BULLIVANTHOUSER

Andrew B. Downs
San Francisco,
Shareholder

Direct Dial: 415.352.2716
Fax: 415.352.2701
Email Attorney

California Court of Appeal Allows Insured to Sue Adjuster Personally for Negligent Misrepresentation and Intentional Infliction of Emotional Distress

By Andrew B. Downs

Even though California courts have consistently recognized that employees of insurance companies are not parties to the insurance contract, and thus they cannot be held personally liable for breach of contract or for "bad faith," this week's decision in *Bock v. Hansen* holds that they can be personally sued on other theories.

Bock v. Hansen was the result of a homeowners property insurance claim. Because the case reached the court of appeal on a demurrer, the Court was required to assume the truth of the allegations in the complaint – allegations of conduct that was (to use the court's words) "appalling." Allegedly, the adjuster altered the scene before taking photos, spoke derogatorily to one of the policyholders, and misrepresented the coverage available for debris removal.

The policyholders then sued the insurer, the adjuster, and a construction consultant. The trial court dismissed the claims against the adjuster, relying on extensive authority that has generally immunized adjusters from personal liability for most errors in the course of their claim-handling duties. The Court of Appeal reversed, finding that claims for negligent misrepresentation and intentional infliction of emotional distress could be alleged personally against the adjuster.

The appellate court found that adjusters personally owe a duty to policyholders to communicate accurate information because of the "special relationship" between insurers and policyholders as outlined in *Vu v. Prudential Property & Cas. Co.,* a 2001 California Supreme Court decision. In reaching that conclusion, the *Bock* court distinguished a number of cases holding that agents and employees of insurers owe no contractual duties to policyholders and cannot be sued for negligence in the performance of their claim investigation and adjustment duties.

The appellate court also found that while the Bocks had not alleged facts sufficient to assert a claim for intentional infliction of emotional distress against the adjuster, they should have been given leave to amend to attempt to do so. According to the court, the Bocks might have been able to allege the extreme and outrageous conduct which is a necessary predicate to that cause of action.

Read in context, it is apparent that the Court of Appeal was deeply offended by the adjuster's alleged conduct and his "defense" that any possible reliance on his alleged misrepresentations was unreasonable because the insureds should have read their policy. After oral argument the parties had settled the dispute, but the court "in light of the issues presented" proceeded to decide the case and publish its opinion anyway. About all we can say is this case amply illustrates the maxim that "bad facts make bad law."