

## [Court of Appeal Complicates the Analysis of Mental and Nervous Disability Claims](#)

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In *Bosetti v. The United States Life Ins. Co.*, \_\_ Cal. App. 4th \_\_, 2009 WL 2104852 (July 17, 2009), the California Court of Appeal addressed whether a standard, two-year benefits limitation on disabilities due to “mental, nervous or emotional disorder[s]” could serve to limit benefits payable to an insured disabled from depression and anxiety who also complained of interrelated physical impairments. The Bosetti court held that the limitation was ambiguous and was not applicable if the claimant’s physical problems contributed to her disabling depression or were a cause or symptom of that depression. The Bosetti court further concluded that the insurer’s denial of benefits based upon that two-year limitation was not in bad faith under the genuine issue doctrine.

Bosetti worked as an assistant director of adult education for a school district and first sought treatment after learning that her position would be terminated. Based upon the report of her treating physician and her complaints of depression and anxiety, she was put on temporary disability under her group policy. She thereafter applied for permanent disability benefits complaining of depression and fibromyalgia pain in her muscles, though her treating physician reported that her disabling impairment was solely mental or nervous in nature. After paying Bosetti’s benefits for two years, United States Life determined that she did not qualify for any additional benefits and could work in “any occupation”, which was the governing disability standard after two years. That determination was based primarily upon the two-year benefits limitation for mental or nervous disorders, the results of a functional capacity examination, and an independent physician consultation.

Following the denial of her request for additional disability benefits, Bosetti filed suit for breach of contract, bad faith and various related causes of action. United States Life then moved for summary judgment contending that Bosetti’s benefits were limited to two years under the mental/nervous limitation and that her purported physical disability did not arise until after her employment (and coverage) terminated. Summary judgment was entered against Bosetti, and she appealed.

The Bosetti court began its analysis by explaining that the insured’s disability had both mental and physical elements, noting that one of her doctors had suggested that her physical disability arose out of her emotional disability and another that her emotional disability or depression arose out of her physical problems and chronic pain. The court then went on to consider whether, under the circumstances, the two-year limitation for disability “due to a mental, nervous or emotional disorder” was even applicable. The court ultimately held that it was not and reversed the trial court’s ruling. According to the Bosetti court, (1) the two-year mental limitation is ambiguous since it “does not clearly explain whether the limitation applies when the total disability is due in part to a mental, nervous . . . disorder” and (2) an insured’s reasonable expectations are that disabling depression arising from a physical condition like fibromyalgia and, correspondingly, disabling physical symptoms arising from depression, would not fall

within the mental/nervous limitation. In so ruling, the court rejected an earlier California Court of Appeal case holding that the same limitation was unambiguous and adopted the 9th Circuit's approach in *Patterson v. Hughes Aircraft Co.*, 11 F. 3d 949 (1993). The court also concluded that there were triable issues of fact concerning whether Bosetti suffered from a non-mental disability prior to the termination of her employment and whether she was totally disabled from "any occupation" at the time benefits were terminated.

Despite the reversal, the court further held that United States Life was entitled to summary adjudication on Bosetti's bad faith and intentional tort causes of action. The court concluded that based upon the record, Bosetti and the insurer had a genuine dispute regarding coverage, and there was no extreme or outrageous conduct.