

## [Court of Appeal Hands UCL Win to Plaintiffs, Shrinks Impact of Moradi-Shalal](#)

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A recent ruling by the California Court of Appeal in a UCL action will likely lead to a showdown in the California Supreme Court over the reach of [Moradi-Shalal v. Fireman's Fund Ins. Cos.](#), 46 Cal. 3d 287 (1988), the ruling that barred private actions seeking to enforce California's Unfair Insurance Practices Act, namely, [Insurance Code Section 790.03](#), *et seq.* ("Section 790.03").

For years plaintiffs' lawyers and insurers have grappled over the question of whether causes of action for violation of California's "Unfair Competition Law" ([Business and Professions Code Section 17200](#), *et seq.*, or "UCL") may allege conduct that violates Section 790.03. Insurers have generally prevailed in demonstrating that to allow a UCL suit to include thinly-disguised Section 790.03 violations would be an impermissible circumvention or end run around *Moradi-Shalal*. The California Court of Appeal supported the insurers' position on this issue in *Textron Financial Corp. v. National Union Fire Ins. Co.*, 118 Cal. App. 4th 1061 (2004).

Now, the Fourth Appellate District, in [Zhang v. Superior Court](#) (October 29, 2009), has rejected *Textron*, and held that because the UCL allows a plaintiff to allege unfair, unlawful, and misleading conduct against businesses generally (including insurers), the fact a plaintiff asserts what appear to be violations of Section 790.03 is not necessarily an end run around *Moradi-Shalal*.

In *Zhang* the plaintiff sued California Capital Insurance Company for breach of contract and bad faith, alleging the insurer improperly handled a claim for repair of property after a fire at his business. Zhang included a UCL count, which incorporated all the allegations that the insurer engaged in conduct that was barred by Section 790.03, but also alleged the insurer had acted unfairly by engaging in false and deceptive advertising, suggesting it would provide coverage in the event of a loss, when it had no intent to do so.

The insurer demurred, arguing that per *Moradi-Shalal*, there is no private cause of action for a Section 790.03 violation, and that using the UCL to in effect assert a Section 790.03 violation is a circumvention of *Moradi-Shalal*, as confirmed by *Textron*.

The trial court granted the insurer's demurrer, but the court of appeal reversed, holding *Moradi-Shalal* did not bar the UCL claim. Acknowledging the contrary holding of the other court of appeal decision in *Textron*, the *Zhang* court nonetheless pointed to the California Supreme Court's ruling in *Manufacturers Life Ins. Co. v. Superior Court*, 10 Cal. 4th 257 (1995), in which the high court rejected the idea that Section 790.03 was intended to "displace existing rights and remedies for unlawful business practices" in the insurance industry, among them the UCL. The court of appeal said it took from *Manufacturers Life* that there is no reason to treat insurers differently from other businesses when it comes to actions under the UCL, except as required by *Moradi-Shalal*.

Thus, the court of appeal concluded, if a plaintiff sues for conduct that is prohibited by Section 790.03, *but not otherwise prohibited*, then a plaintiff may not advance that claim under the UCL. Where, however, as in *Zhang*, a plaintiff alleges unlawful, misleading and untrue conduct that is expressly within the parameters of the UCL, the suit may proceed on that claim.

In response to those who make the “end run” argument, the *Zhang* court observed in a footnote that, as established in *State Farm v. Superior Court*, 45 Cal. App. 4th 1093 (1994), a UCL plaintiff is not entitled to seek compensatory and punitive damages, only restitution and injunction.

Given its conflict with *Textron*, the *Zhang* case will likely be the subject of an active effort to convince the California Supreme Court to grant a petition for review in *Zhang* (or request to depublish) – perhaps with the support of numerous *amici*.