

Case No. B248622

**COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE**

ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES and
PERSONAL INSURANCE FEDERATION OF CALIFORNIA,

Plaintiffs and Respondents,

v.

DAVE JONES in his capacity as Commissioner
of the California Department of Insurance,

Defendant and Appellant.

**AMICUS BRIEF OF UNITED POLICYHOLDERS, SCRIPPS
RANCH CIVIC ASSOCIATION, RANCHO BERNARDO
COMMUNITY COUNCIL
IN SUPPORT OF DEFENDANT AND APPELLANT**

From a Decision by the Los Angeles Superior Court
Case No. BC463124, Hon. Gregory W. Alarcon, Presiding

Amy Bach (142029)
Daniel Wade (296958)
UNITED POLICYHOLDERS
381 Bush St., 8th Floor
San Francisco, CA 94104
Telephone: (415) 393-9990
Facsimile (415) 677-4170

Ivo Labar (203492)
KERR & WAGSTAFFE LLP
101 Mission St., 18th Floor
San Francisco, CA 94105
Telephone: (415) 371-8500
Facsimile: (415) 371-0500

Attorneys for Amicus Curiae
*UNITED POLICYHOLDERS, SCRIPPS RANCH CIVIC ASSOCIATION,
RANCHO BERNARDO COMMUNITY COUNCIL*

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I. INTRODUCTION

Amicus curiae United Policyholders (“UP”), a non-profit consumer organization, respectfully submits the following brief in support of Defendant Appellant Commissioner of the Department of Insurance in the above-referenced case. UP concurs in Defendant Appellant’s contentions that adoption of Cal Code Regs., Tit. 10 §2695.183 – (“the Regulation”) is necessary to promote the public welfare and well within the Commissioner’s express authority.

The Commissioner adopted the Regulation to protect the public *and* effectuate the California Legislature’s intent to solve a serious problem that has plagued homeowners throughout California after every major wildfire in the last two decades: Wildfire victims chronically find their policy limits grossly inadequate to cover the cost of replacing their homes, despite the fact that their policies were described at the point of sale as providing “replacement cost” protection. Post-disaster underinsurance is so severe that cities, counties, the American Red Cross and several charitable foundations have partnered with United Policyholders to help solve it after past

disasters.¹ Consumer education alone is not solving the problem. The Regulation is a much-needed step in the direction of ensuring that consumers will no longer be deceived or misled about their home insurance at the point of sale.

Long before the adoption of the Regulation, the underinsurance problem was exposed in industry publications² and at community meetings in disaster areas, press conferences organized by panicked homeowners and surveys of property owners³. The root causes and nuances of the problem have been dissected in legislative hearings⁴,

¹ See Partnering with the Red Cross, What's UP? (May 2010) at <http://www.uphelp.org/library/partnering-red-cross-great-grant-news/2010-05-01>.

² See construction cost estimating firm Marshall & Swift press release, August 17, 2009, "California Wildfires Highlight Need to Protect Homes Against Underinsurance" <https://www.marshallswift.com/pressreleases.aspx?ReleaseID=15>

³ See post-disaster surveys conducted by local governments and community organizations in partnership with United Policyholders at http://www.uphelp.org/library/resource/survey_results#a

⁴ See CA B. An., A.B. 2119 Sen., 9/03/1993 (...(Petris)...a measure enacted in response to the disastrous Oakland Hills Fire of 1991. SB 1854 requires insurers selling homeowners insurance to make a series of disclosures to consumers."); CA B. An., S.B. 1855 Assem., 8/04/2004 ("Rationale: This bill sponsored by CDI, requires insurers to provide more information to policyholders to reduce the likelihood that a home is underinsured. Following the southern California fires that destroyed over 3,500 homes in 2003, many policyholders discovered that they did not carry adequate coverage.").

law review articles⁵ and lawsuits. There has been extensive print and broadcast media coverage of post-disaster insurance gaps and the underinsurance problem.⁶ Three successive administrations of California Insurance Commissioners conducted fact-finding on the post-disaster underinsurance phenomenon and held hearings over a 22-year period. Two facts consistently emerged: A replacement cost estimate of a home *must factor in* the main components of the

⁵ See Softening the Short Shrift: Regulating Homeowner's Insurance Limits as Causes of Underinsurance, Joshua Fox, 46 Cal. W. L. Rev. 369 (Spring 2010). (Stating, *inter alia*, "insurers have both the incentive and ability to set low policy limits...and...homeowner's insurance policyholders are ill-equipped to determine the appropriate limits for their insurance policies.") (pp.4 and 11); See also When Enough is Not Enough: Correcting Market Inefficiencies in the Purchase and Sale of Residential Property Insurance, Kenneth S. Klein, 18 Va. J. Soc. Pol'y & L. 345 (Fall 2011) for the proposition that underinsurance is in fact pervasive and any effective proposal for remedial action must include insurers providing complete information to potential customers regarding total-loss rebuilding costs.

⁶ See, e.g. "A Year Later, Fire Victims Say Insurers Misled Them" <http://articles.latimes.com/2008/oct/23/business/fi-underinsure23>; See also "Survey shows 2007 wildfire victims grossly underinsured, majority of claims not resolved" http://uphelp.org/pdfs/Survey_0608.pdf; See also "Avoiding Underinsurance," "Underinsurance 101, Causes and Solutions", and other UP reports and publications at http://uphelp.org/library/guide/underinsurance_help.; See also *California Bush Fire Victims Discover Belatedly They Are Underinsured*, Vittorio Hernandez, (June 6, 2008) <http://www.uphelp.org/news/california-bush-fire-victims-discover-belatedly-they-are-underinsured/2008-06-06>.

individual home and the possibility of post-disaster construction cost increases. An estimate that does not include those items cannot be fairly characterized as a “replacement cost” estimate.

Far from being the radical and intrusive mandate Plaintiff Respondent has mischaracterized it to be, the Regulation takes a very modest approach. It gives insurers the option not to communicate an estimate of a home’s replacement value to a consumer at all:

(m) No provision of this article shall be construed as requiring a licensee to estimate replacement cost or to set or recommend a policy limit to an applicant or insured. No provision of this article shall be construed as requiring a licensee to advise the applicant or insured as to the sufficiency of an estimate of replacement cost. CCR, Title 10, section 2695.183, (m)⁷

In addition, the Regulation is consistent with Insurance Code section 10102; the mandatory California Residential Insurance Disclosure form. By setting forth a list of items that must be included if an estimate is to be characterized as a replacement cost estimate, the

⁷ The above language was included in the Regulation over the objections of United Policyholders. We contend that insurers and their sales agents *should* be affirmatively required to recommend dwelling insurance limits adequate to replace a home. But no such requirement exists in the challenged regulation.

Regulation complements the statutorily required disclosure that provides: “The estimate to replace your home should be based on construction costs in your area and should be adjusted to account for the features of your home. *These features include but are not limited to the square footage, type of foundation, number of stories, and the quality of the materials used.*” Cal. Ins. Code § 10102.

The Regulation simply requires that *if* an insurer (or their representative) *chooses* to give a consumer an estimate of the cost of replacing their home, that estimate must factor in square footage, demand surge, the roof, and the main components of the home so as to be complete. Again - the Regulation merely requires, as does the mandatory disclosure form, that insurers’ communications to consumers not be **incomplete**.⁸

The fact that Respondents prefer to remain free to provide incomplete and misleading information to property owners at the point of sale is not a sound basis for invalidating an important consumer protection regulation. Plaintiff-Respondents participated in the drafting process, got almost everything they asked for, signaled general assent, and then when a new Commissioner took office,

⁸ See Klein, *supra* note 5 at p. 13 (sec. II(B)(1)).

mounted the legal challenge that led to this proceeding. The victory Plaintiff-Respondents had scored in the drafting process – an express statement that they have no obligation to provide replacement estimates at all - was apparently not sufficient for them. To accomplish their goal of thwarting the Regulation’s objective, Plaintiff-Respondents misled the lower court **by conflating “accuracy” with “completeness.”** The Regulation requires completeness, not accuracy.⁹ For all of these reasons, and as stated below, UP respectfully requests that this Court reverse the trial court and find that Plaintiff Respondents were not entitled to the declaratory relief that was granted.

II. STATEMENT OF INTEREST

United Policyholders (“UP”) is a non-profit organization based in California that serves as a voice and information resource for insurance consumers in the 50 states. The organization is tax-exempt under Internal Revenue Code §501(c)(3). UP is funded by donations and grants and does not accept money from insurance companies.

⁹ As the Department points out in its opening brief, the focus of the regulation is *completeness* not *accuracy*, an important distinction that the lower court seemed to ignore in its ruling (*See* RF Vol. IV, 1093).

UP has extensive experience with the underinsurance problem that led to the adoption of the Regulation through direct contact with thousands of homeowners after devastating wildfires. During the 12-24 months it generally takes for people to repair, rebuild and recover, UP hosts educational workshops and communicates regularly with the victims through a Roadmap to Recovery™ program. We coordinate these services with the California Department of Insurance, the American Red Cross as well as local government officials and organizations in the affected communities UP monitors individual and community experiences in the long-term disaster recovery process by conducting surveys at the six-month and one-year mark.

UP's Executive Director is currently in her sixth consecutive term as an official consumer representative to the National Association of Insurance Commissioners, and has performed government service as a consultant to the California State Senate and on the California Earthquake Authority Product Enhancement Committee. UP was also an active participant in the informal and formal proceedings that led up to the issuance of the Regulation.

A diverse range of policyholders throughout California communicate on a regular basis with UP, which allows us to provide

topical information to courts via the submission of amicus curiae briefs in cases involving insurance principles that are likely to impact large segments of the public and business community.

UP's amicus brief was cited in the U.S. Supreme Court's opinion in *Humana v. Forsyth*, 525 U.S. 299, 314 (1999), and its arguments have been adopted by the California Supreme Court in *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, 40 Cal.4th 19 (2006) and *Vandenberg v. Superior Court*, 21 Cal.4th 815 (1999). UP has filed amicus briefs in over three hundred cases throughout the United States, including all 50 states and many federal courts.

The Scripps Ranch Civic Association is a non-profit dedicated to preserving, promoting and enhancing the unique quality of life in a community that represents the 12,000 households located within 92131 - Scripps Ranch and Stonebridge Estates areas. A very large number of Association members lost homes and found themselves grossly underinsured due to a 2003 and a 2007 wildfire. SCRA members participated in proceedings and provided public testimony that led to the issuance of the regulation at issue.

The Rancho Bernardo Community Council is a non profit entity whose mission is to provide comfort, protection, civic service and

representation for the community of Rancho Bernardo; interfacing with government agencies, utilities and any other influencing factors on issues specifically directed toward Rancho Bernardo as the principal beneficiary, so as to preserve and enhance the unique quality of life for which the community has become renown. The majority of the approximately three thousand homes that were destroyed in the 2007 Witch Creek wildfire were located in Rancho Bernardo. Rancho Bernardo residents and the community at large have been substantially harmed by underinsurance in the past and are participating here in an effort to help eradicate the problem going forward.

III. STANDARD OF REVIEW

An administrative agency's action comes before a court with a presumption of correctness and regularity. *Tomlinson v. Qualcomm, Inc.*, 97 Cal.App.4th 934, 941 (2002). An administrative agency's regulation, like a statute, "is presumed valid and a challenger bears the burden of pleading and proof of invalidity." *Bell v. Board of Supervisors*, 23 Cal.App.4th 1695, 1710 (1994). Where, as here, a regulation is challenged on its face as not authorized by the governing statute, a question of law is presented that is subject to independent

review by this Court. *Southern California Edison Co. v. Public Utilities Com'n*, 85 Cal.App.4th 1086, 1096 (2000).

While the final responsibility for the interpretation of the governing law rests with the courts, “the appropriate mode of review in such a case is one in which the judiciary ... accords great weight and respect to the administrative construction.” *Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal.4th 1, 12 (1998). In reviewing an administrative agency’s rulemaking, courts will interfere only where the agency “clearly [has] overstepped its statutory authority or violated a constitutional mandate.” *Ford Dealers Assn. v. Department of Motor Vehicles*, 32 Cal.3d 347, 356 (1982).

In reviewing the validity of a regulation, the judicial function is limited to determining whether the regulation is: (1) consistent and not in conflict with the governing statute and (2) reasonably necessary to effectuate the purpose of the statute. Gov. Code, § 11342.2; *see also*, *Yamaha Corp. of America*, 19 Cal.4th at 10-11 (“*If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement this purpose of the statute, judicial review is at an end.*”). To determine whether a regulation is consistent with the governing statute, the

proper inquiry is whether the regulation alters or amends the governing statute or case law, or enlarges or impairs its scope and is within the scope of the authority conferred. *Communities for a Better Environment v. California Resources Agency*, 103 Cal.App.4th 98, 108 (2002). In other words, “[t]he task of the reviewing court in this regard has been described as ‘decid[ing] whether the [agency] reasonably interpreted the legislative mandate.’ [Citation.]” *County of Santa Cruz v. State Bd. of Forestry*, 64 Cal.App.4th 826, 834 (1998).

IV. ARGUMENT

A. THE REGULATION IS A PRAGMATIC APPROACH TO ALLEVIATING AN EPIDEMIC OF UNDERINSURANCE

A person’s home is generally his or her most valuable asset, both from a financial and a human perspective. It is neither logical nor true that homeowners would knowingly expose or underinsure that most valuable asset. The fact that so many disaster victims find out after the fact that the home insurance sold to them as “replacement coverage” does not in fact cover the cost of replacing their home is clear evidence that Plaintiff Respondents’ members are providing misleading and incomplete information at the point of sale.

A properly insured dwelling is one that is covered by a policy with high enough limits to pay for what it would cost to rebuild that dwelling with a like kind and quality structure at its existing location and in compliance with local building codes/ordinances in the event of a total loss. Calculating that cost requires a complete review of the size, style, components and materials of the dwelling, as well as consideration of local market conditions.

Insurance producers and insurers know this and are advertising full coverage and leading consumers to believe they are buying full coverage, but chronically setting dwelling limits too low. In total loss scenarios where the error is exposed, they point the finger at the insured as the party responsible for the inadequate protection.

An insured that knowingly and willfully underinsures his or her home must bear the consequences of having purchased inadequate financial protection. Neither the regulation at issue nor *Amicus Curiae* seek protection for that insured.

But the California Insurance Commissioner must provide protection for the insured that purchases a policy in reliance on a calculation provided by a licensed professional that purports to represent the estimated cost of replacing their home, where in fact the

that calculation excludes significant cost factors. That is the protection the Regulation provides. It was adopted after substantial study and public input, including from insurers, and it is reasonable and necessary.¹⁰

Deceptive communications related to home insurance and replacement values have been wreaking havoc in disaster areas for over twenty years. The Regulation needs to be upheld and enforced.

B. PRIOR TO ISSUANCE OF THE WRIT BY THE LOWER COURT, THE REGULATION WAS STARTING TO HAVE ITS INTENDED EFFECT.

Following the Oakland Hills Firestorm in 1991, the California Legislature passed Senate Bill 1854 in response to the widespread “underinsurance problem” revealed by the Firestorm.¹¹ The California Department of Insurance (“Department”) then promulgated Insurance Code regulations (*Stats. 1992 c. 1089 operative July 1, 1993, amended by Stats. 1993, c. 11, S.B. 52 § 1, effective May 5, 1993*) and created the “California Residential Property Insurance Disclosure”

¹⁰ See New rules aim to curb homeowner underinsurance, Penni Crabtree (June 27, 2011) <http://www.uphelp.org/news/new-rules-aim-curb-homeowner-underinsurance/2011-06-27>.

¹¹ *Id.* at FN 4; See also, e.g. *20 years after Oakland firestorm, insurance snags remain*, Angela Woodall, Los Angeles Times, November 1, 2011 (<http://articles.latimes.com/2011/nov/01/business/la-fi-oakland-fire-20111101>).

Form (“Disclosure”), which must be given to consumers when purchasing a homeowner’s insurance policy. Ins. Code. §. 10100.2 et seq. The Disclosure requires, *inter alia*, that consumers are made aware of certain policy provisions, limits, coverage options, and exclusions, with the goal of reducing underinsurance. *Id.*

Despite the efforts of the Legislature and the Department “underinsurance” was again a significant problem following the 2003 San Diego Firestorm. Recognizing that § 10102 alone had not solved the “underinsurance” problem in California, the Legislature updated the Disclosure in 2004 and again in 2006 (*A.B. 2119 § 4, Stats, 2004, c. 385 S.B 1855 § 2 Stats. 2006, c. 137, A.B. 1946, § 2*). It amended the Insurance Code to provide added specificity regarding disclosure of policy limits, coverage options, and exclusions. Ins. Code § 10103 et seq. Nevertheless, after a series of 2007 San Diego wildfires, most famous of which was the “Witch Creek Fire”, “underinsurance” again reared its ugly head and created a renewed cry for more reforms.¹²

The Legislature responded by amending the Disclosure yet again to require inclusion of a Homeowner’s Bill of Rights (*Stats*

¹² See UP Survey finding that 66% of homeowners found themselves “underinsured” (www.uphelp.org/surveys).

2010, c. 589, A.B. 2022 § 4, operative July 1, 2011) and the Department promulgated the Regulation. Ins. Code. § 10103.05; 790.10; 10 Cal. Code. Regs. §2695.183.

As a result, continuing education providers had enhanced their curriculum pursuant to a related regulation requiring Broker-Agent Training on Estimating Replacement Value. Samples of course outlines emphasize the list of components of a home that must be included if a consumer is given a replacement cost estimate at the point of sale. Again – that list is consistent with section 10102.¹³

Homeowners and Fire Department officials in San Diego participated in a news conference celebrating the issuance of the Regulation.¹⁴ Disaster survivors, community and public officials and consumer advocates jointly expressed optimism that the Regulation would remedy a core cause of the problem – **incomplete calculations passed off to homeowners as “replacement cost” estimates at the point of sale.** And while the Regulation fell short of United

¹³ “Homeowners Insurance Valuation” 2011 CyberCE, Inc & WCS Publishing, Bullhead City, AZ 86430, <http://cyberce.biz/ResourceViewer.aspx?resid=960>.

¹⁴ *Insurance Commissioner: Time to prepare for wildfires*, Elizabeth Marie Himchak, Pomerado News (July 7, 2011). <http://www.pomeradonews.com/2011/07/07/insurance-commissioner-time-to-prepare-for-wildfires/>

Policyholders preferred solution (*a clear legal duty imposed on insurers to recommend adequate replacement cost policy limits*) our organization was confident its standards (*and remedy*) would succeed in deterring sales representatives from misleading consumers at the point of sale and augment the Legislature's efforts to mandate disclosures as a means of eradicating the economic devastation caused by underinsurance.

The severe underinsurance the Regulation addresses is not caused by homeowners being "cheap" and skimping on insurance on purpose. It is caused by deceptive communications at the point of sale. The vast majority of underinsured homeowners *followed an agent or insurer's recommendations and purchased an amount of home insurance that was based on a replacement estimate provided by the agent or insurer*. Insurance sales representatives routinely perform a replacement estimate calculation and provide it to the insured at the point of sale. They induce consumers to rely on their professional expertise and consumers do so. Insurance sales representatives advertise themselves as experts in protecting people's assets. That expertise and the quality of the protection of they sell is the essence of their sales pitch. The notion that an insurance sales

representative would undermine their own credibility by disclaiming the ability to sell appropriate coverage for a home is absurd, as is the notion that an agent or broker would send a prospective customer out to get a contractor bid before selling them a policy. Moreover, contractors are not in the business of providing free estimates for hypothetical construction projects. It is fantasy to suggest that an insurer will agree to insure a home based on a policyholder's determination of value. In reality, insurers use software programs and underwriting guidelines to determine the amount of Coverage "A" dwelling protection they place on a home. The Regulation does not change that reality nor does it in any way regulate underwriting at the point-of sale or otherwise.

The Regulation is a common sense approach. Consistent with the warning that appears in the disclosure form mandated by the California Insurance Code, the Regulation reflects the simple truth that **a home will be underinsured if the policy limits are set on the basis of an estimate that is missing key cost factors.** The Regulation simply recites the same list that appears in the mandated Residential Disclosure form (again - square footage, type of

foundation, number of stories, quality of materials, demand surge, etc.) and adds necessary specificity.

C. CALIFORNIA LAW IMPLIES A QUASI-FIDUCIARY DUTY OWED TO AN INSURED

The specificity *described above* is warranted where a replacement cost estimate is provided by insurance sales professionals because they have a **quasi-fiduciary duty** to their clients. In order to successfully meet the requirements of Section 1749.85 (a) of the California Insurance Code and Section 2188.65 of the California Code of Regulations, a Property and Casualty Broker-Agent, and Personal Lines Broker-Agent must have significant knowledge in the proper methods of estimating the replacement value of structures.

Specifically, the Property and Casualty Broker-Agent or the Personal Lines Broker-Agent that transacts, negotiates or sells homeowners' insurance would be required to complete a minimum of three hours of homeowners' insurance valuation training. California case law supports the **cause and effect** of the Regulation, that is, imposing a heightened duty owed by the insurer to its insured [or consumers at-large as potential customers/future policyholders].

California courts have in past cases recognized a "quasi-fiduciary" duty between an insurer and an insured. *Gibson v. Gov't*

Employment Ins. Co., 162 Cal. App. 3d, 441, 446 (1984) (*describing the relationship between an automobile insurer and its insured as a fiduciary relationship*). As a fiduciary, the insurer would owe the insured, *inter alia*, the duty of candor.¹⁵ Certainly the scope of the relationship between the insurer and insured would, at minimum, include disclosure by the insurer of necessary information required for completeness, resulting in the homeowner purchasing a policy based on this information, or at minimum a consumer's informed decision.

In addition, and unlike most other transactions, “the position of the consumer who procures homeowner’s insurance from an insurance agent differs from that of other consumers in that the insurance buyer may, like wildfire victims discussed above, be ignorant of what he or she needs in the first place.”¹⁶ Studies show that nearly half of all surveyed homeowners incorrectly believed that their insurer or agent bore the responsibility of accurately communicating the replacement

¹⁵ Black’s Law Dictionary 702 (9th ed. 2009). (The term “fiduciary” generally designates a person “required to act for the benefit of another on all matter within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor.”).

¹⁶ Fox, *supra* note 4 at 2.

costs of their dwelling, further underscoring the need for the Regulation.¹⁷

Deliberately or not, insurers and their sales representatives are communicating incomplete and inaccurate dwelling replacement cost estimates to property owners at the point-of-sale. As a result, property owners are being led to believe their homes are insured for an amount that will cover the cost of replacing the home after a total loss, when in fact they will come up short during the rebuilding process.

D. THE LOWER COURT’S RULING DISRESPECTS THE COMMISSIONER AND UNDERMINES HIS ABILITY TO EXECUTE HIS REGULATORY AND CONSUMER PROTECTION FUNCTIONS

Following issuance of the Writ by the lower court, advocates for insurers boasted of their victory over the regulator charged with overseeing their conduct. “Recent Regulatory Rulings May Provide Leverage for Insurers,” wrote Barger & Wolen Attorney Suhhee Choi in a May 9, 2013 blog post on the firm’s website.

Ignoring the substantial problem the Regulation is designed to solve, Plaintiff Respondents insist that the Commissioner cannot

¹⁷ See, e.g. J.D. Power: Homeowners Want Carriers to Offer Identity Theft, Ins. J., October 30, 2006 (“Given the widespread erroneous belief that insurers are obligated to ‘diagnose’ an accurate replacement cost, reports that approximately two-thirds of homes in the U.S. are underinsured seem unsurprising.”).

regulate their communications with customers by requiring them to convey complete information to customers. This is just plain wrong. The Commissioner has clear authority under section 790.10 to issue regulations that prevent insurers from engaging in deceptive communication practices.

The Unfair Insurance Practices Act (Ins. Code section 790 or “UIPA”) provides the Commissioner’s authority to implement the Regulation. The UIPA was enacted in 1959, “...to regulate further in areas of perceived lacunae in the state control of the insurance business.” *Karlin v. Zalta* (1984) 154 Cal.App.3d 953, 972. As the statute itself states, the UIPA is intended to allow the Commissioner a means of “...*providing for the determination of*, all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.” Ins. Code § 790 (emphasis added).

Any argument that a replacement cost estimate is not “misleading” simply because it is not represented to be accurate, as the Trial Court found, and does not take into account the factors required by the Commissioner in the Regulation, is misguided.¹⁸

¹⁸ *Id.* at FN 9.

Perhaps one or two underinsured homes do not suggest a misleading system of estimates, but the pervasive nature of underinsurance does. It is not simply a coincidence that so many homeowners are underinsured. The Commissioner was well within his authority to direct that insurers provide a complete estimate – one that takes into account the square footage of property, the cost of labor, and all other relevant factors in a systemic matter designed to provide for reliable estimates. The Commissioner plainly has the power to prohibit insurers from communicating estimates that only consider some of the relevant factors, and therefore are misleading, whether or not the insurer represents these estimates to be accurate. *Id.*

Similarly, any argument that the Regulation fails because it calls for an “estimate” rather than the actual cost that will be incurred when the structure is replaced is nonsensical. It is impossible to know the exact cost of replacing a structure at some unknown point in the future. The best that can be done is what the Commissioner has done here – **require a complete estimate**. The old system – letting insurance sales representatives pass off incomplete estimates as “replacement cost” estimates – failed and caused serious harm.

All stakeholders had an adequate opportunity to participate in the rule-making prior to the adoption. Insurers and producers had many opportunities to participate in crafting these regulations. In fact, the Commissioner, prior to issuance, adopted almost all their suggested amendments. The Commissioner has done so here, and his Regulation is a reasoned attempt to protect consumers from the pervasive problem of underinsurance by requiring disclosure.

V. CONCLUSION

Insurance buyers rely on insurers and their professional sales representatives to provide complete and accurate information about the products they sell. The regulations at issue simply require that where an insurer or its representative communicates an estimate of a home's replacement value as part of the information they give an insurance buyer, the information communicated must be complete.

In an effort to subvert necessary regulation, Plaintiff Respondents seek to undermine the Commissioner's authority to do his job. The Regulations at issue here plainly promote the public welfare by appropriately prescribing the components of a complete

home replacement cost estimate to be used in situations where an insurer or its agent *chooses* to provide one to a consumer.

For the foregoing reasons, United Policyholders respectfully requests the trial court's finding that Plaintiff Respondents are entitled to declaratory relief should be reversed.

DATED: July 10, 2014

KERR & WAGSTAFFE LLP

By _____
IVO LABAR

*Attorneys for Amicus Curiae
United Policyholders
Scripps Ranch Civic Association
Rancho Bernardo Community
Council*

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

Pursuant to California Rule of Court, rule 8.360 and rule 8.412, I certify that this Amicus Brief of United Policyholders in Support of Defendant Appellants is proportionately spaced, has a typeface of 14-point, proportionally-spaced font, and contains 4,542 words according to the word count feature of Microsoft Word 2007.

DATED: July 10, 2014

KERR & WAGSTAFFE LLP

By _____
IVO LABAR

*Attorneys for Amicus Curiae
United Policyholders
Scripps Ranch Civic Association
Rancho Bernardo Community
Council*

PROOF OF SERVICE

I, Brandilynn Thomas, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 101 Mission Street, 18th Floor, San Francisco, California 94105.

On July 10, 2014, I served the following document(s):

**AMICUS BRIEF OF UNITED POLICYHOLDERS
IN SUPPORT OF RESPONDENT**

on the parties listed below as follows:

Honorable Gregory W. Alarcon Los Angeles Superior Court Department 36 111 North Hill Street Los Angeles, CA 90012	Kamala D. Harris Paul D. Gifford W. Dean Freeman Attorney General of California 300 South Spring Street, Suite 1702 Los Angeles, CA 90013
Gene Livingston Monica Baumann, Esq. Greenberg Traurig, LLP 1201 K Street, Suite 1100 Sacramento, CA 95814-3938	Rancho Bernardo Community Council 12463 Rancho Bernardo Road, #523 San Diego, CA 92128-2143
Supreme Court of California 350 McAllister Street San Francisco, CA 94102 (Via e-submission)	Scripps Ranch Civic Association c/o Bob Ilko, President 10247 Rue Touraine San Diego, CA 92131

By first class mail by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 10, 2014, at San Francisco, California.

Brandilynn Thomas