

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## Croft v. TBR, Inc., 222 W. Va. 224

664 S.E.2d 109 (2008) · No. No. 33504 · Decided March 18, 2008

### SUMMARY

The Supreme Court of Appeals of West Virginia held that Rule 68 offers of judgment in Human Rights Act cases did not include attorney fees and costs because the offers did not explicitly state that those amounts were included. The court reversed the circuit court's denial of the plaintiffs' motion and remanded for determination of reasonable attorney fees and costs in addition to the offer amounts. The opinion includes a concurrence and a dissent.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                            |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Per curiam; Justice Starcher; Justice Benjamin                                                                                                                                                                                                                                                             |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                              |
| DECIDED               | March 18, 2008                                                                                                                                                                                                                                                                                             |
| DOCKET                | No. 33504                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Plaintiffs in consolidated sexual-harassment actions under the West Virginia Human Rights Act accepted Rule 68 offers of judgment and then sought attorney fees and costs. The Circuit Court of Ohio County denied the motion, concluding that the offers included those amounts. The plaintiffs appealed. |
| STANDARD OF REVIEW    | De novo review applies to the circuit court's interpretation of the language in the offers of judgment because the interpretation of contract language presents a question of law.                                                                                                                         |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                                                                                                                                                                             |
| PARTIES               | Robin L. Croft, Jill A. Armitage, Brandy G. McCoy v. TBR, Inc., d/b/a TJ's Sports Garden and Restaurant, Tashe Jovanni Radevski, Shane Kulpa, Erie Insurance Property & Casualty Company, intervenor                                                                                                       |

### TOPICS

offer of judgment

attorney fees

civil procedure

appellate procedure

sexual harassment

## PRACTICE AREAS

civil procedure

appellate procedure

employment law

civil rights

remedies

## QUESTIONS PRESENTED

1. Whether the Rule 68 offers of judgment expressly included the appellants' attorney fees and costs.
2. Whether the circuit court erred by denying the appellants' motion for attorney fees and costs in addition to the amounts stated in the offers of judgment.
3. What standard of review governs interpretation of the offers of judgment.

## HOLDINGS

1. A Rule 68 offer of judgment in a West Virginia Human Rights Act case does not include attorney fees and costs within the offered amount unless the offer explicitly and unequivocally states that it is inclusive of those fees and costs.
2. The interpretation of the written offers of judgment is reviewed de novo.

## KEY QUOTATIONS

*"Thus, under our rule, costs and attorney fees are not included in the appellees' offers of judgment."* (115)

*"Therefore, the circuit court must award to the appellants reasonable attorney fees and costs in addition to the offers of judgment pursuant to Rule of Civil Procedure 68 and Shafer."* (118)

## FACTUAL BACKGROUND

The appellants brought three sexual-harassment-related claims under the West Virginia Human Rights Act against TBR, Inc., Tashe Jovanni Radevski, and Shane Kulpa. The actions were consolidated, Erie Insurance intervened or sought intervention concerning insurance coverage issues, and mediation failed. The defendants and Erie then made separate \$13,000 Rule 68 offers providing for full satisfaction and dismissal of claims, but the offers did not expressly state that the amounts included attorney fees and costs.

## PROCEDURAL HISTORY

The appellants filed three separate Human Rights Act actions, which were later consolidated. After settlement demands were rejected and mediation failed, the defendants and Erie Insurance made separate \$13,000 Rule 68 offers of judgment to each appellant. The appellants accepted the offers and moved for attorney fees and costs. The circuit court denied the motion, and the Supreme Court of Appeals reversed and remanded for determination of reasonable fees and costs in addition to the offer amounts.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The circuit court must determine and award reasonable attorney fees and costs in addition to the amounts stated in the offers of judgment, applying the factors set out in Syllabus Point 4 of *Aetna Casualty & Surety Co. v. Pitrolo* and other applicable law.

#### CASES CITED

- *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (2000)
- *Pope v. Gap, Inc.*, 125 N.M. 376, 961 P.2d 1283 (1998)
- *Wood v. Acordia of West Virginia, Inc.*, 217 W. Va. 406, 618 S.E.2d 415 (2005)
- *Chrystal R.M. v. Charlie A. L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995)
- *Shafer v. Kings Tire Service, Inc.*, 215 W. Va. 169, 597 S.E.2d 302 (2004)
- *Marek v. Chesny*, 473 U.S. 1, 105 S. Ct. 3012, 87 L. Ed. 2d 1 (1985)
- *Jordan v. National Grange Mutual Insurance Co.*, 183 W. Va. 9, 393 S.E.2d 647 (1990)
- *Rohrer v. Slatile Roofing & Sheet Metal Co.*, 655 F. Supp. 736 (S.D. Ind. 1987)
- *State ex rel. Medical Assurance v. Recht*, 213 W. Va. 457, 583 S.E.2d 80 (2003)
- *Aetna Casualty & Surety Co. v. Pitrolo*, 176 W. Va. 190, 342 S.E.2d 156 (1986)
- *Nordby v. Anchor Hocking Packaging Co.*, 199 F.3d 390 (7th Cir. 1999)
- *Pelkowski v. Highland Managed Care Group, Inc.*, 2002 WL 1836509 (7th Cir. Aug. 9, 2002)
- *Broadcast Music, Inc. v. Dano's Restaurant Systems, Inc.*, 902 F. Supp. 224 (M.D. Fla. 1995)
- *Blumel v. Mylander*, 165 F.R.D. 113 (M.D. Fla. 1996)

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