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Insurance Adjuster Employed by Carrier Can Be Held Liable for Negligent Misrepresentation Regarding Coverage

June 17, 2014
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Bock v. Hansen, Court of Appeal, First District, Division 2, California A136567 (April 2, 2014)

Plaintiff homeowners purchased a homeowner's policy in 2001 that provided additional coverage for debris removal. In 2010, a 41-foot long tree limb weighing 7,300 pounds broke off from a tree in their front yard and crashed into the chimney, the front of the house and through the living room window. Three other large limbs also fell, which came to rest on the chimney and broke three windows and damaged the interior of the home, the fence and one of their automobiles. The chimney was the primary heating source for the home.

The carrier sent its employee/adjuster to assess the damage. The adjuster removed some of the limbs before taking photos and told plaintiffs that their policy did not cover the cost of clean-up. He instructed plaintiffs to begin the clean-up themselves. One of the plaintiffs cut her hand as she was cleaning up broken glass. The adjuster subsequently estimated the loss at $3,479 which was low given that plaintiffs had already obtained an estimate of $2,065 just to remove the tree limbs. Plaintiffs sent an email to the carrier's field manager reporting the property damage and requesting that another adjuster be assigned. The adjuster returned to the house with the field manager and plaintiffs showed them the significant cracks and damage to the chimney. The adjuster again told plaintiffs that the policy did not cover the cost of clean-up and told them to get out their chainsaw and start removing the limbs. The carrier issued a revised estimate of loss that did not include certain of the items of damage. Subsequently, the adjuster informed the plaintiffs that the carrier was denying coverage for the chimney damage based on an inspector the carrier had hired who reported that any cracks were due to the age of the chimney and not from the fallen tree branch. Plaintiffs got their own licensed contractor to inspect the chimney and served the carrier with a detailed response to the inaccurate inspector's report. The carrier never responded.

Plaintiffs filed an action against the carrier, the adjuster and the inspector. Plaintiffs' First Amended Complaint alleged a claim for negligent misrepresentation against the adjuster for falsely telling them that their policy did not cover the cost of clean-up. Plaintiffs also made a claim for intentional infliction of emotional distress. The adjuster demurred to the claims against him, and the trial court sustained the demurrers without leave to amend and

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dismissed the claims. The appellate court reversed.

Question Before the Court

Whether an insurance adjuster employed by a carrier may be held liable for negligent misrepresentation?

Yes. The court held that plaintiffs could maintain a negligent misrepresentation claim against the adjuster. The court distinguished its prior 1990 decision in *Sanchez v Lindsey Morden Claims Service, Inc.*, 72 Cal.App 4th 249, 84 Cal. Rptr. 799, in which it was held that an insurance adjuster did not have a duty of care to the insured in dismissing a negligence action, and held where a negligent misrepresentation claim was made the policy considerations were different. The court stated that the insurer and insured have a special relationship which includes the insurer's employed adjuster and found that negligent misrepresentation claims are allowed where the adjuster is accused of providing false information that posed a risk of physical harm to the policyholders and their property. This court was very critical of the adjuster's attempts to diminish the extent of the cut on one of the plaintiff's hand, finding that the adjuster had a business purpose for telling the plaintiffs that their policy did not cover clean-up costs well knowing that the statement was false or made in reckless disregard of the truth. The plaintiffs clearly relied on the adjuster's false statement to their detriment because they started their own clean-up of the damage.

The adjuster argued that he could not be held liable because he was merely acting as the carrier's agent within the scope of his employment. The court found that employees are liable for their own torts even if their employers are also liable. The adjuster also asserted that plaintiffs did not justifiably rely on the misrepresentation because if they had simply read their policy, they would have realized that there was clean-up coverage and his initial estimate included a small amount for debris clean-up. The court responded that given the complex nature of insurance policy coverage, policyholders are entitled to rely on their insurance carrier's agent's representations regarding coverage. The plaintiffs were engaged in their own clean-up efforts before they ever received the adjuster's estimate which agreed to pay only a fraction of their costs.

The court also held that insurance adjusters may also be liable for intentional infliction of emotional distress, but that the plaintiffs here had failed to adequately allege such a claim and were entitled to amend their complaint.

What the Court's Decision Means for Practitioners

This court was not reticent about distinguishing its 1990 decision in *Sanchez v. Lindsey Morden Claims Service, Inc.*, to hold that a negligent misrepresentation could be brought against an adjuster in the face of this adjuster's conduct in adjusting this loss. Federal decisions in other jurisdictions have reached the same result. There is a body of case law that independent adjusters do not owe a duty of care to an insured.

For more information, please contact your regular Hinshaw attorney.