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Small Claims, Big Recovery: Proposals for Settlement in Florida's Small Claims Courts Post-*Nichols*

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CASE COMMENT

SMALL CLAIMS, BIG RECOVERY: PROPOSALS FOR
SETTLEMENT IN FLORIDA'S SMALL CLAIMS COURTS
POST-NICHOLS

State Farm Mutual Automobile Insurance Co. v. Nichols,
932 So. 2d 1067 (Fla. 2006)

*Laura M. Beard**

After a debilitating car accident left Shannon Nichols injured and saddled with nearly \$10,000 in medical bills,¹ she sought only one thing—a road to recovery. Instead, Nichols faced a harrowing reality—after turning down a proposal for settlement from her insurer and losing at trial, not only did Nichols fail to receive reimbursement for her medical expenses, but she also was forced to pay her insurer's attorneys' fees and costs, an amount totaling over \$23,000.²

Nichols's troubles began in 1996 when she was injured in a car accident.³ Nichols immediately turned to her insurance carrier, State Farm, to recover personal injury protection (PIP) benefits.⁴ State Farm relied on the PIP statute⁵ and refused to pay additional benefits after Nichols failed to attend an independent medical examination.⁶ Nichols then filed a complaint in county court alleging breach of contract.⁷ While the case was pending, State Farm served Nichols with a proposal for settlement,⁸ offering to settle for \$250.⁹ Nichols, who had already incurred thousands of dollars in medical expenses, rejected State Farm's proposal, and the case proceeded to trial.¹⁰ At trial, the jury found that Nichols unreasonably refused to submit to a medical examination and issued a verdict in favor of State Farm.¹¹ The county court, in accordance with *U.S. Security Insurance*

* J.D. 2013, University of Florida Levin College of Law; M.S.M. 2010, University of Florida; B.M. 2009, University of Florida. My deepest gratitude to the editors, members, and staff of the *Florida Law Review*, especially to Professor Dennis Calfee for his wisdom and friendship. Special thanks to Professor Mashburn for our conversations which inspired this Comment.

1. *See* State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1070 (Fla. 2006).

2. *See id.*

3. *See id.*

4. *See id.*

5. FLA. STAT. § 627.736(7)(b) (1999) (“If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.”).

6. *Nichols*, 932 So. 2d at 1070.

7. *Id.*

8. *See infra* notes 26–31 and accompanying text.

9. *See Nichols*, 932 So. 2d at 1071.

10. *See id.*

11. *See id.*

Co. v. Cahuasqui,¹² awarded State Farm its reasonable attorneys' fees and costs, an amount totaling \$23,199.¹³ On appeal, Florida's Fifth District Court of Appeal held Florida's proposal for settlement statute¹⁴ applicable to PIP suits.¹⁵ However, the district court certified to the Florida Supreme Court a question of great public importance: "May an insurer recover attorney's fees under rule 1.442, Florida Rules of Civil Procedure, and section 768.79, Florida Statutes, in an action by its insured to recover under a personal injury protection policy?"¹⁶

In *State Farm Mutual Automobile Insurance Co. v. Nichols*, the Florida Supreme Court answered the certified question in the affirmative and held that Florida's proposal for settlement statute, section 768.79, Florida Statutes, is applicable to suits for PIP insurance benefits.¹⁷ In reaching its conclusion, the court looked to the plain language of Florida's proposal for settlement statute, which applies to "any civil action for damages"¹⁸ and reasoned that, since a PIP suit is a civil action to recover damages for breach of an insurance contract, PIP suits are unambiguously covered by the offer of judgment statute.¹⁹

However, Justice Harry Lee Anstead concurred in the result only and warned of the holding's far-reaching implications, noting that "those insureds who file suit in small claims court without the assistance of counsel to make this burdensome calculated guess will leave insurance companies, which are represented by attorneys, with an unfair advantage."²⁰ Justice Anstead feared the court's holding would discourage many insureds from filing claims to recover benefits and leave insurance companies with a windfall.²¹

Many PIP suits involve disputes of less than \$5,000 and, as a result, are filed in small claims court.²² Thus, although *Nichols's* case was not

12. 760 So. 2d 1101, 1107 (Fla. 3d Dist. Ct. App. 2000) (holding that FLA. STAT. § 768.79 is applicable to PIP cases).

13. *See Nichols*, 932 So. 2d at 1071.

14. In section 768.79, Florida Statutes, the Florida Legislature refers to "offers of judgment," and the Florida Supreme Court, in Florida Rule of Civil Procedure 1.442, refers to offers as "proposals for settlement."

15. *Nichols v. State Farm Mut.*, 851 So. 2d 742, 746 (Fla. 5th Dist. Ct. App. 2003). The court also reversed the award of attorney's fees to State Farm and found State Farm's settlement proposal was too ambiguous to satisfy Florida's proposal for settlement rule, Florida Rule of Civil Procedure 1.442. *See id.* at 746.

16. *Id.* at 747.

17. *Nichols*, 932 So. 2d at 1073. The Florida Supreme Court also affirmed the district court's decision reversing the award of attorney's fees to State Farm. *See id.* at 1080.

18. FLA. STAT. § 768.79(1) (1999).

19. *See Nichols*, 932 So. 2d at 1073.

20. *Id.* at 1084 (Anstead, J., concurring in result only).

21. *See id.*

22. *See* The Florida Senate, Interim Report 2009-121, *Review of the Small Claims Process in Florida* (Oct. 2008) 9-10, available at <http://archive.flsenate.gov/data/Publications/2009/Senate/>

brought in small claims court, the *Nichols* decision had an unintended and profound impact on Florida's small claims courts. Florida's small claims courts are governed by the Small Claims Rules, and the Florida Rules of Civil Procedure may only be used if expressly invoked by the parties.²³ Moreover, proposals for settlement must comply with both Florida's proposal for settlement statute, codified at section 768.72, Florida Statutes, and Florida Rule of Civil Procedure 1.442 to provide recovery for claims.²⁴ Thus, Florida's small claims courts have questioned the extent of the *Nichols* holding—are parties in small claims courts still required to invoke the Florida Rules of Civil Procedure before making proposals for settlement, or does *Nichols* allow the use of proposals for settlement regardless of whether the parties invoke the Rules? Some of Florida's county and circuit courts have found that the offer of judgment statute operates independently from the rule.²⁵ Accordingly, these courts enforce proposals for settlement in small claims courts where the Florida Rules of Civil Procedure are not expressly invoked by the parties. This Comment argues that such a policy is sharply at odds with the rationale and purpose underlying small claims court.

Addressing the far-reaching implications of *Nichols* necessitates a brief explanation of the relevant history of: (1) Florida's proposal for settlement statute and rule; (2) Florida's PIP statute; and (3) Florida's small claims courts. After discussing the applicable background, this Comment will highlight the development of Florida case law pre- and post-*Nichols*, and will propose a proper interpretation of *Nichols*, in light of the aims of small claims courts.

In 1986, the Florida Legislature enacted Florida's offer of judgment statute, codified at section 768.79, Florida Statutes, to encourage settlement of claims.²⁶ The statute creates an entitlement to attorney's fees and costs for a party who offers a proposal to settle a civil action where the opposing party obtains a less favorable judgment than the offer, the offer was made in good faith, and the other elements of the statute are met.²⁷

reports/interim_reports/pdf/2009-121ju.pdf.

23. FLA. SM. CL. R. 7.020(c) (2013); Robert N. Heath, Jr., *Proposals for Settlement in PIP Cases: Should U.S. Security Ins. Co. v. Cahuasqui Be Overturned?*, 75 FLA. B.J. 4, 39 (2001).

24. See Ellen Koehler Lyons, *Understanding Proposals for Settlement* (Client Article published by Carlton Fields, 2006), available at <http://www.carltonfields.com/elyons/?op=publications>.

25. See *Bristol West Ins. Co. v. Care Therapy & Diagnostics, Inc.*, 15 Fla. L. Weekly Supp. 883a, *2 (Fla. 13th Cir. Ct. 2008); *Tran v. State Farm Fire and Cas. Co.*, 860 So. 2d 1000, 1000 (Fla. 1st Dist. Ct. App. 2003).

26. See *Aspen v. Bayless*, 564 So. 2d 1081, 1083 (Fla. 1990); *Nat'l Healthcorp Ltd. P'ship v. Close*, 787 So. 2d 22, 26 (Fla. 2d Dist. Ct. App. 2001) ("The legislative purpose of section 768.79 is to encourage the early settlement and termination of litigation in civil cases generally.").

27. See FLA. STAT. § 768.79(1) (1999); see also Lauren Rehm, Note, *A Proposal for Settling the Interpretation of Florida's Proposals for Settlement*, 64 FLA. L. REV. 1811, 1816 (2012).

While the statute creates a substantive right to attorney's fees, Florida Rule of Civil Procedure 1.442, adopted in 1972,²⁸ provides a procedural mechanism for courts to enforce the substantive law.²⁹ Thus, the rule and the statute work in tandem to allow recovery.³⁰ However, instead of aiding in the speedy resolution of disputes before trial, the proposal for settlement statute and rule have resulted in a proliferation of litigation.³¹

In 1973, the Florida Legislature enacted the PIP no-fault insurance statute, designed to provide "swift and virtually automatic payment" of a claimant's medical bills.³² In exchange for prompt recovery of major losses, even when the injured party is at fault, the statute prohibits recovery for pain and suffering in cases where the statutory threshold is not met.³³ The Florida Supreme Court has upheld the PIP statute against constitutional challenges, finding that in exchange for rights taken away by the new statute, the legislature provided an acceptable right for speedy, almost automatic, recovery.³⁴ The Florida Supreme Court indicated that the PIP statute is designed "to level the playing field so that economic power of insurance companies is not so overwhelming that injustice may be encouraged because people will not have the necessary means to seek redress in the courts."³⁵ PIP suits, by definition, do not exceed \$10,000.³⁶

28. See *In re the Fla. Bar: Rules of Civil Procedure*, 265 So. 2d 21, 40–41 (Fla. 1972).

29. See Julie H. Littky-Rubin, *Proposals for Settlement: Minding Your P's and Q's Under Rule 1.442*, 75 FLA. B.J. 12, 12 (2001) (noting that Rule 1.442 "provides the mechanism to assert [the rights created by Fla. Stat. § 768.79] and delineates the proper procedure necessary for implementing the substantive statute."); see generally *Willis Shaw Express, Inc. v. Hillyer Sod, Inc.*, 849 So. 2d 276 (Fla. 2003).

30. See *Wolfe v. Culpepper Constructors, Inc.*, 104 So. 3d 1132, 1134 (Fla. 2nd Dist. Ct. App. 2012) ("Operating in tandem, the statute and the rule provide a sanction in the form of an award of attorney's fees against a party who unreasonably rejects a properly made settlement offer."); V. Julia Luyster & Jennifer Lodge, *When is a Joint Proposal for Settlement a Valid Proposal for Settlement: Apportionment, Avoiding Ambiguity in Release Language, and the Barnes Dilemma*, 24 TRIAL ADVOC. Q. 12, 12 (2005) ("Drafting a valid and enforceable joint proposal for settlement requires strict adherence to § 768.79, Florida Statutes and Florida Rule of Civil Procedure 1.442.").

31. See *Attorneys' Title Ins. Fund, Inc. v. Gorka*, 36 So. 3d 646, 650 (Fla. 2010) (quoting *Sec. Professionals, Inc. v. Segall*, 685 So. 2d 1381, 1384 (Fla. 4th Dist. Ct. App. 1997) (internal quotation marks omitted) ("We regret that this case is just one more example of the offer of judgment statute causing a proliferation of litigation, rather than fostering its primary goal to terminate all claims, end disputes, and obviate the need for further intervention of the judicial process."); see also BRUCE J. BERMAN, *BERMAN'S FLORIDA CIVIL PROCEDURE* 728 (2010–2011 ed.) ("Rule 1.442 continues to be the most litigated of the Rules of Civil Procedure notwithstanding its intended purpose of reducing litigation by encouraging settlements.").

32. *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 683 (Fla. 2000) (citing *Gov't Emps. Ins. Co. v. Gonzalez*, 512 So. 2d 269, 271 (Fla. 3d Dist. Ct. App. 1987)).

33. FLA. STAT. § 627.730 *et seq.*; see also *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 15 (Fla. 1974).

34. See *Lasky*, 296 So. 2d at 15.

35. *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 684 (Fla. 2000).

36. See FLA. STAT. § 627.736 (2012) ("An insurance policy . . . must provide personal injury

Accordingly, many PIP suits arise in the context of small claims courts, where the demand cannot exceed \$5,000.³⁷

Florida's small claims courts were established "to provide an open forum for the speedy resolution of disputes over minor claims."³⁸ To accommodate this goal, the clerk of court may assist litigants in preparing papers,³⁹ and the judge may assist parties with courtroom decorum and the order and presentation of material evidence.⁴⁰ To file in small claims court, a party cannot seek more than \$5,000 in damages.⁴¹ The small damages often do not justify hiring counsel,⁴² and the informal nature of small claims courts "was not designed for litigation where both parties are represented."⁴³ Litigants in small claims court abide by Florida's Small Claims Rules, and the Florida Rules of Civil Procedure only apply if specifically invoked by the parties or the court.⁴⁴ Thus, litigants seeking to use proposals for settlement in small claims court must expressly invoke the Florida Rules of Civil Procedure.

In *U.S. Security Insurance Co. v. Cahuasqui*,⁴⁵ a Florida court held for the first time that proposals for settlement were applicable in PIP cases.⁴⁶ In reaching its conclusion, the Third District Court of Appeal reasoned that the plain meaning of the statute, which applies to "any civil action for damages," justified the use of proposals for settlement in PIP cases.⁴⁷ In a brief per curiam opinion, Florida's First District Court of Appeal, in *Tran v. State Farm Fire & Casualty Co.*,⁴⁸ expanded *Cahuasqui* by holding that Florida's offer of judgment statute applied to PIP cases and to cases pending in small claims courts.⁴⁹ Three years later, the Florida Supreme Court decided *Nichols*, which reaffirmed *Cahuasqui*, and held that

protection . . . to a limit of \$10,000 in medical and disability benefits and \$5,000 in death benefits resulting from bodily injury, sickness, disease, or death . . ."); see also Heath, *supra* note 23, at 39.

37. See FLA. SM. CL. R. 7.010(b) (2013); see also David Gagnon, *Get Me Out of Here! How to Level the Playing Field in Small Claims PIP Actions One Proposal for Settlement at a Time*, 24 No. 3 TRIAL ADVOC. Q. 13, 13 (Summer 2005).

38. *Metro Ford, Inc. v. Green*, 724 So. 2d 706, 707 (Fla. 3d Dist. Ct. App. 1999); see also FLA. SM. CL. R. 7.010(a) (2013).

39. See *Metro Ford*, 724 So. 2d at 707.

40. See *Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th Dist. Ct. App. 1999).

41. See FLA. SM. CL. R. 7.010(b) (2013).

42. See Heath, *supra* note 23, at 39.

43. Gagnon, *supra* note 37, at 13; see also *Treasure Coast Injury and Wellness Centre, P.L. v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 938b (Fla. 19th Cir. Ct. 2004) (noting the presence of attorneys makes the case "more complicated than necessary").

44. See FLA. SM. CL. R. 7.020(a), (c) (2013). Florida's Small Claims Rules were "designed with the pro se litigant in mind, expressly tailored for the purpose of peacefully resolving disputes for citizens lacking legal expertise." Gagnon, *supra* note 37, at 14.

45. 760 So. 2d 1101 (Fla. 3d Dist. Ct. App. 2000).

46. See *id.* at 1102.

47. See *id.* at 1104.

48. 860 So. 2d 1000 (Fla. 1st Dist. Ct. App. 2003).

49. See *id.* at 1000.

Florida's offer of judgment statute is applicable to suits for PIP insurance benefits.⁵⁰ However, *Cahuasqui*, *Tran*, and *Nichols* leave many questions unanswered—most importantly, whether Florida's offer of judgment statute applies to PIP actions in small claims courts when the parties do not expressly invoke the Florida Rules of Civil Procedure.

Florida's courts should find that Florida's offer of judgment statute does not apply in PIP cases filed in small claims courts unless the Florida Rules of Civil Procedure have been expressly invoked by the court or the parties. Such a conclusion is compelled by the plain language of Florida's Small Claims Rules.⁵¹ Florida's Small Claims Rules enumerate the only Florida Rules of Civil Procedure that are automatically applicable to actions in small claims courts.⁵² The court may apply additional rules of procedure to the action where there is a stipulation by all parties, application of any party, or by the court's own motion.⁵³ Thus, because Florida Rule of Civil Procedure 1.442 is not included in Small Claims Rule 7.020(a), a party may not use rule 1.442 unless invoked by the parties or the court.⁵⁴ Additionally, Florida's offer of judgment statute does not operate independently of rule 1.442. Florida's courts have consistently determined that failure to strictly follow the procedural requirements of *both* the statute and corresponding rule voids a proposal for settlement without regard to the merits of the proposal.⁵⁵

50. See *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1073 (Fla. 2006).

51. See *Chessher v. State Farm Mut. Auto. Ins. Co.*, 8 Fla. L. Weekly Supp. 245a (Fla. Escambia County Ct. 2001) (“[T]his case is governed by the Small Claims Rules which specifically exclude Rule 1.442 and therefore *Cahuasqui* (and its principles which apply Section 768.79 to PIP cases) does not apply.”); *Vincon v. State Farm Mut. Auto. Ins. Co.*, 9 Fla. L. Weekly Supp. 53a (Fla. Orange County Ct. 2001) (“[B]ecause the substantive law of § 768.79, Fla. Stat. (1999) is enabled by Fla. R. Civ. P. 1.442, and Rule 1.442 is specifically not included in Fla. Sm. Cl. R. 7.020, which governs the applicability of the Florida Rules of Civil Procedure to small claims, Proposals for Settlement/Offer of Judgment are not allowed in small claims actions absent a stipulation or order adopting the Florida Rules of Civil Procedure, or specifically adopting Rule 1.442.”); *Robinson v. Progressive Cas. Ins. Co.*, 11 Fla. L. Weekly Supp. 738a (Fla. Brevard County Ct. 2004) (“Defendant’s O.J. [offer of judgment] submitted pursuant to § 1.442 Fl. R. Civ. Pro. and § 768.79 Fla. Stat. is inapplicable to a Small Claims action absent a prior invocation of § 1.442 Fla. R. Civ. Pro.”).

52. See FLA. SM. CL. R. 7.020(a) (2013) (“Florida Rules of Civil Procedure 1.090(a), (b), and (c); 1.190(e); 1.210(b); 1.260; 1.410; and 1.560 are applicable in all actions covered by these rules.”).

53. See FLA. SM. CL. R. 7.020(c) (2013).

54. See *Robinson*, 11 Fla. L. Weekly Supp. at *1.

55. See *Campbell v. Goldman*, 959 So. 2d 223, 227 (Fla. 2007) (holding the proposal for settlement statute and rule must be strictly construed, and based on the plain language of the statute, an offer’s failure to state it is being made pursuant to Section 768.79 renders the offer invalid); *Willis Shaw Express, Inc. v. Hillyer Sod, Inc.*, 849 So. 2d 276, 278 (Fla. 2003) (“Section 768.79 is implemented by Florida Rule of Civil Procedure 1.442. . . . This language must be strictly construed because the offer of judgment statute and rule are in derogation of the common law rule that each party pay its own fees.”).

Requiring parties to invoke the Florida Rules of Civil Procedure before using proposals for settlement is consistent with the underlying rationale of small claims courts.⁵⁶ Small claims courts are designed to be “a People’s Court, where the presence of lawyers is permitted, but not required, and where technical rules of pleading are not intended to obscure the greater aim of justice for all.”⁵⁷ Rule 1.442’s highly technical nature⁵⁸ is not compatible with the design and intent of the Small Claims Rules. The Rules were designed to permit courts to hear cases without application of the technicalities required by the Rules of Civil Procedure.⁵⁹ Allowing the use of proposals for settlement in small claims courts where the Rules are not expressly invoked is certain to result in a David versus Goliath scenario: insurance companies, armed with substantially greater resources to fight over claims, may use proposals for settlement to scare litigants from filing or defending legitimate suits brought in small claims courts.⁶⁰

In light of the persuasive rationale for requiring litigants in small claims courts to invoke the Florida Rules of Civil Procedure, some of Florida’s small claims courts have concluded that proposals for settlement are available in PIP cases pending in small claims courts regardless of whether the parties previously invoked rule 1.442.⁶¹ Notably, in *Bristol West Insurance Co. v. Care Therapy & Diagnostics, Inc.*,⁶² a Florida county court held that the proposal for settlement statute operates independently of

56. See Heath, *supra* note 23, at 39.

57. See *Metro Ford v. Green*, 724 So. 2d 706, 707 (Fla. 3d Dist. Ct. App. 1999) (citing *Donoghue v. Wallach*, 455 So. 2d 1085, 1086 n.1 (Fla. 2d Dist. Ct. App. 1984)).

58. See *Attorneys’ Title Ins. Fund, Inc. v. Gorka*, 36 So. 3d 646, 650 (Fla. 2010) (“The effect [of the statute], however, has been in sharp contrast to the intended outcome because the statute and rule have seemingly increased litigation as parties dispute the respective validity and enforceability of these offers.”).

59. See *Chessher v. State Farm Mut. Auto. Ins. Co.*, 8 Fla. L. Weekly Supp. 245a (Fla. Escambia County Ct. 2001). Florida’s Small Claims Rules were “designed with the pro se litigant in mind, expressly tailored for the purpose of peacefully resolving disputes for citizens lacking legal expertise.” Gagnon, *supra* note 37, at 13.

60. See *Robinson v. Progressive Cas. Ins. Co.*, 11 Fla. L. Weekly Supp. 738a (Fla. Brevard County Ct. 2004) (noting the use of proposals for settlement in small claims courts “would be not only extremely prejudicial to the plaintiff,” but would result in “a chilling effect upon a claimant’s right to PIP benefits.”).

61. See *Knowles v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 337b (Fla. Duval County Ct. 2004) (permitting proposal for settlement where Florida Rule of Civil Procedure 1.442 are had not been expressly invoked by the court or the parties); *Pierce Chiropractic Clinic, P.A. v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 338a (Fla. Duval County Ct. 2004) (“Pursuant to the *Tran* opinion, Defendant may serve its Proposal For Settlement, based solely on Section 768.79, Florida Statutes. Though this Court has declined to invoke Rule 1.442 in this case, and therefore it does not apply, this Court is bound by the decision of the First District Court of Appeal, and Plaintiff’s Motion to Strike Defendant’s Proposal For Settlement is hereby DENIED.”); *Bristol West Ins. Co. v. Care Therapy & Diagnostics, Inc.*, 2008 WL 4005713 (Fla. Hillsborough County Ct. 2008).

62. 2008 WL 4005713 (Fla. Hillsborough County Ct. 2008).

rule 1.442 in small claims courts.⁶³ In *Bristol*, an insurer offered the insured a proposal for settlement in the amount of \$251 in a small claims PIP case, although rule 1.442 was not specifically invoked by the parties or the court.⁶⁴ The insured rejected the proposal and at trial, the jury returned a two-part verdict and found the treatment rendered by the insurance provider was “reasonable, necessary, and related to the motor vehicle accident,” and the insured owed \$0 of the charges submitted.⁶⁵ Despite a zero verdict, the trial court found that the provider prevailed on the significant issue in the case—the issue of reasonableness, relatedness, and necessity of treatment—entitling the insurance provider to recover attorney’s fees in accordance with the proposal for settlement in the amount of \$184,000.⁶⁶ The court expressly held that the parties need not invoke the Florida Rules of Civil Procedure in order to serve, or to be served, a proposal for settlement.⁶⁷ In reaching its conclusion, the court noted that a party subject to an offer of judgment under rule 1.442 is unlikely to agree to invoke the Rules of Civil Procedure in small claims court.⁶⁸ The court reasoned that because Florida courts have already stated that parties may make proposals for settlement in small claims cases, the only reasonable conclusion was that “the Rule is unnecessary to effect the intent of section 768.79.”⁶⁹

The court’s conclusion in *Bristol* reflects a misunderstanding of the *Nichols* holding and the purpose of small claims courts. Neither *Nichols* nor *Cahuasqui* arose in small claims court, and neither purported to override the rules governing small claims courts.⁷⁰ Even *Tran*, which expressly stated that Florida’s offer of judgment statute “applies to cases brought pursuant to section 627.736 [PIP cases], and to cases pending in small claims court,” did not expressly override Florida’s Small Claims Rules requiring parties to invoke the Florida Rules of Civil Procedure before their use in a small claims court.⁷¹

The court’s rationale in *Bristol* reflects the fears of Justice Anstead: although, as *Bristol* notes, a party subject to an offer of judgment might not agree to invoke the Florida Rules of Civil Procedure, the alternative result

63. *See id.* at *3.

64. *See id.* at *1.

65. *See id.*

66. *See id.*

67. *See id.* at *3 (“[T]he statute provides sufficient procedural guidance to make it an independent authority for the award of attorney’s fees without the invocation of Rule 1.442 in small claims cases.”).

68. *See id.*

69. *Id.*

70. *See State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1071 (Fla. 2006); *U.S. Security Insurance Co. v. Cahuasqui*, 760 So. 2d 1101, 1102 (Fla. 3d Dist. Ct. App. 2000).

71. *Tran v. State Farm Fire & Cas. Co.*, 860 So. 2d 1000, 1000 (Fla. 1st Dist. Ct. App. 2003).

is even more troubling.⁷² Allowing insurance companies in PIP actions to use proposals for settlement to scare opponents into settling cases for small amounts, or not bringing valid cases at all, undermines the purpose of small claims courts—justice for all.⁷³

Nichols brings to light the inherent challenges of litigating PIP cases in small claims courts. PIP cases inevitably pit an insurance company or health care provider, represented by a myriad of legal counsel, against an insured, who may not be represented by counsel.⁷⁴ Moreover, the litigation in PIP cases might extend for two to four years, as parties engage in extensive discovery to determine the “reasonableness” of the medical treatment provided.⁷⁵ Some authorities, including the Florida Senate, have recommended removal of PIP cases from the jurisdiction of small claims courts.⁷⁶ However, unless and until Florida’s Legislature carves out PIP cases from the small claims process, Florida courts have a duty to follow the law—a law that compels courts to find that Florida’s offer of judgment statute does not apply in PIP cases filed in small claims courts unless the court or the parties expressly invoke the Florida Rules of Civil Procedure.

Since the Florida Supreme Court’s decision in *State Farm Mutual Automobile Insurance Co. v. Nichols*, Florida’s small claims courts have struggled to determine the extent of the court’s holding. Although *Nichols*, *Cahuasqui*, and *Tran* determined that parties could utilize offers of judgment in PIP cases, including PIP cases arising in small claims courts, none of the cases purported to expressly override Florida’s Small Claims Rules requiring parties to invoke the Florida Rules of Civil Procedure before using rule 1.442 in small claims courts. Based on a plain reading of the Small Claims Rules and an understanding of the purpose of Florida’s small claims courts, Florida courts should find that, prior to the use of proposals for settlement in small claims courts, litigants must expressly invoke the Florida Rules of Civil Procedure.

72. See *supra* notes 20–21 and accompanying text.

73. See *Metro Ford v. Green*, 724 So. 2d 706, 707 (Fla. 3d Dist. Ct. App. 1999) (citing *Donoghue v. Wallach*, 455 So. 2d 1085, 1086 n. 1 (Fla. 2d Dist. Ct. App. 1984)).

74. See The Florida Senate, *supra* note 22, at 9–10.

75. See *id.* at 9 (“According to some county judges, these cases may be litigated for two to four years.”).

76. See *id.* at 9–10 (“The complexity of PIP cases coupled with their length suggests that these cases may not neatly fit into the small claims arena.”). The Legislature could statutorily carve out PIP actions from the small claims process. Article V, section 6 of the Florida Constitution provides that “county courts shall exercise the jurisdiction prescribed by general law.” Section 34.01(1)(c), Florida Statutes, provides that county court jurisdiction includes “all actions at law in which the manner in controversy does not exceed the sum of \$15,000.” Presumably, the Legislature could carve out PIP cases from small claims courts by amending the general county court jurisdiction statute. See *id.* at 10.