

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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ENTERED <u>1/20/12</u>
FILED
JAN 20 2012
CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA BY <u>HLS - #152</u> DEPUTY

11 UNITED STATES BANKRUPTCY COURT

12 SOUTHERN DISTRICT OF CALIFORNIA

13 In re) Case No. 10-14968-PB7
14) Adv. No. 10-90406
15 WEST COAST INTERVENTIONAL)
16 PAIN MEDICINE INC., a)
17 California Corporation,) ORDER ON ZENITH INSURANCE
18 Debtor.) COMPANY'S MOTION TO DISMISS
19)
20)
21 WEST COAST INTERVENTIONAL)
22 PAIN MEDICINE, INC.; and)
23 P. KEVIN BARKAL, M.D.,)
24)
25 Plaintiffs,)
26)
27 v.)
28)
29 ZENITH INSURANCE COMPANY,)
30 INC.,)
31)
32 Defendant.)
33)

34 West Coast Interventional Pain Medicine, Inc. and Dr. Barkal
35 entered into a confidential settlement agreement with Zenith
36 Insurance. The plaintiffs now claim the agreement was breached
37 by Zenith.

1 At the center of the dispute are the plaintiffs' claims that
2 Dr. Barkal and West Coast are parties to the settlement
3 agreement. In doing so, they blur the identities of two West
4 Coast entities. One is known as West Coast California, which is
5 the debtor here and was a party to the settlement agreement. The
6 other is known as West Coast Indiana, which was not even formed
7 when the settlement agreement was reached.

8 The Court has reviewed the confidential settlement
9 agreement, maintained by the Court. From it, the Court finds
10 and concludes that as to Dr. Barkal the agreement has been fully
11 performed, so there is no basis for any claim by him. As to
12 West Coast California, it is clear its license to operate as a
13 company and its capacity to sue has been suspended. Community
14 Elec. Service of Los Angeles, Inc. v. Nat'l Elec. Contractors
15 Ass'n, Inc., 860 F.2d 1235 (9th Cir. 1989).

16 To the extent plaintiffs claim West Coast Indiana is the
17 plaintiff, the complaint would be dismissed because, as noted,
18 West Coast Indiana is not a party to the settlement agreement,
19 nor had it even been formed at the time. Moreover, even if it
20 was a party, it is not a debtor here and there is no basis for
21 this Court's exercise of jurisdiction over a suit by a non-debtor
22 entity against another non-debtor entity, Zenith Insurance.

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1 For the foregoing reasons, Zenith's motion to dismiss the
2 First Amended Complaint is granted. Last time, the Court granted
3 plaintiffs the opportunity to amend. After consideration of the
4 instant motion, it does not appear plaintiffs can set out a set
5 of facts which, in light of both the parties and the terms of the
6 settlement agreement, could set out a cause of action, much less
7 one that could properly be filed before this Court.
8 Consequently, leave to further amend is denied.

9 IT IS SO ORDERED.

10 DATED: JAN 20 2012

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13 PETER W. BOWIE, Chief Judge
14 United States Bankruptcy Court
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