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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 Commissioner of the California Department of Insurance,** **Defendant and Appellant.**	Case No.

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

PETITION FOR REVIEW

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PETITION FOR REVIEW

Pursuant to California Rules of Court, rule 8.500, Appellant Dave Jones, Insurance Commissioner of the State of California, respectfully petitions this Court for review of the published opinion of Division One of the Second District Court of Appeal in *Association of California Insurance Companies v. Dave Jones* (B248622), filed on April 8, 2015. A copy of the opinion is attached. (Cal. Rules of Court, rule 8.504(b).) No petition for rehearing was filed.

The Commissioner anticipates submitting a letter requesting depublication of the Court of Appeal's opinion, reported at (2015) 235 Cal.App.4th 1009, within the time allowed by rule 8.1125.

ISSUE PRESENTED

Did the Commissioner act within his statutory authority in promulgating regulations designed to prevent insurers from providing homeowners purchasing or renewing insurance policies with "replacement cost" estimates that the Commissioner reasonably concluded would be incomplete and potentially misleading?

WHY REVIEW SHOULD BE GRANTED

This case presents an issue of significant importance for the Commissioner and for homeowners across the State. For many, the home is their single most valuable asset, and they rely on insurance to protect it. More than 20 million homeowner insurance policies are issued in

California. The average California homeowner reasonably believes that the coverage limit of a "replacement cost" policy, derived from replacement cost estimates provided by insurers, will be sufficient to completely rebuild the home if it is destroyed by a catastrophic event. In the wake of wildfires that swept through Southern California over the last decade, however, many homeowners discovered too late that their replacement cost insurance policies did not cover all the reasonable costs incurred in rebuilding their homes; among the many underinsured, only those who could afford to pay thousands of dollars out-of-pocket or secure additional financing could rebuild.

In response, the Commissioner promulgated California Code of Regulations, title 10, section 2695.183—the replacement cost regulation—exercising his authority to "promulgate reasonable rules and regulations, and amendments and additions thereto, as are necessary to administer this article [Article 6.5, Unfair Insurance Practices, Ins. Code, §§ 790-790.15]." (Ins. Code, § 790.10.)[1] The regulations are designed to prevent homeowners from being misled into underinsuring their homes by incomplete estimates that fail to consider all the costs reasonably expected to be incurred in rebuilding. The regulation requires an insurer to consider a list of minimum costs and factors in estimating replacement cost and to

[1] All statutory references are to the Insurance Code unless otherwise noted.

provide a written itemized estimate to the homeowner, and specifies that providing an incomplete estimate of replacement cost is the making of a misleading statement defined as a prohibited act or practice under section 790.03, subdivision (b) (prohibiting, among other things, "any statement . . . which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading").

The court of appeal struck down the regulation, concluding that the Commissioner had exceeded his statutory authority in promulgating the replacement cost rule, and that the existence of the Commissioner's other separate and independent statutory powers, such as his power to institute enforcement proceedings, suggest that his rulemaking powers in this area are limited. (Opn., pp. 23-25.)

Absent review, the appellate court's opinion threatens harm to the Commissioner's ability to provide clear rules and a level playing field for all insurers marketing replacement cost insurance, and to protect the public against misleading practices that result in unknowing underinsurance. The Court should grant review to settle questions related to the Commissioner's rulemaking power in this area and to clarify that his rulemaking authority in this area is separate and distinct from his other statutory powers and authorities under the Unfair Insurance Practices Act.

SUMMARY OF THE FACTS AND OF THE COURT OF APPEAL'S OPINION

The Unfair Insurance Practices Act vests the Commissioner with broad powers to regulate insurance trade practices in California. (§ 790.) Section 790.03 of the Act generally defines a number of unfair methods of competition and unfair or deceptive acts or practices that are prohibited, including the making and dissemination of untrue, deceptive or misleading statements under subdivision (b). The Act provides the Commissioner with a number of separate but complementary procedural powers and tools to stop or to prevent unfair or deceptive insurance trade practices.

Section 790.04 empowers the Commissioner to examine and investigate the business affairs of any person to determine compliance with the Act. The Commissioner may bring enforcement actions under section 790.05 against any person alleged to have engaged in a defined prohibited act or practice. Upon a finding that the person has engaged in prohibited conduct, the Commissioner may assess monetary penalties under section 790.035 and may enjoin the conduct.

Further, section 790.06 permits the Commissioner to initiate an administrative proceeding against a person suspected of engaging in any act or practice that is unfair or deceptive, but is not defined as one under section 790.03. After an administrative hearing, the Commissioner must issue a report declaring the act or practice to be unfair or deceptive. The

Commissioner cannot assess monetary penalties or order the conduct to cease as he can in an enforcement action under section 790.05. He must instead apply to the superior court for an injunction.

Section 790.10 vests the Commissioner with rulemaking authority to promulgate reasonable rules and regulations necessary to the administration of the Act. In delegating rulemaking authority to the Commissioner, the Legislature intended for him to make specific and definite the broad provisions of the prohibited acts or practices defined in section 790.03 "'for the benefit of the public without having to wait for the Legislature to act at a later date.'" (Opn., pp. 28-29 [citing Assem. Com. on Finance and Insurance, summary of Assem. Bill No. 1353 (1971 Reg. Sess.) p. 1].)

The Commissioner promulgated regulations to ensure that homeowners receive from insurers complete information about estimates of replacement costs so they can make informed decisions in selecting appropriate coverage limits. (Opn., p. 6.) One regulation, California Code of Regulations, title 10, section 2695.183, requires the insurer to consider a list of factors and minimum cost components that would reasonably be incurred to rebuild a home. (Cal. Code Regs., tit. 10, § 2695.183, subds. (a)-(e).) The regulation requires insurers to provide a written itemized estimate to the homeowner. (*Id.*, subd. (g).) The regulation further defines as misleading, under section 790.03, subdivision (b), an insurer's

communication of a replacement cost estimate that has not considered these minimum costs. (*Id.*, subd. (j).)

Two insurance trade associations, Association of California Insurance Companies and Personal Insurance Federation of California, brought a declaratory relief action challenging the validity of the regulation. The trade associations argued that the Commissioner had narrow rulemaking authority under section 790.10 and was required instead to comply with the procedural requirements of section 790.06 to establish the communication of incomplete estimates of replacement cost as a new unfair or deceptive practice.[2] They, however, did not contest the necessity of the regulation or that the basic costs components identified in the regulation should not be considered in estimating replacement cost. (Opn., pp. 8-15.)

The Commissioner responded that, under section 790.10, he could by regulation make definite and specific a particular type of misleading statement falling under the general prohibition against misleading statements in section 790.03, subdivision (b), and that section 790.06 does not supplant his rulemaking authority. (Opn., pp. 15-16.) Following a court trial, the trial court declared the regulation invalid.

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[2] The trade associations additionally contended that the regulation impacts insurance underwriting and infringes on insurers' right to free speech. Neither the trial court nor the Court of Appeal reached the merits of those two issues. (Opn., pp. 18, 31.)

In a published opinion, the Court of Appeal affirmed. The Court of Appeal found the Act defines unfair or deceptive acts or practices and none of those definitions involve the content and format of replacement cost estimates. The Court of Appeal inferred "that the absence of a provision regarding replacement cost estimates was a deliberate choice" by the Legislature. (Opn., p. 23.) It thus concluded that "the Commissioner did not have authority to add content and format requirements for replacement cost estimates in homeowner insurance to the list of practices set forth in section 790.03 under the guise of deeming nonconforming estimates misleading under section 790.03, subdivision (b)." (*Ibid.*)

The Court of Appeal also rejected the Commissioner's argument that an incomplete cost estimate is a type of misleading statement under section 790.03, subdivision (b). It reasoned that the regulation would be unnecessary in that case because the Commissioner could already enforce it in a proceeding under section 790.05. The Court of Appeal also held that the Commissioner's reasoning renders section 790.06 superfluous because the Commissioner could always promulgate a regulation to declare a particular conduct misleading. (Opn., pp. 24-25.) The appellate court distinguished *Ford Dealers Association v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, purportedly because it presented a different statutory scheme with the notable absence of a statute similar to section 790.06. (Opn., pp. 26-28.)

The Court of Appeal acknowledged that the legislative history of section 790.10 may support the Commissioner's position that he could promulgate the regulation. However, the court determined that subsequent additions to section 790.03 adding the Unfair Claims Settlement Practices Act (section 790.03, subd. (h)), as well as statutes mandating disclosures for homeowner insurance policies (sections 10101-10107), are inconsistent with the original legislative intent. (Opn., pp. 28-29.)

LEGAL DISCUSSION

I. REVIEW IS NEEDED TO SETTLE WHETHER THE COMMISSIONER HAS AUTHORITY TO ADOPT REGULATIONS PREVENTING INSURANCE COMPANIES FROM PROVIDING MISLEADINGLY INCOMPLETE INFORMATION.

The Commissioner has traditionally been afforded "broad discretion to adopt rules and regulations as necessary to promote the public welfare." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824; see *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1040 [citing *Calfarm*].) The absence of a specific provision in the enabling statute about the subject or content of a regulation does not deprive an enforcement agency of the authority to promulgate regulations. (*Credit Ins. General Agents Ass'n of California, Inc. v. Payne* (1976) 16 Cal.3d 651, 656.) The statutory omission only means that the Legislature "may elect to defer to and rely upon the expertise of administrative agencies...." (*Ibid.*)

This rule applies with great force to regulations enacted pursuant to remedial statutes intended to protect the public. A remedial statute should be "liberally construed 'to effectuate its object and purpose, and to suppress the mischief at which it is directed.'" (*Ford Dealers Ass'n v. Department of Motor Vehicles*, *supra*, 32 Cal.3d at p. 356.) In such instances, an agency has the discretion to determine what specific acts or statements are misleading to the public and is authorized to enact regulations to prevent such misleading statements to "'fill up the details' of the statutory scheme." (*Id.*, at pp. 362-363.)

The Court of Appeal's opinion injects uncertainty into the application of these longstanding principles in the context of the marketing of replacement cost policies. Instead of permitting the Commissioner to "fill up the details" of the Act with a regulation clarifying the meaning of a misleading statement, the Court of Appeal erroneously concluded that additional statutory enforcement mechanisms indicated legislative intent to deprive the Commissioner of his rulemaking authority. The opinion narrowly construes the Act, using an unnecessarily rigid reading of section 790.03's defined prohibited acts to conclude that, because the content and format of replacement cost estimates are not mentioned, they therefore can be inferred as excluded. (Opn., p. 23.) The Court of Appeal did not examine the object or purpose of the Act or determine whether an insurer's incomplete replacement cost estimate can actually mislead a homeowner.

A complete replacement cost estimate that has considered the undisputed cost components listed in the regulation is required because homeowners often believe that a replacement cost estimate provided by an insurer would take into account these reasonable costs. If an estimate does not do so and is incomplete, then the homeowner would have relied on the insurer's estimate and be misled to select insufficient insurance coverage. Because the Court of Appeal's decision increases the risk that homeowners will again lack the protection previously provided by the regulation, and could create a market advantage for insurance companies who do not make the details of the estimate clear to consumers, this Court should review it.

II. REVIEW IS NECESSARY TO AFFIRM AND CLARIFY THAT THE COMMISSIONER'S RULEMAKING AUTHORITY IS NOT LIMITED BY HIS ADDITIONAL AUTHORITY UNDER THE UNFAIR INSURANCE PRACTICES ACT.

To support its erroneous conclusion that the Commissioner cannot regulate incomplete replacement cost estimates as a form of misleading statement, the Court of Appeal also looked to section 790.06, which permits formal administrative action against a person suspected of an unfair or deceptive insurance practice not defined in section 790.03. (Opn., pp. 24-25.) The Court of Appeal read section 790.06 as a limiting statute and used it to distinguish the Commissioner's authority to enact the challenged regulation from an agency's generally broad discretion to define misleading statements by regulation upheld in *Ford Dealers Association v. Department*

of Motor Vehicles, *supra*, 32 Cal.3d 347. (Opn., p. 26.) This Court should grant review and reject the Court of Appeal's novel approach to construing the Unfair Insurance Practices Act.

Section 790.06 sets forth formal administrative procedures for the Commissioner to prosecute unfair or deceptive acts or practices not defined in section 790.03. Unlike in a proceeding under section 790.05 to enforce a violation of a prohibited act or practice defined by section 790.03, the Commissioner cannot order an insurer to cease misleading practices that result in unknowing underinsurance or assess monetary penalties in a proceeding under section 790.06. (See § 790.035 [authorizing Commissioner to impose monetary penalties].) If the conduct continues, the Commissioner must apply to the superior court to enjoin the insurer. There is no suggestion in the Act that the procedure authorized by section 790.06, however, is intended to supplant rulemaking. Especially since that statute on its face only permits the Commissioner to act against a single insurer who is suspected of misleading homeowners with incomplete replacement cost estimates, it is properly viewed as a complement to, not a limitation of, the Commissioner's rulemaking authority.

The flaw in the Court of Appeal's view of the law can be seen in its application. Section 790.03, subdivision (b)'s definition of a misleading statement is broad. Under the Court of Appeal's analysis, an insurer can easily claim that a particular statement suspected to be misleading is not

specifically defined by section 790.03, subdivision (b), that the Commissioner cannot enforce or regulate it, and, thus, that the Commissioner is limited to use of the alternative procedures authorized by section 790.06, thereby allowing the insurer to escape civil penalties.

This Court should grant review and confirm the Commissioner's authority under section 790.10 extends to promulgating replacement policy regulations that clarify for the industry and consumers misleading practices prohibited by the Unfair Insurance Practices Act.

CONCLUSION

The Commissioner's petition for review should be granted.

Dated: May 18, 2015

Respectfully submitted,

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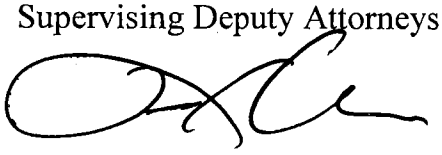

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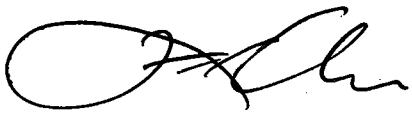
LA2011600848

CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13 point Times New Roman font and contains 2,504 words.

Dated: May 18, 2015

KAMALA D. HARRIS
Attorney General of California



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Filed 4/8/15

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES et al.,

Plaintiffs and Respondents,

v.

DAVE JONES, as Commissioner, etc.,

Defendant and Appellant.

B248622

(Los Angeles County
Super. Ct. No. BC463124)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Wilson Alarcon, Judge. Affirmed.

Kamala D. Harris, Attorney General, Paul D. Gifford, Senior Assistant Attorney General, W. Dean Freeman, Supervising Deputy Attorney General, and Lisa W. Chao, Deputy Attorney General, for Defendant and Appellant.

Amy Bach, Daniel Wade; Kerr & Wagstaffe and Ivo Michael Labar for United Policyholders, Scripps Ranch Civic Association and Rancho Bernardo Community Counsel as Amici Curiae on behalf of Defendant and Appellant.

Greenberg Traurig, Gene Gordon Livingston, Gregory Sperla and Stephen E. Paffrath for Plaintiffs and Respondents.

This appeal asks us to decide whether the Insurance Commissioner (Commissioner) had authority to promulgate California Code of Regulations, title 10, section 2695.183 (the Regulation) under the authority delegated to him by the Unfair Insurance Practices Act (UIPA), Insurance Code sections 790–790.15.[1] The trial court found that he did not. We agree and affirm.

PROCEDURAL AND FACTUAL BACKGROUND

The Regulation

The Regulation at issue here involves homeowner insurance, and specifically replacement coverage in the event of a covered event like a fire.[2] In general, there are

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[1] Undesignated statutory references are to the Insurance Code.

[2] The Regulation provides: "No licensee shall communicate an estimate of replacement cost to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, unless the requirements and standards set forth in subdivisions (a) through (e) below are met:

"(a) The estimate of replacement cost shall include the expenses that would reasonably be incurred to rebuild the insured structure(s) in its entirety, including at least the following:

"(1) Cost of labor, building materials and supplies;

"(2) Overhead and profit;

"(3) Cost of demolition and debris removal;

"(4) Cost of permits and architect's plans; and

"(5) Consideration of components and features of the insured structure, including at least the following:

"(A) Type of foundation;

"(B) Type of frame;

"(C) Roofing materials and type of roof;

"(D) Siding materials and type of siding;

"(E) Whether the structure is located on a slope;

"(F) The square footage of the living space;

"(G) Geographic location of property;

"(H) Number of stories and any nonstandard wall heights;

"(I) Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s);

"(J) Age of the structure or the year it was built; and

"(K) Size and type of attached garage.

"(b) The estimate of replacement cost shall be based on an estimate of the cost to rebuild or replace the structure taking into account the cost to reconstruct the single property being evaluated, as compared to the cost to build multiple, or tract, dwellings.

"(c) The estimate of replacement cost shall not be based upon the resale value of the land, or upon the amount or outstanding balance of any loan.

"(d) The estimate of replacement cost shall not include a deduction for physical depreciation.

"(e) The licensee shall no less frequently than annually take reasonable steps to verify that the sources and methods used to generate the estimate of replacement cost are kept current to reflect changes in the costs of reconstruction and rebuilding, including changes in labor, building materials, and supplies, based upon the geographic location of the insured structure. The estimate of replacement cost shall be created using such reasonably current sources and methods.

"(f) Except as provided in subdivision (k) of this Section 2695.183, the provisions of this article are binding upon licensees, notwithstanding the fact that information, data or statistical methods used or relied upon by a licensee to estimate replacement cost may be obtained through a third party source. Any and all information received by the Department pursuant to this article shall be accorded the degree of confidential treatment required by section 735.5 of the Insurance Code or Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, commencing at section 11180.

"(g)(1) If a licensee communicates an estimate of replacement cost to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee must provide a copy of the estimate of replacement cost to the applicant or insured at the time the estimate is communicated. However, in the event the estimate of replacement cost is communicated by a licensee to an applicant to whom the licensee determines an insurance policy shall not be issued, then the licensee is not required pursuant to the preceding sentence to provide a copy of the estimate of replacement cost. In the event the estimate of replacement cost is communicated by telephone to an insured, the copy of the estimate shall be mailed to the insured no later than three business days after the time of the telephone conversation. In the event the estimate of replacement cost is communicated by telephone to an applicant, the copy of the estimate shall be mailed to the applicant no later than three business days after the applicant agrees to purchase the coverage.

"(2) An estimate of replacement cost provided in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a

replacement cost basis must itemize the projected cost for each element specified in paragraphs (a)(1) through (a)(4), and shall identify the assumptions made for each of the components and features listed in paragraph (a)(5), of this Section 2695.183.

"(h) If an estimate of replacement cost is updated or revised by, or on behalf of, the licensee and the revised estimate of replacement cost is communicated to the applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee shall provide a copy of the revised or updated estimate of replacement cost to the applicant as provided in paragraph (g)(1) of this Section 2695.183, or to the insured simultaneously with the renewal offer, as the case may be. This subdivision (h) shall not apply when the update or revision to the estimate of replacement cost or the policy limit results solely from the application of an inflationary provision in a policy or an inflation factor. This subdivision (h) shall not obligate a licensee to recalculate an estimate of replacement cost on an annual basis.

"(i) Licensees shall maintain (1) a record of the information supplied by the applicant or insured that is used by the licensee to generate the estimate of replacement cost, and (2) a copy of any estimate of replacement cost supplied to the applicant or insured pursuant to paragraph (g)(1), or subdivision (h), of this Section 2695.183. If a policy is issued, these records and copies shall be maintained for the entire term of the insurance policy or the duration of coverage, whichever terminates later in time, and for five years thereafter. However, if the estimate of replacement cost is provided to an applicant to whom an insurance policy is never issued, the records and copies referred to in the first sentence of this subdivision (i) shall be maintained for the period of time the licensee ordinarily maintains applicant files in the normal course of business, provided that such period of time shall be at least sufficient to ensure that the licensee is able to comply with the provisions of this subdivision in the event the policy is issued to the applicant.

"(j) To communicate an estimate of replacement value not comporting with subdivisions (a) through (e) of this Section 2695.183 to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis constitutes making a statement with respect to the business of insurance which is misleading and which by the exercise of reasonable care should be known to be misleading, pursuant to Insurance Code section 790.03.

"(k) When an insurer identifies one or more specific sources or tools that a broker-agent must use to create an estimate of replacement cost,

"(1) the insurer shall prescribe complete written procedures to be followed by broker-agents when they use the sources or tools,

"(2) the insurer shall provide the broker-agent with the training and written training materials necessary to properly utilize the sources or tools according to the insurer's prescribed procedures, and

"(3) the insurer, and not the broker-agent, shall be responsible for any noncompliance with this Section 2695.183 that results from the failure of the estimate to satisfy the requirements of subdivisions (a) through (e), unless that noncompliance results from failure by the broker-agent to follow the insurer's prescribed written procedures when using the source or tool.

"(*l*) This Section 2695.183 applies to all communications by a licensee, verbal or written, with the sole exception of internal communications within an insurer, or confidential communications between an insurer and its contractor, that concern the insurer's underwriting decisions and that never come to the attention of an applicant or insured.

"(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.

"(n) No provision of this article shall limit or preclude a licensee from providing and explaining the California Residential Property Insurance Disclosure, as cited in Insurance Code section 10102, explaining the various forms of replacement cost coverage available to an applicant or insured, or explaining how replacement cost basis policies operate to pay claims.

"(o) No provision of this article shall limit or preclude an applicant or insured from obtaining his or her own estimate of replacement cost from an entity permitted to make such an estimate by Insurance Code section 1749.85.

"(p) For purposes of this subdivision (p), 'minimum amount of insurance' shall mean the lowest amount of insurance that an insurer requires to be purchased in order for the insurer to underwrite the coverage on a particular property, based upon an insurer's eligibility guidelines, underwriting practices and/or actuarial analysis. An insurer may communicate to an applicant or insured that an applicant or insured must purchase a minimum amount of insurance that does not comport with subdivisions (a) through (e) of this Section 2695.183; however, if the minimum amount of insurance that is communicated is based in whole or in part on an estimate of replacement value, the estimate of replacement value shall also be provided to the applicant or insured and shall comply with all applicable provisions of this article. Nothing in this article shall limit or preclude an insurer from agreeing to provide coverage for a policy limit that is greater than or less than an estimate of replacement cost provided pursuant to this article.

"(q) This article shall apply only to estimates of replacement value that are prepared, communicated or used by a licensee on or after June 27, 2011."

three kinds of replacement cost coverage. Each requires an insurer to pay replacement costs up to a limit defined in the policy or up to a set amount above the policy limit.[3] If the cost of repairing or rebuilding a home damaged or destroyed by a covered event exceeds that limit, the homeowner has to pay the difference. Section 2051.5, subdivision (a) defines replacement cost, in pertinent part, as "the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less."

The Regulation was promulgated in 2010 in response to complaints received from homeowners who lost their residences in the wildfires in Southern California in 2003, 2007, and 2008. These complaints arose when homeowners learned that they did not have enough insurance to cover the full cost of repairing or rebuilding their homes because when they bought their homeowner insurance, the estimates of replacement value were too low.[4]

The introductory sentence of the Regulation prohibits a "licensee" from "communicat[ing] an estimate of replacement cost to an applicant or insured in connection with an application for renewal of a homeowners' insurance policy that

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[3] According to the Commissioner's "Initial Statement of Reasons," dated April 2, 2010, issued when the Commissioner proposed the Regulation, there is "Limited Replacement Cost Coverage With an Additional Percentage which pays replacement costs up to a specified amount above the policy limit; [¶] Limited Replacement Cost Coverage With No Additional Percentage which pays replacement costs up to" the dollar limit set forth in the policy; and "Actual Cash Value Coverage which pays the fair market value of the dwelling at the time of the loss, or the cost to repair, rebuild, or replace the damaged or destroyed dwelling with like kind and quality construction up to the policy limit."

[4] The administrative record contains complaints about, among other things, the estimator's using an incorrect description of the property or its square footage, failing to inspect the property, not considering building code requirements, not including obvious costs like debris removal, and not adjusting for inflation in arriving at a replacement cost estimate. It also included a survey conducted after the 2007 wildfires reciting that 75 percent of those responding to the survey complained that their insurance limits did not cover the cost of rebuilding their structures.