IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

ANCEL PRATT, JR., individually,

Petitioner,

vs.

MICHAEL C. WEISS, D.O., MICHAEL C. WEISS, D.O., P.A.; LOUIS H. ISAACSON, D.O.; LOUIS H. ISAACSON, D.O., P.A.; STERLING HEALTHCARE GROUP, INC.; STERLING MIAMI, INC.; LAUDERDALE ORTHOPEDIC SURGEONS; and FMC HOSPITAL, LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC., f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER,

Respondents.

CASE NUMBER: SC12-1783

RESPONDENT, FLORIDA MEDICAL CENTER'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

This appeal is on certiorari review in this Court of the Fourth District Court of Appeal's decision in Pratt v. Weiss, 92 So. 3d 851 (Fla. 4th DCA 2012)(rev. granted, 122 So. 3d 868 (Fla. July 18, 2013)), which upheld the entry of an award of attorney's fees against the plaintiff.

In this Answer Brief on the Merits, the Petitioner, ANCEL PRATT, JR. will be referred to as the Plaintiff. The Respondent, FMC HOSPITAL, LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER will be referred to as the hospital defendant or FLORIDA MEDICAL CENTER. Citations to the record will be to Appellant's Appendix to the Initial Brief in the Fourth District Court of Appeal, Case No. 4D10-4398, in the following form:

A-page(s)

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INTRODUCTION

This appeal addresses the validity of an unambiguous proposal for settlement in a medical malpractice lawsuit that resulted in a significant attorney's fee award to the defendant hospital following the plaintiff's rejection of the proposal, and a jury's verdict in favor of the defendant hospital. The Fourth District Court of Appeal's decision in Pratt v. Weiss, 92 So. 3d 851 (Fla. 4th DCA 2012)(rev. granted, 122 So. 3d 868 (Fla. July 18, 2013)), should be upheld as it does not conflict with the rule, statute or case law governing proposals for settlement.

STATEMENT OF THE CASE AND FACTS

The Plaintiff, Ancel Pratt, Jr., had been playing football at his high school, when he was allegedly injured. A1-59. A volunteer team physician had initially examined him on the field before the paramedics transported the Plaintiff to Florida Medical Center Hospital. Id. Thereafter, the Plaintiff sued eleven defendants[1] for medical malpractice, claiming that the defendants had failed to properly diagnose and treat the Plaintiff following his injury on the football field. Id.

[1] The hospital is the only defendant relevant to this appeal.

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In the First Amended Complaint, the Plaintiff sued the other defendants "and FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL INC., f/k/a FMC CENTER INC., d/b/a FLORIDA MEDICAL CENTER," for negligence and negligent hiring and retention. A1-59. The allegations against FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER, were identical to those allegations against FMC MEDICAL INC., f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER. A33-59. FLORIDA MEDICAL CENTER responded to the complaint with only one Answer. A60-71.

During the course of litigation, the parties exchanged proposals for settlement. The Defendant, FLORIDA MEDICAL CENTER, served a proposal for settlement for $10,000.00 to the Plaintiff, stating that the party making the proposal was "Defendants, FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER." A161-163. A four-page "Settlement Agreement, Release of All Claims Hold Harmless Agreement" was attached to the proposal for settlement. A166-169.

The release stated that the Plaintiff would "fully and completely release, acquit and forever discharge FMC HOSPITAL LTD., a Florida Limited

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Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER, and their affiliates, successors, predecessors, subsidiaries, agents, employers, employees and/or servants, and any primary, excess or reinsurance insurers." A166. The release also stated that, "[t]his Release does not in any way release other named Defendants." A168. The Plaintiff rejected the proposal to settle the case, and the parties continued to litigate the case.

Thereafter, the hospital defendant moved for summary judgment claiming that FMC MEDICAL, INC. was not the proper party. A93-95. That summary judgment motion was never ruled on.

Two years after the hospital defendant served the first proposal for settlement, the Plaintiff served a proposal for settlement to "Defendant FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER, FMC MEDICAL INC., f/k/a FMC CENTER INC. d/b/a FLORIDA MEDICAL CENTER." A97-99. In that proposal, the Plaintiff referred to the FLORIDA MEDICAL CENTER entities as "the Defendant." A97-99. The proposal was rejected.

The case proceeded to trial, and the parties stipulated that the proper party was FMC HOSPITAL, LTD., a Florida Limited Partnership d/b/a FLORIDA

MEDICAL CENTER rather than FMC MEDICAL INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER. A140. The jury instructions referred to the hospital as "FMC HOSPITAL, LTD., a Florida Limited Partnership, d/b/a FLORIDA MEDICAL CENTER." A108-122. The verdict form listed "FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER." A123-125. After trial, the jury found in favor of FMC HOSPITAL LTD., and final judgment was entered in favor of FMC HOSPITAL LTD. A123-125; A159-160. The Plaintiff appealed the final judgment. See Pratt v. Weiss, 53 So. 3d 1044 (Fla. 4th DCA 2011)(per curiam affirmed).

While the plenary appeal was pending in the Fourth District Court of Appeal, FLORIDA MEDICAL CENTER moved for attorney's fees pursuant to the proposal for settlement that the Plaintiff had rejected years before judgment was entered in favor of FLORIDA MEDICAL CENTER. A126-131. The Plaintiff opposed the motion, contending that the proposal was void for failing to apportion the amounts attributable to each offeror; and for failing to state the terms of the general release with particularity. A134.

The trial court held a hearing on the hospital's motion for attorney's fees. In considering the parties arguments, the trial court recognized,

> this is really only one defendant. The fact that you may have improperly named two different entities, as this case

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> proceeded, it was clear that there was no legal or factual basis to naming two defendants. You eventually stipulated to that, and the case went to trial as to the only actual operating entity of the medical center. So the fact that you may have improperly named two defendants, and they both said, okay you've joined us, so we're making this proposal, it was clear there was only one defendant. Florida Medical Center was the defendant. . . .

A141.

After the hearing, FLORIDA MEDICAL CENTER submitted a memorandum of law in support of its motion for attorney's fees addressing the issues posed at the hearing. A148-158. FLORIDA MEDICAL CENTER asserted that the proposal for settlement was valid because it was made on behalf of a single offeror and apportionment was not required and because the terms of the general release were stated with particularity. A148-158.

A year later, the trial court conducted another hearing on the hospital's motion for attorney's fees. A179-206. The trial court was "not persuaded that this is a proposal made by joint offerors. It's made by one offeror, the hospital, defendant." A194. In granting the hospital's motion for fees, the trial court determined that "the language in the release was sufficient to make it clear that those rights [against the other remaining defendants] were preserved, that the release only covered the hospital and would have permitted the plaintiff to accept the proposal and still proceed against the remaining defendants." A221.

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Meanwhile, before the Court held the evidentiary hearing and entered an award of attorney's fees, FLORIDA MEDICAL CENTER had filed another proposal for settlement in attempt to "*only* resolve Defendant FLORIDA MEDICAL CENTER's claim for attorney's fees pursuant to its previously served proposal for settlement." A272. The Plaintiff moved to strike this proposal, claiming FLORIDA MEDICAL CENTER was a non-entity. A260-262 The trial court granted the motion to strike because the "Proposal was served less than 45 days before the trial date/evidentiary hearing," and not because FLORIDA MEDICAL CENTER was a non-entity. A239.

The trial court conducted an evidentiary hearing, and awarded $426,580.00 plus $6,000.00 in expert witness fees to the hospital defendant. A239; A242-243. The Plaintiff appealed to the Fourth District Court of Appeal, arguing that the Proposal was invalid since it failed to apportion an offer between the two separately named defendants; that the Proposal was ambiguous; and that the Proposal required release of future unknown claims. See generally Initial Brief, 4D10-4398. The Fourth District affirmed the trial court's award of attorney's fees, and the Plaintiff sought discretionary review in this Court. See Pratt v. Weiss, 92 So. 3d 851 (Fla. 4th DCA 2012) (rev. granted, 122 So. 3d 868 (Fla. July 18, 2013)). This appeal on the merits followed.

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SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal properly upheld an award of attorney's fees stemming from the Plaintiff's rejection of the hospital defendant's unambiguous proposal for settlement. The hospital's proposal was not a joint proposal which required apportionment. The hospital's proposal included unambiguous terms and conditions, including a release that specifically did not release the other named doctor defendants and did not release future unknown claims. The Fourth District strictly construed the hospital's proposal and did not create an "exception" to the rules governing proposals for settlement.

Although the rules governing proposals for settlement were designed "to end judicial labor, not create more," this case frustrates that purpose. A proposal for settlement must attempt to eliminate all reasonable ambiguity regarding the scope of the proposal and its terms, but the rules do not demand the impossible as long as the offeree can make an informed decision to accept or reject the proposal without needing clarification.

Here, the Plaintiff brought a complex medical malpractice claim against several defendants including the hospital stemming from alleged injuries that occurred on the football field. The complaint included identical allegations against two hospital entities; both entities were characterized as "d/b/a FLORIDA

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MEDICAL CENTER." Both entities were alleged to have owned, controlled and/or maintained the same hospital—FLORIDA MEDICAL CENTER. The same lawyer represented the hospital entities. The hospital entities filed a single answer.

During the course of litigation, the hospital served an unapportioned proposal for settlement on the Plaintiff. The proposal was for $10,000.00. The proposal included the release of both hospital entities. The proposal did not release the other two named defendant doctors. The proposal did not release unknown future claims. The Plaintiff rejected the proposal. Meanwhile, the Plaintiff had also served an unapportioned proposal for settlement to the hospital, which the hospital rejected.

Throughout the entire course of litigation, the parties understood that there was only one hospital entity. The parties finally stipulated to that fact, and included the proper hospital entity in the jury instructions and verdict form used at trial. The hospital prevailed at trial.

Based on the circumstances of this case, there is no way that the Plaintiff can assert that he could not make an informed decision as to whether to accept or reject the hospital's proposal for settlement. Instead, the Plaintiff continues to "nit pick" the proposal in an attempt to avoid a significant fee judgment entered against him. The Fourth District's sound decision does not conflict with the rule, statute, and

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case law governing proposals for settlement. This Court should uphold the Fourth District's decision and find that the hospital's proposal was not a joint proposal requiring apportionment, nor did it release the other named defendants or future unknown claims.

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STANDARD OF REVIEW

An appellate court reviews the enforceability of a proposal for settlement pursuant to section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442, under a *de novo* standard of review. Frosti v. Creel, 979 So. 2d 912, 915 (Fla. 2008).

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ARGUMENT

THE FOURTH DISTRICT COURT'S DECISION TO UPHOLD THE TRIAL COURT'S AWARD OF ATTORNEY'S FEES AGAINST THE PLAINTIFF BASED ON AN UNAMBIGUOUS PROPOSAL FOR SETTLEMENT SHOULD BE UPHELD BECAUSE THE HOSPITAL'S PROPOSAL WAS NOT A JOINT PROPOSAL THAT REQUIRED APPORTIONMENT, DID NOT RELEASE OTHER NAMED DEFENDANTS, AND DID NOT REQUIRE THE RELEASE OF FUTURE CLAIMS.

Operating in tandem, section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442, award attorney's fees as sanction against parties who unreasonably reject a properly made settlement offer. Wolfe v. Culpepper Constructors, Inc., 104 So. 3d 1132, 1134 (Fla. 2d DCA 2012)(citing Willis Shaw Express, Inc. v. Hilyer Sod, Inc., 849 So. 2d 276, 278 (Fla. 2003)). In enacting section 768.79 and adopting rule 1.442, the intent was "to end judicial labor, not create more." Id. (quoting Lucas v. Calhoun, 813 So. 2d 971, 973 (Fla. 2d DCA 2002); see also Sarkis v. Allstate Ins. Co., 863 So. 2d 210, 218 (Fla. 2003)(stating that the rule and statute were implemented in order to "reduce litigation costs and conserve judicial resources by encouraging the settlement of legal actions."). As this Court can see from this appeal, which stems from an incident that occurred almost two decades ago, the intent of the statute and rule has been frustrated.

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A. The hospital's proposal for settlement was not a joint proposal that required apportionment.

Rule 1.442 and section 768.69, governing proposals for settlement, provide detailed requirements in order to enable the offeree "to make an informed decision without needing clarification." Carey-All Transport, Inc. v. Newby, 989 So. 2d 1201, 1206 (Fla. 2d DCA 2008)(quoting State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1079 (Fla. 2006)). Parties are encouraged not to "'nit pick' the validity of a proposal for settlement based on allegations of ambiguity unless the asserted ambiguity could 'reasonably affect the offeree's decision on whether to accept the proposal.'" Land & Sea Petroleum, Inc. v. Business Specialists, Inc., 53 So. 3d 348 (Fla. 4th DCA 2011)(quoting Carey-All Transport, 989 So. 2d at 1206) (quoting Nichols, 932 So. 2d at 1079)).

A proposal for settlement must "name the party or parties making the proposal and the party or parties to whom the proposal is being made." Fla. R. Civ. P. 1.442(c)(2)(A). A proposal for settlement must "state with particularity any relevant conditions." Fla. R. Civ. P. 1.442(c)(2)(C). A proposal for settlement must "state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal." Fla. R. Civ. P. 1.442(c)(2)(E).

A release included in the proposal as a nonmonetary condition must "eliminate any reasonable ambiguity about its [the proposal's] scope." Nichols,

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932 So. 2d at 1079; Lucas, 813 So. 2d at 973. Although courts are instructed to strictly construe rule 1.442 and section 768.79, as this Court explained in Nichols, "given the nature of language, it may be impossible to eliminate all ambiguity. The rule does not demand the impossible." Nichols, 932 So. 2d at 1079; see also Diamond Aircraft Indus., Inc. v. Horowitch, 107 So. 3d 362 (Fla. 2013).

In addition to the general requirements for proposals for settlement, the rule provides that proposals may be "made by or to any party or parties or to any combination of parties properly identified in the proposal." Fla. R. Civ. P. 1.442(c)(3). A joint proposal must "state the amount and terms attributable to each party." Fla. R. Civ. P. 1.442(c)(3). If the proposal is made by multiple offerors, then the amounts must be attributable to each offeror to support a fee award even if one of the party's alleged liability is solely vicarious. [2] See Alioto-Alexander v. Toll Bros., 12 So. 3d 915, 916 (Fla. 4th DCA 2009)(quoting Willis Shaw, 849 So. 2d at 278-9); see also Attorneys' Title Ins. Fund v. Gorka, 36 So. 3d 646 (Fla. 2010); Lamb v. Matetzchk, 906 So. 2d 1037 (Fla. 2005); Allstate Indemnity Co. v. Hingson, 808 So. 2d 197 (Fla. 2002).

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[2] Rule 1.442 was later amended to deal with this situation. Subsection (c)(4) now provides that if "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." Fla. R. Civ. P. 1.442(c)(4). The proposal for settlement at issue in this case is subject to the earlier version of the Rule.

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The issue of whether or not a proposal for settlement is a joint proposal requiring apportionment has been litigated frequently. See e.g. North v. LHB Realty, L.L.C., 2013 WL2431875 (N.D. Fla. June 4, 2013)(holding that the proposal was not a joint proposal requiring apportionment); Arnold v. Audiffred, 98 So. 3d 746 (Fla. 1st DCA 2012)(review granted SC12-2377 (Fla. May 5, 2013)(holding that the proposal for settlement was a joint proposal, which required apportionment); Duplantis v. Brock Specialty Servs., Ltd., 85 So. 3d 1206 (Fla. 5th DCA 2012)(holding that the plaintiff was entitled to separate offers from each defendant in order to independently and intelligently assess and evaluate each offer); Andrews v. Frey, 66 So. 3d 376 (Fla. 5th DCA 2011)(holding that an offer that is conditioned on the dismissal of a defendant who was not the offeror is not a joint offer that required apportionment); Eastern Atlantic Realty & Investment Inc. v. GSOMR LLC, 14 So. 3d 1215 (Fla. 3d DCA 2009)(holding that the proposal for settlement was not a joint proposal); Alioto-Alexander, 12 So. 3d 915 (holding that a proposal that included as a condition the dismissal of the entire suit against the employer and the employee did not serve to transform the proposal into one made by multiple offerors); Oasis v. Espinoza, 954 So. 2d 632 (Fla. 3d DCA 2007)(holding that plaintiff's joint proposal for settlement must state amount and terms attributable to each party regardless of whether vicarious liability is disputed

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or undisputed); Easters v. Russell, 942 So. 2d 1008 (Fla. 2d DCA 2006)(holding that an "and/or" approach to the proposal for settlement left the defendants to determine the settlement between themselves, and was not valid); D.A.B. Constructors, Inc. v. Oliver, 914 So. 2d 462 (Fla. 5th DCA 2005)(holding that a joint proposal for settlement did not satisfy the statute or rule because it was not apportioned between defendants); Heymann v. Free, 913 So. 2d 11 (Fla. 1st DCA 2005)(holding that an initial unified offer to both defendants did not state the amount and terms attributable to each party and therefore was an invalid proposal); Dollar Rent A Car, Inc. v. Chang, 902 So. 2d 869 (Fla. 4th DCA 2005)(holding that a mother's proposal made on behalf of her son was not a joint proposal requiring apportionment).

Although the courts have strictly construed the rules governing proposals for settlement in making the above rulings, each case involves different circumstances, i.e. different relationships between the parties; different claims against the parties; and different terms in the proposals. Like the above mentioned cases, the Fourth District Court in this case properly strictly construed the hospital's proposal for settlement, and properly applied the rule, statute and case law precedent governing proposals for settlement. Andrews, Eastern, Alioto-Alexander, Dollar Rent A Car and North are particularly instructive, and the Plaintiff's reliance on Cano v.

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Hyundai Motor America, Inc., 8 So. 3d 408 (Fla. 4th DCA 2009) and Brower-Eger v. Noon, 994 So. 2d 1239 (Fla. 4th DCA 2008) is misplaced.

In Andrews, the plaintiff and her minor daughter sued a driver and her father for injuries sustained in an automobile accident based on theories of negligence and vicarious liability under the dangerous instrumentality doctrine. The defendants served separate proposals on both the plaintiff and her minor daughter. Each proposal was identical but included the condition of releasing both defendants and their insurers. The Fifth District held that the proposal was valid and that it was not a joint proposal requiring apportionment, instead, the "fact that the proposals conditioned acceptance on releasing Rudolph Frey [the father] neither created an ambiguity, nor transformed them into joint offers." Andrews, 66 So. 3d 376 (citing Eastern, 14 So. 3d 1215; Alioto-Alexander, 12 So. 3d 915)).

Eastern involved a real estate transaction and multiple parties and claims. Prior to trial, the owner of the property served a clear and unambiguous proposal, which provided that "in exchange for Eastern's dismissal of its claims against BJV, Eastern would receive $20,000 and BJV and GSOMR would dismiss their claims against Eastern related to the pending action." 14 So. 3d at 1221. In addition, both BJV and GSOMR were included in the body of the proposal. The trial court concluded that the proposal was a joint proposal which failed to

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apportion or differentiate the amount offered between them. However, the Third District reversed, finding that the proposal "explicitly states that BJV was the party making the offer to pay Eastern $20,000.00," and since Eastern did not seek any affirmative relief against GSOMR, there was no reason for GSOMR to offer payment of any monies to Eastern. 14 So. 3d at 1221.

In Alioto-Alexander, the appellant had sued an employer (Toll Brothers) and its employee (Barr) for actions committed within the scope of his employment. The employer served a proposal for settlement to the appellant in which the proposal stated that it was being made by the employer but provided that the offer was condition upon the dismissal of the entire action, including claims against the employee. The proposal did not apportion the amount between the claims against the employer and the employee. The appellant insisted that this constituted a "joint proposal," but the Fourth District disagreed. Instead, the Fourth District held that the dismissal of the entire suit, including the claims against the employee, was simply a condition of the proposal and did not serve to transform the proposal for settlement into one made by multiple offerors. Alioto-Alexander, 12 So. 3d at 917.

In Dollar Rent A Car, the plaintiff, the natural mother and legal guardian of a minor, served a proposal on behalf of her son to an automobile rental company. The Fourth District found that a fair reading of the proposal was that it was made

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by the mother on her son's behalf and did not include any individual claim that the mother may have had. Therefore, the Fourth District held that the offer was not an offer from multiple plaintiffs, and apportionment was not required. Dollar Rent A Car, 902 So. 2d at 870-71.

North involved a lawsuit by a personal representative acting on behalf of the estate and the survivors against two defendants, a realty company and a management group. The realty company served the plaintiffs with a written proposal for settlement, which included a condition that the Plaintiff would execute a release releasing the realty company. The proposal also included a separate additional condition that the plaintiff would dismiss with prejudice the claims against the management group and the realty company. The plaintiff argued that this was a "joint proposal," and the Northern District Court of Florida rejected this argument. The Northern District held that the proposal was not a joint proposal rather the dismissal of claims against the other defendants were merely conditions of the proposal and not an attempt to modify the proposal into a joint proposal. 2013 WL 2431875 *2.

On the other hand, Brower-Eger involved a claim for breach of contract brought by two plaintiffs, one a partnership and one a general partner, against a single defendant for failure to pay the balance due on the remodeling of a home.

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The defendant filed a counterclaim against three plaintiffs—the partnership and two general partners for negligent hiring. The defendant served an unapportioned proposal for settlement to all three plaintiffs in order to settle the counterclaim. The Fourth District held that the proposal was fatally flawed because it was a joint proposal that did not apportion between the three plaintiffs. Brower-Eger, 994 So. 2d at 1241.

Cano also involved a joint proposal that did not apportion between multiple parties. In Cano, two plaintiffs, husband and wife, sued a car company for breach of express and implied warranty and for revocation of acceptance. The car company served the two plaintiffs with an unapportioned proposal for settlement. The Fourth District held that the proposal was a joint proposal that failed to meet rule 1.442's strict requirement of specifying the amount attributable to each party. Cano, 8 So. 3d at 411.

Here, the proposal was made on behalf of a single hospital entity (FLORIDA MEDICAL CENTER) that was allegedly responsible for the Plaintiff's injuries. Both hospital entities that had been sued were doing business as FLORIDA MEDICAL CENTER. FLORIDA MEDICAL CENTER was represented by the same lawyer and filed a single answer. The Plaintiff even filed its own proposal for settlement to both hospital entities as if they were one entity. A97-99.

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In addition, the style of the case on the pleadings, including the cover page of the instant appeal, reflects that the FLORIDA MEDICAL CENTER entities were treated as one entity. See Petitioner's Initial Brief, where the Plaintiff lists all of the defendants separated by semicolons followed by "and" before listing "FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC. f/k/a FMC CENTER, INC., d/b/a FLORIDA MEDICAL CENTER." By joining these two entities with a semicolon after the "and," this clearly indicates that these two entities have been and continue to be treated as one entity. Further, the parties later agreed that FMC HOSPITAL, LTD. was the only proper defendant, and the jury instructions and verdict form were crafted according to that agreement, referencing only FMC HOSPITAL, LTD. throughout the trial.

The title of the hospital's proposal—"Defendant, FLORIDA MEDICAL CENTER's Proposal for Settlement/Offer of Judgment to the Plaintiff, ANCEL PRATT, JR., Individually"—indicated that it was a single entity's proposal. The first paragraph of the proposal indicated that "[t]he Defendant(s), FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER" were making the offer pursuant to section 768.79 and Rule

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1.442. Both Defendants were doing business as the same entity—"FLORIDA MEDICAL CENTER." The Party making this proposal was listed as "Defendants, FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER," and it was made in an attempt to resolve all pending matters between the Plaintiff and the named Defendants as noted above. There was no conjunction between the two entities to indicate that the proposal was being made on behalf of more than one entity.

In addition, as part of the nonmonetary conditions, the hospital's proposal included an unambiguous release that referred to the two companies that owned, controlled, or maintained the single hospital entity allegedly responsible. The release did not release the other two named defendant doctors who were alleged to be agents of FLORIDA MEDICAL CENTER.

Andrews, Eastern, Alioto-Alexander, Dollar Rent A Car and North all support the Fourth District's decision holding that the hospital's proposal was not an invalid, joint proposal, rather it was an offer made by a single hospital defendant which included as a condition the release of both hospital entities. Cano and Brower-Eger are distinguishable because they involved joint offers that were not apportioned.

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Further, here, the proposal properly identified the claims to be resolved, and the proposal stated with particularity any relevant conditions, the total amount of the proposal and the non-monetary terms of the proposal. The proposal was not a joint proposal and did not need to be apportioned between two entities that both owned, controlled and/or maintained the one entity hospital that was alleged to be responsible. The Plaintiff was able to make an informed decision on whether to accept or reject the unambiguous proposal, especially considering the Plaintiff had served his own unapportioned proposal to the hospital defendant; yet, the Plaintiff chose to reject the proposal. The reason behind his rejection is unknown but it is most likely because he was dissatisfied with the $10,000.00 offer and not because he could not ascertain who was making the proposal.

Accordingly, by strictly construing the rule and statute, and following the case law governing proposals for settlement, the Fourth District properly affirmed the trial court's award of attorney's fees in favor of FLORIDA MEDICAL CENTER. The hospital's proposal was not a joint proposal requiring apportionment. This Court should uphold the Fourth District's sound decision as it does not conflict with the rule, statute, or case law governing proposals for settlement.

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B. The proposal for settlement was not ambiguous because the release did not require the Plaintiff to release the two doctor defendants, and it did not require the release of future unknown claims.

The Fourth District properly found that proposals for settlement are governed by the rules of interpretation of contracts and should be looked at as a whole and construed according to their own clear and unambiguous terms. Pratt, 92 So. 3d at 854 (citing Dorson v. Dorson, 393 So 2d 632, 633 (Fla. 4th DCA 1981) and Cueto v. John Allmand Boats, Inc., 334 So. 2d 30. 32 (Fla. 3d DCA 1976)). Since proposals are construed as a whole, courts will also look to the terms of the release to determine whether the proposal is valid. See Jessla Construction Corp. v. Miami-Dade County Sch. Bd., 48 So. 3d 127 (Fla. 3d DCA 2010); Board of Trustees of Florida Atlantic Univ. v. Bowman, 853 So. 2d 507 (Fla. 4th DCA 2003). A requirement that the Plaintiff release all of its claims against not only the Defendant but also the Defendant's agents, employees, and servants is typical of a "general release" and does not otherwise invalidate a proposal for settlement. Bowman, 853 So. 2d at 509.

Here, as part of the non-monetary conditions, the hospital's proposal contained an unambiguous general release with additional terms based on the circumstances of this case. The release expressly and specifically stated that acceptance would not release other named defendants, including the two doctor

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defendants that were still part of the lawsuit. There was no other mention of the two doctor defendants in the rest of the release or in the proposal.

As held in Bowman, general releases do not invalidate a proposal for settlement. The hospital's release was more than just a general release because it included the additional language about the other two named doctor defendants in order to assure that the Plaintiff's claims against those defendants were preserved. Therefore, the Fourth District correctly found that the release was not ambiguous on that ground and did not invalidate the proposal for settlement.

In addition, the release did not release future unknown claims. Instead, the release specifically restricted any future claims to "injuries and damages alleged by the Plaintiff." A168. Therefore, looking at the hospital's proposal and the release as whole, the Fourth District properly found that that the proposal for settlement was not ambiguous and properly affirmed the trial court's award of attorney's fees against the Plaintiff. This Court should do the same.

CONCLUSION

For the aforementioned reasons, Respondent, FLORIDA MEDICAL CENTER respectfully requests that this Court uphold the Fourth District's decision, holding that FLORIDA MEDICAL CENTER's proposal was a valid proposal for settlement.

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CERTIFICATE OF TYPE SIZE AND STYLE

Respondent hereby certifies that the type size and style of the Answer Brief on the Merits is Times New Roman 14 point font.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a correct copy hereof has been furnished to: Linda A. Alley, Esquire, Sheldon J. Schlesinger, P.A., 1212 S.E. Third Avenue, Fort Lauderdale, FL 33316 [LAlley@schlesingerlaw.com]; and Philip M. Burlington, Esq., and Andrew A. Harris, Esq., Burlington & Rockenbach, P.A., Courthouse Commons, Suite 430, 444 West Railroad Avenue, West Palm Beach, FL33401 [pmb@FLAPPELLATELAW.COM, aah@FLAPPELLATELAW.COM; jew@FLAPPELLATELAW.COM], by e-portal and e-mail on this 31st day of December, 2013.

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