

Appellate Practice Pointer
State Farm Mutual Auto. Ins. Co. v. Nichols

In the recent decision in State Farm Mutual Auto. Ins. Co. v. Nichols, No. SC03-1483 (Fla. 2006), the Florida Supreme Court confirmed that the offer of judgment statute applies to suits for PIP benefits and also reinforced that a proposal for settlement must be unambiguous if it is to provide a basis for attorney's fees.

In Nichols, the insured filed suit against State Farm, her insurer, after State Farm refused to continue providing PIP benefits. State Farm served a proposal for settlement which offered \$250 and required Nichols to execute a "General Release" of all claims. Nichols refused the proposal.

After confirming that a suit for PIP benefits is a "civil action for damages" under the offer of judgment statute, § 768.79, Fla. Stat., the Court shifted its attention to Rule 1.442's requirement that a proposal for settlement "state with particularity any relevant condition" and also "state with particularity all nonmonetary terms." Abrogating the Third District cases to the contrary, the Court made clear that a release is a "relevant condition" or "nonmonetary term" that must be described with particularity. Also abrogating the District Court decisions to the contrary, the Court held that a summary of the proposed release can be sufficient to satisfy Rule 1.442, as long as it eliminates any reasonable ambiguity about its scope.

Applying this rationale, the Court held that State Farm's proposal for settlement was too ambiguous to satisfy Rule 1.442. The proposal stated that it would be "a full and final satisfaction and settlement of any and all of Nichols's claims and causes of action in, or arising out of, the above-styled case," and required a General Release "which will be expressly limited to all claims, causes of action, etc., that have accrued through the date of Nichols's acceptance of this Proposal." The Court held that those two clauses cast doubt as to whether the proposal included only Nichol's PIP claim, or both her PIP claim and a separate uninsured motorist claim she had pending against State Farm.

Other recent cases finding that the proposal for settlement failed the specificity requirement include:

- Rivera v. Publix Super Markets, Inc., No. 4D04-3880 (Fla. June 7, 2006) (stating that the releases can be viewed at the offices of the offeror's attorney is facially insufficient)
- Carnes v. Fender, No. 4D04-3100 (Fla. 4th DCA May 17, 2006) (proposal for settlement stated only that a general release was required)
- Hibbard v. McGraw, 918 So. 2d 967, 71-72 (Fla. 5th DCA 2005) (proposal referred to the offeree as the "sole" plaintiff but the pleadings had not yet been amended to reflect that the other plaintiff was no longer in the case).

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