IN THE SUPREME COURT
IN AND FOR THE STATE OF FLORIDA

CASE NO. SC02-1521

WILLIS SHAW EXPRESS, INC.,
an Arkansas Corporation, and
EDWARD MCALPINE,

Petitioners

v.

HILYER SOD, INC.,
a Florida Corporation,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
OF THE FIRST DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

PAGE

STATUTES

LEGISLATIVE AUTHORITY

PAGE

FLORIDA RULES OF CIVIL PROCEDURE

STATEMENT OF THE CASE AND FACTS

This Petition arises from an underlying First District Court of Appeals ruling that found invalid a joint proposal of settlement submitted by Plaintiffs/Petitioners, WILLIS SHAW EXPRESS, INC. and EDWARD McALPINE, to the Defendant/Respondent, HILYER SOD, INC. [ROA, Vol 1, pg 107-110] [Appendix, section 1, **Hilyer Sod, Inc. v. Willis Shaw Express, Inc. Et Al**, 817 So.2d 1050 (Fla. 1st DCA 2002)]. The joint proposal of settlement failed to set forth the amounts and terms as to WILLIS SHAW EXPRESS, INC. and EDWARD McALPINE individually.

The action initially involved Plaintiffs, WILLIS SHAW EXPRESS, INC., EDWARD McALPINE, and ALTON PATTERSON. ALTON PATTERSON withdrew from the action prior to being involved in any relevant portion of this Petition. WILLIS SHAW EXPRESS, INC., sought to recover damages for its tractor-trailer, cargo, towing costs, loss of use for one tractor-trailers out of a fleet and pre-trial interest, totaling in amount approximately $129,000.00. [ROA,Vol 1, pgs 1-10, Complaint] EDWARD McALPINE, sought to recover damages for the loss of personal property that he had stored in the tractor, totaling approximately $1,800.00. [ROA, Vol 1, pgs 1-10, Complaint]

The Defendant/Appellant, HILYER SOD, INC., filed affirmative defenses including comparative negligence against WILLIS SHAW EXPRESS and EDWARD McALPINE, and failure of the Plaintiffs to mitigate damages individually. [ROA,Vol 1, pgs 11-15, Defendant's Answers and Affirmative Defenses]

After a four (4) day trial and over six (6) hours of deliberation, a jury verdict was returned finding Defendant, HILYER

SOD, INC., eighty-five percent (85%) negligent and Plaintiff, WILLIS SHAW EXPRESS, INC., and EDWARD McALPINE, fifteen percent (15%) negligent. Damages to WILLIS SHAW EXPRESS, INC., were found to be $106,237.00 and damages to EDWARD McALPINE were found to be in the amount of $1,500.00. The total amount of the verdict was $107,737.00, unadjusted for percentages of comparative negligence. [ROA, Vol 1, pgs 22-25, Final Judgment]

SUMMARY OF ARGUMENT

The trial court sanctioned the Defendant/Respondent, HILYER SOD, INC., with attorney fees based upon a joint proposal from two plaintiffs to a single defendant. The joint proposal was for Ninety-five Thousand and One Dollars ($95,001.00) and failed to specify the amounts that each plaintiff requested.

In order for the joint proposal at issue to be valid, it must meet the requirements of **Florida Statute** §768.79 (1999) and **Florida Rule of Civil Procedure** 1.442 (1999). **Florida Rule of Civil Procedure** 1.442 mandates that a joint proposal shall specifically set forth amounts and terms attributable to each party. The amounts and terms mandate of 1.442(c)(3) supports the intent of **Florida Statute** §768.79 to settle actions and obviate trial by giving a workable structure and procedure for joint proposals. If multiple plaintiffs submit a joint proposal, amounts and terms for each plaintiff must be specified so that the defendant(s) can reasonably evaluate the proposal and decide whether to proceed to trial and risk the sanction of attorneys' fees.

Recently this Court has ruled that **Florida Statute** §768.79(2)(b) mandates that amounts be set forth as to each party when submitting a joint proposal. See, **Allstate Indem. Co. v. Hingson** 808 So.2d 197 (Fla. 2002). **Florida Rule of Civil Procedure** 1.442(c)(3) also mandates that joint proposals shall set forth the amounts and terms attributable to each party.

Prior to this Court's ruling in **Allstate Indem. Co. v. Hingson**, 808 So.2d 197 (Fla. 2002), several District Courts had allowed exclusions from the mandate of 1.442(c)(3). However it is now clear that both **Florida Statute** §768.79 (1999) and **Florida Rule of Civil Procedure** 1.442 (1999)

mandate that joint proposals, whether from plaintiffs or from defendants, must specify amounts due to each plaintiff. These mandates promote the intent of the Statute and the Rule by promoting settlement of the action.

Florida Statute §768.79 and **Florida Rule of Civil Procedure** 1.442 are punitive in nature, and are to be strictly construed. However, even if they are not strictly construed, the intent of the statute and rule are clear, and the construction of **F.R.C.P.** 1.442(c)(3) requires joint proposals to specify amounts and terms attributable to each party. In the instant case, both the **Rule** and the **Statute** would require the two Plaintiffs to specify the amounts that each was requesting in their joint proposal.

The trial court also requires specificity as to the amounts the plaintiffs are to receive under a joint proposal. Without specificity, the trial court has no certitude in determining whether or not the sanction of fees is applicable. A determination that specificity is required only as to amounts being proposed to each defendant or limited to circumstances in which the proposal is from multiple defendants who have comparative fault issue between them, leads to constitutional violations under due process and equal protection and fails to promote settlement.

In addressing the construction of **F.R.C.P.** 1.442, Florida's Supreme Court realized the potential for conflicting precedent and statutes and set forth that 1.442 supersedes any conflicting precedent or statute.

Therefore, in order for a joint proposal to be valid, allowing the sanction of attorney's fees to be imposed, the requirement of **Florida Statute** §768.79(2)(b) and **F.R.C.P.** 1.442(c)(3) both mandate that each party shall set forth amounts and terms that each party is requesting, with 1.442(c)(3) explicitly providing **"[a] joint proposal shall state the amount and terms attributable to each party."**

ARGUMENT

1. THE FIRST DISTRICT COURT OF APPEALS HELD THAT AN OFFER OF SETTLEMENT MADE JOINTLY BY MULTIPLE PLAINTIFFS MUST APPORTION AMOUNTS ATTRIBUTABLE TO EACH PARTY, AS MANDATED IN FLORIDA RULES OF CIVIL PROCEDURE 1.442(c)(3); THIS HOLDING IS SUPPORTED BY THE HISTORY, INTENT, AND PRECEDENT OF FLORIDA STATUTE §768.79 AND RULE 1.442.

(De Novo Standard of Review).

A. THE INTENT OF THE STATUTE AND RULE.

Petitioners, while citing a variety of cases, argue that their joint proposal met the requirements of **Florida Rules of Civil Procedure** 1.442(c)(3) and **Florida Statute** §768.79 because their joint proposal must have been accept in its entirety and that the Respondent/Defendant, HILYER SOD, INC., could have sufficiently evaluated the joint proposal even though the Petitioners did not state the amounts requested by each Plaintiff; therefore, the intent of the **Rule** and **Statute** were met.

The intent of the **Rule** and **Statute** are to promote settlement and obviate trial by way of sanctioning a party or parties who do not accept a proposal and proceed to trial. The mechanisms used to accomplish this intent are found in the statute and rule themselves, which have evolved to their current versions with **F.R.C.P.** 1.442 lastly being amended to include the mandate under subsection (c)(3) that "[**a**] **joint proposal shall state the amount and terms attributable to each party.**" See, **F.R.C.P.** 1.442(c)(3) (effective January 1, 1997).

Present day **Florida Statute §**768.79 was derived from laws enacted by the Legislature in 1986. See, c.86-160, §58. The statute sets forth a substantive right to recover attorney fees and costs based upon an offer of judgment proposed by the opposition and the percentage that the final judgment is above or below the proposal. In 1990, the Legislature enacted laws c.90-119 §48, effective October 1st, and clarified **§**768.79 with the addition of the following:

> **(2)** The making of an offer of settlement which is not accepted does not preclude the making of a subsequent offer. An offer must:
>
> **(a)** Be in writing and state that it is being made pursuant to this section;

(b) Name the party making it and the party to whom it is being made;

(c) State with particularity the amount offered to settle a claim for punitive damages, if any;

(d) State its total amount."

See, **Florida Statute** 768.96 (1990) (wherein the last substantive Amendments were enacted).

In 1996, this Court adopted and enacted the current version of **Rule** 1.442 including:

(a) Applicability. This rule applies to all proposals for settlement authorized by Florida law, regardless of the terms used to refer to such offers, demands, or proposals and supercedes all other provisions of the rules and statutes that may be inconsistent with this rule; and

(c)(3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. ***A joint proposal shall state the amount and terms attributable to each party.*** [e.s.]

In the above action, this Court provided the following:

> "In **Timmons v. Combs**, 608 So.2d 1 (Florida 1992), we restated our conclusions set forth in **Leapai v. Milton**, 595 So.2d 12 (Fla. 1992): [I]t is clear that the circumstances under which a party is entitled to costs and attorneys fees is substantive and that our rule can only control procedural matters." **Timmons**, 608 So.2d at 2-3.

Provided in the committee notes to **Rule** 1.442 (1996) amendment, is found the following:

> This rule was amended to reconcile, where possible, §44.102(4) (formerly §44.102(5)(b)), §45.061, and §768.79, **Florida Statutes**, and the decisions of the Florida Supreme Court in **Knealing v. Puleo**, 675 So.2d 593 (Fla. 1996), **TGI Friday's, Inc. v. Dvorak**, 663 So.2d 606 (Fla. 1995), and **Timmons v. Combs**, 608 So.2d 1 (Fla. 1992). This rule replaces former Rule 1.442, which was repealed by the **Timmons** decision, and **supersedes those sections of the Florida Statutes and the prior decisions of the court, where reconciliation is impossible, in order to provide a workable structure for proposing settlements in civil actions** … [e.s.]

Legislative intent and precedent support this evolution of **F.R.C.P.** 1.442 to a point where it mandates that joint proposals must specify amounts and terms attributable to each party. For example, this Court in **MGR Equipment Corp., Inc. v. Wilson Ice Enterprises, Inc.**, 731 So.2d 1262, 1264, n2 (Fla. 1999) addressed the intent of the **Amended Rule** 1.442 and provided the following:

> The current **Rule** 1.442 is not applicable to the instant case since it became effective four months after the instant offer of judgment was tendered. Unlike its predecessor, the current rule mandates greater detail in settlement proposals, which will hopefully enable parties to focus with greater specificity in their negotiations and thereby facilitate more settlements and less litigation.

In **Pirelli's Armstrong Tire Corp. v Jensen**, 752 So.2d 1275, 1277-1278 (Fla. 2nd DCA 2000), *Review Dismissed as Improvidently Granted by* 777 So.2d 973 (Fla. 2001) Judge Casanueva, concurring in part and dissenting in part, set forth the following:

> "This legislative commentary, albeit meager, powerfully manifests the purpose of §768.79 – to reduce both litigation costs and demand on the state's judicial system by imposing sanctions, including attorneys' fees, on those parties who unreasonably reject an offer of settlement.

B. THE PRECEDENT OF RULE 1.442(C)(3)

A substantial amount of court actions transpired prior to the enactment of **F.R.C.P.** 1.442 (1997) with numerous rulings regarding the issue of joint proposals. These pre-amendment cases were decided without the aid of section (c)(3) or this Court's ruling in **Allstate Indem. Co. v. Hingson** 808 So.2d 197 (Fla. 2002), both or which mandate that joint proposals shall set forth the amounts and terms attributable to each party.

Most recently, this Court, in **Allstate Indem. Co. v. Hingson**, 808 So.2d 197 (Fla. 2002) analyzed a joint proposal submitted to separate plaintiffs prior to the 1.442(c)(3) amendment and stated the following:

> We agree with the district court in *C & S* that "[t]o further the statute's goal, each party who receive[s] an offer of settlement is entitled ... to evaluate the offer as it pertains to him or her." 754 So.2d at 797-98. Otherwise, in many cases, it would be impossible for the trial court to determine the amount attributable to each party in order to make a further determination of whether the judgment against only one of the parties was at least twenty-five percent more

> or less than the offer (depending on which party made the offer). [FN3] Moreover, the plain language of section 768.79 supports the *C & S* court's holding. In subsection (2)(b), the statute refers to "party" in the singular. This, we believe, indicates the Legislature's intent that an offer specify the amount attributable to each individual party. Id. at 199.

Without the aid of 1.442(c)(3) (effective January 1, 1997), or this Courts ruling in **Allstate Indem. Co. v. Hingson**, prior district courts attempted to fashion rulings based upon precedent and the intent of **Florida Statute** §768.79. These rulings ultimately resulted in intervention by this Court and the subsequent enactment of **Rule** 1.442 (1997).

This Court was concerned that prior decisions of the Districts could not be reconciled, and the committee notes to **Rule** 1.442 (1996) provided the following:

> **"**This **Rule** replaces former **Rule** 1.442, which was repealed by the **Timmons** decision, and supercedes those sections of the Florida Statutes and the prior decisions of the court where reconciliation is impossible."

After the 1997 amendment, the District Courts addressed various factual and legal scenarios regarding joint proposals and have consistently held, as did this Court in **Allstate Indemn. Co. v. Hingson**, that joint proposals must specifically state the amounts attributable to each party. Actions decided prior to **Allstate Indemn. Co. v. Hingson** generally excluded from the requirements of subsection (c)(3) only joint proposals from multiple defendants to a single plaintiff and joint proposals from a single plaintiff to multiple defendants

where a single defendant is vicarious liable for the co-defendant(s). See, **McFarland & Son, Inc. v. Basel**, 727 So.2d 266, (Fla. 5th DCA 1999)(a joint proposal from co-guardian plaintiffs to multiple defendants must specify amounts attributable to each defendant); **Flight Exp., Inc. v. Robinson**, 736 So.2d 796, (Fla. 3rd DCA 1999)(joint proposal from multiple defendants to single plaintiff need not specify which defendant pays what portion so long as it specifies amount attributable to the plaintiff); **United Services Auto. Ass'n. v. Behar**, 752 So.2d 663 (Fla. 2nd DCA 2000) *Review Granted by* 770 So.2d 163 (Fla. 2000)*, Review Dismissed by* 782 So.2d 869, (Fla. 2001) (joint proposal from single defendant to multiple plaintiffs must specify amounts attributable to each plaintiff); **Danner Const. Co., Inc. v. Reynolds Metal Co.**, 760 So.2d 199 (Fla. 2nd DCA 2000)(joint proposal from multiple defendants to single plaintiff is enforceable as it specifies amount due plaintiff); **Strahan v. Gauldin**, 756 So.2d 158 (Fla. 5th DCA 2000) *Review Granted by* 786 So.2d 1189 (Fla. Feb 02, 2001)(joint proposal from single plaintiff to multiple defendants, where vicarious liability existed to all defendants need not specify amounts to be paid by each defendant); **Ford Motor Co. v. Meyers ex rel. Meyers**, 771 So.2d 1202 (Fla. 4th DCA 2000)(joint proposal from multiple plaintiffs to multiple defendants must specify amounts attributable to each plaintiff, even where one defendant is indemnifying the sole co-defendant); **Stern v. Zamudio**, 780

So.2d 155 (Fla. 2nd DCA 2001)(joint proposal from single defendant to multiple plaintiffs must specify amounts due to each plaintiff); **Allstate Ins. Co. v. Materiale**, 787 So.2d 173 (Fla. 2nd DCA 2001)(joint proposal from multiple plaintiffs to single defendant must specify amount due to each plaintiff); **Alanwood Holding Co. v. Thompson**, 2001 WL 753804 (Fla. 2nd DCA 2001)(joint proposals from multiple defendants to multiple plaintiffs must specify amounts provided by each defendant); **RLS Business Ventures, Inc. v. Second Chance Wholesale, Inc.** 784 So.2d 1194 (Fla. 2nd DCA, 2001)(joint proposal from multiple defendants to single plaintiff must state not only amounts attributable to the plaintiff but also specify which claims the proposal resolves).

The foregoing cases were found to be consistent with the intent of both the statute and the rule as they upheld the mandate of **Rule** 1.442(c)(3) to specify amounts attributable to each party, so that the opposition may make an accurate evaluation of its risk of being sanctioned with attorney's fees. **Rule** 1.442(c)(3) mandates that joint proposals set forth the amounts attributable each party, and this Court has now held that **Statute** 768.79(2)(b) has the identical mandate. See, **Allstate Indem. Co. v. Hingson**, 808 So.2d 197, 199 (Fla. 2002).

The limited cases that have found a further exclusions to **Rule** 1.442(c)(3) are **Safelite Glass Corp. v. Samuel**, 771 So.2d 44 (Fla. 4th DCA 2000) *Review dismissed without opinion by* 786

So.2d 1188 (Fla. 2001) and **Spruce Creek Dev. Co., of Ocala, Inc. v. Drew**, 746 So.2d 1109 (Fla. 5th DCA 1999). In **Safelite**, the Fourth District Court of Appeal found that a joint proposal from multiple plaintiffs to multiple defendants with a single defendant being vicariously liable for the sole co-defendant did not mandate that the proposal specify amounts due to each plaintiff. The expressed reasoning for the exception was that multiple defendants did not risk future litigation in the determination of what amounts each defendant would pay to the plaintiffs. See, **Safelite** at 46.

The Fourth District Court of Appeal, while citing three cases, stated that the amounts to go to each plaintiff were "a matter of indifference" to the multiple defendants, because a single defendant was vicariously liable for the sole co-defendant. See, **Safelite** at 46, citing **Spruce Creek Dev. Co., of Ocala, Inc. v. Drew**, 746 So.2d 1109, 1116 (Fla. 5th DCA 1999); **Danner Constr. Co.**, 760 So.2d 201, 201-202(Fla. 2nd DCA 2000); **Flight Express, Inc. v. Robinson**, 736 So.2d 796, 797 (Fla. 3d DCA 1999). The citing of **Danner Constr. Co.** and **Flight Express** are misplaced in **Safelite** as both **Danner Constr. Co**. and **Flight Express** address a proposal from multiple defendants to a single plaintiff.

In **Safelite**, the plaintiffs were a husband and wife with the husband claiming personal injuries and the wife claiming loss of consortium. If the husband received a verdict supporting his personal injury claim, his wife’s derivative

claim would be supported. To a vast extent the plaintiffs' actions were unified. Thus, the Fourth District Court of Appeal ruled that where the plaintiffs have an action so combined as to constitute a unity of action, it may be a matter of indifference to the defendant or defendants as to whether or not the plaintiffs specify amounts due to each of them.

The Fifth District Court of Appeal, in **Spruce Creek**, which is cited in **Safelite**, provides that a joint proposal from multiple plaintiffs to a single defendant need not specify the amounts due to each plaintiff. In **Spruce Creek**, the plaintiff, Mrs. Drew, filed an action based upon personal injuries, and Mr. Drew filed a loss of consortium claim. The court found that a single joint proposal from Mr. and Mrs. Drew for $1,000,000.00 to a single defendant, which lacked apportionment between the plaintiffs, was a matter of indifference to the single defendant. The court reasoned that if the single defendant accepted the joint proposal, both plaintiffs would release him. See, **Spruce Creek** at 1116. This is a further example excluding joints proposals from two plaintiffs because the actions constitute a unity of action.

In dicta, while ruling that the lack of apportionment to be paid by multiple defendants to a single plaintiff was a matter of indifference to the plaintiff, the **Flight Express** court held that **Rule** 1.442(c)(3) is applied solely to proposals from a plaintiff or plaintiffs to multiple defendants, where the multiple defendants must apportion fault

and payment between themselves. The reasoning expressed in the dicta was that unspecified proposal could cause future litigation between the multiple defendants. The foot note in which **Flight Express** stated its reasoning is set forth below:

> FN1. While revised **Florida Rule of Civil Procedure** 1.442(c)(3) now provides [a] proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. *A joint proposal shall state the amount and terms attributable to each party,* [e.s.]
>
> The committee notes to the emphasized 1996 amendment state that the provision was enacted "to conform with **Fabre v. Marin**, 623 So.2d 1182 (Fla. 1993)" which deals with dividing the exposure of various parties based on their respective percentages of fault. The amended rule is thus designed to obviate future conflicts as to the effect of an offer upon defendants-offerees.

However, the holding in **Flight Express** is an example depicting that a joint proposal from multiple defendants to a single plaintiff need not specify which defendant pays what portion so long as it specifies the amount due to the plaintiff. This is one of the two, possibly three, exceptions upheld in other courts and is the converse of the proposal found in **Spruce Creek** and the instant case.

In the instant case, two plaintiffs composed a joint proposal for Ninety-five Thousand and One Dollars ($95,001.00) to a single defendant. The proposal failed to specify the amounts due to each of the two plaintiffs. Each plaintiff had a separate and distinct action. This is an example depicting a joint proposal from multiple plaintiffs to a single defendant such as was addressed by **Spruce Creek** and **Safelite**,

however, there is a fundamental difference in the joint proposals found in those two cases and the instant case. In the instant case two plaintiffs with separate and distinct claims composed a joint proposal to a single defendant. The plaintiffs' actions were not derivative of the other. Thus, it constituted a fundamental difference to the defendant which plaintiff was to receive what amounts. Moreover, upholding the unspecified proposal of the Petitioners contradicts the history, intent of the Rule and Statute, as well as this Court's recent ruling in **Allstate Indem. Co. v. Hingson** 808 So.2d 197 (Fla. 2002) that each party specify amounts in their joint proposal.

Clearly, the history of both the Statute and the Rule has been to move toward mandating greater specificity in proposals. This greater specificity is to support the intent of the Statute, and the intent of the Statute is to promote settlement and obviate trial by sanctioning a party who unreasonably proceeds to trial. In addressing joint proposals under **Rule** 1.442 (c)(3) and **Statute** 768.79, this intent has been upheld by requiring that the parties specify the amounts and terms attributable to each party. The only exclusions were found prior to this Court's ruling in **Allstate Indem. Co. v. Hingson** 808 So.2d 197 (Fla. 2002) and were addressing joint proposals from multiple defendants to a single plaintiff, joint proposals from a single plaintiff to multiple defendants where a single defendant is vicarious liable for the co-defendant(s)and joint proposals from plaintiffs with a

derivative claim.

The instant case is not an example of any prior exclusions found by the district courts, and the joint proposal submitted by the Petitioners deprived the Respondent a reasonable evaluation of the amounts due to each plaintiff. The Respondent should not be sanctioned for the Petitioners'failure to abide by the 1.442(c)(3) and 768.79(2)(b) mandates.

C. ACCEPTANCE OF JOINT PROPOSALS

Petitioners cite "**Safelite Glass Corporations v. Samuel**, 771 So.2d 44 *(Fla. 2000)."* [Petitioner Initial Brief, Citations to Authority page iii]. However, the Supreme Court dismissed review without published opinion in **Safelite Corporations v. Samuel**, 786 So.2d 1188 (Fla. 2001). The petitioners rely heavily on the Fourth District Court of Appeal's ruling that joint tortfeasors do not require amounts to be specified as to each of the tortfeasors, as one tortfeasor was vicariously liable for the other. See, **Safelite** at 46. [Petitioners' Initial Brief, page 24-26] The **Safelite** court also found that failure of the plaintiffs to specify the division of damages between themselves was permissible because it was a matter of indifference to the defendants. See **Safelite** at page 46 citing **Spruce Creek Development Co. of Ocala, Inc. v. Drew**, 746 So.2d 1109, 1116 (Fla. 4th DCA 1999).

The claims in **Safelite** were for personal injury and the

spouse's loss of consortium. While ruling on joinder, this Court has stated "[w]e further hold that her right of action is a derivative right and she may recover only if her husband has a cause of action against the same defendant." See, in **Gates v. Foley**, 247 So.2d 40, 45 (Fla. 1971). Thus, the derivative action of loss of consortium is unified with and subordinate to the spouse's injury. This is one of the exceptions that the District Courts have found, as was stated previously.

The instant case is vastly different from **Safelite**. Each Plaintiff/Petitioner had a distinct claim with highly contested damages alleged by WILLIS SHAW. Thus, in order to settle with either or both of the Plaintiffs in the instant case, the amounts and terms would necessitate specificity. Further, to reasonably evaluate the proposal of settlement and allow the Respondent to evaluate the risk of being sanctioned with attorney's fees the joint proposal must have met the requirements of 1.442(c)(3).

Concurring specifically in **Safelite**, Judge Pollen cited **Fabre v. Marin**, 623 So.2d 1182 (Fla. 1993), stating that subsection (c)(3) applies solely to various joint tortfeasors and their respective percentages of fault. See **Safelite** at 46, citing **Flight Express, Inc.**, at 798. However, **Flight Express** addressed the factual scenario of a joint proposal from multiple defendants to a single plaintiff, ruling that the proposal need not specify which defendant pays what

portion so long as it specifies the amount due to the plaintiff. See **Flight Express**, citing **Bodek v. Gulliver Academy, Inc.**, 702 So.2d 1331 (Fla. 3rd DCA 1997). Additionally, the proposal addressed in **Flight Express** was submitted prior to the amended **Rule** 1.442(c)(3), which became enacted in 1997.

The 1996 Committee Notes of **Florida Rule of Civil Procedure** 1.442 provide that sub-section (c)(3) is used in conformity with **Fabre v. Marin**, 623 So.2d 1182 (Fla. 1993). The **Fabre** court addressed the factual scenario where Ann Marin was injured in an automobile accident while a passenger of her husband. Mrs. Marin sued Marie and Eddie Fabre, claiming negligence. The Fabres denied responsibility and contended that it was another automobile which had cut off the Marin vehicle.

In addressing issues of Florida's prior legislation regarding joint and several liability, set-off, apportionment of damages, spousal immunity and non-party concurrent tortfeasors, the **Fabre** court provides that

> "[t]he 'fault' which gives rise to the accident is the 'whole' from which the fact finder determines the party-defendant's percentage of liability." See **Fabre** at 1185.

Fabre continues,

> "[c]learly, the only means of determining a party's percentage of fault is to compare that party's percentage to all of the other entities who contributed to the accident, regardless of whether they have been or could have been joined as defendants." See **Fabre** at 1185.

The **Fabre** court does not address solely defendants but addresses all of the entities who contributed to the accident, respective damages, and set-off, all of which must be analyzed in order to evaluate a proposal, and it does not matter if the proposal is from defendants or plaintiffs.

Comparative and contributory negligence is not the sole issue addressed in **Fabre** and is not the sole issue that must be evaluated in a proposal of settlement.

Petitioners argue, citing **Flight Express** and **Safelite**, that 1.442(c)(3) was "designed to obviate future conflicts as to the effect of an offer upon defendant/offerors." [Petitioners' Initial Brief, page 13-15], However, this observation is not the intent of the **Rule** or **Statute,** which attempt to obviate the current claims at issue. **Rule** 1.442(c)(3) allows recipients of a proposal to evaluate each party's offer on an individual basis, taking into account liability, damages, set-off, collateral source issues, and the risk of being sanctioned with attorney's fees, thereby promoting settlement in the case at issue.

Petitioners argue that their joint proposal was to resolve all claims only. [Petitioners' Initial Brief, page 16-21]. The argument is, since they have drafted a proposal which only accepts settlement of all the claims, they are not required to meet the mandate of **Florida Rule of Civil Procedure** 1.442(c)(3) or 768.79(b)(2). Again, two (2) separate and distinct claims existed; the Plaintiff McALPINE

had a minimal property damage claim that was virtually undisputed, while WILLIS SHAW was claiming damages that were over One Hundred Thousand Dollars ($100,000) and were highly disputed. Petitioners' all or nothing approach to joint proposals contradicts the clear wording of 1.442(c)(3) and 768.79, the history and intent of both the **Rule** and **Statute** and is insufficient for the sanction of attorney's fees or the evaluation of the joint proposal.

Petitioners argue that the holding in **Allstate Insurance Co. v. Materiale**, 787 So.2d 173 (Fla. 2nd DCA 2001) is erroneous because the court reasoned that specifying amounts in terms attributable to each party allows settlement to each party separately. [Petitioners' Initial Brief, page 16-18]. The **Allstate** court was emphasizing the mandate of 1.442(c)(3) and stated "this may be particularly important in claims alleging loss of consortium, where defendants may chose to settle the claim for a minimal amount and go to trial on the primary claim." This ruling supports the intent of the **Rule** and **Statute**.

Petitioners argue that the court in **Allstate** fails to explain how the rights of the parties are impacted. [Petitioners' Initial Brief, page 19]. However, the Second District provided that,

> "[w]e disagree with this reasoning because, regardless of whether such acceptance would entitle a defendant to be released by both claimants, a defendant should be allowed to evaluate each plaintiff's claim separately." [e.s.] See **Allstate** at 175.

Petitioners' further argument that **Rule** 1.442(c)(3) is designed to prevent future litigation between recipients of a proposal also runs counter to the intent, history and precedent of the **Rule** and **Florida Statute** §768.79 because both were intended to obviate litigation set out in the proposed settlement; the collateral effect of specifying amounts and terms to each party is a further benefit but is not the primary goal of the **Statute** or **Rule**.

Petitioners make several statements that it was the duty of the Respondent to submit a proposal of settlement to the Petitioners, if the Petitioners' joint proposal could not be evaluated. [Petitioners' Initial Brief, page 3, 7, 24]. The Respondent submits that it is the duty of the proposing party to insure adherence to the mandates of 1.442 and §768.79.

II. AS STATUTE §768.79 AND RULE 1.442 ARE PUNITIVE IN NATURE AND ARE IN DEROGATION OF THE COMMON LAW, THEY ARE STRICTLY CONSTRUED, AND THE PETITIONERS' JOINT PROPOSAL IS INVALID UNDER STRICT INTERPRETATION

(De Novo Standard of Review)

As **Florida Statute** §768.79 imposes the sanction of attorneys' fees upon a party who unreasonably rejects a proposal and **Rule** 1.442 supports the statute and is integrally intertwined with **§**768.79, both the rule and the statute are punitive in nature and are in derogation of common law. As such, both the rule and statute must be strictly construed. See, **Grip Development, Inc. v. Coldwell Banker Residential Real Estate,**

Inc., 2000 WL 1345153 (Fla. 4th DCA 2000); **TGI Friday's Inc. v. Dvorak**, 663 So.2d 606, 614 (Fla. 1995); **Loy v. Leone**, 546 So.2d 1187, 1189 (Fla. 5th DCA 1989); **Syndicate Properties, Inc. v. Hotel Floridian Co.**, 94 Fla. 899, 114 So. 441 (Fla.1927); **Rowe v. State**, 394 So.2d 1059 (Fla. 1st DCA 1981); **Merchants' Nat Bank of Jacksonville v. Grunthal**, 22 So. 685 (Fla. 1897); **Hoodless v. Jernigan**, 41 So. 194 (Fla. 1906); **Castillo v. Vlaminck de Castillo**, 771 So.2d 609 (Fla. 3rd DCA 2000). If the judgment entered is at least twenty-five percent(25%) above the rejected proposal, sanctions of attorney fees are entitled. See, **Florida Statute** §768.79(1999); **TGI Friday's** at 607, 611.

As the rule and statute are punitive in nature, both **Rule** 1.442 and **Florida Statute** §768.79 must be strictly construed. This includes subsection 1.442 (c)(3), which provides that

> **[a] proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party.**

The strict construction of 1.442 and its subsection (c)(3) mandate that joint proposals shall state the amount and terms attributable to each party. Thus, the sanction of attorney's fees may only be placed on the recipient of a proper joint proposal, and a proper proposal is limited to those that explicitly specify the amounts and terms to each party.

In the instant case, two plaintiffs composed a joint proposal for Ninety-five Thousand and One Dollars ($95,001.00) to a single defendant. The proposal failed to specify the

amounts due to each of the two plaintiffs. As the joint proposal did not meet the strict construction of **Rule** 1.442(c)(3), the First District Court of Appeal was acting properly when it reversed the sanction of attorney's fees.

Petitioners argue that the **Rule** 1.442(c)(3) should not be strictly construed and cite **Kuvin v. Keller Ladders, Inc.**, the dissent in **Grip Development Inc. v. Caldwell** and **Gulliver Academy v. Bodek**. [Petitioners' Initial Brief, page 26-31]. However, the Respondent reaffirms that as the **Rule** and **Statute** are punitive in nature, are in derogation of the common law, both are to be strictly construed. This strict construction has been upheld not only in recent cases but has a standard dating back at least to Florida's Supreme Court holding of 1927 in **Syndicate Properties, Inc. v. Hotel Floridian Co.**, 94 Fla. 899, 114 So. 411 (Fla. 1927). However, Petitioners argue that the construction of **FRCP** 1.442 is pragmatically constructed. [Petitioners' Initial Brief, page 26-31].

For support of the Petitioners' argument, they cite Judge Farmer's dissent in **Grip Development, Inc. v.** and **Gulliver Academy, Inc. v. Bodeck**, 694 So.2d 675 (Fla. 1997). [Petitioners' Initial Brief, page 27-31]. In **Gulliver**, Florida's Supreme Court analyzed §768.79 as it related to **Florida Rules of Civil Procedure** 1.090(b)(2) wherein the court held that a trial judge, under the rules of procedure, could enlarge the time limits of the offer of judgment statute because the rules superceded the statute on procedural

matters. **Gulliver Academy** did not address the interpretation of **Rule** 1.442 but addresses whether the rules of civil procedure will prevail over statutes when there is a procedural conflict. There is no such conflict in the instant case.

The **Grip Development** court addressed **Rule** 1.442 (b), which provided the following:

> Service of Proposal. A proposal to a defendant shall be served no earlier than 90 days after service of process on that defendant; a proposal to a plaintiff shall be served no earlier than 90 days after the action has been commenced. No proposal shall be served later than 45 days before the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier.

The ruling in **Grip Development** was a strict interpretation of Rule 1.442 that found invalid an offer served by the plaintiff earlier than ninety (90) days after service of process. See, **Grip Development, Inc. v. Coldwell Banker Residential Real Estate, Inc.** 788 So.2d 262 (Fla. 4th DCA, 2000) Review Denied 790 So.2d 1102 (Fla. 2001). The court in **Grip Development** stated the following:

> Since section 768.79 and **Florida Rule of Civil Procedure 1.442** are punitive in nature in that they impose sanctions upon the losing party and are in derogation of the common law, they must be strictly construed. See **TFI Friday's, Inc. v. Dvorak**,663 So.2d 606, 614 (Fla. 1995) **Loy v. Leone**, 546 So.2d 1187, 1189 (Fla. 5th DCA 1989). Nothing in the record reflects that Ladd was prevented from making an offer of judgment much earlier in the case, even prior to the case being set for the docket of August 18, 1997, or from making an offer of judgment after having obtained the continuance. The

offer of judgment was untimely and thus unenforceable. **Id**. at 265.

Section (c)(3) of **Rule** 1.442 is procedural. The **Rule** mandates that joint proposals shall attribute amounts and terms attributable to each party. Sub-section (g) of 1.442 provides that parties must submit a motion to seek sanctions. Both §768.79 and 1.442 are punitive in nature; they are in derogation of the common law and must be strictly construed as this Court has found in **TGI Friday's, Inc. v. Dvorak**, 663 So.2d 606, 614 (Fla. 1995) and **Allstate Indem. Co. v. Hingson** 808 So.2d 197 (Fla. 2002).

The Petitioners also offer as support **Kuvin v. Keller Ladders**, 797 So.2d 611 (Fla. 3rd DCA 2000) for the proposition that **Rule** 1.442 should not be strictly constructed and argue that the First District, in the instant case, did not look to other courts who failed to strictly construe 1.442 or §768.79. Respondent submits that the Third District Court of Appeal in **Kuvin** did not have the benefit of this Court's strict construction of §768.79 that was set forth in **Allstate Indem. Co. v. Hingson** 808 So.2d 197 (Fla. 2002).

III. IF STATUTE 768.79 OR 1.442 ARE NOT STRICTLY CONSTRUED, THEN GENERAL RULES OF CONSTRUCTION WOULD BE APPLIED AND THE JOINT PROPOSAL WOULD BE INVALID.

(De Novo Standard of Review)

Petitioners argue that the **Rules of Procedure** should be interpreted to further justice and that a strict

interpretation of 1.442 would not further justice. [Petitioners' Initial Brief, page 31-34]. Petitioners further argue that **Fabre v. Marin**, 623 So.2d 1182 (Fla. 1993) controls the interpretation of 1.442(c)(3) and that the Petitioners are not bound by subsection (c)(3) because **Fabre** was not addressing multiple plaintiffs. [Petitioners' Initial Brief, page 33].

If **Rule** 1.442 and **Statute** §768.79 are not strictly construed, then general rules of construction apply. See, **Castillo v. Vlaminck de Castillo**, 771 So.2d 609 (Fla. 3rd DCA 2000); **Syndicate Properties, Inc. v. Hotel Floridian Co.**, 94 Fla. 899, 114 So. 441 (Fla. 1927); **Rowe v. State**, 394 So.2d 1059 (Fla. 1st DCA 1981); **Merchants' Nat Bank of Jacksonville v. Grunthal**, 22 So. 685 (Fla. 1897); **Hoodless v. Jernigan**, 41 So. 194 (Fla. 1906). Therefore, as the court provided in **Castillo** the following analysis is to be completed:

> …rules of construction dictates that when the language under review is unambiguous and conveys a clear meaning, it must be given its plain and ordinary meaning. **In Re McCollam**, 612 So.2d 572, 573 (Fla. 1993); **Holly v. Auld**, 450 So.2d 217, 219 (Fla. 1984). However, that principle is tempered by another cardinal tenet of statutory construction that cautions against giving a literal interpretation if doing so would lead to an unreasonable or absurd conclusion, plainly at variance with the purpose of the legislation as a whole. **State v. Iacovone**, 660 So.2d 1371, 1373 (Fla. 1995); **Holly**, 450 So.2d at 219; **Brown v. Saint City Church of God of the Apostolic Faith, Inc.**, 717 So.2d 557, 560 (Fla. 3rd DCA 1998); **Phoenix Insurance Company v. McCormick**, 542 So.2d 1030, 1032 (Fla. 2nd DCA 1989). See **Castillo** at 611-612.

The language of Rule 1.442(c)(3) states:

> **[a] proposal may be made by or to any party or parties and by or to any combination of**

parties properly identified in the proposal. A joint proposal shall state the amounts and terms attributable to each party.

The phrase "**attributable to**" is ordinarily interpreted in one of two manners. It may be "attributed to" as in "caused by" or "attributed to" as in "due to" or "owing to." If the term is used for the meaning "caused by," it would relate solely to the requirement that the joint proposal from multiple defendants shall specify what each defendant shall provide toward the settlement. This interpretation would exclude the requirement that multiple plaintiffs specify amounts as to each plaintiff. (This is the Petitioners argument under **Fabre**, see infra). This interpretation would directly contradict the intent of this Court and the Legislature.

Florida's Supreme Court has adopted the **Rule** 1.442 to promote the fulfillment of §768.79 with the mandate that "a joint proposal shall state the amount in terms attributable to each party". Moreover, the committee notes found in the 1996 Amendment state that the rule is set forth in order to provide a workable structure for proposing settlement in civil actions. See, **Committee Notes 1996, Rule 1.442**.

The legislative history and judicial interpretation of **§**768.79 manifest the purpose of both the rule and the statute, which is to promote settlement and obviate trial. See, supra, **Eagleman v. Eagleman**, 673 So.2d 946, 947 (Fla. 4th DCA 1996); **Staff Analysis, Florida House of Representatives Committee on**

Judiciary for House Bill 321; **Senate Staff Analysis and Economic Impact Statement, prepared by Senate Bill 866; Bill CS/SB 866**; **Pirelli Armstrong Tire Corp. v. Jensen**, 752 So.2d 1275 (Fla. 2nd DCA 2000).

The intent of the rule is to provide a workable structure for proposing settlements and coincides, supports and furthers the intent of §768.69, by promoting settlements and obviation of trials. If the term "attributable to" is used to mean "caused by," as the Petitioners contend, then joint proposals from multiple plaintiff, whether to a single or multiple defendants, would only specify the amounts that each defendant would pay toward the entire proposal. In theory there could be several hundred plaintiffs, some of whom the defendant or defendants believe have valid claims and others whom they feel have no claim. The defendant would be required to take an all or nothing approach to settlement, meaning that they would be required to settle with all the plaintiffs or risk the sanction of attorney's fees. This sole use of "attributed to" to mean "caused by" leads to an absurd result and contradicts the intent of the rule and statute.

Petitioners argue that the Committee Notes of 1996 referencing **Fabre** limit the (c)(3) mandate to defendants' joint proposals solely. [Petitioners' Initial Brief, page 32]. However, the Petitioners are bypassing the first dictates of construction that when the language under review is unambiguous and conveys a clear meaning, it must be given its plain and ordinary meaning. Sub-section (c)(3) of the **Rule**

explicitly provides that "joint proposals shall state the amount and terms attributable to each party." The **Rule** is clear and conveys a clear meaning, each party who submits a joint proposal of settlement shall set forth the amounts being demanded, if plaintiffs, or being offered, if defendants.

Petitioners cite **Putt v. State** 527 So.2d 914 (Fla. 3rd DCA 1988) and **Kwablum v. Thornhill Estates Homeowners Association, Inc.**, 755 So.2d 85 (Fla. 2000) for the proposition that a court may look to the committee notes in the Rules to determine the Rule's intent. [Petitioners' Initial Brief, page 32 fn 22]. However, both the Third District Court of Appeal in **Putt** and this Court in **Kwablum** first interpret the language of the rules and then look to the committee notes for support. The Third District Court of Appeal provided,

> "While we recognize that committee notes to rules are not binding, they are a valuable aid in the application of criminal rules." **Putt** at 915.

Additionally, this Court in **Kwablum** first looked to the wording of the rule at issue and provided as follows:

> The use of the word "shall" under **Rule** 9.040(b) demonstrates that transfer of an improperly filed cause is mandatory, not discretionary. See **Chaky v. State**, 651 So.2d 1169, 1172 (Fla. 1995) (construing "shall" to be mandatory and "may" to be directory in a rule of procedure)" **Kwablum** at 87.

Thus, under the cases cited by the Petitioners, the clear meaning of the word "shall" was first interpreted and the committee notes were used only as support.

IV. THE COURT MUST HAVE THE ABILITY TO DETERMINE THE AMOUNTS REQUESTED BY EACH PLAINTIFF IN ORDER TO APPLY §768.79 SANCTIONS

(De Novo Standard of Review)

Implicit in the rule and statute is the recipient's or recipients' ability to reasonably evaluate the proposal. This may only be accomplished if the recipient(s) is provided sufficient information. When multiple plaintiffs tender a joint proposal, the recipient must be informed of the amounts and terms attributed to each plaintiff. Without the recipient of a joint proposal having the necessary information mandated explicitly in 1.442(c)(3) and §768.79, the recipient cannot evaluate the proposal.

The same holds true for the court. If the court cannot determine the amounts due to each plaintiff in a joint proposal, the court cannot with any certainty determine the percentage difference between the final judgment and the joint proposal. See, **DiPaola v. Beach Terrace Ass'n**., 718 So.2d 1275, 1277 (Fla. 2nd DCA 1998) (holding that if it is impossible to perform, with any certainty, the calculation necessary to determine the applicability of §768.69, then the offer cannot support an award of fees).

V. SOLELY REQUIRING SPECIFICITY AS TO EACH DEFENDANT RESULTS IN THE VIOLATION OF DUE PROCESS AND EQUAL

PROTECTION RIGHTS

(De Novo Standard of Review)

Under the rational basis theory, both the **Rule** and the **Statute** may discriminate against unclassified people or entities when the State has a rational basis to do so. However, if the application of **Rule** 1.442(c)(3) is applied solely to specifying amounts attributable to (caused by) defendants without specifying amounts (owing or due to) plaintiffs, this would cause the Rule and the Statute to be unconstitutional, under both Florida's and the Federal Constitution.

The due processes clauses found in both Constitutions grant each individual the entitlement to access the court system. If the court interprets **Rule** 1.442(c)(3) in a manner that distinguishes between the joint proposals for actions involving a single defendant opposed by multiple plaintiffs, the defendant is not granted the Due Process or Equal Protection guaranteed.

The instant case is a prime example, where the joint proposal from two plaintiffs to a single defendant failed to specify amounts due to each plaintiff, the single defendant was required to evaluate the proposal on a speculative basis, yet was subject to sanction for proceeding to trial. However, if the converse would occur, where two defendants (not involving joint or vicarious liability) proposed a joint proposal to one plaintiff, the defendants would be required to

specify the amounts being offered from each defendant individually. The plaintiff would not be forced into speculating the amounts from each defendant and can evaluate the joint offer with certainty and with a firm knowledge of the potential for sanctions if he or she proceeds to trial. There is no underpinning in the Supreme Court's or Legislature's intent for the unequal application of 1.442 or 768.79 and there is no rational basis to sanction single defendants involved in civil action with multiple plaintiff more than the converse. Such an application of (c)(3) is both arbitrary and unreasonable and is in no way relevant to the objectives or intent of the legislation.

VI. LIMITING THE APPLICATION OF RULE 1.442(C)(3) TO JOINT PROPOSALS TO MULTIPLE DEFENDANTS WITH COMPARATIVE FAULT WOULD COUNTER THE INTENT OF FLORIDA RULES OF CIVIL PROCEDURE 1.010 AND FLORIDA STATUTE 768.79

(De Novo Standard of Review)

Florida Rules of Civil Procedure 1.010 explicitly states:

> "The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceedings unless these rules specifically provide to the contrary. These rules shall be constructed to secure the just, speedy, and inexpensive determination of every action."

The intent of **Florida Statute §**768.79 is to reduce both litigation costs and the demand on Florida's judicial system by imposing sanctions, including attorneys' fees, on those parties who unreasonably reject an offer of settlement.

If **Rule** 1.442(c)(3) were applied only to actions involving proposals to multiple defendants that may have comparative fault between themselves, the result would be increased litigation as all other recipients of the joint proposals would not be provided sufficient information to reasonably evaluate the proposal. The instant case is a prime example of increased litigation through limiting the application of 1.442(c)(3) to cases, which do not have multiple defendants with comparative fault.

In the instant case, two plaintiffs composed a joint proposal for Ninety-five Thousand and One Dollars ($95,001.00) to a single defendant. The proposal failed to specify the amounts due to each of the two plaintiffs. The single defendant was to determine the reasonability of each plaintiff's proposal without the two plaintiffs specifying the amounts that each requested. The defendant proceeded to trial with both the truck driver and the trucking company. This application of **Rule** 1.442 contradicts the express intent of **Rule** 1.010 and §768.79, unnecessarily inflated costs and increased the length of trial.

VII. TO THE EXTENT THERE IS A CONFLICT BETWEEN THE RULES AND STATUTE, THE RULE CONTROLS PROCEDURE

(De Novo Standard of Review)

Rule 1.442(c)(3) requires that a joint proposal state the amounts and terms attributable to each party; however, Statute 768.79 does not address joint proposals specifically. "To the

extent that statutes dealing specifically with a particular civil action or proceeding do not set out a specific rule for a particular phase of practice or procedure, such phase would appear to be governed by these rules." AUTHORS' COMMENT—1967 to **Florida Rules of Civil Procedure 1.010**. As the **Florida Rules of Civil Procedure** govern the procedural aspects of civil litigation, the rule would govern the procedure and validity of that offer. This is also supported in **Rule** 1.442 itself through the following subsection:

> (a) Applicability. This Rule applies to all proposals for settlement authorized by Florida law, regardless of the terms used to refer to such offers, demands, or proposals, and supercedes all other provisions of the Rules and Statutes that may be inconsistent with this Rule.

Therefore, this Court realized that the **Rule** may not be consistent with **Statute** §768.79 and explicitly states that the **Rule** shall govern the requirements of an offer. Moreover, **Rule** 1.442(c)(3) provides that all joint proposals must specify the amounts and terms attributed to each party. As the rules govern procedure, and the proposal in the instant case failed to meet the requirements of the rule, the proposal is invalid.

VIII. RULE 1.442(c)(3) SUPERCEDES THOSE SECTIONS OF FLORIDA STATUTES AND PRIOR DECISIONS

(De Novo Standard of Review)

If prior Florida courts have ruled on the issues governing 1.442, and §768.79, and those decisions are irreconcilable with the current versions of 1.442, the current

version supercedes the rulings of prior courts. Therefore, if a prior court decision or the statute itself conflicts with **Rule** 1.442, the conflict is resolved in a manner that would support 1.442(c)(3).

This Court's ruling in **Allstate Indem. Co. v. Hingson**, 808 So.2d 197 (Fla. 2002) provides that **Florida Statute** §768.79(2)(b) mandates that joint proposals specify amounts attributed to each party. Therefore, **Statute** §768.79 and **Rule** 1.442 are not in conflict and both mandate that the joint proposal of the Petitioners must have set forth the amounts requested by each Petitioner in order to be valid.

CONCLUSION

In the instant case, the Trial Court sanctioned the defendant with attorney fees based upon a joint proposal from two plaintiffs to a single defendant. The joint proposal failed to specify the amounts that each plaintiff was requesting. The First District Court of Appeals reversed the Trial Court and held that **Florida Rules of Civil Procedure** 1.442(c)(3) mandates that joint proposals by multiple plaintiffs must apportion amounts attributable to each party, meaning each plaintiff in a joint proposal must set forth the amounts that each plaintiff is requesting. See, **Hilyer Sod, Inc. v. Willis Shaw Express, Inc. Et Al**, 817 So.2d 1050 (Fla. 1st DCA 2002)]. This same mandate is found in **Florida Statute** §768.79 and was confirmed by **Allstate Indem. Co. v. Hingson** 808 So.2d 197 (Fla. 2002).

WHEREFORE, the Defendant/Respondent, HILYER SOD, INC., requests the affirmation of the First District's holding in **Hilyer Sod, Inc. v. Willis Shaw Express, Inc. Et Al**, 817 So.2d 1050 (Fla. 1st DCA 2002) reversing the trial court's sanction of attorney's fees, as the Joint Proposal from the Plaintiffs/Petitioners, WILLIS SHAW EXPRESS, INC. and EDWARD McALPINE did not meet the requirements of **Statute** 768.79(2)(b) or **Rule** 1.442(c)(3) for setting forth amounts that each party was requesting and was therefore invalid.

CERTIFICATE OF TYPEFACE AND SIZE

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I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular U.S. Mail delivery to John W. Frost, II, Esquire, and Peter van den Boom, Esquire, Frost & Saunders, P.A., Post Office Box 2188, Bartow, Florida 33831-2188, this _____ day of _____, 2002.

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