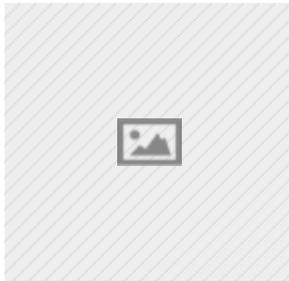




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California Court of Appeal Limits Scope of Agent's Immunity Rule Based on "Special Relationship" Between Insurers and Insureds

On April 2, 2014, the California Court of Appeal, First Appellate District, published an opinion that limits the scope of the agent's immunity rule insofar as it applies to employees of insurers involved in investigating first-party claims. In *Michael Bock, et al. v. Craig Hansen*, Case No. A136567, the court held that insurance adjusters may be held personally liable for misrepresentations concerning policy coverages made during the course and scope of their employment, even if there is no allegation that they acted for their own personal benefit, on the grounds that adjusters owe a duty to communicate accurate information to insureds based on the "special relationship" between their employers and the insureds.

[View the full opinion.](#)

Facts

Bock is a testament to the adage, "Bad facts make bad law." *Bock* arose from a dispute over the obligation of Travelers Property and Casualty Insurance Company to indemnify its insureds, Michael and Lorie Bock, for property damage that occurred after a tree limb crashed through the front of their house, damaging its chimney and living room as well as a surrounding fence.

Travelers assigned defendant Craig Hansen to adjust the loss. The court opined that his behavior, as alleged, was "appalling."

According to the complaint, on Hansen's first visit to the premises (which lasted no more than 15 minutes), he altered the scene inside and outside the house before taking pictures of it. He then instructed Mrs. Bock to "clean up the mess" inside the living room herself. Hansen made derogatory comments about Mr. Bock's employer, which Mrs. Bock thought were rude and upsetting. Hansen also told the insureds that the cleanup was not covered under their policy. Based on his representations, Mrs. Bock attempted to remove debris from the property by herself. While doing so, she allegedly sustained an injury.

Travelers ignored the insureds' request to replace Hansen. Hansen then allegedly revised an estimate to include a false statement that he attributed to the insureds. He also conspired with an unlicensed contractor to create a false report despite photographs and statements by the insureds and their licensed contractor contradicting the report's conclusions.

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suit, alleging claims for negligent misrepresentation and intentional infliction of emotional distress against Travelers and Hansen. The trial court sustained Hansen's demurrer without leave to amend.

Holdings

The Court of Appeal reversed, "holding first that negligent misrepresentation can be asserted against an insurance adjuster, and that such claim was adequately pleaded here." The court also held "the intentional infliction of emotional distress claim was not adequately pleaded, but that the trial court abused its discretion in denying leave to amend."

Citing Vu v. Prudential Property & Casualty Ins. Co. (2001) 26 Cal.4th 1142, the court observed that "while the relationship between the insurer and insured is not a true fiduciary one, it is nevertheless 'special.'" The court then extrapolated from this premise that Hansen vicariously owed the insureds a similar special duty of care, stating without analysis, "Such special relationship leads to the conclusion that Hansen, the employee of the party in the special relationship, had a duty to the Bocks." The court reached firmer ground when it reasoned, based on settled law, that the plaintiffs could state their claim for negligent misrepresentation, because a cause of action for negligent misrepresentation arises where providing false information poses a risk of and results in physical harm to person or property, or information is conveyed in a commercial setting for a business purpose.

In this case, the insureds alleged both that Mrs. Bock had sustained a physical injury as a result of the adjuster's misrepresentations, and that he conveyed them for a business purpose. In doing so, the insureds alleged that the adjuster told them that their policy did not cover the cost of cleanup when in fact it did; the adjuster either knew the representation was false when he made it, or he made it with reckless disregard of its truth; and the insureds relied on the adjuster's false statements to their detriment. These allegations satisfied the elements of a cause of action for negligent misrepresentation.

In reaching this conclusion, court found that the agent's immunity rule did not shield the adjuster from personal liability for the insureds' claims even if he made the false statements while he was acting in the course and scope of his employment. The court reasoned that agents and employees are always liable for their own torts.

Significance

Bock is contrary to the settled law of this state, which holds that, absent allegations that an employee of an insurer undertook any special obligations to an insured, the employee, acting within the course and scope of his or her employment, cannot be held personally liable for breaching a duty that only the insurer owes, unless the agent or employee acts for his own individual advantage. However, to the extent that the complaint in *Bock* alleged sufficient facts to show that Hansen deliberately provided false information that resulted in injury to the plaintiffs in violation of his own independent duty to communicate accurate information to them and not to harm them, Bock may be reconciled with the traditional limits of the agent's immunity rule.

Even so, because *Bock* does not clearly discuss the limitations of its holdings, expect counsel for policyholders to cite only to the broad propositions for which it stands: 1) employees of insurers may be held personally liable for statements made while investigating claims in the course and scope of their employment, even if they do no act for their own benefit; and 2) agents and employees of insurers owe duties of care to insureds by virtue of the "special relationship" of their employer to its insureds. As a result, this case will complicate efforts to dismiss and remove actions involving agents and employees of insurers in the future.

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