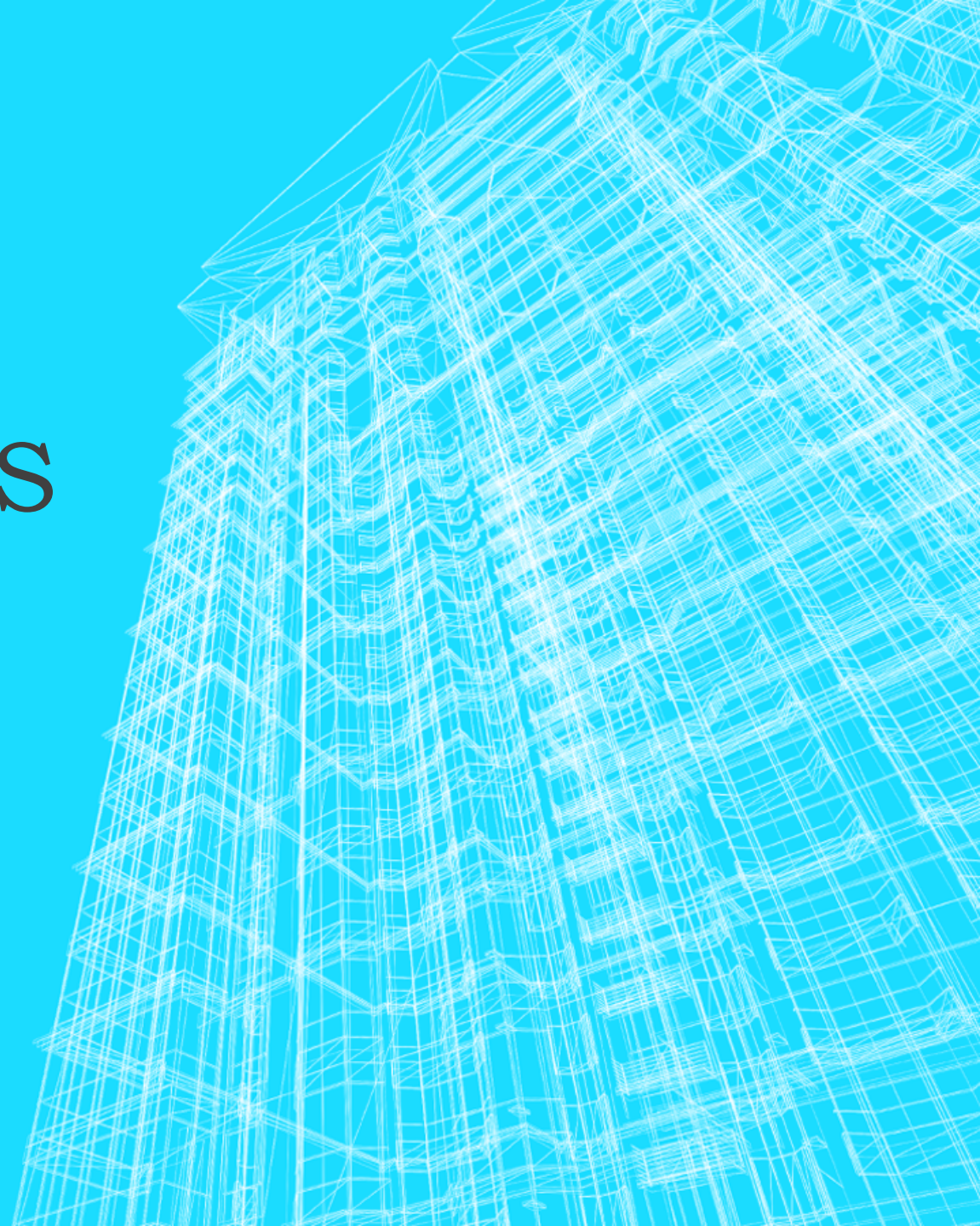


PROPOSALS FOR SETTLEMENT IN FLORIDA CD CLAIMS

Moyer Law Group

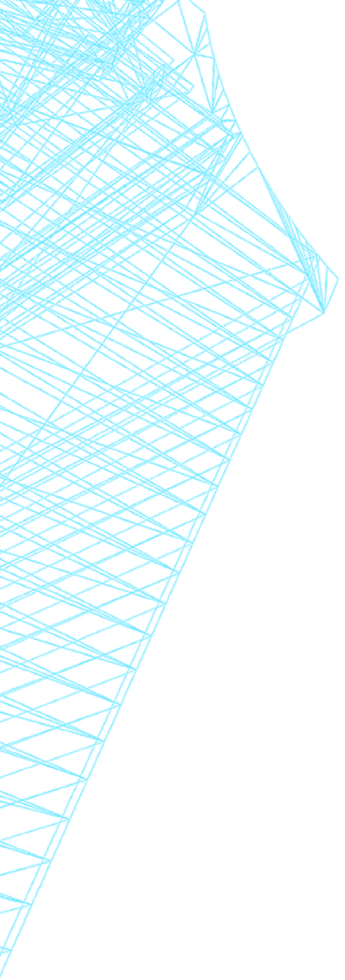
Jason Moyer



Moyer Law Group



801 THIRD STREET SOUTH, SAINT PETERSBURG, FLORIDA 33701
Phone: 727.310.2002 | Fax: 727.310.2003 | MoyerLawGroup.com



Proposals for Settlement (PFS)

- ▶ History of PFS – Florida Statutes § 768.79, § 44.102(6), §45.061, § 73.032
 - PFSs are also known as an Offer of Judgment when made by defendant(s), or a Demand for Judgment when made by plaintiff(s). Proposals are governed by the rules for interpretation of contracts. *Pratt v. Weiss*, 92 So.3d 851, 854 (Fla. 4th DCA 2012) (citing *Dorson v. Dorson*, 393 So. 2d 632, 633 (Fla. 4th DCA 1981)). Proposals are to be looked at as a whole and construed “ ‘according to its own clear and unambiguous terms.’ ” *Id.* [quoting *Cueto v. John Allmand Boats, Inc.*, 334 So. 2d 30, 32 (Fla. 3d DCA 1976)].

Proposals for Settlement (PFS)

- ▶ Purpose of PFS

- Encourage early settlement of civil cases.
 - Settlement is “encouraged by imposing an added financial burden on a party who has refused to accept a fair PFS”.

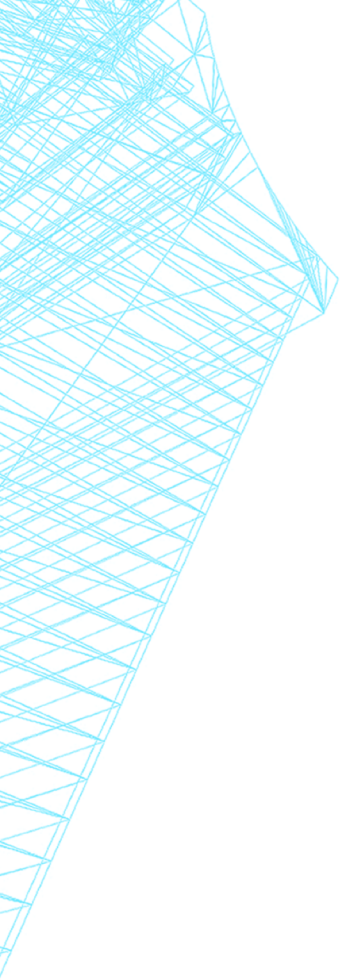


Proposals for Settlement (PFS)

► Florida Rule of Civil Procedures 1.442 – Procedural Guidelines for a PFS



- Accepting a PFS creates a Settlement Agreement between the parties and may be enforced by the Court. *Security Professionals, Inc. v. Segall*, 685 So. 2d 1381 (Fla. 4th DCA 1997).
- They have to agree to all of the proposals material terms treated like a contract. *Grimsley v. Inverrary Resort Hotel, Ltd.*, 748 So. 2d 299 (Fla. 4th DCA 1999).
- PFS also shift potential liability for costs of litigation. In some cases, depending on amount in controversy versus the costs of litigation, a party rejecting a proposal may become liable to the opposing party for reasonable attorney's fees and costs.



Proposals for Settlement (PFS)

- Strict compliance with Florida Rule of Civil Procedure 1.442 is required.
- A PFS must: (i) state the law under which the PFS is being made (i.e. 1.442 and 768.79); (ii) name the party making it and the party to whom it is being made; (iii) identify the claim or claims attempting to resolve (suggestion: include case number); (iv) state any relevant conditions (i.e. release?); (v) indicate total amount of proposal and identify all nonmonetary terms; (vi) state amount proposed to settle punitive damages claim; (vii) state whether the proposal includes attorney's fees; (viii) include a certificate of service in the form required by rule 1.080(f).

Proposals for Settlement (PFS)

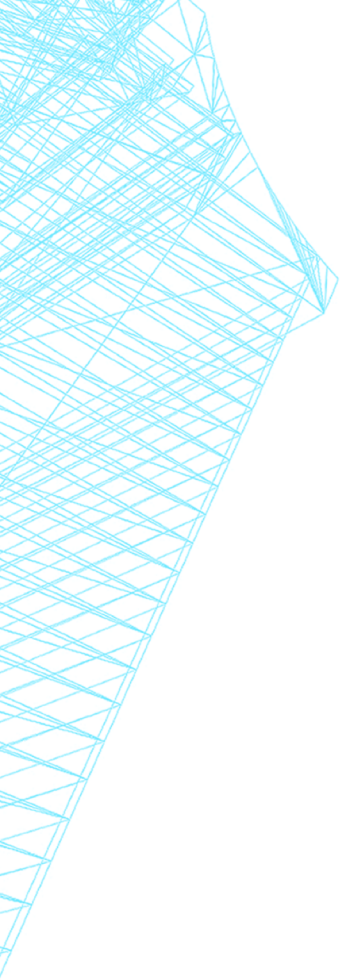
- ▶ Basic Rules for a PFS under Florida Statutes §768.79
 - An offer must (i) be in writing and state that it is being made pursuant to § 768.79 of Florida Statutes; (ii) name the party making it and the party to whom it is being made; (iii) state with particularity the amount offered to settle a claim for punitive damages, if any; and (iv) state its total amount. Additionally, the PFS must be served upon the party to whom it is made, but it shall not be filed unless it is accepted or unless filing is necessary for enforcement.



Proposals for Settlement (PFS)

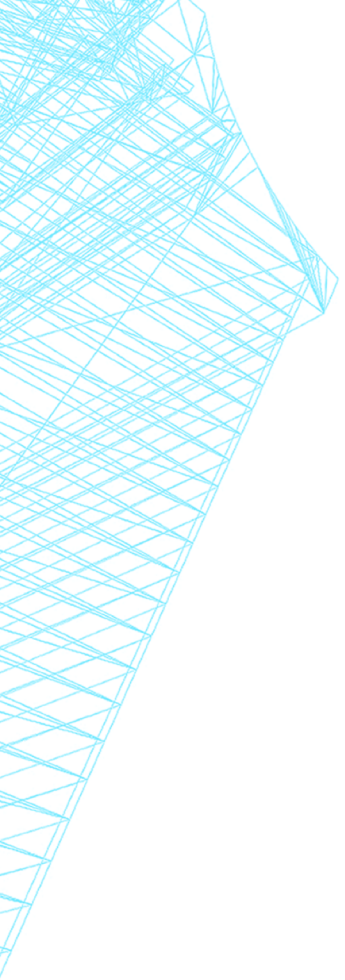


- Timing
 - Earliest time for defendant is 90 days after offeree becomes a party to the case.
 - Earliest time for plaintiff is no earlier than 90 days after the date of service of process on defendant.
 - Latest time to serve PFS is not later than 45 days before the date set for trial or 1st day of docket, whichever is earlier.
 - The offeree has 30 days to accept in writing, otherwise the PFS is deemed rejected.



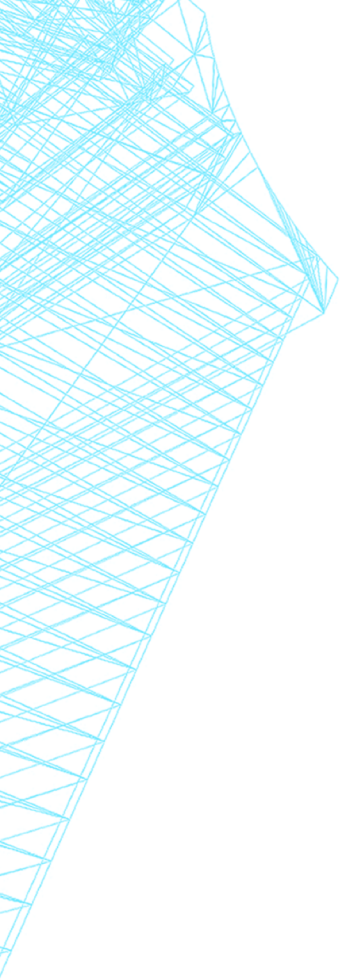
Proposals for Settlement (PFS)

- May a PFS be withdrawn after being served?
 - Yes, a PFS may be withdrawn in writing so long as it is served before the date a written acceptance is filed. Once withdrawn, a PFS is void.
- May a PFS be partially accepted?
 - In 2010, the Florida Supreme Court answered this question in the affirmative establishing that each offeree must be able to independently accept even in a joint proposal. See *Attorneys' Title Insurance Fund, Inc. v. Gorka*, 36 So. 3d 646 (Fla. 2010).



Proposals for Settlement (PFS)

- Discussion of Hingson Case
- Multiple Offerors to a Single Offeree – Offers of judgment made by multiple offerors have to be apportioned by the amounts attributable to each offeror. *Willis Shaw Exp., Inc. v. Hilyer Sod, Inc.*, 849 So. 2d 276 (Fla. 2003).
- Discussion of *Willis Shaw Express, Inc.* Case.



Proposals for Settlement (PFS)

► Appellate

- PFS may not be made for the first time while case is on appeal because an appeal is not an “action for damages”.
- What if a PFS was made when case was pending in Trial Court?
 - Appellate Court will have the authority to grant a motion for appellate attorney’s fees if:
 - PFS was timely;
 - Party making the PFS is entitled to fees by application of statute; and
 - Party that made proposal was prevailing party on appeal.

Proposals for Settlement (PFS)

- PFS Releasing Multiple Defendants without Apportionment
 - Using Rule 1.442(2)(d) to make dismissal of another defendant a nonmonetary condition of acceptance of the PFS. Discussion of various District Court cases, including *Alioto-Alexander v. Toll Bros., Inc.*, 12 So. 3d 915 (Fla. 4th DCA 2009), *Duplantis v. Brock Specialty Services, Ltd.*, 85 So. 3d 1206 (Fla. App. 5 Dist. Apr 27, 2012), *Eastern Atlantic Realty & Inv. Inc. v. GSOMR LLC*, 14 So. 3d 1215 (Fla. 3d DCA 2009).



QUESTIONS?



801 THIRD STREET SOUTH, SAINT PETERSBURG, FLORIDA 33701
727.310.2002 | hhiggins@moyerlawgroup.com | MoyerLawGroup.com