

## **State Supreme Court affirms homeowner reimbursement protections supported by Commissioner Jones**

California Department of Insurance

The State Supreme Court Wednesday ended a long legal battle between a Richmond homeowner and her homeowner insurance company when the court refused to consider the insurance industry's petition to overturn a lower court's precedent setting decision that insurers must pay to repair a home even if repair costs exceed the home's market value.

The case stems from a house fire in October 2011. Richmond homeowner Marlene Garnes submitted a claim for \$320,549 to her insurer, California FAIR Plan Association, for the cost to repair her damaged home, less depreciation.

Although Garnes' FAIR fire insurance policy had a limit of \$425,000, the insurer denied her claim and only paid \$75,000, which it determined was the fair market value of her property in 2011 during the mortgage-driven recession. The conflict over the claim between FAIR and Garnes led to legal challenges.

"This is an important win for homeowners who should have confidence their insurer will deliver on its promises regardless of housing value fluctuations," said Insurance Commissioner Dave Jones.

The First District Court of Appeal in San Francisco ruled in May that a 2004 state law allows homeowners to recover their repair costs even if the policy contained more restrictive payout provisions.

Coverage is limited to fair-market value only if a home has been destroyed or damaged beyond repair, the court said. Garnes' home was badly damaged by the fire, but was not destroyed.

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Jones filed an amicus brief supporting Garnes' argument, pointing out that the Insurance Code entitled her to be reimbursed for the cost of repairing her home even if it exceeded the fair market value of the home. The lower court relied on Commissioner Jones' interpretation of the Insurance Code when it ruled in favor of Ms. Garnes.

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.

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## MEDIA NOTES

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.

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.

There were 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,

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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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