

## **NO EVIDENCE THAT TIME PHYSICIAN IS LIABLE FOR AIDING AND ABETTING INSURER'S ALLEGED BAD FAITH**

January 28, 2010 | Law Alerts, News

*Federico v. Maric*

Ct. Appeals, Div. One, January 28, 2010

Authored By The [JSH Appellate Team](#)

In April 2005, Plaintiff suffered a back injury at work. He received brief treatment at MBI Industrial Medicine ("MBI") through his worker's compensation insurance which was provided by Liberty Mutual. A year later, Plaintiff complained that he re-aggravated his injury at work. MBI found a high probability of permanent impairment. Liberty Mutual accepted the injury as part of the April 2005 injury and allowed Plaintiff to receive limited treatment.

The next month, Plaintiff suffered a work-related injury to his knee. Liberty Mutual asked MBI to obtain an independent medical examination ("IME") of Plaintiff. Dr. Maric conducted the examination. Dr. Maric found no objective evidence of physical injury or pain and suggested Plaintiff was malingering. Liberty Mutual denied Plaintiff's worker's compensation claim. Plaintiff sued Dr. Maric, alleging that he aided and abetted Liberty Mutual's bad faith in denying Plaintiff's claim. The trial court granted summary judgment for Dr. Maric.

The court of appeals affirmed. To show that Dr. Maric aided and abetted Liberty Mutual in committing bad faith, Plaintiff had to prove the following elements: (1) the primary tortfeasor must commit a tort that causes the plaintiff injury; (2) the defendant must know the primary tortfeasor's conduct constitutes a breach of duty; and (3) the defendant must substantially assist or encourage the primary tortfeasor in the achievement of the breach.

The court held that, even assuming the truth of Plaintiff's alleged facts – that Dr. Maric performed an inadequate medical examination, knew that his report would adversely affect the outcome of Plaintiff's worker's compensation claim, and holds a personal belief that most patients he sees for IMEs are imagining or exaggerating their pain – there was no evidence that Dr. Maric knew of Liberty Mutual's intent or propensity to act in bad faith. Additionally, under the facts alleged, no reasonable jury could find evidence of a strategy to assist Liberty Mutual in acting in bad faith.