

Does an Insurer Have an Obligation to Pay Treble Damages in California?

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Treble damages are a concept provided for by law in certain types of lawsuits. The court has discretion to award treble damages, but there must be a legally acceptable reason for the award. The individual sued must not only be guilty of some wrongdoing, but he must have committed the act deliberately, knowing it was wrong. Treble damages, by statute, permit the court to triple the amount of the actual or compensatory damages awarded to a prevailing plaintiff. When a plaintiff is awarded treble damages in California, the question is whether an insurance company is required to pay those damages. Insurance Code § 533 excludes coverage of those “willful” acts committed with the specific intent to injure. However, an insurer is not exonerated by the negligence of the insured, or of the insured's agent or others. Furthermore, Insurance Code § 533 does not exclude coverage for non-malicious acts committed with the sole intent to do the act that caused the harm. (*California*

Shoppers, Inc. v. Royal Globe Ins. Co. (1985) 175 Cal. App. 3d 1, 32.)

There is a clear line of authority in California which holds even an act which is “intentional” or “willful” within the meaning of traditional tort principles will not exonerate the insurer from liability under Insurance Code § 533 unless it is done with a “preconceived design to inflict injury.” (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 887.) More specifically, as the court in *Capachi v. Glens Falls Ins. Co.* (1963) 215 Cal.App.2d, pointed out, “the word ‘willful’ as used in Insurance Code § 533 may be said to connote an act done with malevolence.” Other courts have suggested the culpability contemplated within the term “willful tort” as used in Insurance Code section 533 is synonymous with “malice in fact,” i.e., a wish to vex, annoy, or injure another person. (See, e.g. *City Products Corp. v. Globe Indemnity Co.* (1979) 88 Cal.App.3d 31, 36, fn. 3.)

Where treble damages may be awarded under a statute without establishing malice or a “preconceived design to inflict injury,” Insurance Code § 533 does not exclude coverage. Furthermore, where “the primary purpose of multiplying damages is to provide additional compensation to the victim rather than to punish the offender, it can hardly be maintained that extending insurance coverage to such

multiple damages undermines the theoretical purpose of exemplary damages or offends public policy.” (*California Shoppers, Inc. v. Royal Globe Ins. Co.* supra, 175 Cal. App. 3d 1, 34.)

When addressing treble damages, the relevant analysis is on whether the defendant acted “with the specific intent to injure” the plaintiff when committing the act. This is a case specific analysis, focusing on the factual allegations alleged in the complaint.

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