

**SYNOPSIS OF THE CASE**

**2019 MT 97: DA 17-0731, DRAGGIN' Y CATTLE COMPANY, INC., and ROGER and CARRIE PETERS**, Plaintiffs and Appellees, v. **JUNKERMIER, CLARK, CAMPANELLA, STEVENS, P.C.**, Defendant and Appellee, **NEW YORK MARINE AND GENERAL INSURANCE COMPANY**, Intervenor and Appellant.<sup>1</sup>

The Montana Supreme Court ruled that a stipulated settlement entered without the consent of an insurer to resolve litigation between its insured and a third-party claimant will not be presumed reasonable against the insurer when the insurer has been defending the insured throughout the litigation.

Draggin' Y Cattle Company and Roger and Carrie Peters ("Draggin' Y") filed a malpractice case against their accountant, Junkermier, Clark, Campanella, Stevens, P.C. ("Junkermier") in 2011. Junkermier had a \$2 million liability insurance policy through New York Marine and General Insurance Company ("New York Marine"). New York Marine provided Junkermier a defense throughout Draggin' Y's case against Junkermier. Three weeks before the scheduled trial, Junkermier and Draggin' Y entered into a \$10 million stipulated settlement, assignment of rights, and covenant not to execute. New York Marine did not participate in the settlement agreement. The settlement agreement cited New York Marine's failure to settle as a basis for the settlement and required that the parties request the district court to set "a hearing to approve the stipulated judgment as fair as reasonable." The agreement was not binding without the district court's approval. New York Marine intervened to challenge the reasonableness of the stipulated judgment.

The district court held that New York Marine had effectively abandoned its insured and entered judgment after finding the settlement reasonable. New York Marine appealed. The Supreme Court held unanimously that Junkermier's claims about New York Marine's handling of the case were separate breach of contract or unfair practices claims that an insured has to prove against a breaching insurer. Whatever the merits of those claims, which were not at issue in the litigation between Draggin' Y and Junkermier, they did not give rise to the same legal presumptions the Court has applied to an insurer that breaches its duty to defend an insured against third-party liability claims. When an insurer has not confirmed or denied coverage under the policy or has not settled in good faith, the insured has remedies that provide full compensation for damages caused by the insurer's conduct. It is the failure to provide a defense that constitutes improper abandonment, justifying an insured to take steps limiting its personal liability through a settlement that the law recognizes as presumptively reasonable.

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<sup>1</sup> The Court prepared this synopsis for the reader's convenience. It constitutes no part of the Court's Opinion and may not be cited as precedent.

If the third-party claimant and the insured decide to settle without the insurer's participation, a court may approve the stipulated judgment as between those parties in the underlying liability case, but it will not be presumed reasonable as to the insurer when the insurer is providing a defense. In such cases, the insured must pursue its separate breach of contract or Unfair Trade Practices Act claims against the insurer and will bear the burden of proving all elements of those claims, including damages.

Three members of the Court joined an additional concurring opinion. The concurrence agreed with the Opinion "as far as it goes," but would have held under the facts of this case that the parties' "reasonableness hearing" effectively litigated the damages element of what may become a breach of contract or statutory unfair practices claim, and the Plaintiffs should not have to prove those damages again in any subsequent litigation against New York Marine. The parties already submitted their proof of damages caused by New York Marine's alleged breach of its duty to settle within policy limits, and the amount of the stipulated judgment found reasonable by the District Court should be binding in future litigation.