California Fair Plan Association v. Marlene Garnes

Year: 2015
Court: California Court of Appeal, First Appellate District, Division Two
Case Number: A143190

Under the California Insurance Code, the California Fair Plan, the state's insurer-of-last-resort, is required to, in the case of a partial loss to a policyholder's home, pay the lesser of the cost of repair or the policy limits under an actual cash value policy. In the instant case, the California Fair Plan decided to pay the policyholder Garnes the market value of her home, relying on a manufactured term: "constructive total loss" (when the structure needs extensive repairs that exceed the home's current market value). In Garnes' case, the home was located in a depressed area, thus the market value was significantly less than the cost of repair. In an effort to apparently save its member companies money, the California Fair Plan paid Garnes the market value and walked away, leaving Garnes, its policyholder, essentially with an empty lot. UP reminded the Court that the California Fair Plan must comply with California law and treat its policyholders fairly, noting the California Fair Plan's "constructive total loss" loss settlement valuation has been illegal for many years under the Insurance Code amendments and resulting case law and was expressly disavowed by the Department of Insurance, who also appeared as amicus curiae in the case, on multiple occasions. UPdate 5/26/17: In a published opinion, the Court of Appeal reversed, holding that FAIR Plan's policy, coupled with Cal. Ins. Code 2070 and 2071, sets a minimum standard of coverage that requires FAIR to indemnify Garnes for the actual cost of the repair to her home, minus depreciation, even if this amount exceeds the fair market value of her home.

UP's brief was authored by UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.