

6/20/12

## LEGAL BYTE

Greetings to my valued connections!

Another byte of law for your interest. Topic: Inconsistent & Alternative Pleading to Trigger Insurance Coverage

Can a plaintiff plead inconsistent theories of relief/liability, such as negligence (which is unintentional) and fraud (which is intentional)? The answer is “yes” with a big “but.”

Plaintiff is entitled to plead facts or legal theories in the alternative, or even inconsistently. *Radar Co. v. Stone*, 178 Cal.App.3d 10, 29 (1986).

A plaintiff is entitled to seek the same damages based on different theories of recovery. *Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 57, 118 Cal.Rptr. 184. The courts have held that “A complete defense to one theory of recovery is not necessarily a complete defense to other theories of recovery seeking the same, and additional, damages.” *Id.*

However, to avoid a suit for malicious prosecution, each of the inconsistent theories must be premised on probable cause. *Crowley v. Katleman* (1994) 8 Cal.4<sup>th</sup> 666, 34 Cal.Rptr.2d 386. Thus, it would be risky to allege a negligence claim just to trigger insurance coverage. *Videotape Plus, Inc. v. Lyons* (2001) 89 Cal.App.4th 156, 107 Cal.Rptr.2d 1.

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By: Alan M. Goldberg

alangoldberglaw@gmail.com

Appeals; civil trials; family law; assist with trial preparation: 2<sup>nd</sup> chair, motions, research, witnesses, all aspects of trials; local counsel (California); referral fees paid.

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