SUPREME COURT OF FLORIDA

CASE NO. SC10-148

IN RE:

Amendments to the Florida Rules
of Civil Procedure
_______________________________/

COMMENT ON COMMITTEE'S PROPOSED AMENDMENT TO RULE 1.442

The law firm of Schwartz & Horwitz, regularly handling litigation matters where issues about joint proposals for settlement arise, files its comments to the proposed Amendment to Rule 1.442 and states as follows:

1. Rule 1.442 of the Florida Rules of Civil Procedure set forth the manner in which proposals for settlement are to be filed between parties to a lawsuit. The Committee proposes the following Amendment to Rule 1.442:

> (4) Notwithstanding subdivision (c)(3), when a party is alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract, a joint proposal made by or served on such a party need not state the apportionment or contribution as to that party. Acceptance by any party shall be without prejudice to rights of contribution or indemnity.

2 It appears that the purpose of the suggested Amendment is to address some of the holding in Lamb v. Matetzschk, 906 So. 2d 1037 (Fla. 2005). Lamb holds that "[r]ule 1.442(c)(3) expressly requires that a joint proposal for settlement made by two or more parties be differentiated. The rule makes no distinction between multiple plaintiffs and multiple defendants, nor does it made any distinction on the theory of liability." Lamb, 906 So. 2d at 1042.

3. The suggested Amendment appears to allow a joint proposal made by one plaintiff to two defendants or two defendants to one plaintiff but only in cases in which one of the defendants is alleged to be solely liable on a theory of vicarious or passive liability.

4. We note that there are a large volume of cases where another form of joint liability is present and under which this Amendment does not address this recurring problem - cases in which plaintiffs are suing in a joint capacity, such as husband and wife joint homeowners seeking insurance benefits or other jointly responsible parties.

5. In application, Lamb has not been limited to situations dealing with a claim for vicarious liability but also in a situation where plaintiffs are suing jointly or defendants are being sued jointly. In the case of Graham v. Peter K. Yeskel 1996 Irrevocable Trust, 926 So. 2d 371 (Fla. 4th DCA 2006), the Fourth District Court of Appeal applied Lamb to deem invalid a proposal for settlement to a single plaintiff served by two defendants who were being jointly sued. In a pre-Lamb decision, the Fourth District in Hall v. Lexington Insurance Co., 895 So. 2d 1161 (Fla. 4th DCA 2005), had considered valid one proposal for settlement by the homeowner insurer served on the joint plaintiff homeowners suing in a joint capacity. The Graham ruling (post-Lamb) indicated Hall was no longer a proper method of the use of such proposals.

6. If the intended purpose of the Amendment to 1.442 is to reverse Lamb to allow for joint proposals in a case where defendants are being sued jointly, one under a theory of vicarious liability, the Amendment should also encompass claims made by joint plaintiffs so that a single defendant can serve a joint proposal without apportionment.

7. An additional suggested Amendment could be:

> (5) Notwithstanding subdivision (c)(3), when a party is alleged to be suing jointly such as tenants by the entirety or tenant in common owners of property or is alleged to be liable in a joint capacity with another defendant, a joint proposal made by or

served on such a party need not state the apportionment or contribution as to that party. Acceptance by any party shall be without prejudice to any rights of contribution or indemnity.

Dated: March 31, 2010.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that a copy here of has been furnished to **Mark A. Romance, Esquire**, Committee Chair, 201 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131-4327 by ___U.S. Mail; X Overnight Mail: ___Facsimile; ___Hand Delivery; on this 31st day of March, 2010.

s/ Steven G. Schwartz
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