

Court rejects FAIR Plan's policy of reduced insurance payments for homeowners in lower income neighborhoods

California Department of Insurance

FAIR Plan said the cost of repairing the lower income fire-damaged home wasn't required, even though similar loss in a wealthy neighborhood would be covered.

On Friday, May 26, homeowner Marlene Garnes won a legal victory against California FAIR Plan Association (FAIR) when the California Court of Appeal, First District overturned a decision by a lower court and ordered the insurer to pay the cost to repair Garnes' Richmond-area home, which was damaged in a fire in 2011.

"The Court's decision prevents FAIR from forcing residents in lower income and other economically challenged neighborhoods to move or live in a damaged home instead of repairing it after a fire," said Insurance Commissioner Dave Jones. "FAIR was established as a last resort insurer after the Watts riots, to protect consumers in lower income neighborhoods, after insurers stopped writing coverage in those neighborhoods; thankfully the court recognized this fact and ruled in favor of consumers. We urged the court to require the FAIR Plan to pay the full cost of repairs regardless of whether the home's value was low because it's in a lower income neighborhood, and the court agreed."

In October 2011, Marlene Garnes submitted a claim for \$320,549 to her insurer for the cost to repair her damaged home, less depreciation. Garnes' FAIR fire insurance policy had a limit of \$425,000, but the insurer denied her claim and only paid the \$75,000 it determined was the fair market value of her property in 2011. When the parties were unable to agree on the claim payment, FAIR sued Garnes.

Insurance Commissioner Jones filed an amicus brief in support of Marlene Garnes, pointing out that the Insurance Code entitled her to be reimbursed for the cost of repairing her home even if that exceeded

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the fair market value of the home. The court relied on Commissioner Jones' interpretation of the Insurance Code in ruling in favor of Ms. Garnes.

While the FAIR plan changed the terms of its insurance contracts to limit payments for repairs to the fair market value of the home, they failed to obtain approval of the Insurance Commissioner for this change. Even before the court ruling, Commissioner Jones required the FAIR plan to revise and file its insurance contracts so as to eliminate the language it had added limiting payments to the fair market value of the home. Limiting payments for repairs to the fair market value of the home reduces payments for homeowners in lower income neighborhoods where home values are low – in effect discriminating against homeowners in lower income neighborhoods.

“Since the passage of the Homeowners Bill of Rights in 2004, California insurers have used a variety of methods to cut back on paying claims,” said Garnes’ legal counsel Dylan Schaffer. “With the court’s decision, the rule is now unmistakable: when a fire partially damages a home, insurers must pay the actual cost of repair. We are pleased to have achieved this milestone on behalf of California consumers.”

The Insurance Commissioner appeared as an amicus curiae or friend of the court, based on his vital interest in protecting consumers and ensuring the proper interpretation and enforcement of the provisions in the Insurance Code, United Policyholders UP), a national consumer organization, also filed an amicus brief supporting Garnes’ claim.

“The Garnes decision is a clear directive to FAIR to be fair when calculating the benefits it owes to lower income homeowners,” said UP co-founder Amy Bach. “Ms. Garnes’ home may have been worth \$75K in 2010 – at the bottom of the recession – but it is now worth nearly \$400K. California law does not permit insurers to unfairly take advantage of market conditions to underpay claims.”

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Media Notes:

- California FAIR Plan Association is an insurance industry placement facility and joint reinsurance association created by the Legislature in 1968 to ensure that homeowners who live in high risk or otherwise uninsurable areas have access to basic property insurance.

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- There are roughly 125,828 FAIR Plan policies in CA as of December 31, 2015. This includes condominium, mobile home, and dwelling fire coverage on owner occupied property and property rented to others. Of the 125,828 FAIR Plan policies, approximately 83,678 are written in areas where there are a majority of minorities. The 83,678 FAIR Plan policies in high-minority areas represents 67 percent of the total FAIR Plan writings.
- Insurance Code Section 2051 provides that under an open fire insurance policy that pays “actual cash value,” as does the Garnes policy, the actual cash value recovery is determined in one of two ways. For a “partial loss to the structure,” the measure is “the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less a fair and reasonable deduction for physical depreciation” or “the policy limit, whichever is less.” The insurer may not “total” a partially damaged home, as though it were a car, and force people to move out of their homes, instead of repairing.
- Garnes was represented by Dylan Schaffer from Kerley Schaffer LLP in Oakland.

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