

A recent decision by the Court of Appeal 4th District in an insurance bad faith action, affirmed a lower court ruling against Western Home Insurance Company involving an "extended replacement cost" policy. The home at issue was destroyed in the October 2003 Cedar Fire. The policy had been purchased in 2001 and included extended replacement cost at 25 percent over the policy limits. A key issue in the case focused on the conditions of the policy that required an inspection of the dwelling by the insurance company to determine actual replacement cost and a report to be issued identifying replacement cost to be insured. The inspection, however, occurred after the policy was issued and resulted in a replacement cost amount higher than the amounts listed in the issued policy. The court found the modification was in accordance with the terms of the contract - the increases in coverage dictated by the terms of the policy itself. Western increased the limits only after the insured retained counsel, following the fire that destroyed the home. There were delays in claims payments to the insured, disputes and inconsistencies related to what was required to trigger payments under the personal property benefits, all leading to the bad faith claim. The jury awarded the personal property benefits (\$31,359) along with attorney fees (\$189,000), emotional distress (\$450,000) and punitive damages (\$646,471). The Court of Appeal affirmed, rejecting, along with the other arguments, Western's argument that there was not substantial evidence to support the jury award for emotional distress and punitive damages - holding the ratio was not excessive. If there is good news out of this holding that certainly included a set of bad facts, it is that underinsurance, while mentioned, was dismissed as not being an issue at all - the focus being on the company's own requirement for minimum, substantiated, adequate coverage and their adherence to that, along with the behavior of the company's representatives in handling the resulting claims.