

From: Scott Link <[REDACTED]>
To: jeffrey E. <jeevacation@gmail.com>
Subject: Re: Project VI- Proposal For Settlement
Date: Thu, 19 Oct 2017 20:52:51 +0000

Jeffrey my recommendation is to allocate \$10,000. Based on my conversation with Gunster there's an advantage even if it's slight to an allocation. The optics of 10,000 are OK. It's a small number in the event it ends up in the press, but large enough that it should meet the good faith standard. Scott

Sent from my iPhone

On Oct 19, 2017, at 4:49 PM, jeffrey E. <jeevacation@gmail.com> wrote:

scott. it is a matter of judgement that should rely on local experience. not sure how punis work in florida. its an interesting question . my guess is to offer something. ,

On Thu, Oct 19, 2017 at 9:42 PM, Scott Link <[REDACTED]> wrote:

Jeffrey -below in this string is an analysis from the Gunster proposal for settlement guru. In essence the question is should we allocate some amount to their claim for punitive damages. If we allocate some amount the proposal has a better chance of being upheld after we win the trial. Optically, I never like to give credence to a claim for punitive damages so I typically allocate zero dollars to the punitive damage claim. Gunster has proposed \$100,000 allocation. In a follow up call they have concluded that \$1000 to punitive damages is better than an allocation of zero. \$10,000 is better than \$1000. Obviously the higher the amount the better argument we have that the proposal was made in good faith.

Please let me know if he would like to allocate zero, \$1000, \$10,000 or some other amount to punitive damages. Also let me know if I have the authority once that decision is made to serve the proposal in the aggregate amount of \$ 600,000. Scott

Sent from my iPhone

Begin forwarded message:

From: "Atkinson, David" <[REDACTED]>
Date: October 18, 2017 at 7:33:29 PM EDT
To: "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>
Subject: Fwd: Project VI- Proposal For Settlement

Sent from my iPad. Please excuse tone and typos

Begin forwarded message:

From: "Julin, Thomas" <[REDACTED]>
Date: October 18, 2017 at 7:21:05 PM EDT
To: "Atkinson, David" <[REDACTED]>, "McGinn, Timothy" <[REDACTED]>
Cc: "Brinson, Crystal" <[REDACTED]>

Subject: RE: Project VI- Proposal For Settlement

This is a well done Proposal for Settlement with the exception of its treatment of the punitive damage claims which does not specify the amount of the offer which is allocated to the punitive damage claim. In *R.J. Reynolds Tobacco & Liggett Group LLC v. Ward*, 141 So. 3d 236 (Fla. 1st DCA 2014), the First DCA invalidated a fee awarded which was based on a Proposal for Settlement which stated: “Punitive damages are included in the amount of this proposal, whether pled or unpled. Acceptance of this proposal will extinguish any present or future claims for punitive damages.” *Id.* at 257.

Both Section 768.79 and Florida Rule of Civil Procedure 1.442 require the offeror to state with particularity the amount proposed to settle any claim for punitive damages whenever such a claim exists.

A claim for punitive damages was pending in the *Ward* case at the time the offer was made, but, as can be seen, did not specify how much of the offer was allocated to the punitive damage claim. The First District Court of Appeal held that although the offer was unambiguous and would resolve all claims, the lack of allocation between compensatory and punitive damage claims invalidated the offer and the fee award.

This case is a good illustration of how hyper-technical courts have been in their interpretation of the fee-shifting statute and rule. Courts say they must take this approach since the statute and the rule are in derogation of the American rule against fee shifting.

I’ve made three substantive changes to the offer which you will see in the Track Changes.

The first is made simply to track the language of a 2013 amendment to the Rule so that the offer refers to a resolution of all damages rather than all claims (although a 2016 unpublished Eleventh Circuit decision, *Primo v. State Farm* (attached), indicates that use of the claims language rather the damages language does not make a difference.

The second is just a typographical error where “Epstein” was used instead of “Edwards.”

The third is the allocation of a part of the \$600,000 offer to the punitive damage claim. I selected \$100,000 as the amount for punitive damages to avoid an argument that the offer was not made in good faith. ■■■ not sure that one could challenge an offer on the basis of an allocation like this, however. The allocations also should not have an impact on the taxable nature of the payment Edwards would receive. See *Murphy v. Internal Revenue Service*, 493 F. 3d 170 (■■■ Cir. 2007) (Ginsburg, J.) (en banc) (holding that compensation for non-physical injuries is income). Caveat: I have not done extensive research on this point. There may be other reasons to opt for a different allocation. For example, Epstein might not want it known that he paid anything for punitive damages. Note that confidentiality is not a condition imposed on the offer. It is best not to impose such a condition because that might make it impossible to determine the amount of the offer in the event that it is rejected.

Thomas R. Julin | Shareholder
Brickell World Plaza, [600 Brickell Avenue, Suite 350](#)



[vCard](#)

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

<image002.png>

From: Atkinson, David
Sent: Tuesday, October 17, 2017 12:24 PM
To: Julin, Thomas; McGinn, Timothy
Cc: Brinson, Crystal
Subject: Project VI- Proposal For Settlement

Please see below and attached.

Also, Crystal Brinson will be helping us keep this matter organized. Please copy her on everything. We can drop Chris Murray from copies.

From: Tina Campbell [<mailto:> ]
Sent: Tuesday, October 17, 2017 11:30 AM
To: Scott Link; Atkinson, David
Subject: Epstein

Scott and David,

I am attaching an initial draft of the Proposal for Settlement. I added some language to our standard form (highlighted) to capture some of the deficiencies Edwards alleged for the last PFS. For background reference, Iâ€™ve also attached the filings relating to that challenge.

Thank you.

<image003.jpg>

Tina L. Campbell, CP/FRP

Certified Paralegal/Florida Registered Paralegal

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<Proposal for Settlement.DOCX>

<Primo v State Farm Mutual Automobile Insurance Company (Offer of Judgment).DOC>

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