

Association of California Insurance Companies et al. v. Dave Jones, in his capacity as Insurance Commissioner for the State of California

Year: 2016

Court: California Supreme Court (California Court of Appeal, Second Appellate District, Division One)

Case Number: B248622/S226529

After every wildfire UP has worked since 1991, over 50% of the victims who thought they were fully insured turned out to be insured for less – often far less – than they needed to cover repairs and rebuilding. We refer to this as “the underinsurance crisis.” Solving it remains one of our top priorities. The vast majority of people are underinsured through no fault of their own. When they bought their insurance, an agent or insurer set the dollar amounts of coverage on their home and assured them those dollar amounts would be adequate for replacing the home in the event of a loss. Yet time and time again this turns out to have been a false assurance. But courts continue to protect agents and insurers by dismissing lawsuits from underinsured homeowners before they reach a jury. That is one of many reasons why the underinsurance crisis remains unsolved, despite the best efforts of United Policyholders and many others. Others include the California Department of Insurance and scores of private attorneys who’ve tried to help underinsured clients, only to be dismissed in court. The battle rages on. UP does everything we can to help people who find themselves underinsured through no fault of their own. See: Underinsurance 101 Underinsurance Help How to Avoid the Underinsurance Crisis Survivors Speak: Coping With Underinsurance In response to a widespread and well publicized underinsurance crisis after 2003 and 2007 San Diego wildfires, the California Department of Insurance promulgated a set of regulations that required agents/brokers/producers to make a series of required disclosures when they sell Replacement Cost policies to homeowners. The regulations were a modest step toward ensuring that

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consumers have enough information to make informed choices about insuring their home. The Association of California Insurance Companies and the Personal Insurance Federation sued the Commissioner to invalidate the regulation, and unfortunately succeeded in convincing the Trial Court that the Commissioner had exceeded his authority. It found he erred in issuing the regulations and creating a private right of action under the Unfair Trade Practices Law for failure to make these required disclosures. UP, Commissioner Jones and consumers throughout California were deeply disappointed and worried about the fallout from the Court's decision, and UP filed a friend of the court (amicus) brief hoping to convince the Court of Appeals to reverse. UP argued in its brief that the Commissioner was well within his authority in issuing the regulations and the regulations were a modest step in ensuring that homeowners do not find themselves underinsured after a major disaster. UP pointed out that the underinsurance problem can be traced back to the 1991 Oakland Hills firestorm, after which insurers refused to offer blanket replacement cost policies. UP reminded the Court that California's Residential Property Disclosure Form requires that insurers, through their agents and brokers, convey to homeowners that market value and insuring to value are not the same due the realities of rebuilding from a total loss. UP also urged the Court to follow the tradition in California law which implies a quasi-fiduciary duty owed by an insurer to its insured. UP was joined on the brief by co-amici the Rancho Bernardo Community Council and the Scripps Ranch Civic Association. UPdate 4/9/16: After losing in the Court of Appeal, the Commissioner appealed to the State Supreme Court and UP filed another amicus brief, again supporting the Commissioner's efforts to solve the underinsurance crisis. Our new friends at Public Good Law Center (joined by co-amici Consumers for auto reliability and Safety, East Bay Community Law Center, Housing and Economic Rights Advocates, Public Counsel) and administrative law expert and Stanford Law Professor Michael R. Asimow also filed briefs in support of the Commissioner (see below). UPdate 11/1/16: Today the Attorney General argued on behalf of the Commissioner before the California Supreme Court en banc. UP attended the argument and came away hopeful that the Justices grasped the magnitude of the underinsurance problem and will give deference to the agency and uphold the regulation. Read more here:

<http://www.insurance.ca.gov/0400-news/0100-press-releases/2016/release125-16.cfm> UPdate 1/23/17: Great news today from the California Supreme Court! The Justices unanimously upheld the Commissioner's authority to regulate home insurance replacement cost estimates. The Supreme Court found that the authority granted to the Commissioner by the Legislature includes the authority to issue "reasonable rules and regulations to administer the [Unfair Insurance Practices Act]. The insurance

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industry had challenged the regulation on the grounds that was outside the bounds of the statute. Citing UP's amicus brief and recovery surveys, the Supreme Court recognized the longstanding problem of underinsurance as a compelling justification for the regulation.

UP's brief was written pro bono by Ivo Labar, Esq. and Daniel Veroff, Esq. of Kerr and Wagstaffe, LLP and UP Executive Director Amy Bach and Staff Attorney Dan Wade

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