

AMENDED IN ASSEMBLY JULY 11, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 815

Introduced by Senator Ortiz

February 22, 2005

An act to amend Section 415.50 of the Code of Civil Procedure, relating to service by publication.

LEGISLATIVE COUNSEL'S DIGEST

SB 815, as amended, Ortiz. Civil procedure: service by publication.

Existing law provides for the service of a summons by publication under specified circumstances. Notwithstanding an order for publication of the summons, a summons may be served in another authorized manner, in which event the service shall supersede any published summons.

This bill would ~~delete the latter provision, and~~ provide that a summons may be served by substitute service on a defendant's insurance company if upon affidavit it appears to the court's satisfaction that the ~~party to be served~~ *insured defendant* cannot with reasonable diligence be served in another manner ~~and if~~, other specified conditions are satisfied, ~~and if~~ the insurer has acknowledged the claim and has not denied coverage on the loss. The bill would provide that a plaintiff who elects to serve the defendant's insurer as a substitute for service by publication thereby waives any claim above the policy limits of the insured *defendant*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 415.50 of the Code of Civil Procedure
2 is amended to read:

3 415.50. (a) A summons may be served by publication if upon
4 affidavit it appears to the satisfaction of the court in which the
5 action is pending that the party to be served cannot with
6 reasonable diligence be served in another manner specified in
7 this article and that either:

8 (1) A cause of action exists against the party upon whom
9 service is to be made or he or she is a necessary or proper party
10 to the action.

11 (2) The party to be served has or claims an interest in real or
12 personal property in this state that is subject to the jurisdiction of
13 the court or the relief demanded in the action consists wholly or
14 in part in excluding the party from any interest in the property.

15 (b) The court shall order the summons to be published in a
16 named newspaper, published in this state, that is most likely to
17 give actual notice to the party to be served. If the party to be
18 served resides or is located out of this state, the court may also
19 order the summons to be published in a named newspaper
20 outside this state that is most likely to give actual notice to that
21 party. The order shall direct that a copy of the summons, the
22 complaint, and the order for publication be forthwith mailed to
23 the party if his or her address is ascertained before expiration of
24 the time prescribed for publication of the summons. Except as
25 otherwise provided by statute, the publication shall be made as
26 provided by Section 6064 of the Government Code unless the
27 court, in its discretion, orders publication for a longer period.

28 (c) Service of a summons in this manner is deemed complete
29 as provided in Section 6064 of the Government Code.

30 (d) *Notwithstanding an order for publication of the summons,*
31 *a summons may be served in another manner authorized by this*
32 *chapter, in which event the service shall supersede any published*
33 *summons.*

34 ~~(d)~~

35 (e) (1) A summons may be served by substitute service on a
36 defendant's insurance company if upon affidavit it appears to the
37 satisfaction of the court in which the action is pending that the
38 ~~party to be served~~ *insured defendant* cannot with reasonable

1 diligence be served in another manner specified in this article,
2 *other than service by publication under paragraph (a)*, and that
3 either:

4 (A) A cause of action exists against the ~~party upon whom~~
5 ~~service is to be made~~ *insured defendant* or he or she is a
6 necessary or proper party to the action.

7 (B) The ~~party to be served~~ *insured defendant* has or claims an
8 interest in real or personal property in this state that is subject to
9 the jurisdiction of the court or the relief demanded in the action
10 consists wholly or in part in excluding the ~~party~~ *insured*
11 *defendant* from any interest in the property.

12 (2) If the requirements of paragraph (1) are satisfied, a
13 plaintiff may elect to serve the defendant's insurance company if
14 the insurer has acknowledged the claim and has not denied
15 coverage on the loss. A copy of the summons and complaint may
16 be served by a substituted service of process upon the
17 defendant's insurer with the agent for process designated by the
18 insurer with the Secretary of State, as provided in subdivision (b)
19 of Section 1502 of the Corporations Code. Substitute service of
20 process shall be effected by delivering a copy of the summons
21 and the complaint to the person who is apparently in charge of
22 the office, during the usual hours of business, or by mailing a
23 copy of the summons and the complaint by registered mail,
24 return receipt requested, addressed to the person to be served at
25 the address of the insurer where a copy of the summons could
26 have been delivered. The answer shall be filed in accordance
27 with Section 68616 of the Government Code.

28 (3) A plaintiff who elects to serve the defendant's insurer
29 pursuant to paragraphs (1) and (2) as a substitute for service by
30 publication thereby waives any claim above the policy limits of
31 the insured *defendant*. However, the plaintiff's election to limit
32 his or her claim to policy limits shall be deemed null, and the
33 plaintiff's demand shall no longer be limited to the policy limits,
34 if either of the following occur:

35 (A) The insured *defendant* participates in discovery after
36 commencement of the action.

37 (B) The complaint is later personally served *on the insured*
38 *defendant no later than 30 days before trial*.

39 (4) Nothing in this subdivision shall affect any policy defenses
40 that may exist as between the insured and the insurer.

1 ~~(e)~~
2 (f) As a condition of establishing that the party to be served
3 cannot with reasonable diligence be served in another manner
4 specified in this article, the court may not require that a search be
5 conducted of public databases where access by a registered
6 process server to residential addresses is prohibited by law or by
7 published policy of the agency providing the database, including,
8 but not limited to, voter registration rolls and records of the
9 Department of Motor Vehicles.

O