

## PROFESSIONAL LIABILITY UPDATE

### FEE AGREEMENTS

By John B. Sullivan

#### ***Lemmer v. Charney* (2011) 195 Cal.App.4<sup>th</sup> 99**

*The Second District holds that a provision in a contingency fee agreement that mandated the case proceed to settlement or trial was void as against public policy.*

Don Lemmer represented Jeffrey Charney on an hourly basis in a lawsuit against Charney's former employer Teleflora LLC. After several months, the parties entered into a new contingency fee agreement at Charney's request after Charney promised to take the case to trial or settlement to ensure that Lemmer was paid. However, Charney believed Teleflora's owner would appeal any judgment and extend the litigation to exhaust Charney's resources, and he did not intend to proceed absent a settlement. Charney instructed Lemmer to accept a walk away settlement less than one month before trial.

Lemmer sued Charney and his wife for conspiracy to defraud and Charney's wife for interference with prospective economic advantage. The trial court sustained a demurrer to the first amended complaint without leave to amend.

The Court of Appeal affirmed. The law will not enforce an agreement that requires a client to pursue an unwanted lawsuit. Thus, there is no tort cause of action for damages for a client's decision to abandon a lawsuit. That would require a client to keep his lawsuit alive just for his attorney's profit, despite his own fears and desire to abandon the case.

Lemmer could not sue Charney's wife for conspiracy to defraud or intentional interference with prospective economic advantage because Charney committed no actionable wrong in abandoning the lawsuit.

*Comment:* Regardless of its form, courts will not enforce any provision in an attorney-client fee agreement that requires a client to obtain his or her attorney's consent to abandon a lawsuit.

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