

SUPPLEMENTAL OPINION ON DENIAL OF REHEARING
JANUARY 10, 1994

JURY — PROPER TIME TO OBJECT TO JURY VERDICT IS WHILE JURY STILL AVAILABLE TO CURE INCONSISTENCY. — Although appellee received a jury verdict that was inconsistent with the jury verdicts returned in favor of appellant, the awards were not reversed on appeal because appellant failed to object to the award until after the jury was dismissed; the proper time to object to a jury verdict is while the jury is still available to cure an inconsistency.

Petition for Rehearing; denied.

Kenneth S. Hixon, for appellant.

Matthews, Cambell & Rhoads, P.A., by: *George R. Rhoads* and *David R. Matthews*, for appellee.

PER CURIAM. The appellant in this case, P.A.M. Trucking (PAM), requests a rehearing based on several alleged mistakes of fact and law in our original opinion. We deny this petition, but write this supplement to clarify a portion of our opinion.

Our opinion contains the following paragraph:

PAM also alleges BCBS [Blue Cross Blue Shield] miscalculated its damages. PAM claims that the \$282,187.98 sought by BCBS represents BCBS's unpaid invoices, together with interest and late penalties, without taking into consideration any liability cap. That contention is incorrect. A review of BCBS's invoices shows that BCBS billed PAM each month subject to a monthly liability cap, which was 1/12 of the liability cap stated in the contract.

This paragraph is technically incorrect. BCBS paid insurance claims of PAM's employees, and billed PAM for these claims in monthly invoices. To levelize PAM's payments, in any month the invoice exceeded 1/12 of the contracted liability cap, BCBS deducted the excess from the invoice. This deduction was then carried over to the next month in which PAM's invoice was less than 1/12 of the liability cap. The effect of this procedure was to keep PAM's monthly insurance bill below a specified amount, and to attempt to keep PAM's annual payments as close to the

contracted liability cap, as BCBS calculated it, as possible. Our opinion incorrectly implies that in any month PAM's invoice exceeded 1/12 of the liability cap, BCBS absorbed the excess.

[1] This correction does not disturb the holding in our opinion. BCBS received a jury verdict based on the records they presented in court. This award was inconsistent with the jury verdicts returned in PAM's favor. PAM failed to object to this award until after the jury was dismissed. As we held in the opinion, the proper time to object to a jury verdict is while the jury is still available to cure an inconsistency.

HAYS and BROWN, JJ., would grant rehearing.