

## Montana Supreme Court Rules That Dismissal Of Underlying Suit Is Proper Remedy For Collusive Settlement

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The Montana Supreme Court ruled that a settlement in a defective construction suit was the product of collusion between the landowner and contractor and that the proper remedy was dismissal of the underlying suit and consent judgment. *Abbey/Land, LLC v. Glacier Construction Partners, LLC*, 2019 WL 350088 (Mont. Jan. 29, 2019).

Abbey/Land, a real estate developer, contracted with Glacier for the construction of a luxury home. Both were owned by the same entity and Glacier's only project was the construction of the home for Abbey/Land. When construction problems arose, several lawsuits were filed, including a suit by Abbey/Land against Glacier. That suit resulted in a settlement in which Glacier agreed to a confession of judgment for \$12 million. James River, Glacier's insurer, moved to intervene without success. On appeal, the Montana Supreme Court ruled that James River should have been allowed to intervene to challenge the reasonableness of the confessed judgment. On remand, a trial court ruled that the judgment was the product of collusion. The trial court declined to dismiss the case and instead reduced the settlement to approximately \$2.4 million. The trial court also awarded James River attorneys' fees under its "inherent powers."

On appeal for the second time, the Montana Supreme Court affirmed the lower court's finding of collusion. The court held that the record contained numerous facts demonstrating collusion, including Glacier's agreement to expose itself to consequential damages and the parties' instructions that opposing counsel operate "as a team on a unified strategy." However, the court reversed the reduction of the judgment, holding that the lower court abused its discretion by failing to dismiss the suit entirely. The Montana Supreme Court reasoned that the lower court "faced evidence of collusion so egregious that dismissal of Abbey/Land's claims against Glacier was the only appropriate remedy."

Finally, the Montana Supreme Court ruled that an award of attorneys' fees was proper, but not based on the lower court's "inherent powers." The Montana Supreme Court explained that the narrow exceptions to the "American Rule" prohibiting fee shifting do not extend to the present case and are typically limited to cases brought by insureds. However, the court held that James River was entitled to fees based on the governing declaratory judgment act statute, which allows a court to award "further relief . . . whenever necessary or proper."

## Authors and Contacts

[Bryce Friedman](#)

Partner

[bfriedman@stblaw.com](mailto:bfriedman@stblaw.com)

+1-212-455-2235

