



Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

State Farm • Farmers • 21st Century Insurance Group • SAFECO • Progressive • NAMIC

MEMORANDUM

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Michael Gunning
Senior Legislative Advocate

Michael Paiva
Senior Legislative Advocate

Jerry Davies
Director of Communications

Date: August 5, 2005

To: The Honorable Carole Migden, Chair
Members, Senate Appropriations Committee

From: Dan C. Dunmoyer, President
Rex D. Frazier, Vice President & General Counsel
Michael A. Gunning, Senior Legislative Advocate
Michael A. Paiva, Senior Legislative Advocate

Re: AB 1459 (Canciamilla): Small Claims Court: Jurisdiction
As Amended July 6, 2005
Senate Appropriations Committee: August 15, 2005
PIFC Position: Oppose unless Amended

The Personal Insurance Federation of California (PIFC), representing insurers who write over 50% of all personal lines insurance sold in California, including State Farm, Farmers, Safeco, 21st Century, Progressive, and NAMIC, **opposes AB 1459 (Canciamilla) unless it is amended** to provide that the increase in dollar amounts for small claims court jurisdiction shall not apply where an insurance company stands ready to provide a defense under an insurance contract.

Under current law, small claims courts have jurisdiction over claims of \$5,000 or less. In these courts, matters are generally handled in a more summary fashion than in superior court, with no true right of discovery and no right to counsel. AB 1459 would increase the monetary jurisdictional limit for natural persons in small claims matters from \$5,000 to \$7,500.

More Customers Would Lose Their Contractual Right to a Defense

Increasing the jurisdictional limit to \$7,500 would deprive most of our insured customers of their right to a legal defense *that they already purchased* under their insurance policies. While proponents of AB 1459 analogize this monetary increase to a “cost of living” adjustment, it is more than that and substantially increases the number of our customers that would be deprived of an available insurance company defense. This is because **most auto liability insurance claims are resolved for a payment of \$7,500 or less**. What public policy is served by depriving substantial numbers of insured consumer defendants of their rights to a defense for which they have already paid?

Small Claims Courts Should be Reserved for Cases Where Compromise Is Needed

Claims which are substantial in nature should not be heard in small claims courts **which operate from principals of conciliation**. The purpose and intent of these courts is to encourage speedy settlement of small claims in the spirit of compromise between the parties.

In many insurance cases, insured defendants wish 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.

Amendment Requested

For the reasons above, PIFC requests that the author consider adding the following amendment to the end of Section 2 of this measure to alleviate this concern:

Notwithstanding the preceding sentence, if the amount of the demand exceeds five thousand dollars (\$5,000), 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.

This requested amendment is based upon an approach in the June 22, 1994 version of AB 2506, authored by then-Assembly Member Andal, with one of the principal co-authors being then-Assembly Member Isenberg.

For the reasons noted above we urge your **"NO" vote on AB 1459 unless amended** as set forth above. If you have any questions regarding this matter, please contact Rex Frazier at (916) 442-6646.

cc: Honorable Joe Canciamilla, Author
Karen French, Senate Appropriations Committee
Doug Carlile, Senate Republican Caucus
Cynthia Bryant, Office of the Governor
Scott Reid, Office of the Insurance Advisor
Senate Floor Analyses

4.AB1459-SApps