733.50 in defense costs. Plaintiff had brought a motion to amend the judgment, arguing that such an award was necessary to reflect this Court's holding that it be awarded seventy-five percent of

the expenses it had incurred in defense of the second claim. The trial court agreed, awarding plaintiff the requested attorney fees. Defendant asserts that it paid in excess of what it should have in settlement damages, and that under the amended judgment it ends up paying in excess of seventy-five percent of the total of settlement damages and defense costs. Defendant argues that in order to maintain the seventy-five/twenty-five percent division, the trial court's award of defense costs should have been predicated upon a totaling of all expenses (settlement damages and defense costs) incurred in resolving the second suit.

In granting plaintiff's motion to amend the judgment, the trial court observed that in negotiating the settlement in the underlying claim, the parties had not addressed the effect that the settlement would have on the parties' respective obligations to each other. The trial court concluded that based on the public policy of avoiding additional litigation, the parties should be left in the position created by the negotiation. For the reasons stated by the trial court, we agree.

Second, defendant argues that the trial court erred by not placing on the record the factual findings underlying its holding. We disagree with this assertion. MCR 2.517(A)(4) states that "[f]indings of fact . . . are unnecessary in decisions on motions unless findings are required by a particular rule." MCR 2.611(F) states that "[i]n ruling on . . . a motion to amend the judgment, the court shall give a concise statement of the reasons for the ruling, either in an order or opinion filed in the action or on the record." The concise statement the trial court placed on the record in support of its ruling on plaintiff's motion to amend the judgment met all the requirements of both these court rules.

Affirmed.

/s/ David H. Sawyer

/s/ William B. Murphy