

## RESOLUTION 11-09-2003

### DIGEST

#### Undertakings: Requiring Two Independently Sufficient Surety Pools

Amends Code of Civil Procedure section 995.510 to require that more than two personal sureties on a bond over \$10,000 be divisible into two groups, each having the requisite net worth.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

None known.

#### Reasons:

This resolution amends Code of Civil Procedure section 995.510 to require that more than two personal sureties on a bond over \$10,000 be divisible into two groups, each having the requisite net worth. This resolution should be approved in principle to sustain the two-surety policy and correct an apparent drafting error in the statute.

Until 1982, Code of Civil Procedure section 1057 required that if more than two sureties signed a personal undertaking, they had to be the equivalent of two qualified sureties—that is, they had to be divisible into two groups that each had a net worth of the bond amount or more. When the two-surety requirement was recodified in section 995.510, the Law Revision Commission characterized the provision as continuing the substance of former section 1057.

However, in *Buzgheia v. Leasco Sierra Grove* (1994) 30 Cal.App.4th 766, 773-774 and fn. 6, the court construed section 995.510 to allow more than two personal sureties to qualify if their aggregate net worth was twice the bond amount, even though they could not be divided into two groups each having a net worth of at least the bond amount. Though recognizing the anomalous implications of this interpretation, the court said the problem was one for the Legislature.

This resolution would solve the problem by amending section 995.510 to permit more than two personal sureties only if they can be broken into two groups, each of which has sufficient net worth. Under this amendment, the beneficiary of an undertaking would always have at least two independently sufficient sources of payment.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 995.510 to read as follows:

- 1 §995.510
- 2 (a) A personal surety on a bond is sufficient if all of the following conditions are
- 3 satisfied:
- 4 (1) The surety is a person other than the principal. No officer of the court or member
- 5 of the State Bar shall act as a surety.

6 (2) The surety is a resident, and either an owner of real property or householder,  
7 within the state.

8 (3) The surety is worth the amount of the bond in real or personal property, or both,  
9 situated in this state, over and above all debts and liabilities, exclusive of property exempt  
10 from enforcement of a money judgment.

11 (b) If the amount of a bond exceeds ten thousand dollars (\$10,000) and is executed  
12 by more than two personal sureties, the worth of a personal surety may be less than the  
13 amount of the bond, so long as the aggregate worth of all sureties executing the bond is  
14 twice the amount of the bond and the sureties are the equivalent of two sufficient sureties in  
15 that they can be divided into two groups, each group having a net worth in the amount of the  
16 undertaking.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

#### STATEMENT OF REASONS

Existing Law: Under Code of Civil Procedure section 995.010, subdivision (a)(3), when a party provides a personal undertaking in lieu of a litigation bond—such as for a preliminary injunction or to stay enforcement of a judgment pending appeal—there must be two sureties, each of which must be worth at least the amount of the undertaking. Under subdivision (b), if the undertaking is more than \$10,000 and there are more than two sureties, an individual surety may be worth less than the amount of the undertaking, as long as the aggregate net worth of all sureties is twice the amount of the undertaking.

This Resolution: Requires that, if there are more than two sureties, they must be the equivalent of two adequate sureties.

The Problem: Until 1982, Code of Civil Procedure section 1057 provided that, when a personal undertaking was supported by more than two sureties, they had to be the equivalent of two qualified sureties—that is, it had to be possible to divide them into two groups, each of which had a net worth of at least the amount of the bond. *Mohn v. Superior Court* (1921) 53 Cal.App. 425, 428. In 1982, Section 1057 was recodified with slightly changed language in Section 995.010 and two other provisions. The Law Revision Commission stated that the recodification “continues the substance” of the relevant portion of former Section 1057 with only “clarifying” changes. Cal. Law Revision Com., West's Ann. Code Civ. Proc. §§ 995.310, 995.510 and 995.520.

Nevertheless, an appellate court held that Section 995.010 does not continue the requirement that, when there are more than two sureties, they must be the equivalent of two qualified sureties. *Buzgheia v. Leasco Sierra Grove* (1994) 30 Cal.App.4th 766, 773. Now, it is only necessary that the aggregate worth of the sureties be twice the amount of the undertaking.

The court recognized that this leads to an absurd result. Suppose the undertaking was \$100,000. Each surety would have to be worth that much, and their aggregate net worth would have to be

twice that, \$200,000. If one surety was worth \$199,990 and the other was worth only \$10, they would not qualify, even though the aggregate was \$200,000. “However, by adding a third surety worth \$10 or less the sureties would qualify.” *Id.* at 774, n. 6. The court, however, felt bound by the language of Section 995.010, which permits this anomaly.

When personal sureties are used, the beneficiary should have the protection of two possible sources from which the undertaking can be satisfied in full. That purpose is entirely eviscerated if the undertaking is supported by only one surety who can satisfy it, and other sureties who cannot.

#### **IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule.

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#### **COUNTERARGUMENT**

#### **SAN DIEGO COUNTY BAR ASSOCIATION**

By allowing the party which is required to obtain the undertaking to spread the risk of the undertaking in very small increments among a large number of parties, this change will multiply the effort necessary to collect on the undertaking. Since the resolution offers no minimum requirements for parties participating in the undertaking, it could make it vastly more difficult for creditors to collect on personal undertakings.