

In the Supreme Court of the State of California

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

Plaintiffs and Respondents,

v.

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

Defendant and Appellant.

Case No. S226529

**SUPREME COURT
FILED**

OCT 13 2015

Frank A. McGuire Clerk

Deputy

Court of Appeal, Second Appellate District, Case No. B248622
Los Angeles County Superior Court, Case No. BC463124
The Honorable Gregory W. Alarcon, Judge

APPELLANT'S MOTION FOR JUDICIAL NOTICE

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**TO THE HONORABLE CHIEF JUSTICE AND TO THE HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE
OF CALIFORNIA:**

Pursuant to Rule 8.252, subdivision (a) of the California Rules of Court, defendant and appellant Dave Jones, in his capacity as the Insurance Commissioner of the State of California (“Commissioner”), hereby requests that the Court take judicial notice of the following documents:

- Exhibit A: Assembly Committee on Insurance, Bill Analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) as amended Aug. 11, 1992;
- Exhibit B: Senate Rules Committee, Office of Sen. Floor Analyses, analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) as amended Aug. 11, 1992;
- Exhibit C: Senate Committee on Insurance, Bill Analysis of Assem. Bill No. 2199 (2003-2004 Reg. Sess.) as amended May 17, 2004;
- Exhibit D: Senate Banking, Finance and Insurance Committee, Bill Analysis of Sen. Bill No. 2 (2005-2006 Reg. Sess.) as amended March 29, 2005;
- Exhibit E: Senate Rules Committee, Floor Analysis of Sen. Bill No. 2 (2005-2006 Reg. Sess.) as amended August 30, 2005;
- Exhibit F: Senate Banking, Finance and Insurance Committee, Bill Analysis of Assem. Bill No. 2022 (2009-2010 Reg. Sess.) as amended May 11, 2010;
- Exhibit G: Assembly Committee on Insurance, Hearing Analysis of Sen. Bill No. 812 (1990-1991 Reg. Sess.) as introduced March 7, 1991;

Exhibit H: Assembly Committee on Finance and Insurance,
summary of Assem. Bill No. 1353 (1971 Reg. Sess.);
and

Exhibit I: Legislative Counsel Opinion No. 16132 (Jul. 14, 1971)
Insurance Commissioner: Process (A.B. 1353).

Pursuant to Evidence Code sections 452 and 459, the Court may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments ... of any state of the United States.” (Evid. Code, § 452, subd. (c).) Legislative committee reports and analysis are proper subjects of judicial notice. (See *In re J.W.* (2002) 29 Cal.4th 200, 211 [legislative committee analysis are subject to judicial notice]; *Acer v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484 [finding that legislative committee reports are proper subjects for judicial notice under Evidence Code section 452, subdivision (c)].) Opinions of the Legislative Counsel are also proper matters for judicial notice. (See *St. John’s Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 967, fn. 5.)

In this case, Exhibits A through F are portions of the legislative histories of Insurance Code sections 1749.85, 2051.5, 10101, 10102, and 10103 documenting the recurring problem of underinsurance caused by catastrophic wildfires and are relevant to whether the Commissioner had authority under Insurance Code section 790.10 to address the underinsurance problem. They are also relevant to review of the court of appeal’s analysis that omission of replacement cost estimates from these Insurance Code provisions was a deliberate legislative choice.

Exhibit G is a legislative committee bill analysis of Insurance Code section 790.034 and is relevant to the issue of the scope of the Commissioner’s rulemaking authority under Insurance Code section 790.10.

Exhibits H and I are portions of the legislative history of Insurance Code section 790.10 and are relevant to the scope of the Commissioner's authority to promulgate regulations under that section.

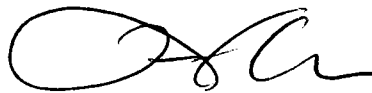
The Commissioner sought judicial notice of Exhibits A and B from the trial court, which did not rule on the request. (See Joint Appendix, Vol. II, 233-244.) The Commissioner requested, and the court of appeal granted, judicial notice of Exhibit G. (See Appellant's Request for Judicial Notice dated February 5, 2014; Order Granting Appellant's Request for Judicial Notice dated March 7, 2014.) The remaining documents sought for judicial notice were not presented to the trial court or the court of appeal, and do not relate to any proceeding below that occurred after judgment was entered in this case.

For these reasons, the Commissioner respectfully requests that the Court take judicial notice of each document.

Dated: October 9, 2015

Respectfully submitted,

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Dave Jones, in his capacity as the
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California*

DECLARATION OF LISA W. CHAO

1. I am an attorney at law duly authorized to practice before all courts of the State of California and this Court, and am employed as a Deputy Attorney General with the California Attorney General's Office, which represents Appellant Dave Jones, in his capacity as the Insurance Commissioner of the State of California ("Commissioner"), in this matter. I have personal knowledge of the facts recited herein, and if called and sworn, would competently so testify.

2. On October 1, 2015, I accessed the official website of California Legislative Information maintained by the Legislative Counsel Bureau at <http://leginfo.legislature.ca.gov> (Website).

3. I also caused to be compiled the legislative histories of Insurance Code sections 790.034, 790.10 and 10101 by the Office of the Attorney General's librarian trained in our office's methods for researching and compiling legislative history.

4. Exhibit A is a true and correct copy of the Assembly Committee on Insurance, Bill Analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) enacting California Residential Property Insurance Disclosure Act (Disclosure Act), Insurance Code sections 10101-10107, obtained by the librarian from the California State Archives.

5. Exhibit B is a true and correct copy of the Senate Rules Committee, Office of Sen. Floor Analyses, analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) enacting the Disclosure Act obtained by the librarian from the California State Archives.

6. Exhibit C is a true and correct copy of a legislative committee bill analysis of Assem. Bill No. 2199 (2003-2004 Reg. Sess.) amending Insurance Code section 2051.5 that I printed from the Website.

7. Exhibits D and E are true and correct copies of legislative committee bill analyses of Sen. Bill No. 2 (2005-2006 Reg. Sess.) adding Insurance Code section 1749.85 that I printed from the Website.

8. Exhibit F is a true and correct copy of a legislative committee bill analysis of Assem. Bill No. 2022 (2009-2010 Reg. Sess.) amending the Disclosure Act that I printed from the Website.

9. Exhibit G is a true and correct copy of a legislative committee bill analysis of Sen. Bill No. 812 (1990-1991 Reg. Sess.) enacting Insurance Code section 790.034 obtained by the librarian from the California State Archives.

10. Exhibit H is a true and correct copy of summary of Assem. Bill No. 1353 (1971 Reg. Sess.) enacting Insurance Code section 790.10 obtained by the librarian from the file of the Assembly Committee on Finance and Insurance located at the California State Archives; and

11. Exhibit I is a true and correct copy of the Legislative Counsel Opinion No. 16132 (Jul. 14, 1971) obtained by the librarian from the California State Archives.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 9th day of October 2015.


Lisa W. Chao



Date of Hearing: August 18, 1992

ASSEMBLY COMMITTEE ON INSURANCE

Burt Margolin, Chair

SB 1854 (Petris)- As Amended: August 11, 1992

SENATE ACTIONS:

COMMITTEE INS., CL. & CORPS. VOTE 6-2 FLOOR VOTE 36-0

SUBJECT

Should insurers be required to disclose to insureds the various forms of residential property insurance available?

DIGEST

Existing law:

- 1) Specifies the California Standard Form Fire Insurance Policy. The policy covers the insured for the actual cash value of the property at the time of loss, but not exceeding the amount it would cost to repair or replace the property with material of similar kind and quality. There is no allowance for increased cost of repair or reconstruction because of building codes or ordinances.
- 2) Requires fire insurance policies to comply with the standard fire form, but permits policies substantially equivalent, or more favorable to insureds.
- 3) Does not require insurers to disclose to applicants the additional homeowners insurance coverages available.

This bill:

- 1) Forbids the issuance of a policy of residential property insurance unless a notice disclosing certain provisions of the purchased coverage, and other types of coverage, is provided to the insured.
- 2) Specifies the content of the notice. The notice must describe guaranteed replacement cost coverage with building code upgrades, or with limited or no building code upgrades. The notice also must describe extended replacement cost coverage, replacement cost coverage and actual cash value coverage. The insurer or insurance agent must indicate on the notice the type of coverage selected or purchased by a homeowner.
- 3) Requires the notice to be provided to insureds every other year for renewals of policies.

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- 4) Provides that after January 1, 1993 no policy may be issued, and after July 1, 1993 no policy may be renewed, as guaranteed replacement cost coverage if there are maximum limits for damage to the insured residential property. Additional endorsements may have limits.
- 5) Requires a residential property insurance policy to disclose, on the declaration page or a separate page, the liability limits for the dwelling and personal property, any deductibles, and whether coverage is provided for building code upgrades. If code upgrade is provided, the limits of such coverage must be specified.
- 6) Authorizes the Insurance Commissioner, only if requested by an insurer, to change the disclosure statement. Language can only be added to describe coverage not currently in the disclosure.
- 7) Provides that it goes into effect on July 1, 1993, except for the provision concerning the issuance of guaranteed replacement cost policies which would become effective January 1, 1993.

FISCAL EFFECT

None

COMMENTS

- 1) PURPOSE. The sponsor, the City of Oakland, and the author state that this bill is a full-disclosure and truth in labeling bill for purchasers of homeowners insurance. They state that this measure is a response to the severe underinsurance problems faced by homeowners who lost their homes in last year's Oakland Hills Fire. The sponsor and author contend that this bill is needed so that homeowners receive full and accurate information needed to make an informed choice about coverage.

According to the sponsor and author, many victims who thought they had full replacement, guaranteed replacement or top of the line property insurance discovered that their coverage was inadequate to cover actual rebuilding costs. Homeowners also discovered that their policies did not cover code upgrades, the additional expense, especially for older houses, of making a dwelling comply with the building codes adopted since the house was built. Other homeowners found out that their policy limits were set too low or that inflation ate away at the coverage levels.

The sponsor and the author state that this bill is needed to ensure that homeowners are informed about their coverage and other available coverages. Most homeowners, the sponsor and author believe, would purchase guaranteed replacement cost coverage if made aware of it.

- 2) NUMBERS. There were over 3,000 houses destroyed in the Oakland Hills Fire. According to information provided by the author, 70 percent of the policies on these dwellings did not cover required building code upgrades, fewer

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than 100 homeowners had policies that did not provide replacement coverage, and 5 to 10 homeowners had no coverage at all. According to the Department of Insurance, most homeowners were underinsured, some by as much as \$100,000 to \$200,000.

Five insurers have agreed to pay fire victims above homeowners policy limits. These insurers are California Casualty, California State Automobile Association, Fireman's Fund, Liberty Mutual and State Farm. Civil Service Employees Insurance Company filed lawsuits asking the court to determine whether it must pay full replacement costs, above policy limits, for three insured dwellings. The Insurance Commissioner is studying Allstate, Civil Service Employees Company, Farmers, Fireman's Fund and State Farm for alleged improper practices after the Oakland Hills Fire.

- 3) REPLACEMENT COST COVERAGE. At issue is the perception of policyholders that they are covered for their complete loss in contrast to the actual language of the homeowners' policies. The marketing practices of insurers and agents could have led homeowners to believe that they were covered for the complete rebuilding of their dwellings because of the titles of the various coverage packages available. There is no standard industry-wide definition for replacement value, complete replacement value or guaranteed replacement value coverages. Persons purchasing these coverages could assume that their losses would be covered without further study of their policies. Most homeowners purchase policies with lower coverage levels, which consequently require them to bear part of the rebuilding costs.

Policyholders should periodically review their policies to determine whether the coverage is adequate. Changes in the value of a dwelling or inflation could leave a homeowner underinsured.

- 4) PRIOR VERSION. The June 22, 1992 version of this measure would have forbidden the delivery of a homeowner's policy that provided less than guaranteed replacement cost coverage unless a notice was provided informing the purchaser that the coverage may be less than the amount needed to fully repair the lost or damaged dwelling. The notice must have specified whether code upgrade was included, the dollar amount required to rebuild to current building code standards, and the cost of code upgrade coverage.
- 5) OPPOSITION. The Personal Insurance Federation (PIF), Association of California Insurance Companies (ACIC), American Insurance Associations (AIA), and Alliance of American Insurers (AAI) opposed the June 22, 1992 version of this bill. The notice required by the current version of this measure resembles the notice sought by the opponents. The opponents, however, have not indicated that they have lifted their opposition to this bill.
- 6) RELATED BILL: AB 2921 (Lee) requires insurers to provide written disclosure to applicants for homeowners coverage, or renewal, of the additional coverages available, such as replacement or guaranteed

- continued -

replacement, coverages to meet changes in building codes or ordinances, or replacement of personal property. AB 2921 is on Third Reading on the Senate Floor.

SPONSOR: City of Oakland

SUPPORT: Insurance Commissioner
California State Automobile Association

OPPOSITION: Personal Insurance Federation
Association of California Insurance Companies
Alliance of American Insurers
American Insurance Association



UNFINISHED BUSINESS

<p align="center">SENATE RULES COMMITTEE</p> <p align="center">Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614</p>	Bill No.	SB 1854
	Author:	Petris (D)
	Amended:	8/11/92
	Vote Required:	21

Committee Votes:

Senate Floor Vote:

SENATOR	Y	N	EX
Green	✓		
Johnston	✓		
Keene	✓		
Titus	✓		
Lewis		✓	
McCorquodale		✓	
B. ers		✓	
Russell		✓	
VACANT (V)			
TOPPE (C)		✓	

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

NOTE: Senate Floor Amendments
of 5/28/92 rewrote the contents of
the bill. Thus, the Senate Policy
vote may not be relevant

Assembly Floor Vote: 74-1, 8/25/92

SUBJECT: Insurance: homeowners

SOURCE: City of Oakland

DIGEST: Assembly Amendments rewrote the bill as it left the Senate concerning disclosures to be made to homeowner's insurance customers but the intent of the bill is the same.

The bill places into law a California Residential Property disclosure statement which insureds must be provided when they are issued a policy of property insurance or when they renew the policy as specified.

ANALYSIS: On October 19 and 20, 1991, a devastating fire occurred in the foothills of the City of Oakland. It killed 25 people, destroyed about 3,000 dwellings and caused more than \$1.5 billion in damage.

The Civil Service Employees Insurance Co. of San Francisco filed three lawsuits in Alameda County Superior Court alleging that it only was obligated to pay the maximum allowed under the homeowner's insurance policies. The question is whether they must pay the actual cost of replacing dwellings they insured.

Many victims at an April 1, 1992, meeting held in Oakland attended by local officials and the Insurance Commissioner testified about misleading sales and marketing practices by insurers, inadequate disclosure of policy terms, lack of good faith in settlement offers, incessant rotation and replacement of claims adjusters and other grievances.

CONTINUED

The Insurance Commissioner ordered immediate market conduct examinations of five insurance companies and called an investigatory hearing he will chair May 27 in Oakland in which insurance executives may be subpoenaed to testify about their actions. He has requested the companies to undertake internal examinations of their response to fire claims and report to him on their performance efforts to resolve outstanding issues to the satisfaction of their customers. He has announced that market conduct studies of five companies frequently cited as having acted improperly by policyholders will be done. The five are Allstate, Civil Service Employees, Farmers, Firemen's Fund, and State Farm. The purpose of the market studies is to determine whether each of the companies have committed violations of the Insurance Code in the underwriting of policies or the handling of claims. (See attached Claims Study of 1992 by the Department of Insurance.)

Current law requires fire policies in California to conform to the California Standard Form Fire Insurance Policy, unless additional coverages are contained in the policy that are substantially equivalent or more favorable to the insured person. This standard form policy sets forth a maximum dollar amount of insurance that will be paid to the insured person for losses to the property, not to exceed "the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business."

This bill:

1. Forbids the issuance of a policy of residential property insurance unless a notice disclosing certain provisions of the purchased coverage, and other types of coverage, is provided to the insured.
2. Specifies the content of the notice. The notice must describe guaranteed replacement cost coverage with building code upgrades, or with limited or no building code upgrades. The notice also must describe extended replacement cost coverage, replacement cost coverage and actual cash value coverage. The insurer or insurance agent must indicate on the notice the type of coverage selected or purchased by a homeowner.
3. Requires the notice to be provided to insureds every other year for renewals of policies.
4. Provides that after January 1, 1993 no policy may be issued and after July 1, 1993 no policy may be renewed, as guaranteed replacement cost coverage if there are maximum limits for damage to the insured residential property. Additional endorsements may have limits.
5. Requires a residential property insurance policy to disclose, on the declaration page or a separate page, the liability limits for the dwelling and personal property, any deductibles, and whether coverage is provided for building code upgrades. If code upgrade is provided, the limits of such coverage must be specified.
6. Authorizes the Insurance Commissioner, only if requested by an insurer, to change the disclosure statement. Language can only be added to describe coverage not currently in the disclosure.

CONTINUED

7. Provides that it goes into effect on July 1, 1993, except for the provision concerning the issuance of guaranteed replacement cost policies which would become effective January 1, 1993.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 8/26/92)

City of Oakland (source)
California Trial Lawyers Association
City of Berkeley
Personal Insurance Federation of California
Insurance Commissioner
California State Auto Association
Executive Council of Homeowners
American Insurance Association

ARGUMENTS IN SUPPORT: The author's office indicates, this bill was introduced in response to the disastrous East Bay Fire of 1991. An estimated 3,000 homes were destroyed in that conflagration. Many homeowners were shocked to find that their homeowners' policies did not cover a full replacement of the value of their structures. There are reports that some homeowners have found that their policy's limits leave them up to \$200,000 short of the actual amount needed to rebuild their homes.

Currently, there is guaranteed replacement coverage insurance for homeowners which provides that no matter what dollar limit is expressed in the policy, the insurance carrier pays the total amount of rebuilding the structure. Unfortunately, many consumers do not know about the existence of guaranteed replacement cost coverage and insurance companies do not always advise insureds of the availability of this type of coverage.

Another problem was that 70 percent of the policies did not include a provision to cover mandated building code upgrades. Some insurance companies are dealing with this problem on a case by case basis and some are even paying for these upgrades even if the policy did not include this provision. However, the majority are not paying and these costs are coming directly out of the pockets of these homeowners.

CONTINUED

ASSEMBLY FLOOR VOTE:

MEASURE: SB 1854
AUTHOR: Petris
TOPIC: Insurance: homeowners.
DATE: 08/25/92
LOCATION: ASH. FLOOR
MOTION: SB 1854 PETRIS THIRD READING BY LEE
(AYES 74. NOES 1.) (PASS)

AYES

- | | | | |
|----------------|---------------|---------------|------------------|
| Allen | Andal | Archie-Hudson | Areias |
| Baker | Bane | Bates | Becerra |
| Bentley | Boland | Bronzan | Bruite |
| Burton | Campbell | Cannella | Chacon |
| Chandler | Cluts | Collins | Connelly |
| Conroy | Cortese | Costa | Eaves |
| Elder | Eppl | Farr | Felando |
| Ferguson | Floyd | Frazer | Barbara Friedman |
| Terry Friedman | Frizzelle | Gotch | Hannigan |
| Harvey | Hauser | Hayden | Horcher |
| Hughes | Hunter | Isenberg | Jones |
| Katz | Kelley | Klehs | Knowles |
| Lancaster | Lee | Lempert | Margolin |
| Mays | Moore | Mountjoy | Murray |
| Nolan | O'Connell | Peace | Polanco |
| Quackenbush | Roybal-Allard | Sastrand | Sher |
| Speier | Statham | Tanner | Tucker |
| Umberg | Vasconcellos | Woodruff | Wright |
| Wyman | Brown | | |

NOES

McClintock

DLW:jk 8/26/92 Senate Floor Analyses
Attachment



BILL ANAL

SENATE COMMITTEE ON INSURANCE
 Senator Jackie Speier, Chair

AB 2199 (Kehoe)
 2004

Hearing Date: June 16,

As Amended: May 17, 2004
 Fiscal: No
 Urgency: Yes (2/3 floor vote required)

VOTES: Asm. Ins. DP:17-0
 Asm. Floor Passed:78-0

SUMMARY

Would define the measure of indemnity under an open policy offering replacement cost, and place specified conditions on insurers in circumstances related to a state of emergency, would allow an insured to be granted a time extension to rebuild, repair, or replace the insured property for "good cause" even without a state of emergency and would, as specified, require an extension of time after a state of emergency is declared, and would further allow an insured to rebuild, repair, or replace the property at a location other than the original insured premise, under specified circumstances.

DIGEST

Existing law

1. Defines an "open policy" of fire insurance, generally speaking, as one that does not state the amount for which the item is insured, but also states, in essence, that the measure of payment is the expense to replace the item in its condition at the time just prior to commencement of the fire [Insurance Code Section 2051];
2. Requires a disclosure that, in the event of a covered loss, a replacement cost policy is to, generally speaking, "repair or replace the damaged or destroyed dwelling with like or equivalent construction," and explains various conditions on qualifying for replacement cost, such as a requirement

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AB 2199, Page

to insure the dwelling to its full replacement cost at the time the policy is issued, and notifies policyholders that some insurers may require that homes be rebuilt before replacement costs will be paid [Insurance Code Section 10102];

3. Otherwise leaves unspecified important standards related to whether an insurer may require rebuilding within six months, a year or any other time, in order to claim replacement cost from the insurer, but sets forth these standards, to some extent, through regulation;

This bill

- 1) Would define the measure of indemnity, under an open policy that promises payment of replacement cost, to be the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured;
- 2) Would specify that if a policy requires the insured