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January 31, 2005

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Honorable Paul Turner, Presiding Justice,
and Associate Justices
California Court of Appeal
Second Appellate District, Division Five
300 South Spring Street
Los Angeles, California 90013-1213

Re: *C3 Entertainment, Inc. v. Arthur J. Gallagher & Co.*
2d Civil No. B174518

Honorable Justices:

The California Academy of Appellate Lawyers, a non-profit organization of experienced appellate practitioners, asks the Court to modify its disposition in this case. We are concerned that the opinion may unnecessarily confuse the already difficult law of appealability. We believe the modification we request will eliminate that risk.

As the Court correctly notes, “the judgment looks like a final appealable judgment.” (Opn., p. 4.) That is because, on its face, the judgment completely disposed of the case as to Gallagher. Under these circumstances, C3 had no choice but to appeal—and no responsible lawyer would have advised C3 otherwise.

Therein lies the problem. The opinion suggests that a judgment that in all respects appears final and appealable may nevertheless *not* be appealable. That means that a prospective appellant’s lawyer can no longer rely on a bright-line rule, but now must evaluate whether for some reason the judgment might not really be what it seems. Clients will be very much at risk if their lawyers guess wrong. At the least, as happened here, the parties may brief an entire appeal only to find out—perhaps many months and tens of thousands of dollars later—that the appeal was premature. But that harm pales in comparison to the harm from failing to appeal a judgment that turns out to be appealable.

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We respectfully suggest that the solution is not to blur the bright-line appealability rule that now exists, but rather to focus on what really went wrong here. As the opinion states, the trial court erred: After granting summary judgment, it “should have then ruled that the order would *not* be reduced to a separate judgment.” (*Ibid.*, emphasis in original.) This narrow error points to an equally narrow appellate remedy: not to dismiss an appeal that on the face of the record was entirely proper, but rather to correct the trial court’s error by vacating the erroneously entered judgment.

This approach would leave existing rules on appealability untouched and unambiguous, while clarifying the trial court’s responsibilities in a situation like this. Although we believe it would be helpful for the Court to provide more concrete guidance on how trial courts should handle the unusual summary judgment situation in this case—we suspect that the summary judgment motion itself may have been premature—the specific issue that concerns us can be addressed simply by modifying the disposition along these lines:

We thus ~~dismiss this appeal. The~~ direct the trial court to vacate the judgment in favor of Gallagher. can be appealed when there is and not to enter judgment until it can enter a final judgment disposing of all causes of action against both Hartford and Gallagher.

We appreciate the Court’s consideration of our request.

CALIFORNIA ACADEMY OF APPELLATE LAWYERS

By 
Robin Meadow
First Vice President

RM:pl

cc: Richard Sherman, Esq.
Paul D. Fogel, Esq.
Charles A. Bird, Esq.
Per attached proof of service

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5700 Wilshire Boulevard, Suite 375, Los Angeles, California 90036.

On January 31, 2005, I served the foregoing document described as: **LETTER DATED JANUARY 31, 2005 FROM THE CALIFORNIA ACADEMY OF APPELLATE LAWYERS TO THE HONORABLE PAUL TURNER AND ASSOCIATE JUSTICES REGARDING C3 ENTERTAINMENT, INC. v. ARTHUR J. GALLAGHER & CO., 2d Civil No. B174518** on the parties in this action by serving:

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Clerk to
Honorable Jon Mayeda
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, California 90012

California Supreme Court (four copies)
300 South Spring Street
Los Angeles, California 90013

(X) By Envelope - by placing the original **(X)** a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

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Executed on **January 31, 2005**, at Los Angeles, California.

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

(Federal) I declare that I am employed by the office of a member of the bar of this court at whose direction the service was made.

Peggy Levenstein