

# PROPOSALS FOR SETTLEMENT

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# Purpose

1. Contractual agreement to resolve claim reasonably
2. Ends judicial labor
3. Allow recovery of attorneys' fees if opposing party doesn't accept

# Statutory Law

1. Florida Rule of Civil Procedure 1.442
2. Florida Statutes § 768.79

# Florida Rules of Civil Procedure 1.442

1. Timing
2. Form
3. Joint Proposal
4. Withdrawal guidelines
5. Acceptance guidelines
6. Good faith

# Florida Statutes § 768.79

1. Form
2. Acceptance guidelines
3. Withdrawal guidelines
4. Defendant's recovery of fees
5. Definition of "Judgment Obtained"

# Calculations of Judgment Obtained

Jury verdict

- PIP benefits paid
- Other collateral source set-offs
- + Pre-offer taxable costs

**Judgment Obtained**

# End Results

- Recoverable Fees versus Judgment Obtained
- 3 scenarios for defense

# When Recoverable Fees < Judgment Obtained

- Judgment Obtained: \$100,000
- Defendant prevailed on PFS
- Defendant's fees/costs \$50,000
- Defendant still owes Plaintiff \$50,000



# When Recoverable Fees = Judgment Obtained

- Judgment Obtained: \$50,000
- Defendant prevailed on PFS
- Defendant's fees/costs \$50,000
- Neither party owes the other party any money

# When Recoverable Fees > Judgment Obtained

- Judgment Obtained: \$25,000
- Defendant prevailed on PFS
- Defendant's fees/costs \$50,000
- Plaintiff owes Defendant \$25,000

# Example 1

3<sup>rd</sup> Party Case (Plaintiff is suing your insured)

01/01/17 Lawsuit Filed

07/01/17 D served PFS for \$20,000

07/01/17 P's pre-offer taxable costs are \$2,500

<b>Verdict</b>	<b>\$30,000</b>
PIP paid:	\$10,000
Write-offs:	\$10,000

What is the “judgment obtained”?

Did Defendant prevail on the PFS?

# Calculations of Judgment Obtained

	\$30,000 (Verdict)
-	\$10,000 (PIP paid)
-	<u>\$10,000 (Write-offs)</u>
	\$10,000 (Net Verdict)
+	<u>\$2,500 (pre-offer taxable costs)</u>
	\$12,500 (judgment obtained)
	Defendant prevails

# Example 2 (more realistic numbers)

## 3<sup>rd</sup> Party Case (Plaintiff is suing your insured)

01/01/17 Lawsuit Filed

07/01/17 D served PFS for \$20,000

07/01/17 P's pre-offer taxable costs are \$6,738.32

Verdict	\$28,674.33
PIP paid:	\$9,879.54
Write-offs:	\$7,854.97

What is the "judgment obtained"?

Did Defendant prevail on the PFS?

# Calculations of Judgment Obtained

	\$28,674.33 (Verdict)
-	\$ 9,879.54 (PIP paid)
-	<u>\$ 7,854.97 (Write-offs)</u>
	\$10,939.82 (Net Verdict)
+ <u></u>	<u>\$ 6,738.32 (pre-offer taxable costs)</u>
	\$17,678.14 (judgment obtained)
	Defendant <u>does not</u> prevail

# Hardest Decisions?

1. When to serve a PFS?
2. Amount of PFS?

# When to Serve a PFS?

The earlier the better!

Considerations:

- a) Most likely will not be accepted
- b) May effect negotiations in future
- c) Must have some "bite" to it



# When to Serve a PFS?

## Considerations:

- a) When are you serving PFS
- b) What is amount of past medical bills likely awarded
- c) What type of case is it

# Example 1

3<sup>rd</sup> Party Case (Plaintiff is suing your insured)

Mediation just impassed

9 months into lawsuit

Total past medical bills: \$43,456.43

PIP has exhausted

Write-offs/adjustments: \$ 7,467.35

???

# Calculation of Judgment Obtained

	\$43,456.43 (total past medical bills)
Less	\$10,000.00 (PIP set-off)
Less	<u>\$ 7,467.35 (collateral source set-offs)</u>
Equals	\$25,989.08
	Assume taxable costs thru mediation are \$2,500.00
Equals	\$28,489.08 (Judgment obtained)

# Trial & Error Approach

Take a number and multiply it by .75

Looking for result that is over the judgment obtained amount

\$35,000.00 PFS

25% less is \$26,250.00

\$26,250.00 < \$28,489.08

This isn't over the judgment obtained

**\$40,000.00 PFS**

25% less is \$30,000.00

$\$30,000.00 > \$28,489.08$

This would be a good PFS amount

# Example 2

1<sup>st</sup> Party Case (Underinsured Motorist Claim)

Mediation just impasse

9 months into lawsuit

Total past medical bills: \$68,567.34

PIP has exhausted

Write-offs/adjustments: \$12,765.43

Tortfeasor has liability limits of \$25,000.00

???

# Calculation of Judgment Obtained

	\$68,567.34 (total past medical bills)
Less	\$10,000.00 (PIP set-off)
Less	\$12,765.43 (collateral source set-off)
Less	<u>\$25,000.00 (tortfeasor's limits)</u>
Equals	\$20,801.91
	Assume taxable costs thru mediation are \$2,500.00
Equals	\$23,301.91 (Judgment obtained)



# Trial & Error Approach

Take a number and multiply it by .75

Looking for result that is over the judgment obtained amount

\$30,000.00 PFS

25% less is \$22,500.00

$\$22,500.00 < \$23,301.91$

This isn't over the judgment obtained

\$35,000.00 PFS

25% less is \$26,250.00

\$26,250.00 > \$23,301.91

This would be a good PFS amount

**\$32,500.00 PFS**

25% less is \$24,375.00

$\$24,375.00 > \$23,301.91$

This would be a good PFS amount

# Fee Hearing

Must have evidentiary hearing

Standard of Review - Abuse of Discretion

Strict Compliance

Burden of Proof