

The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[Dobbas v. Vittas: Excess Liability Insurer Not Permitted to Intervene in Insurance Agent Malpractice Case To Pursue Equitable Subrogation Against the Agent](#)

Tuesday, January 11th, 2011

In a published decision in *Dobbas v. Vitas* (California Court of Appeal, Third Appellate District), the California Court of Appeal addressed the right of an excess insurance carrier to intervene in a insurance agent malpractice action for the purpose of seeking equitable subrogation against the agent. To the relief of the agent, intervention was not allowed.

A bull had escaped from a rancher's property and caused a fatal automobile accident on a nearby road. The victims filed suit against the rancher, and it was discovered that the rancher's insurance agent had either cancelled or failed to renew one of the rancher's excess insurance policies which may have provided coverage for the incident. Accordingly, the rancher filed a complaint for malpractice against the insurance agent for failing to procure the excess policy.

The victims eventually obtained a judgment against the rancher, and, as part of a settlement, the rancher assigned to the victims his claim for malpractice against the insurance agent. The victims, in turn, assigned the malpractice claim to a second excess insurance carrier (i.e., not the carrier of the canceled/non-renewed excess policy) which had contributed to the settlement. That excess carrier then attempted to intervene in the malpractice action for the purpose of seeking reimbursement of the amounts paid, not from the rancher who was responsible for the accident, but from the agent who failed to procure excess insurance to cover the accident.

The Court of Appeal upheld the trial court's ruling that the excess carrier was not entitled to intervene. The court explained that the excess carrier could not establish the elements of a claim for equitable subrogation because it was not in a superior equitable position to the insurance agent. Accordingly, the carrier had no right to reimbursement from the insurance agent and it had no entitlement to intervene. A more detailed discussion of the doctrines of equitable subrogation and equitable contribution is beyond the scope of this blog. However, the published decision dated January 7, 2011 can be found [here](#).