

Underfunding and Overburdening of the California State Courts

Timothy J. Toohy and Joseph G. Adams | December 12, 2012

This is the first in Snell & Wilmer's series, "Welcome to California Business Litigation." California business litigation differs substantially from business litigation in most other parts of the United States, particularly for those used to dealing with Federal Rules-based civil procedures. California has exhaustive statutory regimes — among others, the Code of Civil Procedure, the Business & Professions Code, and the Evidence Code — of which businesses litigating in California must be aware in order to optimize their litigation outcomes.

In this series of articles, Snell & Wilmer lawyers familiar with both California and non-California business litigation practices will share a series of tips — both procedural and substantive — that in-house counsel may find useful in navigating the shoals of California business litigation.

It should come as no surprise that California courts are some of the busiest in the nation. According to the National Center for State Courts, more than a million civil cases are filed every year in California.

But even as civil court filings are heavy, funding to California courts has continued to drop as the State of California deals with a budget crisis that has affected nearly all government services. Rather than keeping pace with the increased activity in the courts, state funding for the judicial system has decreased by 25% over the last decade. These funding cuts amount to over \$1 billion from the California court budget.

Faced with fewer resources, courts have been doing their best to cut expenses. Earlier this year, the Los Angeles Superior Court reduced its staff by nearly 350 workers and closed 56 courtrooms, nearly half of which were civil courts. These reductions covered

management, clerical and administrative positions. Further, starting in May 2012, court-employed court reporters are no longer available for civil trials. If a party wishes to have a court reporter present in court, the party needs to make arrangements for the reporter to be present and, of course, pay for the reporter. The lack of guaranteed court reporting services for most hearings potentially has a profound effect on litigation, including the ability to enforce open-court admissions and stipulations that may not be embodied in specific court orders.

The state-wide funding crisis may be alleviated somewhat by Proposition 30, which was passed on November 6, 2012 and raised state income taxes in California. However, funding to California courts is not expected to increase substantially in the near future. Indeed, even after passage of Proposition 30, the administrator of the Los Angeles

County Courts announced the closure of all courtrooms in all regional court centers, including Beverly Hills, Pomona, and San Pedro. The unavailability of courtrooms close to parties and their counsel undoubtedly increases the costs of litigation for many litigants, who already face significant delays in prosecution of civil matters. Judges in the Los Angeles County Superior Court system are widely predicting major disruptions to pretrial and trial calendars because of the closing of branch courthouses.

What does this mean for businesses that find themselves in a business dispute or lawsuit in California? First, it means that litigation is a significantly slower process. Civil cases have a lower priority than other cases in the California state courts (such as criminal cases), and it may take longer to obtain a court hearing or trial date than in previous years. Although some counties, such as Los Angeles and San Francisco counties, have separate civil courts, those courthouses are bearing the brunt of the budget cuts for the court system as a whole. Parties filing lawsuits face significant delays in having routine motions heard, such as demurrers or discovery motions. The effect of such delays has a snowball effect on delays for determinations on the merits, including trials.

Second, the delays mean that judges find themselves under greater pressure to manage their increasing caseload efficiently. This development may affect cases in numerous ways. For example, judges may put more pressure on litigants to explore alternative

dispute resolution such as mediation or arbitration. The fact that judges have less time and resources to manage or decide discovery disputes between parties means that judges may be more receptive to summary judgment motions or other pre-trial motions. Changes to California law have also made summary judgment or adjudication of issues more available than before. For example, CCP 437(c) was amended effective January 1, 2012 to provide a procedure for summary adjudication of “a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty.” Although there are substantial differences between the two procedures, “summary adjudication” under California state procedural law is roughly akin to “partial summary judgment” under Federal Rule of Civil Procedure 56.

Finally, the new developments in the California courts require litigants to account for changes caused by budget cuts while developing their litigation strategy. The fact that cases may take years to get to trial has a decided effect on whether and how parties bring lawsuits, alternative dispute resolution, and defense and settlement options. For example, delays may, in some instances, suit a party’s interests where it is advantaged by the status quo. In other instances, a party may opt (if possible) to file in federal court or, if available, the courts of other states. In other instances, justice delayed in civil lawsuits, including business disputes, may indeed be

justice denied, when a party is forced to forgo rights or property that is tied up in litigation.

Before a party becomes involved in litigation in California state courts, it should carefully

consider its options and the consequences of current budget cuts in consultation with lawyers experienced in litigating in California.



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