



ALERTS

Abandonment (And Amendment) Issues In The Eleventh Circuit

March 20, 2024

Highlights

The Eleventh Circuit recently analyzed the procedural action for a plaintiff who is satisfied with the outcome of an action on some but not all claims, saying one can properly remove the remaining claims and achieve a final judgment under Federal Rule of Civil Procedure 58(d)

The court found the plaintiff's motion to abandon the claim constituted a motion to amend her complaint to drop the claim pursuant to Federal Rule of Civil Procedure 15(a)(2)

The *Lowery* decision indicates that in the Eleventh Circuit, rather than filing a motion to abandon claims to finalize a judgment, the proper course is to amend the complaint to remove the pending claims

It is widely known that federal courts in the Eleventh Circuit have taken a hard stance under Federal Rule of Civil Procedure 41 – per the plain language of the rule, parties may only dismiss “actions,” not individual claims. But in the coverage action, *Lowery v. Amguard Ins. Co.*, the U.S. Court of Appeals for the Eleventh Circuit confronted a new issue: What

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happens when a claimant is satisfied with the result at summary judgment and wishes to forego other claims and receive a final judgment?

In *Lowery*, the plaintiff sustained injury when hot soup from a restaurant spilled onto her lap. Following a consent judgment with the restaurant to assume the rights under the restaurant's applicable insurance policy, the plaintiff pursued the insurer with a three-count action: reformation of the policy; breach of the reformed policy; and statutory insurer bad faith failure to pay. Although the third count generally presents factual issues under Georgia law, the plaintiff prevailed on her partial summary judgment motion on the other two. The insurer sought interlocutory review of the district court's summary judgment decision.

Satisfied with the result and not wishing to pursue the bad faith claim, the plaintiff decided to forego it and obtain finality on the judgment for the reformation and breach of policy claims. In doing so, the plaintiff submitted a notice of intent to abandon the claim and requested a final judgment pursuant to Federal Rule of Civil Procedure 58(d). The insurer submitted a "notice of non-opposition" to the plaintiff's requested relief because, while interlocutory review is discretionary, federal courts of appeal possess jurisdiction over "final decisions from district courts." The Eleventh Circuit questioned its jurisdiction to hear the appeal considering its precedent that a party may not voluntarily dismiss a "claim" as opposed to an "action" under Rule 41.

In its initial decision in 2023, the Eleventh Circuit determined it possessed jurisdiction over the "final decision" because the plaintiff abandoned her bad faith claim, resolving all active claims. Perhaps recognizing the tension with its Rule 41 jurisprudence, the Eleventh Circuit had earlier this year, sua sponte, vacated its 2023 decision and substituted it with *Lowery*. In the substituted decision, the Eleventh Circuit abandoned its prior abandonment and instead held that the plaintiff's motion to abandon its bad faith claim was actually an intended Rule 15(a)(2) motion to amend her complaint to remove the bad faith claim. The decision allowed the Eleventh Circuit to preserve its stance with respect to Rule 41 while maintaining that Rule 15 is the "'most obvious' vehicle for 'dismissing a single claim without dismissing an entire action.'"

Takeaways

Although not every circuit takes such a rigid stance with respect to Rule 41, it is worth monitoring how other circuits apply the analysis in *Lowery*. Particularly, when representing a plaintiff in a commercial matter and the client receives a favorable partial summary judgment ruling and wishes to forego unresolved claims, counsel should consider how the *Lowery* decision dictates the appropriate procedural mechanism to obtain a final judgment.

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Christopher Daniels at 404-264-4053 or cdaniels@btlaw.com.

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