

Update on Third Mutual v. PCM Lawsuit

By Mary Robertson

In the recently filed lawsuit against PCM by Third Mutual regarding the employees' incentive plan (bonus payments), PCM and Janet have filed their demurrer to the charges. (The same attorney represents PCM and Price.) A demurrer is a statement from the defendants that presents a legal basis for a plaintiff's allegations being invalid and requesting the court to dismiss the charges.

Demurrer Hearing Date

The hearing date for the demurrer was set for September 2, 2010 but has been postponed to **September 23**. It will be heard in **Department C-8 of the Orange County Superior Courthouse – Central Justice Center, at 2:00 pm**.

Demurrer PCM states that 2 of the charges (fraud and elder abuse) should be dismissed against PCM and Janet Price. The demurrer also states that 3 other charges should be dismissed against Janet Price only.

There is no demurrer from Milt Johns, the third defendant in the case, and I have received notification from a reliable source that he has not yet been served. The court documents on file to date do not show that Milt Johns has been served.

The specific charges PCM states should be dismissed are shown in the chart below. They are all based on Third Mutual's failure to state facts sufficient to constitute a cause of action against PCM and/or Price, according to PCM's demurrer.

Third Mutual v. PCM Charges & Demurrer		
Third's Allegations	PCM's Demurrer	Reason
1. Breach of Contract	--	--
2. Breach of Fiduciary Duty	Inappropriate charge against Janet Price	Agent immunity doctrine for Price
3. Intentional Concealment (fraud)	Inappropriate charge against PCM & Janet Price	Charge not pleaded with particularity (full & specific factual allegations) as required by law
4. Violation of Business & Professions Code Section 17200	Inappropriate charge against Janet Price	Agent immunity doctrine for Price
5. Elder Abuse	Inappropriate charge against PCM & Janet Price	Charge fails as a matter of law as required elements of elder abuse not alleged and plaintiff has no standing

6. Negligence	Inappropriate charge against Janet Price	Agent immunity doctrine for Price
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I have read the demurrer and will provide my understanding of the reasons given by PCM to dismiss the charges but I do not have a legal background so this is totally from a layperson's understanding of reading the complaint and the demurrer. Readers may read both of the legal documents at our FOV website, friendsofthevillage.com.

Charges 2 through 6 Against Price

The defendant states all charges against Price are barred under the "agent immunity doctrine". The doctrine requires in order to file suit against an employee of an agency, the allegations must involve the employee acting outside the course and scope of her duty as an employee to her agency or the allegation must claim physical damage to a person or property. The plaintiff's allegations did not involve either of these items.

Charge 3 Fraud Allegation Against PCM and Price

The defendant states the fraud allegations must be dismissed because Third Mutual did not plead the alleged fraud with "particularity."

The particularity requirement requires that every element of fraud be alleged in full and specific factual statements, showing how, when, where, to whom and by what means the fraudulent conduct took place, according to PCM's demurrer. Third Mutual's allegation does not provide with particularity exactly what conduct PCM and Janet Price employed to conceal the incentive plan from Third Mutual.

Charge 5: Elder Abuse Allegation Against PCM and Price

PCM states the elder abuse charge is invalid as Third Mutual has not claimed the required elements of elder abuse under the law. Furthermore, even if they had, Third Mutual has no standing to assert the claims of individual elders.

According to PCM's statement, claims of elder abuse are based on abuse of an individual person aged 65 or older, not abuse of a corporation. Third Mutual is a corporation and therefore cannot claim financial abuse under the Elder Abuse statutes.

Further, PCM's demurrer states only the individual elder being abused may file the complaint; therefore, Third Mutual, as an interested party, has no standing to pursue a claim of elder abuse on behalf of another.