

## **California Court of Appeal reverses trial court's award of monetary sanctions against a nonparty insurer for failure to negotiate in good faith at a mandatory settlement conference**

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The old adages are never out of date. In this case, the California Court of Appeal finds the familiar rule that "You can lead a horse to water, but you can't make him drink" applicable to conduct on the part of defense counsel and an insurance adjuster in a personal injury action. In Vidrio v. Hernandez, decided April 13, 2009, the Court of Appeal, Second Appellate District, granted Mercury Insurance Company's appeal from a trial court order imposing monetary sanctions for alleged bad faith at a mandatory settlement conference. The Court found no statute or court rule authorizing the imposition of such sanctions, and held that "the failure to increase a settlement offer or to otherwise participate meaningfully in settlement negotiations violates no rule of court and is not a proper basis for an award of sanctions."

### The Underlying Action

Plaintiffs Miguel Vidrio and Patricia Salinas filed suit against defendant Maria Hernandez for personal injuries and property damage after plaintiffs' car was rear-ended by Hernandez's vehicle. Hernandez was insured by Mercury Insurance Company, which provided her a defense. After an unsuccessful mediation, defendant served plaintiffs with statutory settlement offers (C.C.P. sec. 998) of \$1,000 each, which were rejected.

At a subsequent mandatory settlement conference, defendant was represented by her Mercury-appointed counsel and Mercury's adjuster, who had full authority to settle the case. Plaintiffs demanded \$15,000 in settlement at the conference, and defendant repeated her prior offers of \$1,000 for each plaintiff. Neither side made a counteroffer, and the case did not settle. At the conclusion of the settlement conference, the trial court criticized defense counsel and the adjuster for their unwillingness to discuss damages, costs of defense, or the basis for defendants' \$1,000 settlement offers, as well as defendant's refusal to offer more than the prior \$1,000 offers, finding such conduct to be bad faith. Apparently believing defense counsel to be "just a conduit" for Mercury, the trial judge ultimately ordered sanctions against Mercury only, not defense counsel or the adjuster, relying on certain statutes, local rules and the California Rules of Court. Mercury filed a timely appeal.

### The Appeal

The Court of Appeal found that no statute authorizes the imposition of sanctions against a nonparty insurer for its purported failure to participate in good faith in a mandatory settlement conference. California Code of Civil Procedure Sec. 177.5, cited by the trial court, on its face does not apply to nonparty insurers. Similarly, neither C.C.P. Sec. 575, nor any local rule was found to justify the award of sanctions against Mercury.

The Court also found no basis for the sanctions in any of the California Rules of Court pertinent to the conduct of mandatory settlement conferences. Rule 2.30, relied on by the trial court, expressly authorizes a court to order payment of reasonable monetary sanctions by an insurer or any other individual or entity whose consent is necessary for the disposition of the case for

any failure without good cause to *comply with the applicable provisions of the California Rules of Court*. However, it was found inapplicable in Vidrio for the simple reason that there is no California Rule of Court requiring good faith negotiation by participants in settlement conferences. It was undisputed here that Hernandez filed an appropriate settlement conference statement, and that her lawyer and Mercury attended the conference and participated in it. The court held that no more was required, effectively restating the old adage as "a court may compel litigants to engage in settlement negotiations, but it can't make them settle."

Appellate opinion: <http://www.courtinfo.ca.gov/opinions/documents/B207391.PDF>