

First Supplement to Memorandum 2004-3

Jurisdictional Limits of Small Claims Cases and Limited Civil Cases: Meeting with Insurance Groups

Last week, representatives of the Association of California Insurance Companies (“ACIC”) and Personal Insurance Federation of California (“PIFC”) met by teleconference with staff from the Commission and from the Administrative Office of the Courts (“AOC”) to discuss the ongoing study of the jurisdictional limits of small claims cases and limited civil cases. Together, ACIC and PIFC represent most of the insurance companies that write personal line insurance in California. The purpose of the teleconference was to explore whether there are ways to modify the proposal in the Tentative Recommendation on *Jurisdictional Limits of Small Claims Cases and Limited Civil Cases* (Dec. 2002) to make it more acceptable, or at least less unacceptable, to the insurance industry.

The meeting focused first on the jurisdictional limit of a limited civil case, then on the jurisdictional limit of a small claims case.

Jurisdictional Limit of a Limited Civil Case

In their comments on the tentative recommendation, neither ACIC nor PIFC took a clear position on the proposal to increase the jurisdictional limit of a limited civil case from \$25,000 to \$50,000. But both groups made negative comments about the proposed increase.

ACIC voiced concern that an insurer might be unable to provide adequate representation for an insured if the jurisdictional limit for a limited civil case was increased, because the “limitation on discovery in such cases would compromise the ability of an insurer’s counsel to thoroughly investigate claims and prepare cases for trial.” First Supplement to Memorandum 2003-20, Exhibit p. 1. PIFC stated that it was conducting research on the proposed increase, but initial feedback suggested

that the change will curtail discovery in cases where policyholders, especially those with lower liability limits, may have personal exposure above policy limits or where potential insurance fraud exists. In such cases the defendant can be left with significant

exposure that is not covered by the policy, leading to financial hardship.

Defense costs may also increase if defense counsel needs to file more trial court motions to obtain permission to conduct additional discovery. The amount in controversy, \$50,000, and the potential for financial harm to defendants is so significant, that it could be argued that limiting the allowed discovery to only one deposition and 35 interrogatories is a fundamental denial of due process. Raising the jurisdictional limit to \$50,000 may also interfere with the insurer's ability to provide a vigorous defense, as required under the policy. The higher the jurisdictional limit, the more consumers will incur the risk that they may be required, where personal assets are exposed beyond the coverage limits, to pay a judgment out of pocket because the severely limited discovery rules hampered a zealous, effective defense. Future premiums could also be affected if the defendant loses their good driver status as a result of an at-fault determination by the court.

Id. at Exhibit p. 104. The clear implication of these comments was that the insurance groups were likely to oppose the proposed jurisdictional increase if the proposal was introduced in the Legislature.

In last week's teleconference with AOC staff and Commission staff, ACIC and PIFC representatives reiterated their concern that the restrictions on discovery in a limited civil case might interfere with an insurer's obligation to provide a vigorous defense against a claim that does not appear to be legitimate. As in their written comments, neither ACIC nor PIFC outright opposed the proposed increase in the jurisdictional limit of a limited civil case. Both groups indicated, however, that they were leaning towards opposing the proposal if it was introduced in the Legislature. Neither group expressed any interest in exploring ways to modify the economic litigation rules to make them suitable for a case in the \$25,001-\$50,000 range. The only new development was that both groups indicated a willingness to consider possible discovery reforms (not a change in the jurisdictional limit), if such reforms were proposed in specific terms.

In short, the teleconference with ACIC and PIFC did not yield anything positive regarding the prospects for increasing the jurisdictional limit of a limited civil case. Given the combined opposition of CAOC and the defense bar (see Memorandum 2004-3), the staff continues to believe that **the study of the jurisdictional limit of a limited civil case should be put on hold for a few years.**

Jurisdictional Limit of a Small Claims Case

In their comments on the tentative recommendation, both ACIC and PIFC unequivocally opposed the proposal to increase the jurisdictional limit of a small claims case from \$5,000 to \$10,000. See Memorandum 2003-4, pp. 30-31; First Supplement to Memorandum 2003-4, Exhibit pp. 1-2; 102-03. ACIC and PIFC voiced numerous concerns about the proposal, including concerns about potential increased insurance fraud.

ACIC and PIFC stuck firmly to that position in the teleconference with AOC staff and Commission staff. Put simply, those groups view small claims court as a bad forum for resolving a claim that involves insurance. Increasing the small claims limit to \$7,500 would not be as objectionable to them as increasing the limit to \$10,000, but they would still oppose such a reform. Neither ACIC nor PIFC expressed any interest in the concept of a pilot project.

The insurance groups would, however, be open to reforms to improve the quality of justice in small claims court, such as improving the small claims advisory service or providing better-qualified decisionmakers. But there is no funding available for such reforms in the tight state budget.

In light of this reality and the views expressed by the insurance groups, as well as the opposition of the defense bar and the conditions demanded by Consumers Union and CAOC (see Memorandum 2004-3), the staff remains convinced that it would be counterproductive to press forward with a proposed increase in the small claims limit in the next legislative session. Rather, the Commission should **put the study of the small claims limit on hold until the state budget improves enough that it is realistic to propose significant reforms of the small claims infrastructure.**

Respectfully submitted,

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