

Pro Per Plaintiffs Who are Attorneys are Not Eligible for Fee Award

July 26, 2011 by David J. McMahon

In Richards v. Sequoia Insurance Co., 2011 DJDAR 6729 (2011), the California First District Court of Appeal reaffirmed the well established rule that a plaintiff who cannot show payment of legal expenses in defense of a claim cannot recover contractual damages for attorney fees against an insurance carrier.

The court did specifically note that the plaintiffs did not make a claim for Brandt attorney fees to compel the payment of insurance benefits in the case. Under the California Brandt fees doctrine, a litigant who sues an insurance carrier to compel payment of policy benefits is entitled to recover fees which can be fairly allocated to that portion of the case.

The attorney plaintiffs owned a lodge insured by Sequoia Insurance Company ("Sequoia"). An action was brought against the plaintiffs and they tendered defense to Sequoia. Sequoia responded to the tender and authorized the plaintiffs to retain counsel at their expense, subject to Sequoia's possible reimbursement of reasonable fees and costs incurred.

Thereafter, the plaintiffs, who were licensed attorneys, demanded full defense and indemnity from the insurer. Sequoia accepted the tender of defense.

Sequoia paid fees and costs relating to the lawsuit and ultimate settlement. The plaintiffs offered to compromise their claims against Sequoia for \$30,000 for time spent in working on the lawsuit. Sequoia ignored the plaintiffs' offer. The plaintiffs then sued for breach of contract. Sequoia moved for summary judgment, which was granted by the trial court. The court found that the plaintiffs were not entitled to recover for time they expended for their own defense.

The Court of Appeal affirmed the trial court's decision.

The court noted that attorneys who represent themselves in disputes involving contracts, which provide for attorney fees, cannot recover reasonable attorney fees for time spent on defending their own case.

This is consistent with the established rule that a plaintiff who cannot show payment of legal expenses in defense of a claim, cannot show contract damages due to an insurer's delay in assuming responsibility. The plaintiffs, as attorneys litigating in propria persona, cannot be said to "incur" compensation for their time and lost business opportunities in defending their own case.