

Luce Forward Obtains a Published Decision Upholding an Insurer's Right to Condition Payment of Extended Dwelling Limits on Repair or Replacement

Under most homeowners' insurance policies in California, dwelling benefits above the limits stated on the policy's declarations page are available if the stated limits are insufficient to repair or rebuild the dwelling after a loss. But most policies also require the homeowner to repair, rebuild or replace the home before these extended limits are available. The plaintiffs' bar has argued, however, that in cases of underinsurance - i.e., where the total limits will not be adequate to repair or rebuild the home - the California Insurance Code requires that these extended limits be paid immediately, and before the homeowner rebuilds. In a recent published decision, the Fourth District Court of Appeal rejected this argument, and held that an insurer is not required to pay the extended limits until the home is repaired or replaced, if the policy so provides.

In *Minich v Allstate*, 2011 Cal. App. LEXIS 270 (March 15, 2011), the insured's home was destroyed by the 2007 Witch Creek wildfire. The Allstate policy provided that Allstate would pay the actual cash value of the loss, up to the limit of liability on the policy's declarations page, with no requirement that the dwelling be repaired or rebuilt. The policy also provided that Allstate would pay up to an additional 50% if the insured repaired, rebuilt or replaced the damaged dwelling. Allstate paid the Minichs the limit of liability shown on the policy's declarations page almost immediately after the fire, but refused to pay the additional 50% until the Minichs furnished Allstate with evidence that they were, in fact, rebuilding the house.

The Minichs sued Allstate for breach of contract and bad faith, arguing that Allstate should have paid them the extended limits immediately after the fire because it was clear that the total benefits available under the policy (including the additional 50%) would be inadequate to rebuild the house. The Minichs contended that Insurance Code sections 2051 and 2051.5 require an insurer to pay the total amount of benefits available under the policy (including any extended limits provided by endorsement) whenever a dwelling is destroyed and the cost to rebuild exceeds the limits. Allstate filed a motion for summary judgment, the trial court granted Allstate's motion, and the Minichs appealed.

The Fourth District Court of Appeal affirmed the judgment in Allstate's favor. The court held that the extended limits endorsement in the Allstate policy made it clear that Allstate was not required to pay more than the limits on the declarations page until the insured repaired, rebuilt or replaced the damaged dwelling. The court also rejected the Minichs' arguments that the Insurance Code mandates payment of the "policy limit" without requiring repair or replacement, and that the term "policy limit" means all benefits available under the policy, including any extensions. The court observed that the Insurance Code sections relating to disclosure statements that an insurer is required to provide to its insureds make clear that the extended limits of the type offered in the Allstate policy refer to amounts over the policy's stated limits. Therefore, "policy limits" as used in other sections of the Insurance Code refer to the limits on the declarations page, and not to all available benefits provided by endorsement. Because Allstate paid the amount listed on the declarations page, it complied with the Code by paying the "policy limits."

The Minich decision makes clear that an insurer may condition the payment of a percentage above the limits stated on a homeowners policy's declarations page on actual repair or replacement by the insured, and that such a requirement will not run afoul of the Insurance Code. In order to avoid the risk that an insured will argue that he or she is entitled to all policy benefits without repair or replacement, the policy language used by the insurer should make clear that nothing above the limits stated on the policy's declarations page will be paid until the insured repairs or replaces the dwelling.

For more information, please contact the authors or any member of the Insurance Litigation Group.

**R. Randal Crispen***Partner*

213.699.2425

rcrispen@luce.com

www.luce.com/randalcrispen

**Marc J. Feldman***Partner*

619.699.2503

mfeldman@luce.com

www.luce.com/marcfeldman