

PILLSBURY & COLEMAN LLP

PHILIP L. PILLSBURY, JR.

June 5, 2020

VIA TRUEFILING

Hon. J. Anthony Kline, Presiding Justice
Hon. James A. Richman, Associate Justice
Hon. Marla J. Miller, Associate Justice
California Court of Appeal
First Appellate District, Division 2
350 McAllister St.
San Francisco, CA 94102

Re: *Fadeeff v. State Farm General Insurance Co.*, Case No. A155691
(May 22, 2020) – Request for Publication of Opinion

To the Honorable Presiding Justice and Associate Justices of the First Appellate District,
Division 2:

We write to urge publication of the Court's opinion in *Fadeeff v. State Farm General Insurance Co.*, Case No. A155691. We believe the opinion warrants publication under the following standards for certification set forth in Rule 8.1105:

- Applies an existing rule of law (the genuine dispute or genuine issue rule) to a set of facts significantly different from those stated in published opinions (Rule 8.1105, subd. (c)(2));
- Involves a legal issue of continuing public interest (Rule 8.1105, subd. (c)(6)); and
- Makes a significant contribution to legal literature by reviewing the development of a common law rule (Rule 8.1105, subd. (c)(7)).

Our Interest

For three decades, our firm has represented policyholders in insurance coverage and insurance bad faith matters. We represent multinational companies as well as individuals and endeavor, in all matters, to ensure that insurance companies properly pay claims in accordance with the applicable policy terms and standards governing good faith claims administration. The undersigned are frequent authors and presenters on insurance issues, and Mr. Pillsbury has provided expert testimony in insurance litigation nationally.

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We have a particular interest in seeking publication of opinions — like the opinion in *Fadeeff* — that address an insurer’s duty of good faith and fair dealing. This is an area of particular social importance. “The availability of tort remedies in the limited context of an insurer’s breach of the covenant advances the social policy of safeguarding an insured in an inferior bargaining position who contracts for calamity protection, not commercial advantage.” (*Kransco v. International Ins. Co.* (2000) 23 Cal.4th 390, 400.) “[T]he unequal relationship between the insured and insurers demanded special remedies for breach of the public trust The significant public interest in the special relationship between the insured and insurer justifies the availability of tort remedies, and distinguishes insurance contracts from other types of contracts.” (*20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1265-66.)

The *Fadeeff* Opinion Warrants Publication

In spite of our Supreme Court’s clarification in *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 724, that the genuine issue rule allows a trial court to grant summary judgment only “when it is undisputed or indisputable that the basis for the insurer’s denial was *reasonable*,” in virtually every lawsuit seeking damages for an insurer’s alleged breach of the covenant of good faith and fair dealing, the trial court will be presented a motion to summarily adjudicate the bad faith claim.

This Court’s opinion will provide important guidance to our trial courts when confronted with such motions. First, as this Court succinctly noted, the genuine issue rule “does not change the rules” for determining motions for summary judgment, and such motions “can only be decided on a case-by-case basis.” (Opinion at p. 8.) It is important, therefore, for our trial courts to have a variety of examples as to how they are to go about conducting the required “case-by-case” analysis.

Increasingly, insurers claim reliance upon supposed “experts” insulate them from bad faith liability as a matter of law. This Court’s detailed analysis of California law bearing upon such a claim, and its scrutiny of the evidentiary record, will provide significant guidance to our trial courts. This is an important area of the law. For many insureds whose claims have been delayed or denied, including wildfire victims, those seeking life-sustaining medical care, and the catastrophically disabled, the availability of a bad faith remedy is the only manner of achieving some measure of evenhandedness in the otherwise inherently unequal position between the insurer and insured.

Document received by the CA 1st District Court of Appeal.

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We respectfully request publication of this significant Opinion.

Very truly yours,



Philip L. Pillsbury, Jr.



Terrence J. Coleman

Service list attached

Document received by the CA 1st District Court of Appeal.

PROOF OF SERVICE

Fadeeff v. State Farm General Insurance Company
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT, DIVISION 2, Case No. A155691

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I, the undersigned, declare that I am a citizen of the United States; my business address is Pillsbury & Coleman, LLP, 100 Green Street, San Francisco, California 94111; I am employed in the City and County of San Francisco; I am over the age of eighteen (18) years and not a party to the within action.

On June 5, 2020, I served the foregoing document(s) described as: **REQUEST FOR PUBLICATION OF THE COURT’S OPINION IN FADEEFF** on the interested parties in this action:

BY ELECTRONIC TRANSMISSION VIA TRUEFILING: Pursuant to Court of Appeal First Appellate District Local Rule 12(j) mandating registered TrueFiling parties consent to eservice and delivery of all documents, I caused the foregoing document(s) to be filed and served electronically on the parties listed below by using the TrueFiling system.

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Service list continued on next page

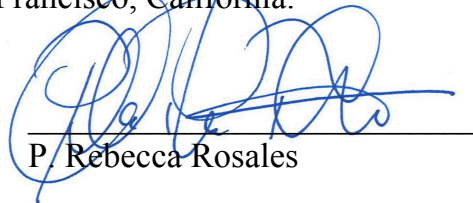
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BY MAIL: I caused such envelope(s), fully prepaid, to be placed in the United States mail at San Francisco, California. I am “readily familiar” with this firm’s practice for collection and processing of correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service the same day, with postage thereon fully prepaid, at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date on postage meter date is more than one day after date of deposit for mailing in affidavit.

Honorable Jeanine E. Nadel, APJ
MENDOCINO COUNTY SUPERIOR COURT
100 N. State Street, Courtroom E
Ukiah, CA 95482
Tel.: (707) 463-4662

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on June 5, 2020, at San Francisco, California.



P. Rebecca Rosales

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