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MERCURY

Date: May 1, 2012

To: The Honorable Mike Feuer, Chair
The Honorable Donald P. Wagner, Vice Chair
Members, Assembly Judiciary Committee

From: Rex D. Frazier, President
Michael A. Gunning, Vice President
Kimberley Dellinger Dunn, General Counsel
Manolo P. Platin, Legislative Advocate

Re: AB 2071 (Hagman) Civil Damages: Trees
As amended March 29th, 2012

Assembly Judiciary Committee Hearing: May 8, 2012
PIFC Position: Support

The Personal Insurance Federation of California (PIFC), representing six of the nation's largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) who collectively write a majority of the personal line auto and home insurance in California **supports AB 2071 by Assembly Member Hagman.**

AB 2071 would amend Sections 3346 and 733 of the Civil code to clarify intentional versus negligent damage or injury to trees. Under current law the two different code sections address the measure of damages to trees;

- CCP 733 provides for *treble* damages for cutting down or injuring trees on the property of another.
- CC 3346 also provides for treble damages for "wrongful" injuries, double damages when it is "casual or involuntary" or simply the actual damage when the trespass was under authority.

These code sections create significant coverage problems for insureds who have done nothing intentional but who, nevertheless, are held responsible for the punitive part of the damages. The PIFC member companies are witnessing a growing trend wherein our insureds fall victim to cash-strapped cities, or attorneys representing claimants who are looking for a way to maximize recovery. These claimants routinely demand—and courts award—double or treble damages. Because punitive damages are uninsurable in California, the insurer pays only the actual damages, putting the insured in the position of having to pay for the often sizeable additional damages assessed.

For damages caused by negligent conduct, the measure of damages is generally the amount which will compensate for all the detriment proximately caused thereby. (Civil Code 3333) The basis for an award of punitive damages is behavior that shows oppression, fraud or malice. (Civil Code 3294) Requiring punitive damages to be awarded for negligent damage to trees violates the public policy of reasonable damage awards, set forth in Civil Code section 3359.

We believe that AB 2071 is a fair measure that allows for proper compensation for actual damages in those circumstances where our insured's negligent act causes unintentional damages to trees. Punitive damages for those that intentionally harm trees will remain in place.

For the reasons stated above, PIFC **supports AB 2071 by Assembly Member Hagman and urges your "aye" vote.** If you have any questions regarding PIFC's position, please contact Michael A. Gunning at (916) 442-6646.

cc: Assembly Member Curt C. Hagman, Author
Drew Liebert, Assembly Judiciary Committee
Mark Redmond, Assembly Republican Caucus
Gareth Elliot, Secretary of Legislative Affairs, Office of the Governor