



FLOOR ALERT

Date: August 15, 2006
To: Members of the California State Assembly
From: American Insurance Association
Association of California Insurance Companies
Pacific Association of Domestic Insurance Companies
Personal Insurance Federation of California
Re: SB 815 (Ortiz) Civil Procedure: Service by Publication
Coalition Letter: Oppose

It appears likely that once again SB 815 (Ortiz) will be heard on the Assembly Floor during the closing days of session. Last year, it was on third reading until September 7, when it was placed on the inactive file.

SB 815 would authorize a plaintiff to serve a defendant's insurance company in lieu of serving the defendant by publication. The bill also provides that a plaintiff who serves the insurer waives any claim above policy limits with two exceptions that basically consume the rule.

We oppose SB 815 for the following reasons:

1. Policyholders pay premiums to insurance companies to defend them if they are sued. They do **not** pay premiums to their insurance companies to assist plaintiffs to bring lawsuits against them. That is exactly what an insurance company is doing if it accepts service of a summons and complaint against its insured.
2. The bill authorizes service "if the insurer has acknowledged the claim and has not denied coverage...". Acknowledging the claim is an ambiguous term, but if it is intended to mean that the insurer acknowledges that a claim has been filed, that happens in every case. Moreover, insurers do not deny coverage at the beginning of litigation. If that occurs, it does so only after the insurance company conducts a thorough investigation, and even if coverage is uncertain, the company provides a defense. Hence, the standard is no standard at all and would require the insurance company to accept service in every case.
3. While the bill provides that a plaintiff who serves an insurance company waives any claim above policy limits, its exceptions eliminate any benefit that might have resulted. The waiver is inapplicable if the defendant participates in the discovery (that would include responding to form interrogatories submitted by the plaintiff), or if the complaint is later personally served (that is within the control of the plaintiff and would occur when plaintiff's counsel concludes that the claim would be worth more than policy limits and would not occur if the claim is worth less). The exceptions make the whole provision meaningless and illusory.

For the reasons set out above, we urge you to **vote "NO" on SB 815**.

cc: The Honorable Deborah Ortiz, Author
Kevin Baker, Assembly Judiciary Committee
Mark Redmond, Assembly Republican Caucus
Cynthia Bryant, Deputy Legislative Secretary for the Governor
Kathleen Webb, Office of the Insurance Advisor