

TUESDAY WEDNESDAY THURSDAY FRIDAY TODAY

SEARCH/RESULTS

Bookmark Reprints

Friday, June 10, 2011

Dodging the Effects of Proposition 51

Robert Abiri is a partner at Abiri & Szeto LLP, a civil litigation law firm located in Irvine, which specializes in personal injury and civil rights matters. He graduated from UCLA School of Law and has extensive experience representing both plaintiffs and defendants in all types of litigation



Deep pockets. Large companies and public entities are all too familiar with this designation bestowed upon them by avaricious plaintiffs' attorneys. And until recently, these "deep pockets" had to consistently assume the lion's share of damages stemming from multi-defendant personal injury lawsuits. The reason?

Simple...they had more money -

just as the Dodgers unquestionably have a disproportionately larger bank of money than the individuals who attacked Brian Stow.

In the vast majority of personal injury cases, the injured party's economic damages (i.e. medical bills) are largely exceeded by the general damages (i.e. pain and suffering). For example, while a broken rib may incur only a few thousand dollars in medical bills for examination and x-rays, the discomfort and inability to engage in any physical activity during the healing phase can provide upwards of tens of thousands of dollars in general damages. Prior to 1986 - when Proposition 51 was enacted - a plaintiff could recover the entirety of these damages from any one of multiple at fault parties, regardless of each individual person or entity's percentage of culpability. Therefore, so long as a plaintiff could pin even 1 percent of fault on a wealthy defendant, he or she could avoid the pitfalls of financially insolvent defendants.

Assume a drunk driver crashes into another car, seriously injuring the innocent driver. The eventual lawsuit brought by the victim oftentimes includes not only a cause of action against the inebriated party, but also against the city for its unsafe design of the intersection. Despite likely being held responsible for only a small percentage of the liability, the city would find itself on the hook for all the damages the drunk driver could not satisfy, which is typically the vast majority of the claim. Not surprisingly, this was rampantly exploited until the passing of Proposition 51 - appropriately nicknamed the Deep Pocket Initiative.

This brought about a significant and what many people in the legal field believed a

welcome and fair change to the system. Under Proposition 51, any at fault party is jointly and severally liable for up to 100 percent of economic damages such as the medical bills, but only liable for its actual share of fault for the typically higher general damages consisting of pain and suffering. This largely eradicated the ability to capitalize on a wealthy entity's tangential involvement in a plaintiff's injury. But does Proposition 51 serve as a complete bar to plaintiffs pursuing a high value case against a so-called deep pocket? In fact, it does not.

Aside from the obvious situation where the more solvent defendant is actually the bigger tortfeasor amongst its less wealthy co-defendant (in which case the effects of Proposition 51 become irrelevant), there is the unique situation where economic damages either outweigh or are on par with general damages. The most glaring example is the recent attack on Giants fan Brian Stow in the Dodgers parking lot following the opening home game earlier this year.

Becoming a topic of workplace conversation in addition to having widespread coverage in the media, most people know that, in March, Stow was beaten in the Dodgers parking lot by random attackers. This led to Stow suffering brain damage and being placed in a medically induced coma. Stow's family has now sued the Dodgers, alleging a myriad of claims pointing the blame at least partially on the team.

By suing the Dodgers - and proving only the slightest shred of liability for [Brian] Stow's beating at the stadium - the franchise would be responsible for all of his medical bills.

While the lawsuit does not specify the amount of either the economic or general damages, the family's attorney will almost certainly push the medical bills (which are included under the umbrella of economic damages) as the foundation for the suit. Even if taken to court and found liable, the attackers will undoubtedly lack the financial resources necessary to satisfy a multimillion dollar award. So by suing the Dodgers - and proving only the slightest shred of liability for Stow's beating at the stadium - the franchise would be responsible for all of his medical bills, which the family estimates to be as high as between \$45 to \$50 million.

This lawsuit serves as a great example of the irony of Proposition 51. Designed to protect against the unfair allocation of damages to a lesser responsible party, this shield becomes penetrable on the rare occasion where significant economic damages arise. Accordingly, it is not surprising that Stow's family has outwardly stated that his lifetime care could total nearly \$50 million. Since joint and several liability still applies to economic damages such as future medical care - something Stow will need for the foreseeable future and perhaps indefinitely - the fact that the Dodgers are not directly responsible for the attack on Bryan Stow is reduced to a footnote instead of a defense.