

## David Nelson

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**From:** Stephen Underwood [sunderwood@collegesoflaw.edu]  
**Sent:** Friday, June 15, 2012 5:27 PM  
**To:** David Nelson  
**Subject:** RE: Settlement Authority Resolution [Plumas CoCo #12-252]

David: I take issue with Mr. Settlemire's interpretation. But I concede this can be a little complicated.

The section I generally feel prevails in these circumstances is GC 935.4 which provides: A charter provision, or a local public entity by ordinance or resolution, may authorize an employee of the local public entity to perform those functions of the governing body of the public entity under this part that are prescribed by the local public entity, but only a charter provision may authorize that employee to allow, compromise, or settle a claim against the local public entity if the amount to be paid pursuant to the allowance, compromise or settlement exceeds fifty thousand dollars (\$50,000). A charter provision, ordinance, or resolution may provide that, upon the written order of that employee, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised, or settled.

As the Resolution indicates, the board may direct and control litigation under GC 25203, which grants the board the authority to settle litigation and claims. There is nothing that prohibits it from delegating that authority to the JPA so long as the Board itself could settle claims. The Joint Powers law allows the JPA to do those things the county is empowered to do. (GC 6509) Section 935.4 provides that the public entity, by resolution, may allow its employees to settle claims up to \$50,000. To limit settlement authority as Mr. Settlemire indicates would seem to otherwise limit the Board settlement authority, even to its employees, to just \$20,000. That part I don't agree with.

Perhaps even a larger question is whether the above section (GC 935.4) limits settlement to no more than \$50,000, leaving part of the Resolution (the settlement provisions above \$50,000) suspect. So, while I do not agree with Mr. Settlemire's limit of \$20,000 in authority, the part of the Resolution which grants authority to settle claims over \$50,000 seems to me to raise the real issue.

I firmly believes that under the Joint Powers Law, what the board can do itself, it can delegate to another entity formed pursuant under the Joint Powers law. So notwithstanding section 935.4, or 31000.8, it seems to me it is really an interpretation of the Joint Powers law that is the determining factor. I would refer you to the governing documents of the Trindel JPA regarding what it provides about settlement of claims. I believe Article VI of the JPA provides that the JPA itself has the power to settle claims. (I might have an outdated copy – I worked on amendments for Don Hemphill a few years ago, but don't know if any changes were made.) This raises the question whether that power is limited by the Government Code sections noted above, or grants Trindel the same authority as the Board of Supervisors of its respective members might have. If the Board can settle any claim, then it seems it can grant that power to the JPA it is a member of, subject to any limitations set forth in the agreement or any other governing document. I have reviewed the issue related to delegation to a JPA and do not believe Plumas or any member county is prohibited from granting Trindel the same power it has regarding settlement.

All this is to say, this seem a close call. I believe that either there is a \$50,000 limit, or the power to settle is the same as the Board of its respective members is, which is unlimited. Finally, one could argue that it is really not the Trindel JPA that is settling the claim, but it is delegated to an employee, thus triggering the \$50,000 limit. Circular right?

Why don't you run my thoughts by Mr. Settlemire and see if he thinks I'm on the right track. Then perhaps we can hash out if it is \$50,000 as the limit, no limit or his \$20,000 limit. I didn't know how soon you needed an answer so that's why I'm giving you my "down and dirty" preliminary opinion. As I said, I think this is a complicated issue.

Hope this makes sense, and doesn't seem like a lot of lawyer "talk."

Finally, I don't know whether you want to treat this as an "attorney client communication" but I assume you will need to share this, and I am ok with that.

Steve Underwood

**From:** David Nelson [mailto:dnelson@trindel.org]  
**Sent:** Friday, June 15, 2012 12:20 PM  
**To:** Stephen Underwood  
**Subject:** FW: Settlement Authority Resolution [Plumas CoCo #12-252]

Hello again Stephen

I need some help with Mr. Settlemire question. Please see the email below. GC 31000.8 does not seem to matchup with how we have set up the JPA.

David Nelson  
Executive Director

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**From:** Settlemire, Craig [mailto:CSettlemire@countyofplumas.com]  
**Sent:** Friday, June 15, 2012 11:27 AM  
**To:** David Nelson  
**Cc:** Bonnett, Pat; Cortez, Liz; Simpson, Lori  
**Subject:** FW: Settlement Authority Resolution [Plumas CoCo #12-252]

David:

At Pat Bonnett's request, I am reviewing the attached Resolution prior to its submittal to the Plumas County Board of Supervisors.

The Resolution cites as Government Code section 31000.8 as the Board's authority to delegate settlement authority in worker's compensation cases to the contracted claims administrator. However, section 31000.8 appears to limit that authority to \$20,000 in any 30-day period:

The contract may provide that the contracting firm may reject, settle, compromise and approve workers' compensation, and public liability and employee health and welfare benefit claims against the county, its officers or employees, **within such limits and for such amounts as the board of supervisors may specify**, and may provide that the contracting firm may execute and issue checks in payment of such claims, which checks shall be payable only from a trust fund which may be established by the board of supervisors. Funds in the trust fund established by the board pursuant to the provisions of this section shall not exceed a sum sufficient to provide for the settlement of claims for a 30-day period as determined by the board of supervisors or the sum of twenty thousand dollars (\$20,000), whichever is larger, at any one time.

Cal Gov Code § 31000.8

While the clause highlighted in green does not state a limit, the subsequent payment provision limits payments to not more than \$20,000 per month from funds held in a trust fund.

The proposed Resolution provides for settlement authority to Trindel up to a 25% rating, which currently equates to \$26,650.00; authority to Trindel *plus* the County Risk Manager equivalent to \$62,387.50; and C&R authority to Trindel *plus* the Risk Manager of \$30,000. G.C. sec. 31000.8 also appears to limit the authority of county employees to the same amounts:

In lieu of, or in addition to, contracting for the services described in this section, the board of supervisors may authorize a county employee to perform any or all of the services and functions which the board may contract for under the provisions of this section.

Cal. Gov Code § 31000.8

I haven't researched this in depth, so I am open to considering other interpretations of this statute or other applicable law.

Thank you for your attention to this matter.

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**From:** Bonnett, Pat  
**Sent:** Friday, June 15, 2012 10:21 AM  
**To:** Settlemire, Craig  
**Cc:** Simpson, Lori; Cortez, Liz  
**Subject:** FW: Settlement Authority Resolution

Here you go

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**From:** David Nelson [<mailto:dnelson@trindel.org>]  
**Sent:** Tuesday, May 22, 2012 10:29 AM  
**To:** Chester Robertson ([chesterrobertson@co.modoc.ca.us](mailto:chesterrobertson@co.modoc.ca.us)); James M. Arkens ([jarkens@mono.ca.gov](mailto:jarkens@mono.ca.gov)); [jyoung@co.del-norte.ca.us](mailto:jyoung@co.del-norte.ca.us); Simpson, Lori; Michelle McLelland ([mmclelland@alpinecountyca.gov](mailto:mmclelland@alpinecountyca.gov)); Peggy Scroggins ([pscroggins@countyofcolusa.org](mailto:pscroggins@countyofcolusa.org)); Rich Inman ([rinman@cao.co.san-benito.ca.us](mailto:rinman@cao.co.san-benito.ca.us)); Richard Egan ([regan@co.lassen.ca.us](mailto:regan@co.lassen.ca.us)); Van Maddox ([auditor@sierracounty.ws](mailto:auditor@sierracounty.ws)); Wendy Tyler ([wtyler@trinitycounty.org](mailto:wtyler@trinitycounty.org)); 'Darcy Locken'; Denise Carter ([dcarter@countyofcolusa.org](mailto:dcarter@countyofcolusa.org)); Jacki Credico ([credico@cao.co.san-benito.ca.us](mailto:credico@cao.co.san-benito.ca.us)); Pamela Knorr ([pknorr@alpinecountyca.gov](mailto:pknorr@alpinecountyca.gov)); Peter Huebner ([peter4actions@gmail.com](mailto:peter4actions@gmail.com)); [rsherman@mono.ca.gov](mailto:rsherman@mono.ca.gov); Montgomery, Shawn; [spourian@trinitycounty.org](mailto:spourian@trinitycounty.org); Martin Nichols; Bonnett, Pat  
**Cc:** Lisa Mitchell; Lacy Cusmano  
**Subject:** Settlement Authority Resolution

Hello all

As we discussed very quickly at the meeting, it is very important that we get settlement authority established for the JPA to be compliant and effective.

Attached is the sample resolution that we discussed at the board meeting. Please have your board approve and forward a copy to my attention.

The resolution is split into two parts Stipulations and Compromise and Release.

**Stipulations**

25% rating and under Trindel  
25% to 50% Trindel and County Risk Manager  
50% and higher will need Board approval

**Compromise & Release**

5,000.00 and under Trindel  
5,000.00 to 30,000.00 Trindel and County Risk Manager  
30,000.00 and higher will need Board approval

If you have any questions please do not hesitate to call and discuss.

David Nelson  
Executive Director



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