

THE RULE FOR JOINT PROPOSALS FOR SETTLEMENT- BE SPECIFIC!

Proposals for settlement are a valuable negotiating tool, worthy of serious consideration by all parties to a lawsuit. Their judicious use may garner attorneys' fee and cost awards, even for non-prevailing parties. Under Section 768.79, Florida Statutes, and Rule 1.442, Florida Rules of Civil Procedure, defendants may be awarded reasonable attorneys' fees and costs, if their proposals for settlement are not accepted and if the judgment is for no liability or plaintiff's judgment is at least 25% less than the offer amount. But by the same token, plaintiffs are entitled to reasonable attorneys' fees and costs if their offers are not accepted

and they recover a judgment at least 25% greater than their offers.

Subsection (c)(3) of Rule 1.442 says, "A joint proposal shall state the amount and terms attributable *to each party*." Significantly, the Rule does not differentiate between plaintiffs and defendants, but rather uses the term "party," the rationale being that each party should be able to fully and fairly evaluate the offer as it relates specifically to that party.

On June 23, 2005, the Florida Supreme Court in *Lamb v. Matetzschk* evaluated whether Florida law prohibits undifferentiated offers of judgment from one plaintiff to two defendants, even when one of the two defendants is alleged to be only vicariously liable.

Mr. Lamb had rear-ended a stopped car. He was thereafter rear-ended by an

automobile driven by William Matetzschk, who was then rear-ended by a vehicle driven by his own wife, Margie Matetzschk. Lamb brought suit against the Matetzschks for his injuries. There was no evidence that the collision between the Matetzschks propelled Mr. Matetzschk into Mr. Lamb a second time, so the sole allegation against Mrs. Matetzschk was that she was jointly and severally liable with her husband for Mr. Lamb's injuries since she was a co-owner of the vehicle driven by Mr. Matetzschk

Lamb served three proposals for settlement. The first two, both of which were rejected, were undifferentiated joint proposals to the Matetzschks. The third, which expired without acceptance, was made solely to Mr. Matetzschk for \$6,000 (following

settlement with Mrs. Matetzschk at mediation).

At trial, Lamb's award exceeded the settlement proposals by more than 25%, entitling him to attorneys' fees pursuant to Section 768.79. Mr. Matetzschk argued that the trial court should award the attorneys' fees based upon the third proposal for settlement, since the first two were undifferentiated. The trial court disagreed, and fixed the first undifferentiated proposal as the inception date for attorneys' fees.

The Fifth DCA reversed, stating that *Willis Shaw v. Hilyer Sod, Inc.*, 849 So.2d 276 (Fla. 2003), controlled on undifferentiated offers of judgment. In *Willis Shaw*, the Florida Supreme Court stated:

A strict construction of the plain language of Rule 1.442 (c)(3) requires that offers of judgment made by multiple offerors must apportion the amounts attributable to each offeror.

The Supreme Court opined in *Lamb* that each defendant should be able to settle the suit knowing the extent of his or her own financial responsibility. The Court rejected Lamb's contention that it would be impossible to apportion an offer of settlement when one of the offerees was only vicariously liable.

The Supreme Court held that the plain language of Rule 1.442 mandates that offers of settlement be differentiated between the parties, even if a party's liability is purely vicarious.

Combining the language of Rule 1.442 and the Supreme Court's rulings in *Willis Shaw* and *Lamb* makes clear - when an offer is made from multiple parties, it must be apportioned amongst those parties. Likewise, when an offer is made to multiple parties, it must be apportioned amongst them. Be specific, so each party can fully and fairly evaluate the impact of the offer!

Have a question or issue you'd like to see in a future newsletter? Email Stephan Lampasso in our Fort Lauderdale office at slampasso@mconnaughhay.com.

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