



# 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

### STAFF

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**Date:** June 16, 2005

**To:** Honorable Dave Jones, Chair  
Members, Assembly 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  
As Amended May 27, 2005  
Assembly Judiciary Committee: June 28, 2005  
**PIFC Position: Oppose unless Amended**

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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, 21<sup>st</sup> 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.

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 right of discovery and no right to counsel. SB 422 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 SB 422 analogize this monetary increase to a “cost of living” adjustment, it is more than that and substantially increases the number of our customers that could be hauled into small claims court. 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 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.***

For the reasons noted above we urge your "**NO**" vote on **SB 422 unless amended** as set forth above. If you have any questions regarding this matter, please contact Rex Frazier at (916) 442-6646.

cc: Senator Simitian, Author  
Leora Gershenzon, Assembly Judiciary Committee  
Mark Redmond, Assembly Republican Caucus  
Cynthia Bryant, Deputy Legislative Secretary for the Governor  
Scott Reid, Office of the Insurance Advisor

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