

**Judge Benson – Law & Motion – Wednesday, January 11, 2023 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 22CV01582 Klempa, Sandra et al v. California Capital Insurance Company**

*EVENT: California Capital Insurance Company's Demurrer to First Amended Complaint*

California Capital Insurance Company's Demurrer to First Amended Complaint is SUSTAINED in its entirety as to all causes of action with leave to amend. Plaintiffs, if they so choose shall amend within 20 days of this order.

Preliminarily, Defendant's request for judicial notice is GRANTED.

General Rule Re: Standing Under an Insurance Policy

"Every action must be prosecuted in the name of the real party in interest . . . ." ( Code Civ. Proc., § 367.) *Gantman v. United Pac. Ins. Co.*, (1991) 232 Cal. App. 3d 1560 "Generally, 'the person possessing the right sued upon by reason of the substantive law is the real party in interest.' It follows that "[s]omeone who is not a party to [a] contract has no standing to enforce the contract or to recover extra-contract damages for wrongful withholding of benefits to the contracting party." (*Id*)

Here, the policy, which is attached to the complaint and subject to judicial notice, identifies Ponderosa Gardens as the "insured". It does not identify Ms. Klempa as an insured. As a result, because the contract does not identify Ms. Klempa as an insured, she is not a "party" to the contract.

Someone who is not a party to the contract has no standing to enforce the contract or to recover extra-contract damages for wrongful withholding of benefits to the contracting party. (*Hatchwell v. Blue Shield of California*, (1988) 198 Cal. App. 3d 1027, 1033)

In their opposing papers, Plaintiffs identify (5) "exceptions" to the general standing rule. The Court addresses those below.

*The Good Faith Exception*

Plaintiff contends this exception applies because Ms. Klempa was an express beneficiary. However, any allegation that Ms. Klempa is an express beneficiary is contradicted by the policy itself. Facts appearing in an exhibit attached to the complaint are properly considered, and contrary allegations ... may be disregarded. (*Panterra GP, Inc. v. Superior Court*, (2022) 74 Cal. App. 5th 697, 730) Thus, to the extent the FAC attempts to plead Ms. Klempa was an express beneficiary, the Court must disregard these allegations in light of the policy attached to the FAC, which demonstrates Ponderosa was the only named insured.

*Direct Dealing Exception*

The problem with Plaintiff's reliance on US Roofing is that the FAC alleges no facts indicating Ms. Klempa was in negotiations with Defendants for her to be insured

individually. U.S. Roofing dealt with a situation where a separate agreement was allegedly made concerning a separate party. If the FAC alleged that Ms. Klempa and Defendants agreed that Ms. Klempa would be insured as an individual, this exception would potentially apply. However, the FAC does not allege this. The allegations in ¶ 71 that the policy was “intended” by all parties to cover both Ponderosa Gardens and Sandra Klempa is conclusory. Unlike US Roofing, no agreement has been alleged concerning the inclusion of Ms. Klempa as an additional insured.

#### *CCP § 1908 is not an exception*

Plaintiffs’ reliance on CCP 1908 is misplaced. Simply because Ms. Klempa will be bound by a Court judgment has nothing to do with the issue of standing. They are completely separate issues.

#### *Standing Through Assignment*

Ins Code § 520. Agreement not to transfer claim

An agreement not to transfer the claim of the insured against the insurer after a loss has happened, is void if made before the loss except as otherwise provided in Article 2 of Chapter 1 of Part 2 of Division 2 of this code.

In reviewing the policy, which according to the complaint was in effect at the time of loss, the Court finds no prohibitions on assignment. As a result, it appears Ponderosa would be permitted to assign its rights to Ms. Klempa. Of course, the operative pleading contains no allegations regarding assignment.

#### *Negligence and Reformation*

The Court concurs with Defendant’s authority and analysis as to the negligence and reformation causes of action. Regarding negligence the demurrer is sustained on both the grounds of duty and statute of limitations. The allegations supporting reformation are conclusory.

Defendant shall prepare and submit a form of order consistent with this ruling within 10 days.

## **2. 20CV02212 Owens, Marc, et al. v. Aegis Security Insurance Company, et al.**

*EVENT: Plaintiff’s Motion to Compel Further Document Production and Responses to Plaintiff’s Fifth Set of Requests for Production and Fourth Set of Special Interrogatories*

Plaintiffs’ Motion to Compel Further Document Production and Responses to Plaintiffs’ Fifth Set of Requests for Production and Fourth Set of Special Interrogatories is GRANTED in part and DENIED in part. Any and all requests for sanctions are denied.

As to request for Production of Documents, Set Five, the motion is denied as to request nos. 69-72, and granted as to nos. 73 and 74. As to requests 73 and 74, the Court finds the following objection to be improper:

To the extent that this request seeks “screenshots,” “computer printouts,” or other image captures not held in the ordinary course of Aegis’ business, such a request is both vague and presumably requires Aegis to create or generate evidence or documents which do not already exist and is therefore outside the scope of discovery obligations imposed by the Discovery Act. Therefore, no further documents will be produced at this time.

The Court disagrees that the requests require the creation or generation of new evidence, rather the request merely seeks the transfer of electronic evidence into paper form. Thus, although the supplemental responses indicate all documents have been produced, the referenced objection shall be removed, and further code complaint responses provided.

Regarding Special Interrogatories Set Four, Plaintiffs’ Reply does not explain how Defendant’s supplemental responses are deficient. The motion is denied as to the Special Interrogatories.

As to the deposition issue, the Court has been presented with an unusual situation where Plaintiffs are additionally seeking to compel further deposition testimony, despite the fact nowhere in the caption of the motion nor in the notice of the motion does it explicitly seek that nor do they reference the applicable statute, CCP § 2025.480. With this being the case, the Court’s research finds a history of liberal and flexible interpretation of the rules pertaining to the notice of motion, see *Tarman v. Sherwin*, (1961) 189 Cal. App. 2d 49, 51-52.

The essence of these cases is the controlling consideration whether the opposing party was on notice of the moving party’s contentions. The Court finds that, as it pertains to taking the further deposition of Mr. Large as a result of newly discovered information, both the moving papers and Defendant’s response demonstrate Defendant was on notice of the issue.

Additionally, unlike in *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, Plaintiffs have filed more than a notice of motion. They have filed a points and authorities explaining why the further deposition of Mr. Large is necessary and have included relevant deposition transcripts. Thus, the Court finds the motion, including the supporting papers were filed on December 6, 2022 is to also be construed as a motion to compel further deposition testimony, making the motion timely.

As a result, the motion is granted to the extent Mr. Large shall provide further deposition testimony, limited in scope to the new documentation obtained after the original deposition.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.

3. **22CV02595 Collins, Theresa v. Ray, Nicholas Andrew et al.**

*EVENT: Defendants' Vyanet Operating Group, Inc. and Nicholas Andrew Ray's Motion to Strike Punitive Damages*

Defendants' Vyanet Operating Group, Inc. and Nicholas Andrew Ray's Motion to Strike Punitive Damages is Granted with leave to amend. Plaintiff, if she so chooses, shall amend within 20 days. The Court's research indicates punitive damages in a non-intentional tort setting are rare. Further driving while talking on a cell phone is an infraction with a fine of \$20 for a first offense and \$50 for a subsequent offense, see Vehicle Code § 23123(b). At most, this appears to be bad faith, see Lackner v. North, (2006) 135 Cal. App. 4th 1188, 1212) The Court finds driving while talking on a cell phone is, by itself, insufficient to support punitive damages.

4. **22CV02781 Mountain Circle Family Services v. Rossington, Shauna**

*EVENT: Reconsideration of Shauna Rossington's Motion to Dismiss For Untimeliness*

Reconsideration of Shauna Rossington's Motion to Dismiss For Untimeliness Continued to February 8, 2023 on the grounds the moving papers submitted by Ms. Rossington are not accompanied by a proof of service indicating Defendant was served. The Court will prepare the form of order.

5. **23CV00042 Butte County Animal Control v. Thompson, Kimberly et al.**

*EVENT: Petition to Determine if Dog is Vicious*

The Court will conduct a hearing.