

***Bock v. Hansen*, 2014 Cal. App. LEXIS 303 (Cal. App. 1st Dist. Apr. 2, 2014)**

**Insurance adjuster could be liable for negligent misrepresentation
and intentional infliction of emotional distress.**

FACTS AND PROCEDURAL POSTURE

These facts are as alleged by the plaintiffs. On September 9, 2010, a 41 foot tree limb broke from an oak tree and crashed into the house of plaintiffs Michael and Lorie Bock. They reported the accident to their homeowners insurance, Travelers, the day it occurred. Adjuster Craig Hansen was assigned to the incident and arrived at the scene the next day. Hansen reviewed the damage for only 15 minutes, moving some tree branches before he took pictures. Hansen left a check for \$675 and told the Bock's that clean-up was not covered by their policy (it was), and that they would have to take care of it themselves. While attempting to clean up glass from the broken windows, Mrs. Bock cut her hand.

The next day Mr. Bock discovered that the tree had caused significant damage to the chimney. The Bock's reported this to Travelers, and also requested that a new adjuster be assigned to their claim due to Hansen's conduct during his visit. Travelers ignored the request to replace Hansen. Hansen prepared an estimate for the damage, for \$3,479. On the 15th of September, Hansen and his supervisor visited the house. The Bocks had a licensed general contractor present to show Hansen the damage to the chimney and house. Hansen again told the Bocks that their policy did not cover clean-up and told Mr. Bock to get his chainsaw and do it himself. A revised estimate two days later increased slightly to \$3,655. However, this new estimate eliminated amounts for damage to the hardwood floors and the fence, based on a false statement by Hansen that the Bocks had confirmed no damage to those areas.

Travelers then sent out an unlicensed contractor to inspect the damage and prepare a report. The report claimed that there was no evidence that the tree limb had impacted the chimney, and that any damage to the chimney was minor and due to the age of the house. On the basis of this report, Travelers denied coverage for the chimney. The Bocks hired a licensed contractor to review the Travelers report and respond. The Bocks provided this response to Travelers, and requested a reconsideration of the coverage determination. Travelers never responded. The Bocks sued both Travelers and Hansen. The trial court granted both Travelers' and Hansen's demurrers. The Bocks appealed as to their causes of action against Hansen for Negligent Misrepresentation and Intentional Infliction of Emotional Distress.

DISCUSSION

In his demurrer, Hansen argued that he owed no duty to the Bocks and could not be liable for negligent misrepresentation as a matter of law. The court explained that a duty is easily found here. Although the relationship between an insurer and insured is not a true fiduciary relationship, it is a special relationship sufficient to support the existence of a duty. Because Hansen was the employee of the insurer, he also had a duty to the Bocks. Hansen also alleged that he cannot be liable as an agent because he was acting in the course and scope of his employment. The court explained that an agent is always liable for his own torts, and that a claim for negligent misrepresentation can lie against an insurance adjuster.

A negligent misrepresentation action is available in two circumstances: (1) where providing false information poses a risk of and results in physical harm to person or property; and (2) where information

is conveyed in a commercial setting for a business purpose. The court found that both circumstances applied here. Mrs. Bock cut her hand while cleaning up debris after Hansen misrepresented the terms of the insurance policy; and, Hansen made the misrepresentation for a business purpose. The court held that the Bocks adequately alleged a claim for negligent misrepresentation.

As to the cause of action for intentional infliction of emotional distress, Hansen argued that the Bocks had failed to allege outrageous conduct, and that the Bocks could not amend their complaint to adequately allege such conduct. To be “outrageous,” conduct must go beyond “mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” Outrageous conduct is conduct that is so extreme as to exceed all bounds of that usually tolerated in a civilized community. Although the Bock’s alleged that Hansen ignored overwhelming evidence, altered the scene of the accident, created a false claim report, and made rude and disparaging remarks, this was not sufficient to show outrageous conduct. The court agreed with Hansen that the Bocks failed to allege outrageous conduct.

Where a defect in a complaint can reasonably be cured by an amendment, the plaintiff should be allowed to amend the complaint. The plaintiff bears the burden of demonstrating a reasonable possibility to cure the defect. The court found that the Bocks met their burden, and that the trial court should have allowed the Bocks to amend their complaint.

Reversed and remanded.