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## **Bullivant prevails in rare case upholding terminating sanctions**

By Ronald L. Richman

On June 10, 2008 the Court of Appeal in *Liberty Mutual Fire Insurance Company v. LcL Administrators, Inc.* upheld the Trial Court's granting of terminating sanctions against a defendant and cross-complainant, striking its answer and cross-complaint on the grounds that the defendant and cross-complainant willfully failed to comply with discovery orders.

In the case, Liberty Mutual issued workers' compensation policies to LcL that generated premiums in excess of \$500,000. When LcL refused to pay the premiums, Liberty Mutual filed suit. LcL filed an answer containing twenty-eight affirmative defenses, including breach of contract and "bad faith". In addition, LcL filed a cross-complaint against Liberty Mutual for breach of contract and "bad faith". LcL alleged that Liberty Mutual failed to properly investigate and adjust the underlying workers' compensation claims.

In complex litigation, discovery, e.g., interrogatories, demands for production of documents, depositions, etc., is the primary tool available to obtain from an opposing party all facts, the identity of all witnesses, and copies of all documents supporting its defenses and counter-claims. In *Liberty Mutual*, the Court of Appeal held that LcL's failure to provide complete and straightforward responses to the most basic of interrogatories, for example, those asking LcL to state all facts, identify all witnesses and identify and produce all documents supporting its allegations of breach of contract and bad faith, warranted terminating sanctions.

In affirming the trial court's holding that LcL failed to comply with the trial court's discovery orders, the appellate court found that LcL repeatedly provided virtually the same inadequate responses to the interrogatories after being warned by the trial court to provide complete and straightforward responses or face terminating sanctions.

In holding that the LcL's failure to comply with the trial court's discovery orders was *willful*, the appellate court found that LcL: (a) repeatedly ignored informal attempts to resolve the discovery dispute; (b) gave written responses that were "worthless" and provided no "meaningful information"; (c) conducted itself in a way that "reeked of bad faith"; and (d) continued to "engage in obfuscation and game playing".

Lastly, the Court found that LcL's conduct was prejudicial, preventing Liberty Mutual from mounting any defense to the unfounded allegations:

A party cannot intelligently defend itself against affirmative defenses or damage claims when the other side's discovery responses consist of legal double-talk and provide no useful information. Here, after numerous extensions of time and more than a year's worth of delay, LcL could still not provide an intelligible factual basis for their defenses and counterclaims.

In the end, it's worth the fight to get complete and straightforward responses to discovery.

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