

**RESOLUTION 09-06-2008**

**DIGEST**

Small Claims: Service on Insurer

Adds Civil Code section 1360.6 to allow for service on a defendant's insurer in small claims motor vehicle accident cases.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommend that legislation be sponsored to add Civil Code Section 1360.6 as follows:

- 1     § 116.340  
2             (a) Service of the claim and order on the defendant may be made by any one of  
3     the following methods:  
4             (1) The clerk may cause a copy of the claim and order to be mailed to the  
5     defendant by any form of mail providing for a return receipt.  
6             (2) The plaintiff may cause a copy of the claim and order to be delivered to the  
7     defendant in person.  
8             (3) The plaintiff may cause service of a copy of the claim and order to be made  
9     by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the  
10    need to attempt personal service on the defendant. For these purposes, substituted service  
11    as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or  
12    marshal who shall deliver a copy of the claim and order to any person authorized by the  
13    defendant to receive service, as provided in Section 416.90, who is at least 18 years of age,  
14    and thereafter mailing a copy of the claim and order to the defendant's usual mailing  
15    address.  
16             (4) The clerk may cause a copy of the claim to be mailed, the order to be issued,  
17    and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.  
18             (b) Service of the claim and order on the defendant shall be completed at least 15  
19    days before the hearing date if the defendant resides within the county in which the action  
20    is filed, or at least 20 days before the hearing date if the defendant resides outside the  
21    county in which the action is filed.  
22             (c) Proof of service of the claim and order shall be filed with the small claims  
23    court at least five days before the hearing.  
24             (d) Service by the methods described in subdivision (a) shall be deemed complete  
25    on the date that the defendant signs the mail return receipt, on the date of the personal  
26    service, as provided in Section 415.20, or as established by other competent evidence,  
27    whichever applies to the method of service used.  
28             (e) Service shall be made within this state, except as provided in subdivisions (f)  
29    and (g).  
30             (f) The owner of record of real property in California who resides in another state  
31    and who has no lawfully designated agent in California for service of process may be  
32    served by any of the methods described in this section if the claim relates to that property.

33 (g) A nonresident owner or operator of a motor vehicle involved in an accident  
34 within this state may be served pursuant to the provisions on constructive service in  
35 Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the  
36 defendant was a nonresident at the time of the accident or when the claim was filed.  
37 Service shall be made by serving both the Director of the California Department of Motor  
38 Vehicles and the defendant, and may be made by any of the methods authorized by this  
39 chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle  
40 Code.

41 (h) If an insurance company has acknowledged the existence of a liability policy  
42 covering its insured resident or nonresident owner or operator of a motor vehicle involved  
43 in an accident within this state, and the owner or operator either failed to provide a current  
44 address at the time of the accident, or has since moved with no forwarding address; the  
45 insurance carrier must disclose its insured's current address for service of process or accept  
46 service of process on behalf of its insured owner or operator. Service on the insurance  
47 company may be made pursuant to (a)(1) above.

48 (i) If an action is filed against a principal and his or her guaranty or surety  
49 pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to  
50 complete service on the principal. If service is not completed on the principal, the action  
51 shall be transferred to the court of appropriate jurisdiction.

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

**PROPONENT:** National Lawyers Guild—Los Angeles Chapter

**STATEMENT OF REASONS:**

Existing Law: While existing law allows for service of process in a small claims case against a nonresident defendant by service on the Director of the California Department of Motor Vehicles, it still requires service on the defendant.

This Resolution: Would close a current loophole in the small claims statutes that operates to deny personal injury plaintiffs the right to pursue their claims in small claims court when the defendant cannot be located after the accident, and the insurance company who is duty bound to indemnify the defendant knows the defendant's location but refuses to disclose it.

The Problem: There is no mechanism in small claims court for an order for publication when a defendant cannot be located. There are often car accident cases in which the defendant either provides an outdated address, or moves after the accident without leaving a forwarding address. The plaintiff has been in discussion with the defendant's insurance company but they fail to reach a settlement. When the plaintiff tries to file a small claims action against the defendant the insurance company informs the plaintiff that the defendant has moved, but refuses to disclose the defendant's whereabouts. Without a current address to serve the defendant the plaintiff is unable to avail her/himself of the small claims court. This proposed amendment would close a loophole in the statute to allow plaintiffs in personal injury actions to serve the defendant through the defendant's insurance company when the defendant's whereabouts are unknown.

**IMPACT STATEMENT:**

This proposed resolution does not affect any other statute.

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