S175907

SUPREME COURT COPY

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff-Repondent,

v.

INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY,
Defendant-Appellant.

After a Decision by the Court of Appeal,
Second Appellate District, Division Three
Case No. B208691 (L.A. Sup. Ct. No. SJ0969)

OPENING BRIEF ON THE MERITS

OFFICE OF THE COUNTY COUNSEL
RALPH L. ROSATO, Assistant County Counsel
BRIAN T. CHU, Principal Deputy County Counsel
State Bar No. 161900
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012-2713
Tel: (213) 974-1956
Fax: (213) 687-8822
E-mail: BChu@counsel.lacounty.gov

Attorneys for Plaintiff-Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA (Acting through COUNTY OF LOS ANGELES)

AMENDED

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

S175907 - PEOPLE v. INDIANA LUMBERMENS MUTUAL INSURANCE

Full Name of Interested Entity/Person	Party / Non-Party		Nature of Interest
COUNTY OF LOS ANGELES	[X]	[ ]	Judgment Plaintiff
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	

Submitted by:

Brian T. Chu
Principal Deputy County Counsel
Office of the Los Angeles County Counsel
5020 W. Temple Street, Rm. 606
Los Angeles, CA 90012
(213) 974-1956
BChu@counsel.lacounty.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

I. SUPREME COURT'S SPECIFICATION OF ISSUE

After the Court of Appeal reversed an order denying a motion to vacate a bail bond forfeiture and to set aside summary judgment, this Supreme Court on October 21, 2009 granted review on the following issue:

> "When a criminal defendant is surrendered into custody or arrested in another county within 180 days of the date of notice that the bail bond has been forfeited, does Penal Code section 1305 require the surety on the bond to file its motion to vacate the forfeiture and exonerate the bond within that period of 180 days in order to obtain relief?"

II. SUMMARY OF ARGUMENT

Timing is everything. With bail bond forfeitures this is especially true. *Penal Code* section 1305[1] establishes the rules by which the courts, and bail bond sureties and their agents, must adhere in enforcing and setting aside bail forfeiture orders. As with many statutes enacted by the Legislature, section 1305 has been revised several times over the past two decades. This case presents an opportunity for this Supreme Court to clarify a procedural rule for the courts and sureties in sureties' attempts to set aside forfeiture orders under section 1305, subdivision (c)(3).

---

[1] All further statutory references are to the *Penal Code* unless otherwise specified. Unless otherwise specified, subdivisions refer to subdivision (c) of *Penal Code* section 1305.

Defendant-Appellant, INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY (hereinafter, LUMBERMENS), through its agent, issued a bail bond for the release of criminal defendant Robert Laimbeer. The bail bond was ordered forfeited when Laimbeer failed to appear at a required hearing in Los Angeles Superior Court. Approximately three months later, Laimbeer was arrested in San Bernardino County on unrelated charges and additionally held for the underlying charges in the Los Angeles Superior Court. He was later sentenced to state prison on the unrelated charges and did not return to Los Angeles. The 180-day period within which LUMBERMENS could have set aside the bail forfeiture order expired and a judgment in favor of the Plaintiff-Respondent, PEOPLE, was entered on the forfeited bond. In a last-ditch attempt to avoid its obligation, LUMBERMENS moved to set aside the judgment contending that it could move to set aside the bail forfeiture order at any time under subdivision (c)(3).

The Second Appellate District in *People v. Ranger Ins. Co.* (hereinafter, *Ranger*) (2006) 141 Cal.App.4th 867 held that a motion to vacate a bail forfeiture under section 1305, subdivision (c)(3) may be filed at any time, even beyond the expiration of the 180-day appearance period. In stark contrast, the Third Appellate District in *People v. Lexington National Ins. Co.* (2007) 158 Cal.App.4th 370 (hereinafter, *Lexington*), held the opposite – that the surety must file a timely motion to set aside a bail

forfeiture under the grounds set forth under subdivision (c)(3). Here, the fact pattern is identical those in *Ranger* and *Lexington*.

An analysis of the historical derivation of subdivision (c) reflects support for the *Lexington* rule. While trial courts are mandated to order under subdivisions (c)(1) and (c)(2), on their own motion, to set aside a bail forfeiture order if the defendant re-appears in court or is surrendered to custody in the same court or same county within the 180-day period, the same explicit requirement is not found in subdivision (c)(3). The statutory history reflects that the Legislature intended to have sureties file motions within the 180-day period if grounded on subdivision (c)(3). In 1999, however, that portion of subdivision (c) which mandated the timely filed motion was renamed as subdivision (i) within the same section 1305. With this history in mind, it is clear that subdivision (c)(3) motions are required to be filed within the 180-day period.

Further, the concern that the government would receive an improper windfall if the *Lexington* rule were to apply is unfounded. From a practical basis, there will always be a windfall to the government whether or not the defendant is in custody before or after the 180-day period. The real issue is how sureties will act if the *Ranger* rule is applied. *Ranger* will motivate sureties to sit back and hope that bail-jumping defendants will be found by other law enforcement officers. In so doing, sureties can take a calculated risk and refrain from spending their own financial resources in finding

these defendants. If the *Ranger* rule is followed, absurd results would also follow.

III. STANDARD OF REVIEW

This case presents a pure question of law subject to independent review by this Supreme Court. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) In particular, this Supreme Court is asked to determine the proper interpretation of section 1305, subdivision (c)(3), which was addressed in the trial court and Court of Appeal below. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 221.) "We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citation.] If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we ' "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd

consequences." ' [Citation.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.)

Furthermore, to the extent that uncertainty remains in interpreting statutory language, consideration should be given to the consequences that will flow from a particular interpretation. The court should not parse each literal phrase of a statute if doing so contravenes the obvious underlying intent, or leads to absurd or anomalous results. (*People v. Adames* (1997) 54 Cal.App.4th 198, 212.)

Finally, this Supreme Court independently reviews the undisputed facts as applied to the interpreted statute. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.)

IV. STATEMENT OF THE FACTS

The facts of this case are undisputed. By criminal complaint filed on January 18, 2005, Robert Laimbeer was charged in Los Angeles Superior Court with violating *Vehicle Code* sections 14601.1, subdivision (a) (driving with a suspended drivers license) and 16028, subdivision (a) (no proof of vehicle insurance). (CT, p. 1.) Though Laimbeer was initially released from custody on his own recognizance ("OR status"), his OR status was revoked because of repetitive failures to appear in court without a sufficient excuse and a bench warrant was issued for his arrest. (CT, p. 1.)

Subsequently, Laimbeer was arrested on the outstanding warrant and on March 17, 2007 LUMBERMENS issued a bail bond through its agent in the amount of $35,000 for his release. (CT, pp. 2-3.) The bail bond stated, in pertinent part:

> "[LUMBERMAN] hereby undertakes that the above named defendant will appear in the above-named court on the date above set forth to answer any charge in any accusatory pleading ... and if convicted, will appear for pronouncement of judgment or grant of probation, or if he/she fails to perform either of these conditions, that [LUMBERMENS] will pay to the people of the State of California, the sum of [$35,000]. [¶] If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith against [LUMBERMENS] for the amount of its undertaking herein, as provided by Sections 1305 and 1306 of the California Penal Code." (CT, p. 4.)

Following his release, Laimbeer was required to appear in Los Angeles Superior Court for arraignment on the *Vehicle Code* violations on April 18, 2007. (CT, p. 4.) However, Laimbeer failed to appear in court on that date and without a sufficient excuse. (CT, p. 3.) The court, therefore, ordered the bail forfeited (CT, p. 2) and a bail forfeiture notice was mail served to LUMBERMENS and its agent on the same date (CT, p. 15).

The 180-day appearance period deadline within which LUMBERMENS or its agent was to either surrender Laimbeer to custody, or file a motion to toll or extend the time for such appearance (§§ 1305,

subd. (g), 1305.4) or set aside the forfeiture order (§ 1305, subd. (i)), was October 21, 2007.[2] (CT, p. 15.)

On July 16, 2007, almost three months after bail was ordered forfeited, Laimbeer was arrested in San Bernardino County on narcotics-related charges, i.e., *Health and Safety Code*, section 11351. (CT, p. 17.) He was additionally held on the outstanding bench warrant previously issued by the Los Angeles Superior Court for his failure to appear at the April 18, 2007 arraignment. (CT, p. 19.) On or about September 5, 2007, Laimbeer was transferred to state prison from San Bernardino Sheriff's Department custody. (CT, p. 19.) The record fails to reflect any attempt by LUMBERMENS or its agent to make a motion to either set aside the bail forfeiture order or to toll or extend the time for surrender or appearance. Furthermore, the record fails to reflect any attempt by LUMBERMENS or its agent to locate Laimbeer during the 180-day appearance period. The only reference in the record of an attempt to locate Laimbeer is a declaration executed by LUMBERMENS attorney, Marc D. Chasman, stating that he called the California Correctional Institution in Tehachapi on

---

[2] The 180-day period provided under section 1305 within which the defendant is to return to custody is extended five days when the notice of bail forfeiture is mailed. (§ 1305, subd. (b).) The 185th day after the bail forfeiture notice was mailed was Sunday, October 20, 2007. (See *Code Civ. Proc.*, § 12a.)

December 7, 2007 and found that Laimbeer was incarcerated at that facility. (CT, 13:9-12.)

V. STATEMENT OF THE CASE

On December 4, 2007, summary judgment was entered on the forfeited bond. (CT, p. 7.) On January 2, 2008, LUMBERMENS filed a motion to vacate summary judgment, vacate forfeiture and exonerate bond under the authority of section 1305, subdivision (c)(3). (CT, pp. 8-24.) LUMBERMENS contended that, because Laimbeer was arrested on the underlying case within the 180-day period, a motion to set aside the summary judgment and the bail forfeiture could be filed at any time, even after the expiration of the 180-day period. (CT, 11:1-12:2.) It cited and relied on *Ranger*, *supra*, 136 Cal.App.4th 135, a decision rendered in the Second Appellate District.

In opposition, COUNTY contended that the court did not have jurisdiction to do anything other than enter summary judgment once the 180-day period had expired without the bail forfeiture order being set aside. (CT, 26:22-30:13.) COUNTY cited and relied on *Lexington*, *supra*, 158 Cal.App.4th 370, a decision rendered in the Third Appellate District subsequent to *Ranger*. (CT, 28:8-29:17.) COUNTY argued that *Ranger* and *Lexington* directly conflicted with each other and that the trial court was free to choose to follow either of the decisions, regardless whether or

not its adopted position was consistent with its own district. (CT, 29:18-23.)

On May 23, 2008, the trial court denied LUMBERMENS' motion. (CT, p. 43.) On June 13, 2008, LUMBERMENS filed a Notice of Appeal from the order denying its motion to vacate the summary judgment and forfeiture. (CT, p. 44.)

On July 21, 2009, Division Three of the Second Appellate District reversed the trial court's order in a published opinion. The Court of Appeal recognized that there was a split of appellate authority with respect to the time by which a surety must file a motion to vacate forfeiture and exonerate bond if the criminal defendant is arrested outside of the county in which the underlying case is filed. On October 21, 2009, this Supreme Court granted review on the issue of whether sureties are required to file motions to set aside bail forfeiture orders within the 180-day period when the criminal defendant is surrendered to custody or arrested in another county within the 180-day period.

VI. A HISTORY OF SECTION 1305, SUBDIVISION (C)

A. Basic Principles of Bail Statutes

The appellate courts often remind us of the principles governing the bail statutes. To wit, the law traditionally disfavors forfeitures and this disfavor extends to bail forfeitures. (*People v. United Bonding Ins. Co.*

(1971) 5 Cal.3d 898, 906.) In bail matters, there should be no element of revenue to the state nor punishment of the surety. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal. 4th 653, 657-658.) Section 1305 must, therefore, be strictly construed in favor of the surety to avoid the harsh results of forfeiture. (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 538, 542-543; *County of Los Angeles v. Ranger Ins. Co.* (1999) 70 Cal.App.4th 10, 16.)

It must not be forgotten, however, that "[t]he object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court." (*People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at p. 657.) " '[A] bail bond is a contract between the surety and the government whereby the surety acts as a guarantor of the defendant's appearance in court under the risk of forfeiture of the bond.' [Citation.] Thus, when there is a breach of this contract, the bond should be enforced. [Citation.]" (*Id.*) A surety should not simply wait in anticipation for the criminal defendant, whose failure to appear at a court hearing prompted the bail bond forfeiture order, to appear voluntarily or to be arrested by law enforcement officers in order to obtain an order vacating the forfeiture. The surety voluntarily undertakes a risk that a criminal defendant will fail to appear at a court hearing in exchange for receiving a premium and posting a bond. It cannot, and should not, be

allowed to avoid its obligations under the bond while failing to timely act on behalf of its own financial interests.

While there is a tendency for courts to swing in favor of the sureties to avoid the harsh results of forfeiture, this Supreme Court can find a way to balance the sureties' interests against the need to have criminal defendants obey court orders and protect the public from those who would fail to comply with orders.

B. The Evolution of Section 1305, Subdivision (c)

In 1990, section 1305 provided for specific circumstances under which a bail forfeiture could be set aside (in relevant part):

> "But, if at any time within 180 days after the entry in the minutes or, if mailing of notice of forfeiture is required, within 180 days after mailing the notice of forfeiture, the defendant appears and satisfactorily excuses the defendant's neglect or shows to the satisfaction of the court that the absence of the defendant was not with the connivance of the bail, the court shall, under terms as may be just and that are equal with respect to all forms of pretrial release, direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately. The court may order the bail reinstated and the defendant released again on the same bond after notice to the bail, provided that the bail has not surrendered the defendant. If, at any time within 180 days after the entry in the minutes or mailing, as the case may be, the bail should surrender the defendant to the court or to custody, the court shall, under terms as may be just, direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately.
>
> ...

"Unless waived by the district attorney, other prosecuting attorney, or county counsel, as the case may be, no order discharging the forfeiture of the undertaking or deposit shall be made without notice by the bail to the district attorney, prosecuting attorney, or county counsel, as specified by the board of supervisors after consultation with the county counsel and the district attorney, who may request a hearing within 10 days after receipt of the notice. The notice may be given by the surety insurer, its bail agent, the surety, or the depositor of money, any of whom may give the notice and appear either in person or by an attorney. The court shall then set the date, time, and place of hearing and give notice to the district attorney, prosecuting attorney, and county counsel and to the bail. The district attorney, prosecuting attorney, or county counsel, as the case may be, shall recover the costs incurred in successfully opposing a motion to discharge the forfeiture of the undertaking or deposit prior to the division of the forfeited bail money between the cities and the county in accordance with Section 1463. The costs shall be recovered from the forfeited bail money." (See *Stats.* 1990, ch. 1073.)

Under this version of section 1305, no order vacating a bail forfeiture could be made unless the district attorney, prosecuting attorney, or county counsel was provided notice of such contemplated action. The district attorney, prosecuting attorney, or county counsel could then request a hearing to oppose the motion.

In 1993, Assembly Bill 734 repealed section 1305 and enacted a re-worked section 1305 with a subdivision (c) that provided, in relevant part, as follows:

"(c) If the defendant appears in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms

that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

[¶] Additionally, if the defendant is surrendered to custody or to the court by the bail within the 180-day period, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

[¶] In all other cases, an order vacating the forfeiture shall not be made without 10 days' prior notice by the bail to the applicable prosecuting agency, unless notice is waived by the agency. The notice may be given by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause.

[¶] In lieu of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:

(1) The bail is given prior notice of the reinstatement.

(2) The bail has not surrendered the defendant."

(See *Stats.* 1993, ch. 524.)

The 1993 enactment provided that if the defendant either appeared in court, or was surrendered into custody or to the court within the 180-day period, the court *on its own motion* was to set aside the forfeiture and exonerate the bond. "In all other cases," the surety seeking to vacate the forfeiture order was required to file a motion within the 180-day period with 10 days notice to the prosecuting agency (unless waived). The motion

could be heard up to 30 days after the expiration of the 180-day period. Thus, except for the clearly defined circumstances in which the trial court was required to act on its own motion, the Legislature contemplated that the surety or its authorized agent would file a motion to vacate forfeiture within the 180-day period.

On September 19, 1994, the Legislature amended section 1305 under Assembly Bill 3059, and made additional changes relevant to a defendant's appearance in court within the 180-day period, either as a result of being surrendered to custody by the bail or arrest in the underlying case. As amended (in italics), subdivision (c) provided:

> *(1)* If the defendant appears *either voluntarily or in custody after surrender or arrest* in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion *at the time the defendant first appears in court on the* case *in which the forfeiture was entered*, direct the order of forfeiture to be vacated and the bond exonerated. *If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated.* An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.
>
> *(2) If, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately*

vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(3) If, outside the county where *the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.*

(4) *Except as provided* in *paragraphs (1) and (2), the court, in its discretion, may require that the bail provide 10 days' prior notice to the applicable prosecuting agency, as a condition precedent to vacating the forfeiture.* The notice may be given by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration o the 180-day period. The court may extend the 30-day period upon a showing of good cause...."

(See *Stats.* 1994, ch. 649, § 1.)

The changes to subdivision (c) "require[d] the court, on its own motion and at the time the defendant first appears in court on the case in which the forfeiture was entered, to direct the order of forfeiture to be vacated and the bond exonerated. The bill would further require the court, with respect to a defendant surrendered to custody by the bail or arrested in the underlying case within a specified period, on its own motion, to direct the order of forfeiture to be vacated and the bond exonerated if either (1) the defendant is surrendered or arrested *within the county* where the case is located and is subsequently released from custody prior to an appearance in court, or (2) the defendant is surrendered or arrested *outside the county*

where the case is located. [¶] This bill also would provide that if the court fails to so direct the order of forfeiture to be vacated and the bond exonerated on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated." (Legis. Counsel's Dig., Assem. Bill No. 3059 (1993-1994 Reg. Sess.) (emphasis added); Stats. 1994 ch. 649, § 1, p. 3133.) As correctly observed by the Court of Appeal, the Legislative Counsel's Digest does not square with the express words of the statute. (*People v. Ranger Ins. Co.* (2006) 141 Cal.App.4th 867, 870-871.) The plain words of the statute, however, are unambiguous and are the sole source of the legislative intent. (*Id.*, at p. 871.) Thus, a trial court was not required under subdivision (c)(3) to act on its own motion to set aside forfeiture if the defendant was surrendered to custody or arrested *outside* the county for the underlying charges.

Moreover, under subdivision (c)(4), the Legislature clearly intended to require that a motion be filed within the 180-day period, which could be heard within 30 days after the expiration of the appearance period. Within the context of subdivisions (c)(1) and (c)(2), it is obvious that the requirement of filing a motion was inapplicable because the trial court was required to act on its own motion or, in any event, the forfeiture would automatically be set aside and the bond exonerated if the trial court failed to act. The filing of a motion by the surety, therefore, was a prerequisite for an order vacating forfeiture on grounds stated under subdivision (c)(3).

Otherwise, the notice provisions of subdivision (c)(4) would be meaningless.

In 1999, the Legislature amended subdivision (c) by removing the relevant portion of subdivision (c)(4) and renumbering the substance of the provision as subdivision (i):

> "A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. The court, in its discretion, may require that the moving party provide 10 days prior notice to the applicable prosecuting agency, as a condition precedent to granting the motion." (Stats. 1999, ch. 570, § 2.)

The amendment provided "that a motion to vacate a forfeiture of bail that is filed within the 180-day period, may be heard within 30 days of the expiration of that 180-day period." (Legis. Counsel's Dig., Assem. Bill No. 476 (1999-2000 Reg. Sess.).) The amendment did not really amount to a substantive change, except to the extent that it was not readily apparent that subdivision (i) found its roots within subdivision (c). Most importantly, however, the historical requirement that the surety must file a motion for an order to set aside summary within the appearance period remained unchanged. Subdivisions (c)(1) through (c)(3) have remained unchanged since 1994.

VII. JUDICIAL INTERPRETATION OF SUBDIVISION (C)(3)

The first appellate case to address the issue of whether the surety must file its motion to vacate forfeiture within the 180-day period when the defendant is taken into custody outside of the county in which he was originally charged was *People v Ranger Ins. Co.*, *supra*, 141 Cal.App.4th 867 (hereinafter, *Ranger*).

In *Ranger*, the criminal defendant was arrested in Ventura County on drug-related charges. He was subsequently released on a bail bond issued by the surety. The defendant failed to appear at a court hearing and the trial court ordered the bail forfeited. A day later, the defendant was arrested in Santa Barbara County and held in a Santa Barbara County jail on the Ventura case. Although the defendant remained in custody, the surety did not move to exonerate the bond. After the expiration of the 180-day appearance period, summary judgment was entered on the forfeited bond. Approximately one week later, however, the surety moved to set aside the summary judgment, contending that subdivision (c)(3) required the court to exonerate the bond on its own motion. (*Ranger*, *supra*, 141 Cal.App.4th at p. 869.)

The surety argued that, because subdivisions (c)(1) and (c)(2) required the trial court to act on its own motion to set aside the forfeiture, that subdivision (c)(3) similarly required the trial judge to act on its own motion and vacate the forfeiture. The Second Appellate District court

reversed the trial court's denial of the surety's motion. First, the Court of Appeal disagreed with the surety's argument because it was clear that subdivisions (c)(1) and (c)(2) were similarly phrased to require the court to act on its own motion, whereas subdivision (c)(3) was not similarly phrased. (*Ranger*, *supra*, 141 Cal.App.4th at p. 870.) Nevertheless, while subdivision (c)(3) did not require the court to act on its own motion, neither did it expressly require the surety to file a motion to vacate forfeiture within the 180-day period: "What is significant here is that the defendant was in custody within 180 days of the notice of forfeiture.... [We can find no cases] where under these circumstances the court loses jurisdiction when the surety does not move to vacate the forfeiture within 180 days." (*Id.* at p. 871.)

A year and one-half later, the same fact pattern emerged in the Third Appellate District in *People v. Lexington National Ins. Co.*, *supra*, 158 Cal.App.4th 370 (hereinafter, *Lexington*). There, the defendant was released on a bail bond while being prosecuted in Yolo County and he subsequently failed to appear for sentencing. The trial court issued a bench warrant for his arrest and ordered the bail forfeited. Two days before the 180th day, the defendant was arrested in Sutter County and a hold was placed on him for the Yolo County case. The surety then moved to set aside the forfeiture order after the 180th day passed, under the authority of subdivision (c)(3). The trial court denied the motion and summary

judgment was entered against the surety on the forfeited bond. (*Id.*, at p. 372.)

In a lengthier opinion, the *Lexington* court declined to follow *Ranger* and held that subdivision (c)(3) required the surety to file a motion to vacate forfeiture within the 180-day period. Noting that "[c]ourts have consistently interpreted section 1305 as requiring that a surety move to have the forfeiture vacated within the 180-day period and have found that a court is without jurisdiction to vacate a forfeiture if a motion to vacate is not made within that period," (*id.*, at p. 373), it stated that *Ranger* is at odds with the plain language of section 1305 (*id.*, at p. 374). While *Ranger* admitted that such motions are required to be filed by the surety under subdivision (i), the Second Appellate District nevertheless held motions under subdivision (c)(3) were exempt from subdivision (i) requirements. (*Id.*) The *Lexington* court strongly disagreed, stating that "subdivision (i)'s reference to 'motions' generally strongly suggests that the Legislature intended that all motions to vacate the forfeiture ... be filed within the statutory period." (*Id.*, at p. 375.) Such an intent was also evidenced in section 1306, subdivision (a), which required the entry of a summary judgment following the expiration of the 180-day period, indicated the Legislature's intent to have motions filed before the expiration of the 180-day period. (*Id.*)

VIII. INTERPRETING SUBDIVISION (C)(3)

From a strict reading of subdivision (c)(3), it would appear that a timely filed motion is not required of the surety. Both *Ranger* and *Lexington*, concede that a literal reading of the statute supports such a conclusion. (*Ranger*, *supra*, 141 Cal.App.4th at p. 871; *Lexington*, *supra*, 158 Cal.App.4th at p. 374.) But as this Supreme Court previously stated:

> "[T]he 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. [Citations.] An interpretation that renders related provisions nugatory must be avoided [citation]; each sentence must be read not in isolation but in the light of the statutory scheme [citation]; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed [citation]." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

In *People v. Accredited Surety & Casualty Co.* (2004) 132 Cal.App.4th 1134, the criminal defendant failed to appear at a required court hearing and his bail was forfeited. He was later discovered to have been arrested in another state within the 180-day period. The surety moved to set aside the bail forfeiture under subdivision (c)(3) on the basis that the

defendant's arrest in another state was also "outside the county where the case is located" – the Court of Appeal held otherwise. (*Id.*, at p. 1143.) The appellate court affirmed the denial of the surety's motion because stating:

> "If forfeiture is available under section 1305, subdivision (c)(3) whenever a defendant is arrested anywhere outside of the county, other portions of section 1305 become meaningless. For example, subdivision (f) grants relief from forfeiture when 'a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant ... .' *If relief is available simply by virtue of defendant being arrested outside the county where the case is located, as provided in subdivision (c)(3), subdivision (f) serves no purpose; relief could be provided under subdivision (c)(3) without requiring the additional step of establishing that the prosecutor elected not to extradite.*"
>
> (*People v. Accredited Surety & Casualty Co.*, *supra*, 132 Cal.App. 4th at p. 1144 (emphasis added).)

Accredited Surety & Casualty Co. stands for the proposition that the courts should not look at individual provisions of statutes in a vacuum. By broadly construing a statute without the context of its history and evolution, one may inadvertently render other related statutes meaningless.

IX. THE GOVERNMENT DOES NOT RECEIVE AN IMPROPER WINDFALL UNDER *LEXINGTON*

The court below aligned itself with the *Ranger* in large part because of its deference to the principle that the government should not gain an

improper windfall from the forfeiture while having Laimbeer in custody, albeit in another county. However, the conclusion that the forfeiture results in an improper windfall[3] is undeserved. As long as the court and the surety adhere to the provisions of section 1305, monies received from forfeited bonds should not be characterized as "improper."

Here, the fact pattern includes a defendant whose bond was forfeited and who is arrested outside of the county in the underlying case within the 180-day period. No motion was filed by the surety by the 180th day to either to set aside the forfeiture or to extend the 180-day period. Summary judgment is entered on the forfeited bond almost 1-1/2 months after the 180th day. Under this fact pattern, the government receives a windfall.

In a second fact pattern, a defendant is arrested outside of the county in the underlying case *one day after* the 180-day period expires. No motion was filed by the surety within the 180-day period to either set aside the forfeiture or to extend the 180-day period. Summary judgment is entered on the forfeited bond almost 1-1/2 months after the 180th day. Under this

---

[3] That the government receives substantial sums of money for the failure of a defendant to comply with court orders resulting in a forfeiture of bond, regardless of whether the court and/or surety complies with the provisions of section 1305, can arguably be characterized as a windfall. A windfall is defined as "an unexpected gain, piece of good fortune, or the like." (*Webster's Unabridged Dictionary* (Portland House, Ltd. 1989), p. 1636.) The issue, however, is whether the government receives an *improper* windfall.

second fact pattern, the government receives a windfall identical to the first fact pattern – the forfeiture of the bond.

The only difference between the two fact patterns is whether the defendant is arrested into custody *before* or *after* the 180th day. Yet, the result is the same – the government receives the bond amount *plus* it has the defendant in custody. From a practical perspective, is the windfall any different if the defendant is arrested before or after the 180th day? Of course not. Yet, the Legislature has seen fit to make the 180th day a deadline by which the defendant must be arrested or surrendered to custody in order for the surety to get the bail forfeiture vacated. To characterize the windfall as "improper" on the basis that any delay in setting aside the forfeiture order was merely related to the surety's filing of a motion is undeserved and does not effect the intent of the Legislature.

Indeed, the Legislature's enactment of the various bail statutes reflects an intent to enact time-driven requirements. A bail bond must be exonerated if a criminal complaint is not filed within 15 days after the date set for arraignment. (§ 1305, subd. (a); *People v. Ranger Ins. Co.* (2006) 145 Cal.App.4th 23.) If a written notice of bail forfeiture order is not mailed by the court clerk to the surety and its agent within 30 days after the order, the bond is exonerated. (§ 1305, subd. (b)(1).) If the defendant appears in court in the underlying case within 185 days after mailing of the bail forfeiture notice, the bond is exonerated. (§ 1305, subd. (c)(1).) If

there is a permanent or temporary disability that prevents the defendant from appearing in court, the surety must file a motion to vacate forfeiture or toll time, as applicable, within 185 days after the bail forfeiture notice is mailed. (§ 1305, subds. (d), (e).) A surety may move to extend the 180-day period by another 180 days if it makes such a motion before the 185th day. (§ 1305.4.) Examples of a time-driven statutory scheme go on and on. It is not unusual, indeed it would be expected, that the surety would be compelled under subdivision (c)(3) to adhere to a time-driven schedule and file an appropriate motion. Under *Ranger*, no such time deadline would exist.

X. *RANGER* ENCOURAGES SLOTH BY SURETIES

If sureties are allowed to follow *Ranger*, it may provide them with a disincentive to locate defendants whose bail has been forfeited. When a surety issues a bail bond for a defendant's release, it surely does not do so without considering its own loss history. Such factors as the amount of the bond, the alleged charges, the cost of hiring investigators and bail recovery agents in the event of forfeiture, are all part of the business of making bonds.

Employing business cost cutting measures, such as not hiring investigators or bail recovery agents, may still result in a profit to the surety as long as it has enough volume business on other "good" bonds to cover

small individual bond losses. This approach to bonds relies on the hope that the defendant will be recaptured by law enforcement officers who happen to run into the defendant within the 180-day period. If the surety comes upon information about the defendant's custody status two months or even two years after the summary judgment is entered, it will have spent nominal finances to set aside the judgment and recover its forfeited bond. In such a case, the surety will have not only received the benefit of the premium payment, but will have saved money by not hiring investigators or bail recovery agents and avoiding protracted litigation. As a practical effect, the surety is the party that obtains a windfall.

Conversely, following *Lexington* will encourage sureties to locate defendants. By motivating sureties to file motions to set aside their forfeited bail bonds on appropriate grounds, sureties will undertake to protect their vested financial interests by "owning" the investigation into the location of the defendant. While law enforcement officers may happen upon the defendant, the additional resources of the sureties' agents and investigators add to the potentiality of the defendant's recapture and return to the court.

XI. LUMBERMENS FAILED TO TIMELY FILE A MOTION TO VACATE THE BAIL FORFEITURE

LUMBERMENS issued a bail bond for the release of Laimbeer with the known and attendant risk that he could fail to appear at a hearing and

subject the bail bond to forfeiture, however small or large that risk may have been. When Laimbeer failed to appear and the bond was ordered forfeited, LUMBERMENS did nothing to look for Laimbeer.

Indeed, it was only after LUMBERMENS attorney called the California Correctional Institution in Tehachapi three days *after* summary judgment was entered on the forfeited bond, that it was discovered he had been arrested some nine months earlier in San Bernardino County. It was only one month after summary judgment was entered that LUMBERMENS did anything to set aside the bail forfeiture order and the judgment thereon.

The record speaks for itself about why *Lexington* should be followed. LUMBERMENS sat back and either intentionally or negligently waited to see if law enforcement would catch up with Laimbeer before the 180-day period. While law enforcement did catch up with Laimbeer in the 180-day period, LUMBERMENS exacerbated its failure to act by failing to even make phone calls or other means by which to determine whether law enforcement officers had Laimbeer in custody. LUMBERMENS could have contacted the San Bernardino Sheriff's Department as early as July 16, 2007 to determine his custody status. Five months went by before any action was taken. It is this type of behavior which section 1305 seeks to enjoin and that which is consistent with what the state can expect if this Supreme Court follows *Ranger*. Sureties should be encouraged to look for defendants who "jump bail" and be required to file motions to set aside

forfeiture orders within the 180-day period or duly ordered extensions of time.

XII. CONCLUSION

The statutory history and evolution of section 1305, subdivision (c) reflects the Legislature's intent that a surety must file a motion to set aside a bail forfeiture order within the 180-day period if the defendant is arrested or in custody within the 180-day period outside of the county which ordered the bail forfeited. A contrary ruling which allows such a motion to be filed at any time is not only contrary to the legislative intent, but would also motivate sureties to make decisions on apprehending defendants based more on luck and shrewd business practices rather than hard, honest work. Plaintiff respectfully submits that the ruling of the Court of Appeal should be reversed and *People v. Ranger Ins. Co.* (2006) 141 Cal.App.4th 867 be overruled.

DATED: November 20, 2009

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

By 

BRIAN T. CHU
Principal Deputy County Counsel

Attorneys for Plaintiff and Respondent,
THE PEOPLE OF THE STATE OF CALIFORNIA (Acting through COUNTY OF LOS ANGELES)

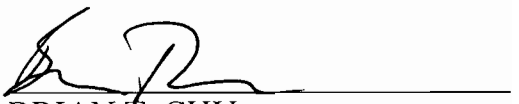
CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.360

The text of this document consists of 7,433 words as counted by the Microsoft Office Word 2003 program used to generate this document.

DATED: November 20, 2009

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

By 

BRIAN T. CHU
Principal Deputy County Counsel

Attorneys for Plaintiff and Respondent,
THE PEOPLE OF THE STATE OF CALIFORNIA (Acting through COUNTY OF LOS ANGELES)

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

That on November 20, 2009, I served the attached

OPENING BRIEF ON THE MERITS

upon Interested Party(ies) by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed ☐ as follows ☒ as stated on the attached mailing list:

(BY MAIL) by sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 20, 2009, at Los Angeles, California.

Jennifer Moon

Type or Print Name of Declarant
and, for personal service by a Messenger Service, include the name of the Messenger Service

Jennifer Moon

Signature

[Service List]

E. Alan Nunez, Esq.
Nunez & Bernstein
4836 North First Street, Suite 106
Fresno, California 93726

Second Appellate District Court
Division 3
300 South Spring Street
Los Angeles, California 90013

Honorable Richard Kemalyan
Department 79
Los Angeles Superior Court
5925 Hollywood Boulevard
Los Angeles, California 90026

Peter A. Botz, Esq.
Robert Tomlin White, Esq.
Toni L. Martinson, Esq.
Two Jinn, Inc.
1959 Palomar Oaks Way, Suite 200
Carlsbad, California 92011