



SISC

Self-Insured Schools of California
Schools Helping Schools

The Language of the JPA

First Edition
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The Language of the JPA

We work in a unique industry. Joint Powers Authorities (JPA) and other self-insured entities fit into a category of financing and risk like no other. Governed by boards that are subject to critiques from the public and even their members, JPAs must decide on a daily basis how best to use the “public” funds with which they are entrusted.

Employees must manage these funds with care and a high degree of professionalism. This requires a foundational knowledge of what we are calling The Language of the JPA. As our industry evolves, so does its language.

This booklet is intended to primarily help those who are new to the JPA community. It can be looked upon as a “Quick Start Guide” similar to what you might find in your vehicle. Rather than plow through the 250 page service guide, it is so much easier to refer to that much thinner book, to get at the root of an issue. By no means is the booklet meant to be a comprehensive summary of all the key terms you will be using throughout your career. It is a starting point and we hope an interesting introduction to inspire you to seek more information as you progress. This 1st Edition leans heavily towards legal terminology, as there is a significant bend towards the law in all that we do on a day to day basis. Subsequent editions will hopefully provide broader context.

We want to thank the CAJPA Legal Affairs Committee chaired by Michael Pott, Chief Operating Officer/ Chief Legal Counsel for PRISM, for allowing select members of that committee to review the terminology contained in the booklet and adding recommended additional terms to the initial list of terms for consideration.

We also want to extend a thank you to Jim Wagoner, Attorney at Law and Nicholas Rasmussen, Attorney at Law of McCormick Barstow LLP for their review of the terminology and input. As coverage counsel to SISC and many other entities and insurers, they provide valuable service to those of us charged with navigating through the waters of coverage and risk.

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AB 218

A bill that was approved in California by the Governor on October 13, 2019 and became law on January 1, 2020. The bill expanded the definition of childhood sexual abuse to include childhood sexual assault. The bill increased the time limit for commencing an action for recovery of damages suffered as a result of childhood sexual assault to 22 years from the date the plaintiff attains the age of majority or within 5 years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual assault, whichever is later. (See Code of Civil Procedure section 340.1)

Abuse of process

The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. (1)

Action

The legal demand of one's right to recover from another person or party made before a court; a lawsuit. (3)

Actuarial

Highly trained specialists who perform all the mathematical functions underlying insurance operations. (2)

Affidavit

A voluntary declaration of facts written down and sworn to by a declarant, usually before an officer authorized to administer oaths. (1)

Appeal

A proceeding undertaken to have a decision reconsidered by a higher authority; especially, the submission of a lower court's or agency's decision to a higher court for review and possible reversal. (1)

Assumption of the risk

The act or an instance of a prospective plaintiff's taking on the risk of loss, injury, or damage. (1)

Bailment

Relationship involving transfer of possession and control by bailor to bailee in which bailee accepts responsibility for the property. (3)

Bifurcate

To divide into two separate parts, as in bifurcation of a trial to determine liability separately from damages. (3)

Breach of contract

The failure, without legal excuse, to fulfill a contractual promise. (2)

CSA

Childhood Sexual Assault.

Case of first impression

A case that presents the court with an issue of law that has not previously been decided by any controlling legal authority in that jurisdiction. (1)

Certificate of Insurance

A document acknowledging that an insurance policy has been written, and setting forth in general terms what the policy covers. (1)

Class action

A lawsuit in which one person or a small group of people represent the interests of an entire class of people in litigation. (4)

Coinsurance

An insurance-to-value provision in many property insurance policies providing that if the property is underinsured, the amount the insurer pays for a covered loss is reduced. (2)

Comparative negligence

A plaintiff's own negligence that proportionally reduces the damages recoverable from a defendant. (1)

Contractual indemnity

Indemnity that is expressly provided for in an agreement. (1)

Cross complaint

A claim asserted by a defendant against another party to the action. Also termed (in some jurisdictions) cross-petition. A claim asserted by a defendant against a person not a party to the action for a matter relating to the subject of the action. (1)

Cumis counsel

An independent attorney hired by a defendant in a lawsuit in which the damages may be covered by the defendant's insurer but a conflict of interest between the defendant and the insurer makes it unreasonable for an attorney selected by the insurer to represent the defendant. • The term derives from *San Diego Fed. Credit Union v. Cumis Ins. Society, Inc.*, 162 Cal. App. 3d 358 (1984) in which the concept was first clearly articulated. The case has been superseded by statute: California Civil Code section 2860. (1)

Declaratory relief

A unilateral request to a court to determine the legal status or ownership of a thing. (Also see Civil Code of Procedure section 1060.) "The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment." (1)

Default

To be neglectful; especially, to fail to perform a contractual obligation. To fail to appear or answer. To enter a default judgment against (a litigant). (1)

Directed verdict

Decision of the court, made after plaintiff's case has been heard, that defendant is entitled to prevail because plaintiff has not proven his or her case. (3)

Discovery

The process used to reveal facts and preserve testimony and evidence in a lawsuit. See Civil Code of Procedure section 2016.010 (1)

Dissent

Disagreement by one or more judges with the majority decision of the court, usually accomplished by a written dissenting opinion. (3)

Enjoin

To legally prohibit or restrain by injunction. (1)

Estoppel

Inability of a person to assert a legal position as a result of certain prior inconsistent action on their own part. (3)

Excess insurers

Excess insurers write policies that provide coverage over the limits of the insured's primary policy. Excess insurance does not pay a loss until the loss amount exceeds the underlying policy limits (or a certain sum, if the underlying policy does not provide coverage). (2)

Ex parte contacts

Contacts in which only one party is heard. (2)

Exculpatory

Anything which tends to exonerate. In an agreement, language intended to relieve one party of the consequences of his or her acts. (3)

Force majeure

An event or effect that can be neither anticipated nor controlled; especially, an unexpected event that prevents someone from doing or completing something that he or she has agreed or officially planned to do. (1)

Good faith

In insurance, consideration given to the insured's interests that is at least equal to the insurer's interests in handling a claim. (2)

Guardian ad litem

A guardian, usually a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party. (1)

Hearsay

Testimony by a witness based not on his or her own observations but on what someone else said, offered in evidence to prove the truth of what was said. (3)

IBNR

Incurred but not reported (IBNR) is a type of reserve fund account used in the insurance and self-insurance industry as the provision for claims and/or events that have transpired, but have not yet been reported to an insurance company or risk pool.

Incurred losses

The amount equal to paid losses and losses for which the insurer is liable but has not yet paid. (2)

Injunction

A court order commanding or preventing an action. (1)

Insurance agent

A legal representative of one or more insurers for which the representative has contractual agreements to sell insurance. See Civil Code section 2332 regarding Principal/Agent relationship. (2)

Insurance broker

An independent business owner or firm that sells insurance by representing customers rather than insurers. (2)

Insurance guaranty funds

State funds that pay the claims of insolvent licensed insurers in the particular state. (2)

Interrogatory

A written question submitted to an opposing party in a lawsuit as part of discovery. (1)

Liable

Responsible or answerable in law. Legally obligate (i.e., liable for the taxes.) (1)

Libel

A defamatory statement expressed in a fixed medium, especially writing but also a picture, sign, or electronic broadcast. (1)

Loss ratio

An insurer's incurred losses (including loss adjustment expenses) for a given period divided by its earned premiums for the same period. (2)

Malicious prosecution

The improper institution of legal proceedings against another with malice and without probable cause. See Judicial Council of California Civil Jury Instruction 1501. (4)

Manuscript policies

Nonstandard custom policies developed for one specific insured or for a small group of insureds such as a business association with unique coverage needs. (2)

Moral hazard

A condition that may lead a person to intentionally cause or exaggerate a loss. (2)

Motion for judgment notwithstanding the verdict

A party's request that the court enter a judgment in its favor despite the jury's contrary verdict because there is no legally sufficient evidentiary basis for a jury to find for the other party. (1)

Motion for Summary Judgment

A request that the court enter judgment without a trial because there is no genuine issue of material fact to be decided by a fact finder – that is, because the evidence is legally insufficient to support a verdict in the non-movant's favor. (1)

Motion in limine

A pretrial request that certain inadmissible evidence not be referred to or offered at trial. (1)

Motion to dismiss

A request that the court dismiss the case because of a settlement, voluntary withdrawal, or a procedural defect. (1)

Nonwaiver agreement

A signed agreement indicating that during the course of investigation, neither the insurer nor the insured waives rights under the policy. (2)

Order to show cause

An order directing a party to appear in court and explain why the party took (or failed to take) some action or why the court should or should not impose some sanction or grant some relief. (1)

Patent

The right granted by the United States government to an inventor or applicant for a limited time period to exclusively own and control a new, useful, and nonobvious invention. (4)

Precedent

A previously decided case that, because it deals with the same issues as a pending case, governs the court's decision in the pending case. (3)

Public adjuster

An organization or person hired by an insured to represent the insured in a claim. (2)

Punitive damages

Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; specifically, damages assessed by way of penalizing the wrongdoer or making an example to others. (1)

Qualified immunity

Immunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights. (1)

Reinsurer

The insurer that assumes all or part of the insured risk exposures of the primary insurer in a contractual agreement. As distinguished from an excess insurer. (2)

Remedy

The means by which a right is enforced or the violation of a right is prevented or compensated. (3)

Res judicata

Latin, a thing decided or adjudged; legal doctrine that prevents the relitigation of a case by the same parties after it has been finally decided by a court. (3)

Reservation of Rights letter

An insurer's letter that specifies coverage issues and informs the insured that the insurer is handling a claim with the understanding that the insurer may later deny coverage should the facts warrant it. A failure to cite a specific policy exclusion or term could lead to a waiver of the coverage defense on the part of the insurance carrier or risk pool. (2)

Respondent superior

The doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency. (1)

Retention

A risk management technique by which losses are retained by generating funds within the organization to pay for losses. (2)

SAM

Sexual assault and molestation.

Slander

A defamatory assertion expressed in a transitory form, especially speech; especially, false and defamatory words that are said in reference to another, such as those charging criminal conduct, imputing horrible or loathsome disease, alleging malfeasance or incompetence in reference to the person's reputation. (1)

Standing

The legal right to sue on a claim; a person must have a sufficient stake or interest in a controversy in order to have standing to sue with regard to that controversy. (3)

Stare decisis

Latin, to stand by a decision; it is the policy of the courts to follow prior decisions on a particular point of law. (3)

Statute of Limitations

Statue that prescribes the time within which a legal action may be commenced and after which time no further legal action is possible. (3)

Statutory liability

Liability that is created by a statute (or regulation) as opposed to common law. (1)

Stay

Court order that freezes a legal proceeding and prevents it from going forward; may be used to stop the enforcement of a judgment or of another court order. (3)

Stipulation

Presentation of certain undisputed facts into evidence by mutual agreement of the parties. (3)

Strict liability

Liability that does not depend on proof of negligence or intent to do harm but that is based instead on a duty to compensate the harm proximately caused by the activity or behavior subject to the liability rule. (1)

Structured settlement

A settlement in which the defendant agrees to pay periodic sums to the plaintiff for a specified time. (1)

Subrogation

Right of one (subrogee) who has paid, in connection with a legal obligation to do so, a debt on behalf of another (subrogor), to stand in the subrogor's shoes in making a demand on a third party to recoup that payment. (3)

Summary Judgment

Prompt disposition of a lawsuit, on motion of either party, available where only legal issues rather than fact issues are in dispute. (3)

Tender

To present for acceptance or offer.

Third party administrator

A firm that contracts to provide administrative services to other businesses and that is often hired to handle claims by organizations that have self-insurance plans. (2)

Toll

As in statute of limitations, to show facts that prevent its barring the action and postpone its expiration. See *Artis v. District of Columbia*/138 S.Ct 594 "Stop the clock." (3)

Tort

From the Latin "tortus" for twisted; refers to any civil wrong for which a legal remedy is available, usually involving the recovery of money damages. (3)

Trade secret

A practice, method, process, design, or other information used confidentially by an organization to maintain a competitive edge. (4)

Trademark

A distinctive design or set of words that legally identifies a product or service as belonging to a certain organization. (4)

Treble damages

Damages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed. Also termed triple damages. (1)

Unilateral contract

A contract in which only one party makes a promise or undertakes the requested performance. (4)

Venue

The locale in which the lawsuit may be brought. (2)

Verdict

A jury's finding or decision on the factual issues of a case. (1)

Vicarious liability

Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties. Also termed imputed liability. (1)

Voir dire

Latin, to speak the truth. Examination of jury panel to select members of the jury. (3)

Writ

A court's written order, in the name of a state or other competent legal authority, commanding addressee to do or refrain from doing some specified act. Typically issued by a court of appeal while a case is pending in the lower court. (1)

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