



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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Date: April 13, 2005

To: The Honorable Joseph Dunn, Chair
Members, Senate Judiciary 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: SB 422 (Simitian): Small Claims Court: Jurisdiction
Senate Judiciary Committee Hearing: April 26, 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 SB 422 (Simitian) unless it is amended** to provide that the increase in dollar amounts for small claims court jurisdiction shall not apply where another party has a duty to defend the defendant as part of a contractual agreement.

SB 422 will increase the monetary jurisdictional limit in small claims matters from \$5,000 to \$15,000. We are in opposition to this bill because, under the current "at-fault" tort-liability system an increase of the current jurisdictional limits would subject litigants to substantial liability without the assistance of counsel. This substantial increase is inconsistent with the purpose and intent of small claims matters.

SB 422 Will Expose Litigants To Substantial Liability Without The Assistance Of Counsel. SB 422 will have the adverse effect of exposing parties in an action to substantial liability without the assistance of an attorney to assist in their defense. **Under current law**, no attorney may take part in the conduct or defense of a small claims action. (Code of Civil Procedure Section 116.530.) This bill would put an individual at risk that a judgment of a significant amount would be decided against them. Under existing law, if the amount in controversy exceeds the jurisdictional limit of the small claims court, the matter must be heard in either Municipal or Superior Court where not only do the parties have the right to counsel, but they may also participate in pre-trial discovery in order to defend their claims. The appropriate tribunals for disputes with the magnitude of exposure presented by this bill are Courts of law such as Municipal and Superior Courts which are better suited to address the complexity of the issues posed by these matters.

Denying an individual the right to have counsel and to participate in pre-trial discovery proceedings is **fundamentally unfair** in light of the potential liability imposed by this bill. Litigants subjected to substantial liability should, at a minimum, be afforded representation. Under this bill, litigants must defend these matters at their own peril.

In addition, **insurers who are contractually obligated to defend and indemnify their insureds** are prohibited from assisting in the defense of these matters. Issues of fairness, in matters which cannot, by any stretch of the imagination, be considered small in nature, require that the individual be afforded the opportunity to retain or be provided counsel by the individual's insurer. Not only does the insurer have a contractual duty to defend its insured, but the **insureds pay for litigation expenses** as part of their insurance premiums. Therefore, by increasing the jurisdictional limit of small claims matters, **insureds would lose their right to a defense** in matters which could result in substantial loss.

SB 422 also does not take into account insureds (under the definition of the contract) who are not necessarily a "party to the contract". An example of this would be permissive users. PIFC requests that the author consider adding the following amendment to this measure to alleviate this concern: ***(g) Notwithstanding subdivision (a), 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.***

Increasing The Jurisdictional Limit Is Inconsistent With The Purpose Of Small Claims Courts.

The small claims court was established to obtain speedy settlement of small claims by informal proceedings conducted in the spirit of compromise and conciliation. *Sanderson v. Niemann* (1941) 17 C.2d 563. The seminal phrase in this purpose statement is "small claims." Small claims courts have historically been preserved as a tribunal in which claimants can get redress for small sums without the expense attendant upon suit in a court of law. Increasing the jurisdictional amount beyond the current limit runs counter to the purpose and intent of small claims courts. Matters which are three times the amount of the current limit represent a substantial claim and, therefore, clearly fall outside the purview of those matters which are suitable for adjudication in small claims courts.

Moreover, increasing the jurisdictional limit would result in delays in settlements due to the increased nature of the claim. This result is contrary to the notion of speedy settlement which is inherent in the purpose of small claims jurisdiction. SB 422 will transform small claims into complex matters which are substantial in nature. Claims which are substantial in nature should not be heard in Courts of Equity which operate from principals of conciliation. By preserving the current jurisdictional limit in small claims courts, the purpose and intent of these courts can be preserved through speedy settlement of small claims in the spirit of compromise between the parties.

For the reasons noted above we urge your **"NO" vote on SB 422 unless it is amended to provide that the small claims court shall not have jurisdiction where the amount of the demand exceeds five thousand (\$5,000) and another party has a duty to defend the defendant as part of a contractual agreement.** If you have any questions regarding this matter, please contact Dan Dunmoyer at (916) 442-6646.

cc: Senator Simitian, Author
Alexandra Montgomery, Senate Judiciary Committee
Mike Petersen, Senate Republican Caucus
Richard Costigan, Legislative Secretary for the Governor
Cynthia Bryant, Deputy Legislative Secretary for the Governor
Scott Reid, Office of the Insurance Advisor
Senate Floor Analyses

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