

Speed Addiction

OPINION: Lawyers and judges who favor haste in court would do well to focus on the right to trial and the merits of each case. A new summary-judgment bill brings balance.

BY ROBERT S. FINK

California courts carefully must balance their need for speed with their fight for right; currently, the balance us off-kilter. Defense counsel use summary judgment motions with such frequency that a plaintiff's right to a jury trial is being fast-tracked right out of the civil courts.

A new summary-judgment bill (SB476, Escutia) in Sacramento restores equilibrium. The proposed bill asserts that a trial conducted on its merits is favored, and that the right to trial by jury is a fundamental guarantee.

Fueled by the best intentions for expediting sluggish civil courts, 1992 legislative amendments to Code of Civil Procedure Section 437c(c) made it easier for judges to grant summary or pretrial judgments. But as often occurs with good intentions, something went dreadfully wrong — *Union Bank v. Superior Court*, 31 Cal. App. 4th 573 (1995). This landmark interpretation subverted the amendment's intent.

The language of the court's decision changed burden-of-proof standards in civil trials. The ruling forces each plaintiff to prove the case before a judge.

Previously, defendants had the responsibility to provide evidence that negates allegations against them. Now, defendants are more passive because their burden of proof is obviated. Defendants may respond to plaintiffs' evidence by simply declaring it insufficient.

Judges may accept this argument and grant the summary judgment, based on fact. However, this contradicts our system of the administration of justice. Judges are supposed to decide matters of law while juries have the responsibility of deciding matters of fact.

Putting the onus of proof onto the plaintiffs has handed big business a tremendous advantage in civil disputes. Well-heeled defendants are using summary judgment motions as tactical discovery tools to build better barriers for plaintiffs with limited resources.

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Since *Union Bank*, a plaintiff must prove the case twice.

In the first round, the plaintiff must prove the case before the judge hearing the pretrial motion. During this process, the defense is privy to some of the plaintiff's strongest evidence, such as expert testimony, witnesses, and documents, all handed over years before a trial may occur.

At the second stage, if a plaintiff does prevail at this juncture, the plaintiff must try the case all over again in front of a jury. This wasteful duplication diverts valuable judicial resources.

According to the civil code, summary judgment motions are only appropriate in drastic situations. However, the meaning of "drastic" has expanded beyond recognition. Many litigants automatically file for summary judgment, as part of a nothing-to-lose, pretrial strategy.

Some defense counsel believe that summary judgment is the best time to win the case, with little or no formal discovery. They see these motions as economical surgical strikes. However, these lightning attacks short-circuit valid actions.

And the constitutionally guaranteed right to trial is another prominent casualty.

To reinsert equity, SB476 shifts the burden of proof back to the defendants.

Opponents of the bill include insurance companies and the Chamber of Commerce. They fault the bill as anti-business, saying the burden of proof should remain with the plaintiffs. Plaintiffs always have had to prove their accusations. But it's a plaintiff's right to do that before a jury.

The role of juries is diminishing across the country with the rise of a more activist bench. Juries no longer rule on patent infringement and bankruptcy cases in federal court. Some employers force workers to sign away the right to a jury trial in employment-related disputes.

Yet opinion surveys consistently attest to the public's belief in juries — not lawyers, judges or Congress — to protect them from unfair acts. Juries are a grass roots check. The summary judgment bill reflects the public's conviction by affirming the right to be heard by a jury. Jury trials do take time, but when it comes to justice, late is better than never.