

## Utilizing C.C.P. § 1030 to Defeat Claims by Out-of-State Plaintiffs

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Code of Civil Procedure section 1030 provides an underutilized yet effective tool for resolving claims brought by out-of-state plaintiffs.

C.C.P. § 1030 Requires Courts to Order Out-of-State Plaintiffs to File an Undertaking to Secure Defense Costs and Attorney's Fees Where there is a "Reasonable Possibility" the Defendant will Prevail

Section 1030 provides:

(a) When the plaintiff in an action or special proceeding resides out of the state, or is a foreign corporation, the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action or special proceeding. For the purposes of this section, "attorney's fees" means reasonable attorney's fees a party may be authorized to recover by a statute apart from this section or by contract.

(b) The motion shall be made on the grounds that the plaintiff resides out of the state or is a

foreign corporation and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding.

...

(c) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees (emphasis added). Section 1030 is somewhat unique in that defendants must show only a "reasonable possibility" of obtaining judgment – a relatively easy standard to meet. If the plaintiff also resides out of State (or is a foreign corporation) the motion must be granted. The court lacks discretion, and must order the plaintiff to file an undertaking sufficient to secure an award of costs and attorney's fees authorized by statute or contract.

A Successful Section 1030 Motion Often Leads to Dismissal or Settlement

The impact of a successful early section 1030 motion can be dramatic. Particularly in cases where attorney's fees are recoverable, a costs and attorney's fee award can quickly reach tens and even hundreds of thousands of dollars. Many plaintiffs simply do not have the resources to file an undertaking to secure such an award, and will

abandon the litigation as a result. Where funds are available for the undertaking, it nevertheless encourages settlement by increasing the costs of prosecution, and the monetary risks associated with filing a case of questionable merit.

If the plaintiff fails to file the undertaking within 30 days after service of the court's order (or within a greater time allowed by the court), the court shall dismiss the action. (Code Civ. Pro. § 1030(d).) Further, if the motion is filed within 30 days after service of summons on defendant, the court has discretion to stay further proceedings until after the undertaking is filed. (Code Civ. Pro. § 1030(e).) The result is defendants can often obtain a dismissal or settlement at an early state of the litigation without having to conduct extensive discovery or file dispositive motions.

Conclusion

Attorneys, clients, and insurance professionals should consider filing a section 1030 motion in their cases brought by out-of-state plaintiffs.

### **ABOUT THE AUTHOR**

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