



Unfair Insurance Practices Act Can Give Rise To Private Cause Of Action Under UCL

The California Court of Appeal recently addressed the question of whether a violation of the Unfair Insurance Practices Act can give rise to a civil cause of action under the Unfair Competition Law (“UCL”). The court answered the question in the affirmative. In *Zhang v. Superior Court*, 178 Cal. App. 4th 1081 (2009), Plaintiff Zhang sued California Capital Insurance Company (“California Capital”) for breach of contract and bad faith arising out of the handling of her claim for damages to her commercial premises due to fire. In addition, Zhang alleged a cause of action under the UCL and for “unfair, deceptive, untrue, and/or misleading advertising.”

California Capital demurred to Zhang’s third cause of action by arguing that the plaintiff could not state a private cause of action under the UCL due to the decision in *Moradi-Shalal v. Fireman’s Fund Ins. Companies*, 46 Cal.3d 287 (1988). The trial court agreed by sustaining the demurrer and Zhang appealed.



On appeal, the court explained that *Moradi-Shalal* did not stand for the proposition that insurers who violate the Unfair Insurance Practices Act can never be liable in tort to the injured party. Instead, the court noted that “the courts retain jurisdiction to impose civil damages or other remedies against insurers in appropriate common law actions, based on such traditional theories as fraud, infliction of emotional distress and (as to the insured) either breach of contract or breach of the implied covenant of good faith and fair dealing.” *Moradi-Shalal*, at 304-305.

This was departure from *Textron Financial Corp. v. National Union Fire Ins. Co.*, 118 Cal.App.4th 1061 (2004), which was previously interpreted to bar UCL “unlawful” prong claims against insurers based on conduct prohibited by section 790.03. Instead, the court held that “if a plaintiff relies on conduct that violates the Unfair Insurance Practices Act but is not otherwise prohibited, *Moradi-Shalal* requires that a civil action under the UCL be considered barred.” 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. Accordingly, “if a plaintiff expressly alleges conduct that was prohibited by the UCL, then there is no reason to apply *Moradi-Shalal* to prohibit the cause of action.”

As a result, the Court of Appeal found that the trial court erred in sustaining the demurrer and issues an order overruling the lower court’s decision.



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