

[Paslay v. State Farm](#)

Year: 2016

Court: California Court of Appeal

Case Number: B265348,

UP submitted a request to depublish a portion of an appellate opinion which improperly made a finding of fact about an insurance bad faith dispute. In the case, the insured, while waiting for the adjuster to come to the house to inspect the damage, began mitigating the damage. In order to prevent the water damage from spreading to undamaged portions of the room and resulting mold, the insured removed sections of the ceiling and drywall. The insurer refused to pay for the mitigation and associated costs. When the insured sued for bad faith, the court found that insured should have waited before mitigating. This is a dangerous precedent because the insured's duty under the policy is to mitigate further damage to the property. Insurers also have the duty promptly and thoroughly investigate every claim. In other words, the court here allowed the insurer to place the insured between a rock and a hard place - wait to mitigate while the adjuster drags their feet (with no penalty) and risk breaching the policy by not preventing further damage or mitigate further damage and risk the insurer refusing to pay to the mitigation.

UP's letter was authored by Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq. with assistance from E. Gerard Mannion, Esq., of Mannion and Lowe (UP Board Member)