



Association of California
Insurance Companies
A subsidiary of PCI

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Two Insurance Trade Associations File Litigation Over Anti-Consumer Homeowners Regulations: Regulations Take Effect Today

SACRAMENTO, Calif. – Despite express concerns raised from key Democratic legislators, Insurance Commissioner Dave Jones will implement regulations drafted by his predecessor, Steve Poizner, which will severely restrict the ability of insurers to provide valuable information to homeowners when selecting the amount of insurance they purchase.

Accordingly, two insurance trade associations, the Association of California Insurance Companies (ACIC) and the Personal Insurance Federation of California (PIFC), have filed a lawsuit in the Superior Court of California in the County of Los Angeles seeking to stop one aspect of regulations relating to homeowners' insurance issued by the California Department of Insurance (CDI). The regulations take effect today, June 27, 2011.

The following statement can be attributed to Rex Frazier, PIFC president, and Mark Sektnan, ACIC president:

"The homeowner regulations that take effect today are both anti-consumer and inconsistent with California law. Insurers want to foster open communication with policyholders and these regulations restrict these communications. These rules will not provide more coverage if a large number of homes are lost following a major wildfire. While the trades are challenging these unwise regulations, insurance companies will fully comply with the regulations until a court determines otherwise.

It is important to note what the lawsuit does not cover. The insurance industry supports most of the CDI's regulation, particularly the provisions requiring additional 1) training for insurance agents on estimating replacement cost for homes and 2) insurer record-keeping about homeowners' insurance sales to ensure more information is available during a claims dispute. The insurance industry also supported CDI-sponsored legislation in the 2010 session by then-Assemblyman Ted Gaines, AB 2022, which improved the disclosures that insurers must provide to the public in a homeowners' insurance transaction.

The present litigation concerns a regulation drafted by former-Commissioner Poizner during the last months of his administration that current-Commissioner Jones has inherited. The regulation provides insurers a mandated formula and particular words they must use when talking with a customer interested in homeowners insurance and imposes punishments on any insurer that deviates from the state-required formula. Under the regulation, any such change to the formula, however beneficial or clarifying that change may be, is automatically treated by the state as a "deceptive" sales practice subjecting the insurer to discipline. The insurers maintain there are many more helpful ways than one to talk with a customer about the purchase of homeowners' insurance, and the CDI's approach just sets a technical trap to punish perfectly legitimate conduct.

Prior CDI Regulations Invalidated By Courts

The CDI's contested regulation is just the latest effort by the CDI to control insurers' interactions with their customers. Disagreements between insurers and the CDI in this area of law date back to previous CDI administrations. During the Garamendi administration, in 2005, the California Court of Appeal ruled in *AIA v.*

Garamendi that the CDI does not have unlimited power to control the process of accepting or renewing customers and the terms of their relationships. This process, called “underwriting,” was at issue in the *A/A v. Garamendi* case, where the Court invalidated then-Commissioner Garamendi’s regulations and said that the CDI does not have the statutory authority to regulate underwriting.

During the Poizner administration, disagreement on this issue continued. In 2008, the California Court of Appeal ruled against the CDI in *Everett v. State Farm* by holding that policyholders, not insurers, have the responsibility for determining their own homeowners’ insurance coverage limits and insurers cannot be forced by plaintiff attorneys to guarantee the adequacy of coverage after a fire when the customer did not select adequate coverage limits up front.

Consumer groups regularly advise consumers on how to protect their homes, select adequate coverage levels and work with their insurers and agents to ensure their needs are met. An example from United Policyholder is attached. Regulations that punish all but the most restrictive insurer communication with customers will only reduce the helpful information that insurers can provide customers and, because of litigation worry, increase the likelihood that insurers would be barred from providing information to consumers regarding their coverage.

Concerns about Regulations Addressed by Legislature

The California Legislature has addressed this issue in many bills over the last 20 years, since the Oakland Hills fires in the early 1990’s. The Legislature has crafted a balance between 1) ensuring available, affordable insurance coverage for the public and 2) providing clear rules so that insurers understand and can meet their promises to policyholders. The Legislature, in 2010, expressed concern at the direction of the CDI on the very regulations involved in this lawsuit (letter attached). In a letter dated August 27, 2010, the Chairmen of the Senate and Assembly Insurance Committees jointly wrote to Commissioner Poizner expressing concern that “the structure of the proposed regulation might actually *discourage the very conversations that we agree ought to occur*... That seems like an anti-consumer outcome.” We are unaware of the CDI ever responding to this letter.

The Challenged Regulations Are Unlawful

Not only are the regulations bad policy, but they seek unlawfully to expand the CDI’s power to define insurer behavior as deceptive. The regulations create a new approach for determining what constitutes an “unfair practice” under Insurance Code Section 790, the “Unfair Practices Act” (UPA). The CDI regulations require very specific behavior by an insurer when discussing homeowners’ insurance with a customer, but the UPA only bans unfair, unlawful and deceptive behavior. There are many legitimate and helpful ways to discuss homeowners’ insurance beyond the CDI’s one specific approach. The UPA does not support the CDI regulation. More importantly, such a restriction violates insurers’ constitutional protections for commercial free speech when talking to policyholders. The mere fact that an insurer did not follow a CDI formula under the regulations does not constitute a misleading communication.

In March, 2011, the insurance trade associations requested changes to the regulations in a detailed proposal. To date, we are unaware of the CDI ever responding to our proposal.

In sum, there is simply no court opinion or legislative history that authorizes the CDI to regulate the homeowner’s underwriting process in the manner it is attempting. The insurance trade associations have attempted to work with the CDI to improve these regulations and develop a workable process, but the CDI has insisted on an approach where litigation is the only remaining option. This disagreement results in an unfortunate and avoidable expenditure of time and money that all parties would be better off avoiding.”

The Association of California Insurance Companies (ACIC) is an affiliate of the Property Casualty Insurers Association of America (PCI) and represents more than 300 property/casualty insurance companies doing business in California. ACIC member companies write 41.8 percent of the property/casualty insurance in California, including 57.3 percent of personal auto insurance, 45.7 percent of commercial automobile insurance, 40 percent of homeowners insurance, 32.5 percent of business insurance and 43.4 percent of the private workers compensation insurance. PCI is

composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association.

The Personal Insurance Federation of California (PIFC) represents six of the nation's largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) and one national trade association (National Association of Mutual Insurance Companies) who collectively write a majority of the personal line auto and home insurance in California.

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Attachment