

*Daily Journal*, February 10, 2004

## **EMPLOYMENT LAW**

### **Court OKs Landmark Overtime Award**

#### **The 1st DCA Upholds Almost All The \$90 Million Given To Claims Adjusters Covered By State Wage-And-Hour Laws**

**Source: Tyler Cunningham, Daily Journal Staff Writer**

A state appeal court Monday upheld nearly all of a landmark \$90 million award given to insurance claims adjusters who were denied overtime pay.

A unanimous panel of the 1st District Court of Appeal said 2,400 Farmers Insurance Group adjusters comprising the class performed work that was more production-related than administrative, so they were entitled to overtime under California's wage-and-hour laws.

The adjusters processed a high volume of small claims, the court said, and had little authority to settle big-ticket cases. They gathered facts, completed forms and talked with policyholders. On matters of bigger importance, they acted as go-betweens.

The court also said it was not persuaded by a recent opinion by the U.S. Department of Labor explicitly saying that adjusters are exempt from overtime laws.

The lawsuit, filed in 1996, is one of many challenging the wage-and-hour practices of California businesses. As in many of these lawsuits, the plaintiffs claimed their employer wrongly denied them extra pay for overtime work.

The standards for the overtime law are promulgated by the state Industrial Welfare Commission, which issues "wage orders" governing which employees are exempt. The IWC declared anyone in a "technical, clerical, mechanical or similar occupation" to be entitled to overtime, unless employed in an "administrative, executive or professional" capacity.

In April 2001, Alameda County Superior Court Judge Ken Kawaichi rejected Farmers' claim that the adjusters were exempt from overtime laws because they were administrative workers. Claims adjusting, he said, is "a product or service which [Farmer's] operation exists to provide," and claims representatives "devote their time to carrying out [this] product/ service as opposed to its 'administrative' functions." Thus, he concluded, the adjusters are subject to the overtime regulations.

In July 2001, after trial, an Alameda County jury gave an award of \$90 million to the adjusters. The judgment surprised many businesses, and experts guessed that the case could open the door for other administrative workers to file similar overtime class actions.

In an earlier opinion, the 1st DCA upheld the trial court's summary adjudication that claims representatives were not exempt from overtime pay requirements. *Bell v. Farmers Ins. Exchange*, 87 Cal.App.4th 805 (2001).

Farmers asked the appeals court to reconsider that decision, in light of a recent five-page opinion written by the U.S. Labor Department's wage-and-hour division administrator, Tammy McCutchen, which stated that adjusters are administrators and therefore, exempt from overtime pay. The company also pointed to recent opinions

from the 9th U.S. Circuit Court of Appeals and other district court decisions.

The court rejected that request Monday, saying the IWC intended that the term "administrative capacity" have a different meaning than in parallel provisions of federal law. Besides, the court said, such opinion letters lack the force of law. The court also distinguished the Farmers case from the federal cases that plaintiffs in those cases worked substantially different jobs or worked for different kinds of businesses.

The court upheld the entire judgment except for \$1.2 million awarded for unpaid double-time hours. The trial judge used a sample average to determine the number of double-time hours worked, but the appeal court said the estimate was so inaccurate as to raise constitutional questions.

Justice Douglas E. Swager wrote the opinion in *Bell v. Farmers Insurance Exchange*, 2004 DJDAR 1440. He was joined by Justices James J. Marchiano and William D. Stein.

The court remanded the case to the trial court for further proceedings regarding the plan of distribution.

Wendy Cole Lascher, a partner at Lascher & Lascher in Ventura who represented Farmers, had not read the opinion Monday and declined to comment.

Steven G. Zieff, a partner at San Francisco's Rudy, Exelrod & Zieff who represented the plaintiffs, said the opinion is important for the individual plaintiffs involved, who have waited more than 10 years to get their overtime pay. He said it's also a good exposition of the state's overtime laws, but it is based on a heavily developed factual record particular to this case.

"It's a well-reasoned opinion useful for other employees to look to for general legal principles," Zieff said. "It doesn't say that any and all claims adjusters in any and all companies are exempt."