

[Request for Depublication: Stephens v. Fireman's Fund](#)

Year: 2015

Court: California Court of Appeal, First District, Division One

Case Number: A135938; A136740

UP submitted this letter requesting depublication of the decision in Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co. (A135938; A136740, Certified for Partial Publication November 24, 2014; 231 Cal.App.4th 1131, modified at 231 Cal.App.4th 1437d) based on legal errors in the opinion with respect to the distinction between contract and tort damages. While UP applauded the Court of Appeal for holding that the insurer's bad faith delay and denial of benefits excused the insured's timeline for completing repairs in accordance with the policy, the Court of Appeal wrongfully awarded conditional contract damages to the insured rather than tort damages. California law has long held that an unreasonable delay or denial of benefits owing constitutes tortious bad faith. The measure of damages should be the injury suffered by the insured, not simply the benefits already owed under contract. If the decision stands it will create confusion in the California insurance law about what damages are available in bad faith cases. From a public policy standpoint, the Court of Appeal's decision may open the door for insurers to act in bad faith without fear of additional liability in tort. No public purpose is served by forcing insureds to institute litigation to recover benefits owing without the possibility of recovering additional tort damages.

UP's letter requesting depublication was written by UP Staff Attorney Dan Wade, Esq. and UP Executive Director Amy Bach, Esq. Of Counsel: Sharon Arkin, Esq.