

## [Justices Back Calif. Insurance Commissioner in Feud With Industry](#)

The Recorder

The California Supreme Court dealt property insurers a blow on Monday, reversing lower court rulings that had limited the state insurance commissioner's authority and blocked a rule the industry had slammed as overly prescriptive and burdensome.

The lawsuit by two state industry trade associations challenged a 2011 regulation making it illegal for insurers to issue estimates of a home's replacement cost to consumers unless the estimate included specific factors like the cost of labor, building materials and debris removal.

California Insurance Commissioner Dave Jones issued the rule in response to an outcry from hundreds of victims of the Southern California wildfires in 2007 and 2008, who found that they were underinsured by tens or hundreds of thousands of dollars when faced with actually having to rebuild their homes.

The Association of California Insurance Companies and the Personal Insurance Federation of California succeeded in blocking the rule in 2013 when a Los Angeles judge ruled that the commissioner had overreached, and the decision was affirmed on appeal in 2015. The groups brought in litigation heavyweight Theodore Boutsos Jr. of Gibson, Dunn & Crutcher to defend the victories before the California Supreme Court.

But in a unanimous opinion Monday, the state high court ruled that the commissioner "enacted the replacement cost regulation by exercising valid authority" under the Unfair Insurance Practices Act.

The Association of California Insurance Companies had argued that because the law did not specifically call out incomplete replacement cost estimates as an "untrue, deceptive or misleading act," the commissioner could not limit how insurers formulate their estimates. The ACIC also contended that the commissioner could only challenge alleged unfair practices through enforcement actions case-by-case,

not through broad, prohibitive rulemaking.

The court rejected both of those arguments. “Even if the statutory prohibition on misleading statements is ... self-executing, an administrative agency nonetheless has authority to administer it,” Justice Mariano-Florentino Cuéllar wrote for the court. “As the association concedes, the commissioner could certainly have brought an enforcement action against an insurer’s use of misleading replacement cost estimates under [the law],” Cuéllar added. “What this enforcement power does not imply is that the commissioner was disabled from addressing the problem posed by such estimates through regulation.”

Commissioner Jones, in a statement, called the decision an “important victory.”

The ruling is also a victory for insurance policyholders, although it will not bring any immediate relief to those who lost their homes in the earlier wildfires, said Amy Bach, executive director of the San Francisco-based advocacy group United Policyholders. “The hope is that going forward, insurers are going to do a much better job at estimating the replacement value of the home that they’re insuring,” Bach said.

The challenge to the replacement cost rule is part of a broader fight that the insurance industry has pursued against what it sees as an overly aggressive government regulator.

“The significance of the case is that commissioners before Dave Jones and including Dave Jones have sought to expand their authority and control, dictating how insurance companies should conduct their business,” Gene Livingston, a Greenberg Traurig partner in Sacramento representing the ACIC, said last Friday before the ruling was handed down. He could not be reached Monday. “We respectfully disagree with the court’s opinion today upholding the commissioner’s overreach; we believe it does not accurately reflect the Legislature’s intent,” the industry groups said in a joint statement in response to the ruling. “The court acknowledged that its decision reaches only one of several grounds asserted in this case and we are continuing to evaluate our options, including on remand.”