

ASSOCIATION OF BUSINESS TRIAL LAWYERS

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REPORT

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STATEMENTS OF DECISION: YOUR CHANCE TO TELL AND PRESERVE THE STORY

PART I: THE BASICS



Hon. John L. Segal

Business litigators in California state court are increasingly waiving a jury, often in complex cases. Sometimes it's because of the subject matter of trial, sometimes it's because a court trial allows for more flexibility in scheduling. When, for whatever reason, your fact-finder is a judge, one of the final things he or she does before judgment is to issue a statement of decision that will be the basis of any appellate review of the judgment. Indeed, the trial court's statement of decision is often the first document an appellate judge reads, even before your brief.



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Too often, the preparation of the statement of decision goes through multiple rounds of objections, proposals, and revisions, as the losing party essentially tries to present a motion for a new trial, rather than focusing on the more limited purpose of a statement of decision.

But what is that purpose? What is a statement of decision, and do you want one?

The "what" seems simple enough. Under Code of Civil Procedure section 632, "[t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial." It's probably obvious that the reason the trial court issues a

statement of decision is to explain its decision to the Court of Appeal. But in practice it's not that simple.

This article explains the basics of the statement of decision process. Part II, in a later issue of the Report, will discuss strategy.

It's all about the appeal.

Statements of decision matter because of a core principle of appellate law: the doctrine of implied findings. "[I]n the absence of a statement of decision, an appellate court will presume that the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267.) In practical terms, this means that the appellate court must presume that the trial court resolved all factual disputes in favor of the prevailing party unless the statement of decision says otherwise. (There is an exception where the statement of decision fails to decide an issue or resolve an ambiguity, if the appellant brought the problem to the trial court's attention. (Code Civ. Proc., § 634.) We will discuss that in Part II.)

Consider this hypothetical: The trial court finds for the plaintiff, whose case depended on proving Fact X. Items A and B in evidence each independently establishes Fact X, and the trial court admitted both. But the court erred in admitting Item B because it was hearsay to which the defendant timely objected. On appeal, can the defendant obtain a reversal based on the erroneous admission of Item B? If there is no statement of decision, the Court of Appeal must presume that the trial court relied on the admissible Item A—so, judgment affirmed. But if in a statement of decision the court explains that it found Item A not credible and relied only on Item B, then its erroneous admission of Item B was prejudicial—judgment reversed. In short: Without a statement of decision, the plaintiff wins on appeal; with one, the defendant

wins.

The real world is, of course, a lot more complicated. But before we start in on those complications, we want to stress what a statement of decision is not.

For something that can occur in every bench trial, many lawyers (and even some judges) do not fully understand the statement of decision process. That's not surprising; the procedures governing the preparation of statements of decision are a little complicated. Indeed, trial judges take classes about those procedures.

A request for a statement of decision often looks like a lengthy set of interrogatories. Both sides make objections and submit lengthy briefs on the merits, as the losing party reargues the case and the winning party responds in kind. Occasionally, even the judge doesn't precisely follow California Rules of Court, rule 3.1590, which sets out the detailed procedures governing requests for and preparation of statements of decision. None of this activity furthers the goal of explaining the basis for the court's decision or helps the losing party avoid application of the doctrine of implied findings.

So our first recommendation is: Study rule 3.1590 closely at every step of the process—it contemplates multiple pathways—and appreciate the limited (but important) purpose of a statement of decision. The trial court will appreciate your focus, and so will the Court of Appeal.

Do you want a statement of decision?

From the discussion so far, it should be clear that, as a general proposition, the losing party always wants a statement of decision, and the winning party never does. But, as with all generalities, there are exceptions.

For one thing, the winning party can't control whether there is a statement of decision. Rarely does a judge issue something as simple as "plaintiff wins and shall recover \$X." Particularly in business cases, the court will almost always provide an explanation of its ruling. Many judges use the procedure in rule 3.1590(c)(4), which authorizes the court to announce its tentative decision (which it can do orally, see rule 3.1590(a)), and then "[d]irect that the tentative decision will become the statement of decision unless, within 10 days after announcement or service of the tentative decision, a party specifies those principal controverted issues as to which the party is requesting a

statement of decision or makes proposals not included in the tentative decision."

For another, there can be situations where, rather than risk leaving the matter to an appellate presumption, the winning party wants a statement of decision to make clear that the trial court actually considered and decided a particular issue.

Yet another reason the winning party may want a statement of decision is to take advantage of the fact that the statement of decision may be the only document in which the trial court has an opportunity to speak directly to the appellate court, and it is often the first document that an appellate judge reads. If there's going to be some statement of decision, the winning party should want to help the trial court make it as comprehensive and persuasive as possible. Participating in drafting the statement of decision is a way to make the trial court's decision stronger and more unassailable on appeal.

If you want it, can you get it?

Section 632 provides for statements of decision "upon the trial of a question of fact." (Code Civ. Proc., § 632.) This does not mean "upon the decision of a question of fact," because plenty of factual decisions don't trigger the right to a statement of decision. "The requirement of a written statement of decision generally does not apply to an order on a motion, even if the motion involves an evidentiary hearing and even if the order is appealable." (*Lien v. Lucky United Properties Investment, Inc.* (2008) 163 Cal.App.4th 620, 623-624.) The phrase "generally does not apply" covers a lot of ground, including rulings under Code of Civil Procedure section 425.16 (the "anti-SLAPP" law) (*Lien, supra*, 163 Cal.App.4th 620), preliminary injunctions (*People v. Landlords Professional Services, Inc.* (1986) 178 Cal.App.3d 68), and CEQA proceedings (*Consolidated Irr. Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 196, fn. 5).

But again, this general rule has exceptions. In *Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, the Court of Appeal reversed the judgment because the trial court failed to issue a statement of decision when making an alter ego finding under Code of Civil Procedure section 187. The decision provides useful guidance on whether a particular procedural setting requires a statement of decision (*id.* at pp. 659-662), although the court was

careful to note that its “conclusion is not intended to have application beyond the facts of this particular case” (*id.* at p. 662). A number of other statutes give the parties a right to a statement of decision. (*See* Fam. Code, §§ 2127, 2338, 3022.3; Prob. Code, §§ 1000 [civil rules apply in probate proceedings unless Probate Code states others], 1962.)

A particularly important exception—and one that most lawyers don’t know about—is for certain kinds of arbitration orders. Under Code of Civil Procedure section 1291, “[a] statement of decision shall be made by the court, if requested pursuant to Section 632, whenever an order or judgment, except a special order after final judgment, is made that is appealable under this title [the Arbitration Act].” This includes a judgment following confirmation of an arbitration award, but not an order vacating an award. (*See* Code Civ. Proc., § 1294.) While most confirmation/vacatur proceedings involve purely legal questions, there can be significant factual disputes when a party raises questions of arbitrator disqualification or misconduct. (*See, e.g., Honeycutt v. JPMorgan Chase, N.A.* (2018) 25 Cal.App.5th 909.) Warning: In this setting, where the “trial” is less than a day, you must request a statement of decision before the matter is submitted (Code Civ. Proc., § 632)—in other words, before the conclusion of the trial court hearing. More on this in Part II.

Despite the limitations on when a party has the right to a statement of decision, the trial court certainly has discretion to issue one. (*See Khan v. Superior Court* (1988) 204 Cal.App.3d 1168, 1173, fn. 4 [although the trial court had no obligation to issue a statement of decision on a motion to quash, it was not “powerless” to do so because “Section 632 and California Rules of Court, rule 232 [now rule 3.1590], are directed to situations where a statement of

decision is required; they do not limit situations where a statement of decision can be permitted”].) Most trial judges write orders on contested motions that in many respects resemble statements of decision. So if a statement of decision seems appropriate in a situation where it is not required, there’s no reason not to request one—although it would be prudent to let the court know that you’re invoking its discretion and that you recognize that you have no right to one.

What if the court refuses to issue a statement of decision?

While a conscientious judge will rarely refuse to issue a statement of decision when one is required and properly requested, there isn’t much of an appellate remedy. “[A] trial court’s error in failing to issue a requested statement of decision is not reversible per se, but is subject to harmless error review.” (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108.) This is a bit of a Catch-22 because it may be impossible to show prejudice without knowing what the trial court found and why. In any case, the usual remedy for the trial court’s failure to provide a statement of decision has not been merits reversal of the judgment, but rather a remand with directions to issue one. (*E.g., Gruendl v. Oewel Partnership, Inc., supra*, 55 Cal.App.4th at p. 662.)

So much for the basics. In Part II, we’ll focus on strategic issues and practical suggestions.

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