United Policyholders
Empowering the Insured

Win for California Policyholders on Replacement Cost

In its November 24, 2014 decision, the California Court of Appeal First District, Division One, reversed a *judgment notwithstanding the verdict* that an insurer owes a duty to its insured to communicate policy requirements and settle claims fairly. In *Stephens & Stephens XII LLC v. Fireman's Fund Ins. Co.* (Case No: A135938, 2014), the Court of Appeal reversed and remanded with directions to award a conditional judgment for the insured if they complete the repairs required under the policy to recoup replacement cost, rather than actual cash (depreciated) value. Insureds who pay higher premiums for replacement cost policies are able to recoup the actual cost to rebuild but these requirements are sometimes subject to time limit requirements in the policy.

This is an important decision because the trial court reversed in error a jury finding that the insurer had unreasonably withheld replacement cost benefits. The insurer claimed that the insured had failed to replace the property at issue within the 180-day policy deadline. However, the insured was able to prove at trial that the insurer breached its duties under the California Insurance Code to fairly investigate the claim and inform the insured of their respective [time] requirements. However, the trial judge erroneously overruled the jury and refused to award a judgment for the insured.

On appeal to the First District Court of Appeal, UP submitted an *amicus curiae* brief which reminded the court of the equities and hardship involved and: "If an insurer fails in any of [its] duties [to communicate policy requirements and settle claims fairly], the insurer is precluded from asserting a defense to the insured's claim for entitlement to the benefits or as a defense to its liability for bad faith that the policyholder did not meet its own contractual obligations." (citing *City of Hollister v. Monterey Ins. Co* (2008) 165 Cal.App.4th 455) (discussing the long-held principle of black-letter contract law that a *condition is excused whose fulfillment the other party prevented*).

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