Building A Better Proposal for Settlement

By Christopher B. Hopkins

In this article Christopher Hopkins describes some recent developments in the case law surrounding Proposals for Settlement, and offers practical suggestions for drafting one that will be enforced.

An emerging trend in the past five years indicates that only one in four Proposals for Settlement is enforced on appeal.[1] This trend is attributable to procedural rule changes a decade ago which resulted in dozens of subsequent appellate decisions strictly construing technical compliance.[2] In addition to satisfying procedural rules created by the judiciary, a lawyer must craft a settlement offer, free of any ambiguity, which also fulfills statutory requirements enacted by legislation. In 2007, Justice Pariente lamented that, after the Florida Supreme Court's fourth decision in five years, there seemed to be no end to disputes over the proper form and substance of Proposals for Settlement.[3]

Defense counsel face particular hurdles when a client seeks to include non-monetary terms such as indemnity agreements, hold harmless clauses, and even general releases in Proposals for Settlement. Plaintiffs' lawyers, on the other hand, typically only need to draft a far simpler money-for-dismissal Proposal.

Case law has established that any ambiguity or need for further judicial labor will void a Proposal for Settlement.[4] This article provides hands-on recommendations for defense counsel to draft better Proposals for Settlement by tracking the procedural and statutory requirements. It also discusses the most recent interpreting case law, particularly the preferred methods for joint Proposals and how to include non-monetary terms. These tools will help build a better Proposal for Settlement.

1. This Proposal for Settlement is served pursuant to Section 768.79, Florida Statutes and Florida Rule of Civil Procedure 1.442.

You can often tell how long a lawyer has practiced — or whether the lawyer handles federal cases — if he or she uses the expression "offer of judgment." That term, which was abandoned by Florida state law, has been replaced with "Proposal for Settlement." Admittedly, a lawyer could still label the settlement offer almost anything; however, to be a treated as a Proposal for Settlement, it must reference the controlling rule and statute and be in writing.[5]

A good practice is to both fax and mail your Proposal to the opposing side. Maintain the fax confirmation sheet in the same file as the Proposal so you have proof of service.

2. This Proposal is not served earlier than ninety (90) days after this action was commenced and is not served later than forty-five (45) days before trial.

Surprisingly, there is a line of cases which suggests that a defendant can enforce a premature Proposal for Settlement served within the initial three months of suit.[6] But that is a questionable practice and, meanwhile, the courts are quite strict about Proposals filed too close to trial.

The "forty five days before trial" rule uses the *earlier* of the special set-

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ting or the start of the trial docket.[7] Frequently, parties continue discovery right up until trial, especially critical expert depositions. Be mindful of this Rule if, for example, your trial docket starts in June but your case is set in August. Once that June docket begins, a party cannot serve a Proposal for Settlement; indeed, the deadline would have expired in April. A good practice is to calendar that forty-five-day deadline when you receive the trial docket and write to your client that the Proposal for Settlement deadline is approaching. Likewise, it is also a good practice to confirm your client's authority to serve a Proposal.[8]

3. In compliance with Florida Rule of Civil Procedure 1.442(c)(2), this Proposal includes:

A Proposal can follow almost any format as long as it includes the required language of Rule 1.442 and Section 768.79. That said, lawyers should draft their Proposals in anticipation that, at some point in the future, they will have to persuade the court that all procedural and substantive requirements in both the rule and statute have been met. Thus, a good practice is to simply follow the "form and content" requirements in Rule 1.442. Indeed, the proposed wording in this article intentionally tracks the same sub-section letters so this Proposal for Settlement can be compared side-by-side with Rule 1.442(c)(2).

(A) Defendant(s) _____ (This Defendant/These Defendants) makes this Proposal to Plaintiff(s), _____ .

The first requirement is identifying which party is making the Proposal. Do not worry at this point if multiple defendants are making the Proposal; simply name each included defendant clearly and correctly.

It is important to tailor this portion of the Proposal so that, if it is made by one defendant, you identify that party as "This Defendant." If there multiple defendants making the offer, this paragraph should label them, "These Defendants." Those references will help clarify and limit which party/parties are making the offer in the event there are other co-defendants in the case whom you do not represent and who do not intend to benefit from the Proposal. Also confirm that the "COMES NOW" introductory paragraph directly under the title of the Proposal reflects the exact name(s) of the offering party or parties listed in this section.

Likewise, accurately identify in this section the individual plaintiff or multiple plaintiffs who are receiving the Proposal. Any party not referenced will not be considered as making or receiving your Proposal for Settlement.[9] In short, do not leave out any party you intend to be included in this settlement, but make sure you do not "over include" unintended parties.

(B) This Proposal is intended to resolve any and all claims of the Plaintiff(s), _____, against This Defendant/These Defendants arising out of the facts alleged in this lawsuit.

Frequently, a Proposal is served with the intent to settle the entire case. The rule, however, permits a Proposal to be tailored to individual claims; at least one interpreting court has held that an individual "claim" means one count in a multi-count Complaint.[10] If your intention is just to resolve one count, the Proposal must be clear which of the outstanding claims (e.g., "only Count I for Negligence against Defendant, XYZ") are to be extinguished.[11]

Generally speaking, the defendant will seek to release all counts in the Complaint and any claims which could have been brought in the Complaint. Recent case law suggests you can release "all claims" between the parties; however, attempting this may cause fatal confusion or ambiguity (see discussion below regarding non-monetary terms and conditions). If you choose to modify this paragraph, consider avoiding "and/or" as that wording alone may be claimed to cause ambiguity. Also, if you want to specifically exclude a separate pending or possible claim, say so: "This Proposal intends to resolve actions which were or could have been brought in this PIP case, but this Proposal does not intend to resolve any UM claims."

Finally, a number of cases have questioned whether a Proposal was made in good faith in light of the amount offered. The rule is that the amount offered must be made in good faith where the offeror has some reasonable foundation upon which to base the offer.[12] While the Fourth District has stated that a nominal figure is not "suspect" simply because it is nominal, such reasoning may only be a starting point.[13] The Third District, on the other hand, has stated that a reasonable basis for a nominal offer only exists where the "undisputed record" strongly indicates that the defendant has no exposure.[14]

(C) There are no relevant conditions other than the Plaintiff(s) shall file a Notice of Voluntary Dismissal With Prejudice as to This Defendant/ These Defendants.

Florida courts have not specifically decided whether requirements to sign indemnity terms, hold harmless agreements or releases are specifically "conditions" or "non-monetary terms."[15] Practically speaking, it does not matter since both must be stated with "particularity," meaning that it is specific enough so there is no doubt in the recipient's mind what rights are being extinguished. That said, the inclusion of broad non-monetary terms creates the risk the plaintiff can argue an ambiguity exists which voids the Proposal.

Obviously, if you have a condition, set it forth in this paragraph. Releases and other non-monetary terms will be handled below. Otherwise, the only condition proposed should involve how the case is concluded.[16] There are several options; at least one court has pointed out that filing a Notice of Voluntary Dismissal is the most appropriate because it extinguishes all related possible claims.[17]

(D) The total amount of this Proposal is XXX ($xxx.xx), which amount shall be attributed in the following manner:
- **(i) XXX ($xxx.xx) from Defendant, _____, towards the claim of Plaintiff, _____.**
- **(ii) XXX ($xxx.xx) from Defendant, _____, towards the claim of Plaintiff, _____.**
- **(iii) This Proposal shall be accepted jointly by all Plaintiffs identified above in (i) and (ii); individual Plaintiffs cannot alone accept their attributed amount of this Proposal.**

This section of the Proposal for Settlement involves the most hidden traps. The easiest scenario is one defendant serving the Proposal on one plaintiff. Identify them clearly and accurately in subsection (i) and delete sub-sections (ii) and (iii).

The rule is that, if a joint Proposal does not state the amount attributable to each offeror and offeree, the Proposal will be deemed defective.[18] The failure to do so has been a stumbling block despite Florida courts' repeated insistence that there is a bright line rule.[19] Thus, if you have multiple defendants making offers, each individual defendant must make a specific dollar amount offer to each individual plaintiff. Depending upon the number of parties, you may have to repeat sections (i) and (ii) several times so that each offering defendant has set forth its offer to each intended plaintiff.

As examples, if you had one defendant and two plaintiffs, you would need to identify the defendant in both (i) and (ii) and then identify plaintiff #1 in (i) and plaintiff #2 in (ii). If you have two defendants and one plaintiff, then identify the plaintiff in both (i) and (ii) and list defendant #1 in (i) and defendant #2 in (ii). Again, each recipient must be given a specific dollar amount demand allocated to them.[20]

In early 2008, the First District approved the following joint offer and found it to be free of ambiguity in describing the terms attributed to each defendant and that it intended to resolve the entire claim: "Total Amount of Proposal: Seventy-Five Thousand and no/100 Dollars ($75,000.00), payable to Plaintiff, James Clements; (Thirty-Seven Thousand Five Hundred and no/100 Dollars($37,500.00) from Defendant, Bobby B. Rose, and Thirty-Seven Thousand Five Hundred and no/100 Dollars ($37,500.00) from Defendant, Maudeanna Rose.)."[21]

Without question, this can get complicated. Consider, for example, a joint proposal for settlement where two defendants make settlement offers to two plaintiffs. To craft such a Proposal, the lawyer would have to repeat section (i) four times so that defendant #1 could make its Proposal to the two plaintiffs individually and then defendant #2 could do the same.

Make sure that the words (e.g. "one thousand, six hundred and sixty six dollars and 67/100") match with the numbers (e.g. $1,666.67). If the words do not exactly state the numeric amount, the Proposal will be deemed ambiguous.[22] Likewise, while no case has been found on point, if the multiple individual offers (e.g. $1,666.67 to four Plaintiffs) do not add up to the total amount of the Proposal ($6,666.68), it will likely be deemed ambiguous and therefore void. Of course, the allocated amounts to each Plaintiff do not have to be the same.

Be careful with vicariously liable defendants as well as plaintiffs who both bring an individual claim and a claim on behalf of a ward or child. In one case, the plaintiff served a Proposal only on the defendant doctor (Dr. Jones) but not the defendant doctor's sole practice medical group (Dr. Jones, P.A.).[23] Even if the other defendant is only vicariously liable, both defendants must be identified and be given a specific dollar amount to settle.[24] Dr. Jones' acceptance of an undifferentiated Proposal would not dismiss the claims against Dr. Jones' solo practice.[25] Conversely, if the doctor and his group wanted to serve a Proposal, they would have to serve individual or joint Proposals to extinguish the entire case. Of note, Proposals for defendant #1 which also require (or result in) the release of defendant #2 or non-parties have not been well-received.[26]

Similarly, be mindful in situations where plaintiff #1 has an individual claim as well as a claim on behalf of plaintiff #2 ("Mrs. Jones, individually, and as natural parent and guardian of Miss Jones"). In this situation, Mrs. Jones, individually, needs to be identified as plaintiff #1 while Mrs. Jones on behalf of her daughter is plaintiff #2.[27]

Finally, there have been some cases where plaintiffs have tried to escape the Proposal by claiming that it was unclear whether a joint Proposal had to be accepted by both parties or whether one plaintiff could have accepted.[28] While such strategies have not always been successful, defense counsel can avoid the risk by stating clearly in section (iii) that all recipients must jointly accept.

(iv) There are no other non-monetary terms other than those stated here or elsewhere in this Proposal.

While courts have approved

the use of indemnity, hold harmless and lien resolution terms as well as entire general releases, the inclusion of these terms certainly trigger the court's strict construction regarding whether every term is stated with particularity and lacks any hint of ambiguity. Particularly in a one-defendant scenario, consider a simple money-for-dismissal Proposal in order to streamline any issues of ambiguity.

While the offering party can require the recipient to sign an indemnity agreement, hold harmless provision, lien-resolution terms or general release, this creates risk for the offering party which will only be resolved after-the-fact. In short, a lawyer may not know whether the Proposal is enforceable until the conclusion of the case. If your client requires that non-monetary terms be included, a good practice is to put in writing to the client that the addition of such terms has been grounds for successful challenges because of the "strict construction" perspective and *de novo* standard of review. Likewise, consider adopting previously approved Proposal for Settlement language which has successfully been upheld by the controlling District Court of Appeal. Proposals should avoid releasing insurance companies of co-defendants or using broad language releasing those in privity with your client.[29]

As recently as January 2008, the Third District approved the following hold harmless and indemnity language:

> [Plaintiff shall hold Defendant harmless and indemnify the Defendant] from any and all existing, or potentially existing, liens or other claims which any person or entities may have on the damages sought in this lawsuit arising out of [the Plaintiff's] claims or potential claims in this lawsuit.[30]

In the same case, the court also approved this lien resolution provision:

> [Plaintiff and Plaintiff's counsel] shall agree that all known liens or other claims of third parties, including but not limited to, health care providers [of the Plaintiffs], will be satisfied and extinguished by [the Plaintiffs] and [the Plaintiff's] counsel.[31]

That lien resolution provision might be improved by limiting the "liens of other claims of third parties" to those related to the subject of the lawsuit. That said, this language above was approved as is by the court.

Similarly, in 2008, the Fourth District approved this lien resolution and hold harmless clause:

> The Releasing Party agrees to be responsible for, and to satisfy out of the proceeds of this settlement, any and all liens and or subrogated interests, known and unknown, for medical treatment, health care related expenses, and attorneys fees incurred by or on behalf of the Releasing Party, on account of the [date] incident referred to above.
>
> The Releasing Party agrees to indemnify and hold harmless the Released Party from any and all claims and/or liens and/or subrogated interests herein for which these funds are intended.[32]

In 2006, the Supreme Court of Florida clarified that the offering party could require the execution of a general release as a term or condition of a Proposal.[33] That said, the offering party must sufficiently summarize the release or attach the release to the Proposal.[34] The offeror cannot blindly demand the offeree sign an undescribed release as a Proposal term; even the offeror's stated willingness to allow the offeree to review the proposed release at the offeror's attorney's office is "facially insufficient."[35] Of the two options, the better practice is to attach the release. The best practice is to avoid the use of a release altogether in order to prevent claims of confusion or ambiguity.

As the Supreme Court noted, "given the nature of language, it may be impossible to eliminate all ambiguity."[36] This is not intended to be an insurmountable obstacle, but simply a requirement that the terms be "sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification."[37] This can be accomplished by avoiding ambiguity which "could reasonably affect the offeree's decision."[38] Again, by reducing the number of words in your Proposal or release, you limit the chance there is an ambiguity.

One risk of using a general release with the Proposal is a conflict in the wording. In *State Farm v. Nichols*, the Proposal stated that the plaintiff was releasing "any and all of Nichol's claims and causes of action in, or arising out of, the above-styled case." The attached release, however, was much broader and included all claims of any kind which accrued before written acceptance of the Proposal. Because the Proposal involved claims "arising in or out of" the suit but the release extinguished all claims, of any nature, the entire Proposal was deemed void.[39]

Of note, before *Nichols* was decided in 2006, some courts had stricken Proposals which extinguished both related and unrelated claims as being too broad.[40] *Nichols* does not definitively resolve that issue, but the majority indicated that "general releases [typically] have included expansive language designed to protect the offeror from unforeseen developments or creative maneuvering" and that the Rule seeks to "prevent ambiguity, not breadth."[41] Notably, however,

that sentiment remains a theory as the *Nichols* settlement language was deemed ambiguous.[42] Thus it appears acceptable to have a Proposal or an attached release extinguish any and all claims before the date of written acceptance. That said, the wording of a release could still be deemed unclear as to its breadth or in conflict with the Proposal language.

In early 2008, the Fourth District approved a Proposal which released the defendant from "all manner of action or actions, cause and causes of action, controversies, claims and demands whatsoever in law or in equity, present and future, which [plaintiff] can, shall or may have against [defendant] including all claims arising from or relating to [the accident] including all claims that could have been brought in the [lawsuit]."[43] Notably, even though the plaintiff raised some interesting ambiguity challenges, the Panel relied upon *Nichols* and enforced the Proposal. At the risk of altering court-approved language, a more conservative approach might be to limit the extinguished claims to those which accrued prior to acceptance.

(E) The amount proposed to settle a claim for punitive damages is zero dollars.

While there is no case where a Proposal has failed for lack of identifying how much is attributed to a punitive claim when no such claim has been raised, a good practice in light of the requirements of Rule 1.442(c)(2)(E) is to set forth that no money is intended to settle the punitive claim.

On the other hand, if there is a punitive claim, and no money is offered, theoretically the Plaintiff could settle the compensatory claim and still have a punitive claim.

4. This Proposal is <u>inclusive</u> of attorney's fees and costs.

A Proposal can either include or exclude attorney's fees and costs. While individual cases require different considerations, the best practice would be to include attorney's fees and costs in order to create absolute finality to a case. Additionally, it is a safe practice to include fees in the Proposal even if the underlying claim (e.g., negligence) does not bring entitlement to fees.

Be careful in excluding attorney's fees in this section of the Proposal as three intermediate appellate courts in early 2008 have taken opposite stances as to whether a party's acceptance of a Proposal amounts to "prevailing party" status for statutory fee entitlement.[44]

5. This Proposal shall be accepted in writing within thirty (30) days after service.

While neither the governing rule nor the applicable statute requires that the Proposal indicate that acceptance shall be in writing, setting forth that requirement is a good practice. The statute does, however, require that acceptance be in writing. It is common for opposing counsel to verbally accept Proposals over the phone; however, that is not deemed to be formal acceptance. Additionally, should a dispute arise over whether a Proposal was withdrawn before acceptance, stating this requirement should clarify the issue.

Conclusion

Technical compliance with the relevant Rule and statute has voided most Proposals which were challenged on appeal. Since there is no approved standard form, counsel are encouraged to follow these guidelines in order to build a better Proposal for Settlement.

1 In the unscientific sample of opinions since 2004 researched for this article, proposals for settlement were not enforced nearly four times more frequently than they were deemed valid. Stated differently, the recent history of cases suggests that a proposal for settlement has a 1:4 chance of enforcement on appeal.

2 *See In re Amendments to Fla. Rules of Civil Procedure*, 682 So. 2d 105 (Fla. 1996) (effective January 1, 1997).

3 *Campbell v. Goldman*, 959 So. 2d 223, 227 (Fla. 2007) (Pariente, J., specially concurring) ("Because parties will now be on notice that all "t's" must be crossed and "i's" dotted, there should be no further litigation on this particular issue. […] But if the past history of litigation on offers of judgment is any indication, this will not be the last time the Court must clarify the requirements of the rule and statute.")

4 *Id.* at 226 (*citing Willis Shaw Express, Inc. v. Hilyer Sod*, 849 So. 2d 276 (Fla. 2003) and *Lamb v. Matetzschk*, 906 So. 2d 1037 (Fla. 2005)).

5 *Campbell*, 959 So. 2d at 227 ("The plain language of the statute provides that an offer *must* state it is being made pursuant to this section.").

6 *Shoppes of Liberty City, LLC v. Sotolongo*, 932 So. 2d 468, 469 (Fla. 3d DCA 2006) (citations omitted).

7 Fla. R. Civ. P. 1.442(b).

8 *Fivecoat v. Publix Supermarkets, Inc.*, 928 So. 2d 402 (Fla. 1st DCA 2006); *Ponce v. U-Haul Co. of Florida*, 979 So. 2d 380 (Fla. 4th DCA 2008).

9 *Passport Leasing Corp. v. Zimmerman*, 945 So. 2d 660 (Fla. 4th DCA 2007) (omission of wife's name from proposal for settlement was inexcusable neglect and acceptance did not extinguish her claim).

10 *Miami-Dade County v. Ferrer*, 943 So. 2d 288 (Fla. 3d DCA 2006).

11 *Saenz v. Campos*, 967 So. 2d 1114, 1116-1117 (Fla. 4th DCA 2007) (citations omitted); *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1080 (Fla. 2006).

12 *Downs v. Coastal Sys. Int'l, Inc.*, 972 So. 2d 258, 262 (Fla. 3d DCA 2008).

13 *State Farm Mut. Auto. Ins. Co. v. Sharkey,* 928 So. 2d 1263, 1264-65 (Fla. 4th DCA 2006).

14 *Event Servs. America, Inc. v. Ragusa,* 917 So. 2d 882, 884 (Fla. 3d DCA 2005) (citations omitted) (deeming $500 in elevator injury case not in good faith).

15 *Sparklin v. Southern Indus. Assocs., Inc.*, 960 So. 2d 895, 897 (Fla. 5th DCA 2007) ("Presumably, a release would fit within the definition of a non-monetary term."); *Nichols*, 932 So. 2d at 1080; *Papouras v. Bellsouth Telecommunications, Inc.*, 940 So. 2d 479, 480 (Fla. 4th DCA 2006).

16 The Fourth District, in *Palm Beach Polo Holdings, Inc. v. Madsen, Sapp et al.*, 957 So. 2d 36 (Fla. 4th DCA 2007), held that a proposal for settlement which did not provide information as to whether the case would be dismissed or the defendant released was still enforceable.

17 *1 Nation Technology Corp. v. A1 Teletronics, Inc.*, 924 So. 2d at 6.

18 *Colonel v. Melrose Area Property Owners*, 930 So. 2d 755 (Fla. 5th DCA 2006) (citations omitted).

19 *Graham v. Peter K. Yeskel 1996 Irrevocable Trust*, 928 So. 2d 371, 372 (Fla. 4th DCA 2006) (citations omitted); *Hibbard v. McGraw*, 918 So. 2d 967 (Fla. 5th DCA 2006); *Matetzschk*, 906 So. 2d 1037; Heymann *v. Free*, 913 So. 2d 11 (Fla. 1st DCA 2005).

20 *Easters v. Barbara Russell, M.D., individually, and Barbara Russell, M.D., P.A.*, 942 So. 2d 1008 (Fla. 2d DCA 2006). The offering party cannot make an "undifferentiated" proposal where either recipient #1 or #2, or any combination thereof, pays settle-

ment. That does not fulfill the "particularity" requirement that each receiving party be named and allocated a specific dollar amount of the total settlement.

[21] *Clements v. Rose*,33 Fla. L. Weekly D1088 (Fla. 1st DCA April 21, 2008), available at 2008 WL 1774091.

[22] *Stasio v. McManaway*, 936 So. 2d 676 (Fla. 5th DCA 2006) (holding that a clerical error voided a Proposal where the proposal was for $60,000, but the attached release said "FIFTY NINE THOUSAND NO/100 DOLLARS ($60,000.00)…").

[23] *Easters,* 942 So. 2d 1008 (Fla. 2d DCA 2006).

[24] *Oasis v. Espinoza*, 954 So. 2d 632 (Fla. 3d DCA 2007) (even if vicarious liability is undisputed, the plaintiff must apportion between the two defendants); *D.A.B. Constr. v. Oliver*, 914 So. 2d 462 (Fla. 5th DCA 2005); *Matetzschk*, 906 So. 2d 1037.

[25] *Easters*, 942 So. 2d at 1010.

[26] *Southern Indus. Assocs., Inc.*, 960 So. 2d at 898, fn. 1 ("One might logically posit, in fact, that the only enforceable nonmonetary condition allowable under the rule is one that does not go beyond what the offeror would be entitled to by operation of law upon settlement") (citations omitted).

[27] *Dollar Rent-A-Car, Inc. v. Lyndia Chang, as natural mother and legal guardian of Matthew Chang, a minor*, 902 So. 2d 869 (Fla. 4th DCA 2005).

[28] *Clements v. Rose*, 33 Fla. L. Weekly at D1088.

[29] *Southern Indus. Assocs., Inc.*, 960 So. 2d at 898.

[30] *Kee v. Baptist Hospital of Miami, Inc.*, 971 So. 2d 814, 815 (Fla. 3d DCA 2008).

[31] *Id.* NB: the *Kee* Panel also rejected the argument that the Proposal was ambiguous as to whether the plaintiff's counsel must guarantee payment of any hospital liens to the extent that those were satisfied and extinguished.

[32] *Ledesma v. Inglesias*, 975 So. 2d 1240, 1243 (Fla. 4th DCA 2008).

[33] *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067 (Fla. 2006).

[34] *Papouras v. Bellsouth*, 940 So. 2d at 480-481 (*citing State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d at 1078-79); *Sink v. Emerald Hill Owners Ass'n*, 903 So. 2d 1047 (Fla. 5th DCA 2005).

[35] *Rivera v. Publix Super Markets, Inc.*, 929 So. 2d 1184 (Fla. 3d DCA 2006).

[36] *Nichols*, 932 So. 2d at 1079.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 1079-1080; *see also Board of Trustees of Florida Atlantic Univ. v. Bowman*, 853 So. 2d 507 (Fla. 4th DCA 2003) (noting that language in Proposal was not the same as extinguishing terms in general release).

[40] *Clements v. Rose,* 33 Fla. L. Weekly at D1088.

[41] *State Farm v. Nichols*, 832 So. 2d at 1079.

[42] *Id.*

[43] *Ledesma v. Inglesias*, 975 So. 2d at 1242.

[44] *San Martin v. DaimlerChrysler Corp.,* 33 Fla. L. Weekly D1152 (Fla. 3d DCA April 23, 2008); *Mady v. DaimlerChrysler Corp.*, 976 So. 2d 1212 (Fla. 4th DCA 2008); *Dufresne v. DaimlerChrysler Corp.*, 975 So. 2d 555 (Fla. 2d DCA 2008).

Nathaniel S. Hatcher

Recipient of the 2008 Henry Burnett Trial Advocacy Award

In June 2006 The FDLA Board of Directors unanimously approved the creation of the **FDLA Henry Burnett Trial Advocay Award** at Stetson University College of Law. Nominations for the award are submitted by Stetson's Center for Excellence in Advocacy and confirmed by the College's Honors and Awards Committee. The scholorship is awarded annually to a law student excelling in Trial Advocacy at Stetson University College of Law.

The award, named for Henry Burnett, first President of the Florida Defense Lawyers Association, is in recognition of the indelible impression made by Mr. Burnett on the defense practice throughout the State of Florida.

FDLA is delighted to report that **Nathaniel S. Hatcher** is the 2008 recipient of the ***Henry Burnett Trial Advocacy Award.***

Mr. Hatcher received his Bachelor of Arts in Philosophy from Furman University. While attending Stetson University College of Law, Nathan was named Who's Who Among Students in American Universities and Colleges, and also named as an All American Scholar.

The award was presented at the Stetson University College of Law Honors and Awards Ceremony on Friday, May 9, 2008.