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MEMORANDUM

Date: April 27, 2011

To: The Honorable Noreen Evans, Chair
The Honorable Tom Harman, Vice Chair
Members, Senate Judiciary Committee

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

Re: SB 221 (Simitian): Small Claims Court: Jurisdiction
As Introduced February 9, 2011

Senate Judiciary Committee – (Anticipated) Hearing May 3, 2011
PIFC Position: Oppose unless amended

The Personal Insurance Federation of California, representing six of the nation's largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) and one national trade association (National Association of Mutual Insurance Companies) who collectively write a majority of the personal line auto and home insurance in California, **opposes, unless amended, SB 221 by Senator Simitian.**

Under current law, small claims courts have jurisdiction over claims of \$7,500 or less. In these courts, matters are generally handled in a more summary fashion than in superior court, with no right of discovery and no right to counsel. SB 221 would increase the monetary jurisdictional limit for natural persons in small claims matters from \$7,500 to \$10,000.

The proposed increase would amount to a doubling of the jurisdictional limits in just six years. In 2005, SB 422 (Simitian) increased the jurisdictional limit from \$5,000 to \$7,500 over the objections of many, including the insurance industry. Our concerns remain.

SB 221 would cause more customers to lose their contractual right to a defense. Increasing the jurisdictional limit to \$10,000 would deprive most of our insured customers of their right to a legal defense *that they already purchased* under their insurance policies. This is because most auto liability insurance claims are resolved for a payment of \$10,000 or less. What public policy is served by depriving substantial numbers of insured defendants of their rights to a defense for which they have already paid?

Increasing the jurisdictional limits has an impact upon drivers beyond the immediate financial judgment. In many insurance cases, insured defendants seek to fight liability altogether and avoid any form of at-fault determination. This is particularly

true in auto accident cases where an at-fault determination can result in a 20% surcharge, as required by Proposition 103. Small claims courts focus more on “splitting the difference” than on detailed determinations as to liability and damages in a particular case. Placing more insured defendants under the summary proceedings of small claims courts would simply make it more difficult for our California customers to keep their claim records “clean,” especially when there are legitimate questions about fault and damages.

SB 221 opens the door to increased fraudulent claims. We already see a great deal of fraud in small claims court where there is no discovery, no opportunity for verification of medical bills or to dispute what is claimed. And there is a multiplier effect - fraud often operates with multiple passengers in a car, each bringing an individual claim in small claims court where a favorable judgment is easier to obtain. This may exceed the coverage limits of the insured and as a result, they become personally liable – having had no defense to which they were contractually entitled.

SB 422 references improvements that need to be made to the small claims court system and process and specifically states that the jurisdictional limits should not be raised again until services are funded at a level sufficient to provide an enumerated list that included:

- In-person advice from legal professionals;
- Staffing levels adequate to meet the demand and provide advisory service to both sides without conflicts of interest;
- Professional, well-trained, compensated decision-makers, in small claims courts in *all* counties in California; and
- Temporary judges be well-trained and knowledgeable of a long list of federal and state laws.

It is not clear that all of these conditions have been met.

The legislature should allow the Expedited Jury Trial Act to Work

Last year, diverse interests cooperated to develop and pass AB 2284 (Evans), the Expedited Jury Trial Act, establishing a voluntary, inexpensive, alternative method of handling civil actions. We believe this alternative will encourage lawyers to take those cases in the \$7,500 plus range that the author states are rejected by lawyers today. The program is operative until January 1, 2016. We request that it be determined at that time whether the limits need to be increased.

Amendment Requested

For the reasons above, PIFC requests that the author consider adding the following amendment to the end of Section 1 of this measure to alleviate our concerns:

Notwithstanding the preceding sentence, if the amount of the demand exceeds seven thousand five hundred dollars (\$7,500), the small claims court shall not have jurisdiction over any person or entity who is a party to or an insured under a contract that provides a duty to defend.

PIFC opposes, unless amended, SB 221 and urges your “**nay**” vote. If you have any questions regarding PIFC’s position, please contact Kimberley Dellinger Dunn at (916) 442-6646.

cc: Senator Joe Simitian, Author
Elizabeth Dietzen Olsen, Senate Judiciary Committee
Mike Petersen, Senate Republican Caucus
Gareth Elliott, Secretary of Legislative Affairs, Office of the Governor
Randall Ward, Insurance Advisor Director, Office of the Governor