

## Featured Areas of Practice

Business Litigation  
Intellectual Property Litigation  
Antitrust and Unfair  
Competition  
Probate/Trust Litigation  
Employment Litigation  
Corporate Control Disputes  
Appeals

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## Don't forget the statute of limitations

Harry: You know the first time we met I really didn't like you that much.  
Sally: I didn't like you.  
Harry: Yeah, you did you were just so uptight then. You're much softer now.  
Sally: You know I hate that kind of remark. It sounds like a compliment but really it's an insult.  
Harry: OK, you're still hard as nails.  
Sally: I just didn't want to sleep with you and you had to write it off as a character flaw instead of dealing with the possibility that it might have something to do with you.  
Harry: What's the statute of limitations on apologies?  
Sally: Ten years.  
Harry: Ooo, I can just get it in under the wire.

From *When Harry Met Sally*, 1989. Script by Nora Ephron.

## A real life scenario

From fraud to breach of contract to slander, a person only has a set amount of time in which he or she may bring a claim against another party. This time period is known as the "statute of limitations." In Florida, Chapter 95 of the Florida Statutes defines this time period for most causes of action that one may bring. Not everyone is as lucky as Harry from *When Harry Met Sally* in getting "under the wire" of a statute of limitations.

In *Brooks Tropical, Inc. v. Acosta*, 32 Fla. L. Weekly D1011 (April 18, 2007), the plaintiff, Acosta ("Acosta") failed to bring his claims against the defendant, Brooks Tropical, Inc. ("Brooks"), within the statute of limitations. Brooks and Acosta were owners of commercial mango groves in Miami-Dade County. Prior to 1992, Brooks discovered that fungicide from DuPont, known as Benlate, might be responsible for the decline in mango production. After discovering that the law firm of Sheehe & Vendittelli was handling other

claims against DuPont, Brooks convinced Acosta, as well as ten other growers, to file suit against DuPont in August 1993. Early the next year, DuPont offered to settle all outstanding Belante cases for a total of \$34 million. James Zaharako, a former employee of Brooks, acted on behalf of all of the plaintiff growers in the lawsuit and agreed to accept \$3.6 million to settle all of their claims. According to a disbursement schedule that he had prepared, Zaharako issued a settlement check to each of the plaintiff growers in mid-June 1994. Two years later, Acosta asked his personal attorney to investigate the Benlate settlement. Over four years later, in October 2000, Acosta brought suit against Brooks for breach of oral contract, fraud, and breach of fiduciary duty claims alleging that Brooks falsely represented that the proceeds of the Benlate settlement would be divided amongst the plaintiff growers *pro rata* based on the number of acres each owned. In  
*continues on page 2*

**Lessons on statute of limitations (continued from page 1)**

September 2005, a jury returned a verdict in Acosta’s favor. Brooks appealed.

The Third District Court of Appeals reversed the jury verdict. The court held that all of Acosta’s claims were barred by the statute of limitations. Each of Acosta’s claims had a four-year statute of limitation based on Section 95.11, Fla. Stat. The statute of limitations begins to run when the *last* element of constituting the cause of action occurs. There may be a large gap of time between the first element of a cause of action and the final element, but the statute of limitations only begins to run out when that ultimate element has occurred. As to each of Acosta’s claims, the latest element of each cause of action occurred when Zaharako issued the settlement check to Acosta in June 1994. As such, Acosta had until June 1998 to file suit against Brooks for breach of

contract, fraud or breach of fiduciary duty.

Because Acosta did not file suit until October 2000, he did not get in “under the wire.” Rather, Acosta missed his opportunity to file suit and all of his claims were barred.

The lesson of *Brooks Tropical, Inc. v. Acosta* is that an individual with potential claims should be aware of the time period in which he or she may bring suit. Sitting on a potential claim for too long may prevent you from being able to bring it up at all.

Most importantly, remember that *When Harry Met Sally’s* ten-year statute of limitations on apologies is much longer than the statute of limitations for most other claims!

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*“The lesson is... sitting on a potential claim for too long may prevent you from being able to bring it up at all.”*

**What to discuss with your attorney *before* mediation**

Mediation comes in many forms. Often in Florida, it is a mandatory procedure that is required by the court. If you find yourself facing mediation, you can assist your case in a number of ways. Even if you have previously attended a mediation, remember that each case is different. Following a few simple steps to prepare can go a long way towards reaching your ultimate goal.

The following topics should be discussed before mediation by you and your attorney:

**Identify your interests**

This may seem simple enough, but many people mistake a certain amount of money or a particular demand for the real interest that underlies the position you are taking. Look for justifications for your number (i.e. prior year’s sales). This will help identify your real interests (perhaps recovering commissions) and give you a rational reason for your demand, which will ultimately help negotiations.

**Identify your “BATNA” – Best Alternative to a Negotiated Agreement**

Knowing the best option if your case does not settle can help you to evaluate offers from the opposing side. If you have a great alternative (i.e. lots of evidence and the law is on your side), you may view settlement offers more critically. If your alternative is not so attractive, and, for example,

you have no case law on your side and the other side has a smoking gun, you may be more favorable to settlement.

**Get creative!**

Once you and your attorney have fully explored your interests and alternatives to mediation, consider a few creative ways that the problem could be solved. Having a few key items to offer in your pocket may prove the best way to seal the settlement. The most creative settlements can allow both sides to come away satisfied. Consider what you may be willing to offer outside of the usual dollar figure.

Finally, the most important thing is to continually communicate with your lawyer before and during mediation. Maybe your creativity won’t kick into gear until an hour into the negotiations. When you have that genius idea, talk about it. Your lawyer may be able to steer you away from offering something that will create future problems. Use your lawyer as a sounding board and *together* you will find a better solution.

Negotiation tips borrowed from *Getting to Yes* by Roger Fisher and William Ury.

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*“Knowing the best option if your case does not settle can help you to evaluate offers from the opposing side.”*

## We're growing to serve you better

Litchford & Christopher is pleased to announce the arrival of **David Beyer** to the firm. David recently completed two years of service as a judicial law clerk for the Florida First District Court of Appeal in Tallahassee.

Born in Melbourne, Beyer received his Bachelor of Arts degree in Economics from the University of North Carolina at Chapel Hill and his J.D. from the Florida State University College of Law. In law school, David received Book Awards in Property Law, Federal Taxation and International Litigation. He was a member of the Florida State *Law Review*, and served as Articles Selection Editor.

David's litigation practice includes focus on civil litigation and appeals.

"With David's outstanding educational background, he brings valuable governmental experience to our firm," says Don Christopher, one of our firm's founding shareholders. "He adds to our growing associate ranks and increases the unique talent available to our clients."

David and his wife, Jenny Rosser Beyer, reside in Orlando.

**Chris Leon** has joined Litchford & Christopher as a law clerk for this summer. He just completed his first year at the University of Florida College of Law.

Originally from the Orlando area, Chris graduated from Lake Brantley High School and then attended the University of Florida as an undergraduate with a major in Finance and minor in Entrepreneurship.

Chris is interested in pursuing a law career in commercial litigation.

As for his experience at Litchford & Christopher, he says, "I enjoy the variety of legal work and the opportunities we have in serving clients of all types."

Outside of school and the office, Chris enjoys fishing, golf and being a Gator fan. He is a member of Annunciation Catholic Church in Altamonte Springs.

Chris will return to the University of Florida this fall to complete his final year of law school.

Congratulations to our attorneys for their recent recognitions:

**Hal Litchford**  
Florida Super Lawyer 2007  
Chambers USA

**Keith Rounsaville**  
Florida Super Lawyer 2007  
Chambers USA  
Recently appointed as  
Chair of The Florida  
Bar's Antitrust and Trade  
Regulation Certification  
Committee

**Christine Ho**  
Elected to Asian-American  
Chamber of Commerce  
Executive Board of  
Directors

## "Where's the drama? Like on Perry Mason?"

From *To Kill a Mockingbird* to *Boston Legal*, audiences have seemingly always been held in thrall by the so-called "courtroom drama." One of the most iconic images in all of American pop culture is that of the well-dressed, quick-on-his-feet attorney doing battle with an equally intelligent and silver-tongued opponent. Such a drama invariably leads to that classic scene, perhaps best embodied in *A Few Good Men*, where the lawyer induces a stubborn witness – played by stone-willed Jack Nicholson – to melt down on the stand and give a key piece of testimony that wraps up the entire case.

Because these images are so pervasive, clients are often times confused when their case does not immediately go to trial. And, once its there, clients may be disappointed that there is no key moment to win the case, as they've seen so often. For better or worse, as is the case with most dramatized versions of American life, the courtroom drama focuses only on the interesting

and "sexy" parts of the legal profession. Even a real trial like that of the infamous OJ Simpson cannot show the hundreds or thousands of hours of preparation.

In fact, all that preparation often leads to a settlement before a trial ever occurs. When a case does go to trial, most of the drama has long since passed during the discovery phase where the real case is revealed. Discovery in modern law has taken most of the surprise out of trials. Everyone knows the evidence beforehand, so there is no "zinger" left for trial.

Remember this the next time you are watching Sam Waterston or Raymond Burr carve up a witness with a deft cross-examination or bring down the house with a stirring closing argument: "It's only a movie." As the author of *Bone Valley* and real-life attorney Claire Matturro once noted, "If a legal drama realistically showed what a lawyer does most of the time – reading case law and writing briefs – no one would watch it."

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*"If a legal drama realistically showed what a lawyer does most of the time... no one would watch it."*

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**Featured Areas of Practice**

Business Litigation  
Intellectual Property Litigation  
Antitrust and Unfair  
Competition  
Probate/Trust Litigation  
Employment Litigation  
Corporate Control Disputes  
Appeals

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Please click on "Firm Newsletter" from the home page.

Litchford & Christopher Professional Association is pleased to provide *Legal News for Clients*. If you have a topic for consideration, please contact **Angela Allen** at [aallen@litchfordchristopher.com](mailto:aallen@litchfordchristopher.com) or **Christine Ho** at [cho@litchfordchristopher.com](mailto:cho@litchfordchristopher.com). As always, we welcome you to contact any of our attorneys to discuss how the topics covered in this newsletter may affect your business or personal legal affairs.

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***About our firm***

Litchford & Christopher is a commercial litigation firm serving clients with complex legal matters. The firm, established in 1985, is an "AV-rated" firm with clients of varying sizes – from small, local businesses to national, Fortune 500 corporations – and in multiple industries. Please visit our Web site at [www.litchfordchristopher.com](http://www.litchfordchristopher.com).