COURT OF APPEALS DECISION DATED AND FILED

January 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2013AP753

Cir. Ct. No. 2011CV2542

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ADVANCED GREEN ENERGY SOLUTIONS, LLC,

PLAINTIFF-APPELLANT,

V.

PIEPER ELECTRIC, INC. AND CLEAR HORIZONS, LLC,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County: JOHN W. MARKSON, Judge. *Affirmed in part; reversed in part and cause remanded with directions*.

Before Lundsten, Sherman and Kloppenburg, JJ.

¶1 LUNDSTEN, J. Advanced Green Energy Solutions appeals the circuit court's judgment entered after a jury trial on Advanced Green's two breach of contract claims, one against Pieper Electric, Inc., and another against Clear

Horizons, LLC. The jury found for Advanced Green on both claims. However, on the claim against Clear Horizons for breach of a non-compete agreement, the circuit court reduced the jury's damages award from $32,000 to $0 and dismissed the claim. The circuit court also awarded $23,000 in attorneys' fees to Clear Horizons as "the prevailing party" on that claim under a fee-shifting provision in the non-compete agreement. Finally, the court awarded costs to Pieper Electric and Clear Horizons under WIS. STAT. § 807.01[1] after concluding that Advanced Green's recovery was less than Pieper Electric and Clear Horizons' joint settlement offer.

¶2 Advanced Green raises three issues: (1) whether there was sufficient evidence to support the jury's $32,000 damages finding on the non-compete claim against Clear Horizons; (2) whether Clear Horizons was "the prevailing party" under the non-compete agreement; and (3) whether the joint settlement offer was effective for purposes of obtaining costs under WIS. STAT. § 807.01. Advanced Green does not persuade us that the circuit court erred with respect to the first two issues, but we agree with Advanced Green that the joint offer was not effective for purposes of § 807.01 because Pieper Electric and Clear Horizons were not jointly and severally liable for Advanced Green's claims. We therefore affirm the judgment in all respects, except that we reverse the part of the judgment awarding costs to Pieper Electric and Clear Horizons based on § 807.01. We remand for the circuit court to amend the judgment to deny those costs.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Background

¶3 Advanced Green's contract claims arose out of a project to construct biogas digesters in Dane County. Pertinent here, in its complaint Advanced Green alleged the existence of two contracts.

¶4 We refer to the first contract as the "purchase agreement." This contract was between Advanced Green and Pieper Electric. Under the purchase agreement, Advanced Green was to receive from Pieper Electric 5.5% of the amount Pieper paid for supplies for the digester "kits." We follow the parties' lead and refer to this required payment to Advanced Green as the 5.5% markup.

¶5 We refer to the second contract as the "non-compete agreement." This contract was between Advanced Green and Clear Horizons. Under the non-compete agreement, Clear Horizons promised to keep confidential certain supplier information and not to purchase from a list of "restricted suppliers" for a set period of time.

¶6 Advanced Green alleged that Pieper Electric and Clear Horizons breached the respective agreements. As Advanced Green explains in its brief-in-chief:

> After [Advanced Green] had provided [the defendants with] information about its suppliers, pricing, flow studies, etc., [the defendants]—now having this information in hand—tried to reduce [Advanced Green's] scope of work ... [by limiting Advanced Green's] involvement to only two suppliers …. For all of the rest of the suppliers, [the defendants] began circumventing [Advanced Green] and started to deal directly with [those suppliers] ....

¶7 The jury found that Pieper Electric breached the purchase agreement, causing Advanced Green $99,495.50 in damages. The jury also found

that Clear Horizons breached the non-compete agreement, causing Advanced Green $32,000 in damages.

¶8 We reference additional facts as needed below.

Discussion

1. Whether The Evidence Was Sufficient To Support The Jury's $32,000 Damages Finding On The Non-Compete Claim Against Clear Horizons

¶9 Clear Horizons moved to reduce the jury's damages finding on the non-compete claim from $32,000 to $0, arguing that there was no credible evidence to support the finding. The circuit court agreed.

¶10 The circuit court acknowledged that Daniel DeBuhr of Advanced Green testified to a figure of "between $25,000 and $32,000," but the court concluded that this testimony related to suppliers that were not covered by the non-compete agreement because they were not "restricted suppliers" under the terms of that agreement. The court further concluded that the other evidence relating to the non-compete agreement was too speculative to support the damages award. As we explain below, we reject each of Advanced Green's arguments purporting to show that the circuit court erred on this topic.

¶11 Applying the same standard as the circuit court, we uphold a jury's finding if "there is any credible evidence, under any reasonable view, that leads to an inference supporting [it]." *See* ***Morden v. Continental AG***, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659; *see also* ***Weiss v. United Fire & Cas. Co.***, 197 Wis. 2d 365, 388-90, 541 N.W.2d 753 (1995) (explaining that we apply the same standard of review when the circuit court sets aside a jury's finding for insufficiency of the evidence).

¶12 As we understand Advanced Green's arguments, it is asserting that there are essentially two possible sources of evidence to support the $32,000 damages award against Clear Horizons: (a) testimony referencing the 5.5% markup that Advanced Green was to receive under the *purchase agreement* with Pieper Electric, including DeBuhr's "between $25,000 and $32,000" testimony, and (b) other testimony by DeBuhr referring to non-compete damages of "hundreds of thousands of dollars."

a. 5.5% Markup Testimony

¶13 Advanced Green directs us to DeBuhr's testimony referring to damages "between $25,000 and $32,000," which was, in DeBuhr's estimation, "roughly" 5.5% of the purchases made from particular suppliers. If Advanced Green means to argue that this evidence supplies direct proof of damages with respect to the non-compete agreement, we disagree. The circuit court correctly concluded that this testimony related to suppliers who were not "restricted suppliers" and, therefore, not suppliers that were covered by the non-compete agreement with Clear Horizons. As far as we can discern, Advanced Green does not challenge this conclusion.[2] We therefore reject any argument that DeBuhr's "between $25,000 and $32,000" testimony is direct evidence of non-compete agreement damages.

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[2] The question of which suppliers were included in the "restricted suppliers" under the non-compete agreement was not submitted to the jury, and Advanced Green does not develop an argument that the non-compete agreement was ambiguous on this question. Thus, so far as we can discern, this question presented an issue of contract interpretation for the court. *See* ***Town Bank v. City Real Estate Dev., LLC***, 2010 WI 134, ¶32, 330 Wis. 2d 340, 793 N.W.2d 476 ("The interpretation of an unambiguous contract presents a question of law for this court's independent review. Conversely, when a contract is ambiguous and consequently is properly construed by use of extrinsic evidence, the contract's interpretation presents a question of fact for the jury." (citation omitted)).

¶14 More plainly, Advanced Green argues that DeBuhr's "between $25,000 and $32,000" testimony provides indirect evidence of damages under the non-compete agreement. In Advanced Green's words, so the argument goes, the testimony provides a "benchmark" showing what is a "fair" amount of non-compete damages. Advanced Green argues that the jury may have used the information in the same way a jury might use the price of a pack of gum to estimate the value of a candy bar. We are not persuaded.

¶15 First, the most sensible view of the jury's decision to select the $32,000 figure as non-compete damages was that the jury determined that this part of DeBuhr's testimony was evidence of damages flowing from a violation of the non-compete agreement. But if this was the jury's thinking, then, as the circuit court explained, the damages duplicate damages the jury awarded to Advanced Green with respect to the purchase agreement. To use Advanced Green's gum/candy bar analogy, this would be like looking to the price of gum and then twice awarding damages for the loss of the gum, even though the issue is the loss of a candy bar.

¶16 Second, Advanced Green has not explained how the jury might have rationally looked to purchase agreement damages to estimate *non-duplicative* non-compete agreement damages. What is lacking is an explanation of why non-duplicative non-compete agreement damages are somehow measurable by reference to purchase agreement damages. Perhaps the price of gum can rationally be used to estimate the value of a candy bar. But Advanced Green does not explain why there is a similar relationship between purchase agreement damages

and *non-duplicative* non-compete agreement damages. To the extent such damages do not overlap, we fail to see how one sheds light on the other.[3]

b. "Hundreds Of Thousands Of Dollars" Testimony

¶17 The second possible source of evidence Advanced Green relies on as support for the jury's $32,000 damages finding is additional testimony by DeBuhr. DeBuhr testified generally about harm caused by Clear Horizons' breach. With the exception of testimony we address in footnote 4 below, the only effort by DeBuhr to quantify this harm, that Advanced Green directs our attention to, is DeBuhr's testimony about his efforts over the years to identify suppliers for biodigesters and to develop a business reputation that was worth "hundreds of thousands of dollars." We agree with the circuit court, however, that this evidence was too vague to support the $32,000 damages finding.

¶18 Advanced Green needed to "prove by credible evidence to a reasonable certainty that damages were suffered and to establish at least to a reasonable probability the amount of these damages." *See* ***Pleasure Time, Inc. v. Kuss***, 78 Wis. 2d 373, 387, 254 N.W.2d 463 (1977).

> "Neither a court nor a jury as the trier of the facts can determine damages by speculation or guesswork. The trier of fact may make a reasonable estimate of the damage based on relevant date and evidence …. Damages must be proven with reasonable certainty. ***Maslow Cooperage Corp. v. Weeks Pickle Co.*** (1955), 270 Wis. 179, 70 N.W.

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[3] Advanced Green discusses whether the jury could have relied on the 5.5% markup as a measure of non-compete damages without duplicating the damages the jury awarded on the purchase agreement. However, demonstrating that the amounts were non-duplicative would require, as a starting point, evidence supporting a finding that 5.5% of the purchases from restricted suppliers equaled $32,000. Advanced Green has not pointed to such evidence and, so far as we can discern, there is none.

> (2d) 577. True, some type of damage is difficult of proof but the difficulty does not excuse the failure to put into evidence *some reasonable basis of computation*."

Id. (emphasis added; quoted source omitted).

¶19 Advanced Green fails to develop an argument that comes to grips with this "reasonable basis of computation" standard or to otherwise provide a convincing explanation of how a jury could rationally look to DeBuhr's exceedingly vague "hundreds of thousands of dollars" testimony to support the oddly specific $32,000 damages finding. Rather, Advanced Green's limited arguments on this topic suggest that the jury may have engaged in the type of speculation or guesswork that is prohibited.[4]

2. Whether Clear Horizons Was "The Prevailing Party" Under The Non-Compete Agreement

¶20 After reducing the $32,000 non-compete damages finding to $0, the circuit court dismissed Advanced Green's non-compete claim against Clear Horizons with prejudice. The non-compete agreement contained an attorneys' fees provision, which stated as follows:

> In the event that an action or proceeding is brought to enforce the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to

[4] In its reply brief, Advanced Green appears to argue that different evidence—that is, evidence of purchases from one of the restricted suppliers—provides credible evidence to support $6,098.68 in non-compete damages. We deem this argument forfeited. On appeal, the argument is made for the first time in Advanced Green's reply brief. Moreover, so far as we can tell, Advanced Green failed to make the argument before the circuit court, even though the court identified it as a possible argument but also concluded that such an amount would duplicate purchase agreement damages. Even at this late date in its reply brief, Advanced Green does not request that we reverse and direct the circuit court to change the non-compete damages verdict to $6,098.68. Rather, Advanced Green seems to contend, without persuasive explanation, that this argument supports "reinstat[ing] the jury's award of $32,000."

> reasonable attorneys' fees and expenses incurred in connection therewith.

¶21 The circuit court concluded, based on this provision, that Clear Horizons was the prevailing party for purposes of Advanced Green's non-compete claim. The court reasoned that damages are an essential element of a contract claim and that, absent recoverable damages, Clear Horizons was the prevailing party on that claim. The court awarded Clear Horizons $23,000 of its total attorneys' fees, limiting the recoverable fees to those attributable to the non-compete claim.

¶22 Advanced Green argues that it was the prevailing party under the non-compete agreement. The question of who is "the prevailing party" under the agreement presents a contract interpretation issue, which is a question of law that we review de novo. *See* ***Borchardt v. Wilk***, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990).

¶23 The non-compete agreement neither expressly defines "the prevailing party" nor incorporates the definition of "prevailing party" from any particular statute or case law. We observe, however, that the parties' arguments appear to assume that either Advanced Green or Clear Horizons must be "the prevailing party." In other words, neither Advanced Green nor Clear Horizons develops a back-up argument that no one is "the prevailing party" under the agreement. Accordingly, we will assume that either Advanced Green or Clear Horizons must be the prevailing party.

¶24 Advanced Green appears to be asserting, in part, that it should be the prevailing party under the non-compete agreement because it prevailed in the lawsuit as a whole. To the extent that this is part of Advanced Green's argument,

we consider it undeveloped and could decline to address it further. *See **State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider undeveloped arguments). We observe, however, that interpreting the agreement as Advanced Green does appears to be unreasonable. Even if we assume that Advanced Green prevailed in the lawsuit as a whole, this was primarily because of Advanced Green's success on its purchase agreement claim against a party (Pieper Electric) that was not a party to the non-compete agreement. We recognize that the fee-shifting provision in the non-compete agreement refers to the prevailing party in an "action," but the term "action" in the agreement cannot reasonably be read as a reference to all claims in the lawsuit because the agreement limits the term "action" to actions "to enforce" the agreement—that is, the agreement between Advanced Green and Clear Horizons. Consequently, the only pertinent claim for purposes of who is "the prevailing party" under the non-compete agreement is the non-compete claim.

¶25 As to the non-compete claim, we agree with the circuit court that Clear Horizons is the prevailing party. Clear Horizons successfully defended against the non-compete claim because Advanced Green failed to show any damages on the claim, resulting in dismissal of that claim with prejudice. It is true that Advanced Green successfully showed a breach of the non-compete agreement, but Advanced Green does not dispute the circuit court's conclusion that damages are an essential element of a contract claim. *See **Black v. St. Bernadette Congregation of Appleton***, 121 Wis. 2d 560, 566, 360 N.W.2d 550 (Ct. App. 1984) (relying on proposition that "damages are an essential element of a contract action"). In effect, Advanced Green concedes that it did not prove all of the elements of its claim against Clear Horizons.

¶26 We do not hold that the failure to prove damages would always lead to the conclusion that a defendant, like Clear Horizons, is a "prevailing party" under the contract term at issue here. There might be, for example, non-damages consequences to a jury breach-of-contract finding, even without a damages finding, that prevents a defendant from "prevailing." But, if such circumstances might exist, they are not present here.

¶27 Advanced Green argues that it is "contrary to fundamental principles of justice and fair play" to conclude that Clear Horizons is the prevailing party. For support, Advanced Green relies on ***Shadley v. Lloyds of London***, 2009 WI App 165, 322 Wis. 2d 189, 776 N.W.2d 838, and ***Borchardt***, 156 Wis. 2d 420.

¶28 ***Shadley*** and ***Borchardt*** both involved the interpretation of fee-shifting provisions in contracts, but the pertinent similarities end there. *See* ***Shadley***, 322 Wis. 2d 189, ¶¶1-2, 8-9, 11-23; ***Borchardt***, 156 Wis. 2d at 422-28. ***Borchardt*** involved a situation in which there were damages on both a claim and counterclaim involving the same parties that were offset against one another. *See* ***Borchardt***, 156 Wis. 2d at 422-23, 426. We adopted a proportionate reduction rule from other jurisdictions so that the party with more damages received attorney's fees in proportion to that party's net damages. *See* ***id.*** at 422, 426-28. In ***Shadley***, which also involved two parties to a contract, we applied a similar rule when a claimant proved only a small portion of the total damages claimed. *See* ***Shadley***, 322 Wis. 2d 189, ¶7 & n.3, ¶¶21-23.

¶29 We see no logical way to apply this type of proportionality rule here, where Advanced Green proved *no* damages relating to the agreement with Clear Horizons. Accordingly, neither ***Shadley*** nor ***Borchardt*** persuades us that we should reverse the circuit court's attorneys' fees award.

3. Whether The Joint Settlement Offer Was Effective For Purposes Of Obtaining Costs Under WIS. STAT. § 807.01

¶30 The circuit court awarded costs to Pieper Electric and Clear Horizons under WIS. STAT. § 807.01(1) after concluding that Advanced Green's recovery was less favorable than a $151,000 plus costs joint settlement offer that Pieper Electric and Clear Horizons made to Advanced Green. Advanced Green argues that the circuit court erred in concluding that the joint offer was effective for purposes of obtaining costs under § 807.01(1).

¶31 Whether a settlement offer under WIS. STAT. § 807.01 is "effective" for purposes of the statute is a question of law that we review de novo. ***Testa v. Farmers Ins. Exch.***, 164 Wis. 2d 296, 300, 474 N.W.2d 776 (Ct. App. 1991). We agree with Advanced Green that the joint offer was not effective because Pieper Electric and Clear Horizons were not jointly and severally liable for Advanced Green's claims.

¶32 WISCONSIN STAT. § 807.01(1) provides that, if "the plaintiff" does not accept "the defendant['s]" settlement offer (more precisely termed an "offer of judgment"), and the plaintiff fails to recover a more favorable judgment, then the defendant recovers costs.[5] In ***Denil v. Integrity Mutual Insurance Co.***, 135 Wis.

[5] WISCONSIN STAT. § 807.01(1) provides, in full:

> After issue is joined but at least 20 days before the trial, the defendant may serve upon the plaintiff a written offer to allow judgment to be taken against the defendant for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the plaintiff may file the offer, with proof of service of the notice of acceptance, and the clerk must thereupon enter judgment accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the

(continued)

2d 373, 401 N.W.2d 13 (Ct. App. 1986), we addressed how to interpret the statute when there are multiple defendants. *See **id.*** at 379-84. We concluded that "defendants who are jointly and severally liable may submit joint offers of judgments to an individual plaintiff under sec. 807.01(1)." ***Id.*** at 380. "However, joint offers by defendants who are only severally liable do not invoke the provisions of th[e] statute." ***Id.*** Since we decided ***Denil***, we have repeatedly cited this rule. *See, e.g.*, ***Testa***, 164 Wis. 2d at 302 ("[A] joint offer of judgment from defendants who are only severally liable to the plaintiff is not effective ...."); ***Smith v. Keller***, 151 Wis. 2d 264, 275, 444 N.W.2d 396 (Ct. App. 1989) ("Joint offers by defendants who are only severally liable do not invoke the statute.").

¶33 Here, there is no dispute that Pieper Electric and Clear Horizons were only severally liable for Advanced Green's claims. That is, only Pieper Electric was potentially liable under the purchase agreement and only Clear Horizons was potentially liable under the non-compete agreement. However, as part of their joint settlement offer, Pieper Electric and Clear Horizons offered to be jointly and severally liable for the judgment. They argue that, under these circumstances, ***Denil*** does not bar their joint offer from being effective for purposes of WIS. STAT. § 807.01(1). We disagree.

¶34 In ***Denil***, we relied on the supreme court's interpretation of analogous statutory language addressing costs when "the plaintiff" makes a settlement offer to "the defendant." *See **Denil***, 135 Wis. 2d at 380-84 (citing

> offer of judgment is not accepted and the plaintiff fails to recover a more favorable judgment, the plaintiff shall not recover costs but defendant shall recover costs to be computed on the demand of the complaint.

DeMars v. LaPour, 123 Wis. 2d 366, 366 N.W.2d 891 (1985), which interpreted WIS. STAT. § 807.01(3)). In ***Denil***, we summarized the ***DeMars*** court's reasoning, and applied that reasoning to § 807.01(1):

> The ***DeMars*** court noted that if multiple plaintiffs were permitted to make a joint offer of settlement under sec. 807.01(3), a defendant would be denied an opportunity to separately evaluate and settle each claim. Thus, a statute designed to encourage settlement would have had exactly the opposite effect. ***DeMars***, 123 Wis. 2d at 371, 366 N.W.2d at 895. The court noted further that joint settlement offers "could exert unreasonable pressure on defendants to settle a case because of the leverage exerted by the possibility of an aggregate judgment in an amount greater than a joint settlement offer." ***Id.*** The court concluded that it was not the legislature's intent to force a defendant to settle but, rather, to encourage him to do so. Our supreme court has directed that sec. 807.01 is to be construed so as to accomplish its underlying purpose, and we shall do so in interpreting the statute.
>
> *Offers by Defendants Jointly and Severally Liable*
>
> The court's rationale in ***DeMars*** does not apply when multiple defendants, jointly and severally liable, submit a joint offer of judgment to an individual plaintiff possessing but a single claim for which compensation is sought. The plaintiff is concerned with the value of his or her claim without regard to the source of the settlement proceeds. The evaluation of an offer of judgment fairly representing the total value of the plaintiff's claim is not affected by the fact that the offer is made jointly by more than one defendant. The plaintiff's claim has no more or less value whether the offer is submitted by the defendants separately or jointly.
>
> ….
>
> Further support for this conclusion is found by examining the effects of joint and several liability existing under Wisconsin law. *See, e.g.*, ***Chart v. General Motors Corp.***, 80 Wis. 2d 91, 258 N.W.2d 680 (1977). If required to make individual offers of judgment, two defendants, jointly and severally liable, would recover costs under sec. 807.01(1) only if each defendant submitted a separate offer equaling the total value of the plaintiff's claim. This is so because under joint and several liability, each defendant's

> offer would be measured against the total judgment awarded to the plaintiff.
>
> ….
>
> *Offers by Defendants Severally Liable*
>
> On the other hand, the court's rationale in ***DeMars*** does apply to defendants whose liability is only several. Joint offers of judgment by multiple defendants who are only severally liable to a plaintiff would defeat the statute's purpose in the same way as would joint offers from multiple plaintiffs. *When presented with such an offer, a plaintiff is denied an opportunity to separately evaluate each defendant's offer of admitted liability and so settle the plaintiff's claim with that defendant*. *See* **DeMars**, 123 Wis. 2d at 371 ....

Denil, 135 Wis. 2d at 381-84 (emphasis added).

¶35 Applying the ***DeMars*** reasoning here, we conclude that the joint offer of judgment was not effective for purposes of WIS. STAT. § 807.01(1). As ***DeMars*** makes clear, a plaintiff should not "be denied an opportunity to separately evaluate and settle each claim." *See* ***Denil***, 135 Wis. 2d at 381. An offer by severally liable defendants to be held jointly and severally liable for a judgment does not give a plaintiff this opportunity.

¶36 Pieper Electric and Clear Horizons also argue that the real question is whether a plaintiff can "fully and fairly evaluate the offer." The circuit court similarly reasoned that "[t]he issue really is whether the offeree … can fully and fairly evaluate the offer and make a reasoned decision to accept." It is true that some cases contain this type of limited language. *See* ***Testa***, 164 Wis. 2d at 302; ***Wilber v. Fuchs***, 158 Wis. 2d 158, 165, 461 N.W.2d 803 (Ct. App. 1990). However, a careful reading of those cases reveals that "fully and fairly evaluate" language is simply shorthand for the much more detailed reasoning in ***Denil*** and ***DeMars***. *See* ***Testa***, 164 Wis. 2d at 301-03 (relying on ***Denil*** and ***DeMars***);

Wilber, 158 Wis. 2d at 162-65 (same). And, under the controlling reasoning in those more detailed cases, Advanced Green could not "fully and fairly evaluate" Pieper Electric and Clear Horizons' joint offer because Advanced Green did not have the opportunity to separately evaluate an offer from each defendant with respect to Advanced Green's separate claims.

¶37 Finally, we disagree with Pieper Electric and Clear Horizons that this case is analogous to cases involving insureds and insurers under circumstances in which the insurer is the only defendant with any "real interest" in settlement. *See, e.g.*, ***Testa***, 164 Wis. 2d at 299-300, 303 (plaintiff offered joint settlement to defendant insureds and defendant insurer within policy limits, and defendant insurer was the only defendant with a "real interest" and the right to settle the case). Unlike that situation, Pieper Electric and Clear Horizons each had their own "real interest" in achieving a settlement with Advanced Green and, correspondingly, Advanced Green was entitled to an opportunity to individually evaluate separate offers in light of the merits of Advanced Green's distinct claims against distinct parties.

Conclusion

¶38 In sum, we affirm the judgment in all respects, except that we reverse the part of the judgment awarding costs to Pieper Electric and Clear Horizons under WIS. STAT. § 807.01. We remand for the circuit court to amend the judgment to deny those costs.[6]

[6] We perceive no reason from the parties' briefing why further proceedings would be necessary on remand. However, our decision is not intended to limit the circuit court's authority to conduct further proceedings if necessary.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.