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Burned out and underinsured

A LOOK AT WHY CALIFORNIA HOMES ARE UNDERINSURED AND THE LITIGATION THAT ARISES OUT OF THAT UNDERINSURANCE

The story is now well known. The California wildfires in 2017 and 2018 have destroyed thousands of homes. Following the devastation, many homeowners turned to their insurers for help in rebuilding their destroyed homes. In response, homeowners were often paid insurance policy benefits that were not enough to pay the rebuilding costs. This was because the homeowners were often significantly underinsured.

The extent of underinsurance following the California wildfires is startling. One author has noted that "[a] six month after-the-fact survey of the subset of homeowners who lost their homes to the October 2007 wildfires in San Diego reported the average amount of under insurance at $240,000 (K. Klein, *When Enough Is Not Enough: Correcting Market Inefficiencies in the Purchase and Sale of Residential Property Insurance*, 18 Vir. Journal of Social Policy & The Law, 344 (2011) p. 348; hereinafter, "Klein 2011"). Indeed, 74% of the homeowners who responded to the survey reported that they were underinsured.

Klein updated his research and published another article in 2017. (K. Klein, *Minding the Protection Gap: Resolving Unintended, Pervasive, Profound Homeowner Underinsurance*, Vol. 25, Issue 1 Conn. Ins. Law Journal 34, hereinafter, "Klein 2017") He points out:

> Six months after the 2013 Black Forest Fire, 38% of respondents self-reported they were underinsured by an average of $100,000. Six months after the 2015 Butte Fire, 65.22% of respondents self-reported they were underinsured. Six months after the 2015 Valley Fire, 53% of respondents self-reported they were underinsured by an average of $103,000. Six months after the 2017 North Bay Fires 66% of respondents self-reported they were underinsured on the dwelling portion of their claim by an average of $317,000.

(Klein 2017, p. 47.)

It is also recognized that underinsurance is a national problem. One study by Marshall & Swift/Boeckh found that, from 2002 to 2006, between 58% and 73% of homes in the United States were underinsured. (See P. Wells, Insuring to Value: Meeting a Critical Need [Nat'l. Underwriter, 2007, 2nd ed.], p. 46.) According to the same study, there is now

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"an estimated 58 percent of homes undervalued by an average of 21 percent in the United States" (*Ibid*.)

How did this come about? It resulted from the insurance companies and their agents failing over decades to properly determine the replacement cost of homes. The insurance industry knew this. In order to avoid the foreseeable consequences of its failure, the insurance industry adopted a modern version of *caveat emptor*: The homeowner, not the insurer, was responsible for determining the cost to replace the insured home. This position was taken, and supported in the courts, despite the homeowner's obvious inability to accept this unilaterally imposed duty of the insurance industry.

Now, homeowners must resort to litigation to recover the amount of their underinsurance. This litigation has historically been directed at the insurance agent. (See, e.g., *Fitzgerald v. Hayes* (1997) 57 Cal.App.4th 916.) But this may be an unsatisfactory solution. Insurance agents may carry professional liability insurance, but it is unlikely that such insurance will be sufficient to respond to tens, if not hundreds, of underinsurance claims. Litigators must turn their attention to the insurance companies themselves to provide sufficient funds for the many underinsured homeowners. This article addresses some facts that a litigator will need to know, as well as some of the issues that will need to be addressed in bringing such claims against the insurance companies.

A brief history of underinsurance in the insurance industry

The problem of underinsurance has been recognized in the insurance industry since at least the 1930s. (See S. Hassani, "Magnifying Disaster: The Causes and Consequences of Underinsurance," April 2013, unpublished doctoral dissertation; hereinafter, "Hassani".)

Hassani, who extensively studied the history of underinsurance, concluded:

> Since at least the 1930s, insurers and insurance professionals have publicly proclaimed the difficulty of ensuring that dwellings are adequately "insured to value." Industry reports, statements made by industry spokesmen, and other publicly available historical materials released in every decade since the 1930s have revealed a condition of widespread home underinsurance. Moreover, these materials indicate that insurers have repeatedly attempted to resolve home underinsurance – but have met with little success. Adequate dwelling insurance-to-value has been an unattainable ideal for the property insurance industry.

(Hassani, p. 32)

An example of this history is found in what are now publically available documents from Farmers. In a February 7, 1992, Farmers Field Bulletin to all "District Managers and Agents from George E. Seebart, Vice President-Field Operations/ California Zone," Seebart wrote:

> A substantial percentage of our covered dwellings are underinsured, often by an alarming percentage. For example, in the recent devastating fire in the Oakland area, one home was covered for $250,000, what we *actually paid* was $1,127,540, which means the home was underinsured by 450 percent!
>
> Several homes were underinsured by 200 to 300 percent.
>
> The Oakland fire was not unique. In the earthquake of 1989 in the Pleasanton Region, a house we insured for $85,000 generated a claim for $385,000, a gap of 353 percent. Underinsurance by 100 to 200 percent was not uncommon.

(Emphasis in original.)

In response to the recognized underinsurance problem, on January 23, 1992, Farmers Regional Manager reported to the same "District Managers and Agents," that "we've developed a program that helps to make sure that a policy is adequate to rebuild a home following a covered loss. It's the Computerized Dwelling Replacement Cost Estimation Program being introduced Feb. 15, 1992, for New Business and April 1 for Renewals."

How successful has Farmers been since 1992? If the recent Northern California fires are any example, then many Farmers insureds remain underinsured. A complaint filed against Farmers by a group of plaintiffs after the October 2017 Northern California fires alleges that the plaintiffs were collectively underinsured by tens of millions of dollars.

The foregoing demonstrates that the insurance industry has been aware of the underinsurance problem for decades, and yet has not solved it, let alone notified its policyholders that the industry's methods are insufficient. And the example above from Farmers demonstrates that insurers seek to set the policy limits on their own. Accordingly, insurers spend heavily on software programs that supposedly can be used to set policy limits, because it is the insurers who want to do so without any involvement by the insured. This allows the insurers to cap the amount of their losses, as well as maintain and increase market share.

Why the insurance industry has failed to properly set dwelling replacement cost limits

There are several reasons the industry has failed to properly set replacement cost limits.

For years, the insurance industry has adopted methodologies and used software programs that were insufficient to determine replacement cost amounts, and the insurance industry knew that. For example, one author has pointed out that even recently developed software used to determine replacement cost is inadequate:

> When wildfires ravaged California in 2007, the California Department of Insurance ("CDOI") comprehensively studied the problem of underinsurance. The resulting 1550+ page administrative rulemaking file describes how insurers deploy software that purports to account for the likelihood of weather events causing mass loss and concomitant price surges. Yet even when a homeowner both relied on that software to calculate adequate coverage on top of the coverage the insurer and/or producer recommended, over half of homeowners were *still* underinsured.

(Klein 2017, p. 39, emphasis in original.)

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Likewise, the California Department of Insurance concluded that the software tools used by insurers were "inadequate for formulating a realistic dwelling rebuilding cost" (Klein 2017, p. 65).

Insurance agents may not have been properly trained to determine the accurate amount of insurance. (Klein, 2017, p. 75.) The insurance industry has refused to inspect homes (except high-end homes), even though the industry recognized that this was the most effective way to properly measure replacement cost. "In the absence of a visual inspection by a producer with time and expertise, the adequacy of the estimate erodes." (Klein 2017, p. 75.) Likewise, Hassani has reported that insurers do not want to conduct individual inspections because "the business does not produce enough premium to justify inspections." (Hassani, p. 65.) In other words, it costs too much! Insurers are responsible to train their agents, and any failure to do so on the part of the insurers may contribute to policyholders' underinsurance.

It may be inherently impossible for the insurer to accurately set replacement cost where there is a large-scale disaster resulting in the destruction of hundreds or thousands of homes. This is due to several factors. First, every year, construction costs increase, often exceeding the annual rate of general inflation (See Klein 2017, p. 68). If policies are renewed without consideration of these increases, the policyholder, over time, will become more and more underinsured. Also, construction prices often will increase significantly after a disaster because of high demand for construction services.

The recent regulatory mandate that insurers adopt more accurate criteria to determine replacement costs has either not been followed or has not gone into effect. In 2011, the California Department of Insurance adopted Section 2695.183 to Title 10 of the California Code of Regulations. This section, which was supposed to take effect in 2011, set forth a list of factors that an insurer must consider when determining dwelling replacement cost. Insurers had not used all the factors on the list to determine replacement cost. The insurance industry challenged the regulation, and the trial and appellate courts held for the insurers. The California Supreme Court, however, reversed in *Ass'n. of Cal Ins. Cos. v. Jones* (2017) 2 Cal.5th 376). In reversing the Appellate Court, the Supreme Court observed:

> In 2008, The Department of Insurance's market conduct division conducted an investigation of the four largest insurers – ones that together amounted for approximately half the market covering these losses. The survey revealed that for a majority of the policies examined, coverage limits matched what was indicated by the insurer's own coverage calculator. But the recommended coverage nonetheless understated what was actually needed to rebuild the insured's home over 80 percent of the time. Even when the homeowner had purchased extended replacement cost coverage, 57 percent of these policies still underinsured their policyholders relative to the cost of rebuilding their homes.

(*Ass'n. of Cal. Ins. Cos. v. Jones,* 2 Cal.5th at 383.)

It is important to note that, despite the adoption of section 2695.183 in 2011, the problem of underinsurance has persisted. This is clearly evidenced by the extent of underinsurance arising from the several California wildfires since 2011. This may be due to insurers failing to follow the regulation, or because the regulation has yet to go into effect because of the insurance industry's litigation. The Court's decision in *Jones* may not have been the final step in that litigation; rather, remaining objections to the regulation were remanded to the Superior Court. That fight may go on, and the fate of section 2695.183 may yet to be determined.

Possibly, the biggest reason the insurance industry has failed to properly set the replacement cost limits is the benefit insurance companies receive for doing so. The obvious benefit is that the insurer limits its losses in a catastrophe situation. But even more important is that there is an incentive to underinsure properties in order to capture and retain market share. (Klein, 2011, p. 355, and see p. 40, "Cost estimating software creates the opportunity to capture and retain more market share by selling nominally 'full' but actually inadequate insurance coverage"; and see Hassani, p. 238, fn. 23.) Klein has pointed to a "1996 whitepaper by the Insurance Services Office that found that '[a]n insurer willing to pay the price of sufficient catastrophe insurance could have trouble competing for business.'" (*Ibid*.)

As Stephan Young, Senior Vice President & General Counsel of Insurance Brokers and Agents of the West, put it: "Simply put, the lower the replacement cost valuation, the lower the premium. And the lower the premium, the more likely an insurer is to sell its policies in a highly competitive marketplace, and the more money a homeowner can save." (Klein 2017, p. 52; footnote omitted).

There are also strong incentives to retain existing customers. (*Id*., p. 356.) As Klein has also pointed out: "The rational choice for the insurer is simply to let the coverage-to-value ratio deteriorate over time rather than raise premiums and thus lose an indeterminate set of renewals. This will cause even initially fully insured homeowners to become underinsured over time." (*Id*., p. 357.)

As with the long history of underinsurance, the insurance industry has been clearly aware to this day that it is simply unable to accurately set insurance policy replacement cost limits. Nonetheless, the insurance industry has not attempted to tell its policyholders this fact.

Blaming the homeowner for underinsured homes

Despite knowing that it has failed for decades to properly insure homeowners, the insurance industry, rather than adopting more accurate methods to determine home construction costs, adopted another approach: Blame the homeowner. (See Klein 2011, p. 365, citing to insurance industry statements that it is up to the homeowner to know what coverage is needed; and see Hassani, pp. 81-82, "the dominant meaning communicated in [insurance] industry documents

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from the 1940s to the 1990s," is that it is the policyholder's duty to determine the policy limit.") For many years, the insurance industry has insisted in its publications, in addendums to insurance policies, and in the courts that it only provides an estimate for the replacement of homes, and that it is the insured who must determine the amount of insurance that they need. This approach has resulted in appellate decisions that have also held that the insured has responsibility for setting the replacement cost limit, not the insurer.

In *Everett v. State Farm Gen. Ins. Co.* (2008) 162 Cal.App.4th 649, the court ratified the insurance industry's proffered myth that the insured was solely responsible for setting the dwelling replacement cost limit. The court purported to cite to the California Insurance Code to support its position that it was Everett's duty to determine the policy limit:

> Insurance Code sections 10101 and 10102 do not require State Farm to set policy limits that equal the cost to replace the property. Nor is State Farm duty bound to set policy limits for insureds. It is up to the insured to determine whether he or she has sufficient coverage for his or her needs. In fact, the California Residential Property Insurance Disclosure statement provides that it is the insured's burden to obtain sufficient coverage: "*To be eligible to recover extended replacement cost coverage, you must insure the dwelling to its full replacement cost at the time the policy is issued*, with possible periodic increases in the amount of coverage to adjust for inflation. . . . Additionally, the insured "must notify the insurance company about any alterations that increase the value of the insured dwelling by a certain amount."

(*Id.*, 162 Cal.App.4th at p. 661, emphasis added.)

In citing sections 10101 and 10102, the court seemed to suggest that those sections contained the language also cited by the court in the same paragraph. They do not. Rather, the language cited by the court came from an Acord form, "California Residential Property Insurance Disclosure" (Acord 67 CA (2005/01), and does not appear in either sections 10101 or 10102. Indeed, the language in the Acord form that was cited by the court pertained to "Guaranteed Replacement Cost Coverage With Full Building Code Upgrade." (*Id.*) Guaranteed Replacement Cost Coverage is no longer offered in California. (See Hassani, p. 14.) Further, Acord prepares standardized forms for the insurance industry and is not a governmental regulatory agency. (See http://www.acord.org).

Significantly, Acord 67 CA has been changed, and in its July 2011 edition, it no longer directly provides that the insured is responsible for setting the policy limit. Rather, the revised Acord form provides:

> Insuring your home for less than its replacement cost may result in your having to pay thousands of dollars out of your own pocket to rebuild your home if it is completely destroyed. Contact your agent, broker, or insurance company immediately if you believe your policy limits may be inadequate.

(Acord 67 CA [2011/07].)

Echoing the revised Acord form, a State Farm homeowners policy issued in 2018, provided the following in accordance with Section 10102:

> You are encouraged to obtain a current estimate of the cost to rebuild your home from your insurance agent, broker, or insurance company or an independent appraisal from a local contractor, architect, or real estate appraiser. If you do obtain an estimate of replacement value, and wish to change your policy limits, contact your insurance company. While not a guarantee, a current estimate can help protect you against being underinsured.

("Notice to Consumers – California Residential Insurance Disclosure," State Farm 2018 Homeowners Policy.)

The State Farm policy language, as well as the language contained in the July 2011 edition of Acord 67 CA, is strikingly different from the corresponding State Farm provision contained in the Everett policy.

> The State Farm replacement cost is an estimated replacement cost based on general information about your home. It is developed from models that use cost of construction materials and labor rates for like homes in the area. The actual cost to replace your home may be significantly different. State Farm does not guarantee that this figure will represent the actual cost to replace your home. *You are responsible for selecting the appropriate amount of coverage* and you may obtain an appraisal or contractor estimate which State Farm will consider and accept, if reasonable. Higher coverage amounts may be selected and will result in higher premiums.

(*Everett State Farm Gen. Ins. Co.*, 162 Cal.App.4th, 653; emphasis added)

It should now be apparent that some notices to policyholders in California may no longer contain an express statement that the insured is responsible for setting the policy limits. It should be anticipated that insurers will use the language in the July 2011 edition of Acord 67 CA to contend that the insured has the duty to set the policy limits. This argument will likely be based on the Acord language that the insurer's replacement cost figure is only to be an "estimate" of the replacement cost and is not a "guarantee" that the policy limits are sufficient. Likely, the insurers will contend that this language is no different from the prior mandate that the insured has sole responsibility to set the policy limit.

Despite the foregoing, it appears that some insurers are continuing to tell their insureds that the insureds are ultimately responsible for setting the policy limit. USAA is reported to have told its policyholders that, "[w]e can calculate the minimum rebuilding cost of your home based on your home characteristics, *but only you can decide if this is enough coverage*." (See Third Amended Complaint and Demand For Jury Trial in *Robert A. Biven, et al. v. United Services Automobile Association*, Sup. Ct., Sonoma Cty., CA, Case No. SCV 261717; emphasis added.) It remains to be seen whether USAA's limitations will be allowed under California Insurance Code sections 10101 and 10102.

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Those sections, which prescribe the notice to policyholders regarding their homeowners' policy limits, do not contain any admonition that the insured is responsible for the policy limit. Significantly, section 10102 provides that "[t]he disclosure statement may contain additional provisions not conflicting with, annulling, or detracting from the foregoing." (Ins. Code, § 10102, subd. (c).) It would appear at least arguable that imposing the duty to set the limits upon the insured conflicts with the disclosure requirement that only provides that "[y]ou are encouraged to obtain a cur-rent estimate of the cost to rebuild your" home.

Regardless of what limitation the insurer puts in its policies concerning the insured's duty or responsibility to determine the policy limit, that limitation can and should be challenged on several grounds.

First, determining the dwelling policy limit is simply beyond the knowledge and experience of homeowners. As one author has noted,

> To accurately gauge the "replacement cost" of a home, an individual homeowner would have to track construction costs for labor and material, at the very least annually, for their specific geographic area. They then would have to translate this information into a detailed component-based replacement cost estimate for their home. The cost of obtaining an accurate replacement cost appraisal from an independent appraisal company could be prohibitive if the insured annually purchased a new independent appraisal. Internet-based appraisal tools are available for a modest fee, but they involve the individual home owner in making decisions on the fit and finish of their home that are best left to someone with experience and expertise in making these judgments. The home owner does not possess the training or the means of evaluating the credibility or accuracy of the appraisal system being used.

(P. Nielander, "Valuing A Home Correctly: How to Avoid Underinsurance," 2000-2019, International Risk Management Institute, Inc. [IRMI].)

Given that policyholders are not equipped to determine their own policy limits, it is not surprising that they commonly accept the limits set by the insurers. Because policyholders lack sufficient information, unlike the insurers, as to what policy limits should be, policyholders reasonably rely on their insurers to accurately set the policy limits. Here, the insurers' own advertising may establish the insureds' reasonable reliance on the insurers' representations.

Second, it is noteworthy that the foregoing notices to policyholders state that the insured can go to either a contractor or their agent to receive help in determining their policy limit. In other words, the agent and contractor are both considered to be equally informed to assist the insured. But if the insured follows this advice, and talks to his/her agent, the agent is likely to use the same software program the agent originally used to determine the replacement cost and/or tell the insured that they have enough coverage.

Third, insureds frequently find, contrary to insurance industry statements, that they cannot increase their policy limits beyond what was set by the insurance company. There are numerous examples of insureds requesting increases in their limits and being told by the agent that the limits are fine. (Hassani, pp. 168, 238–239.) Further, in many cited cases, insureds have reported that "they wanted more insurance but could not get it, or that they were assured by their broker or agent that they had adequate insurance" (Klein 2011, p. 362, fn. 71, and the cases cited therein.)

Insurers have internal limits on how much in homeowners' limits they will write in any given period, and therefore may not have the capacity to respond to requests for increased limits.

Litigating against the insurance industry

The following is not an attempt to outline all of the possible approaches to litigating against the insurance industry for causing the serious and widespread underinsurance crisis in California. Nonetheless, a few salient points can be made.

First, it will be necessary in these cases to seek reformation of the policy to reflect the insured's expectations that they are sufficiently insured to fully pay for the replacement of their home. Although reformation is often sought in litigation, counsel should not wait until then to commence efforts to seek reformation. Many insurers have internal policies and procedures to allow for policy reformation. An example of an insurer's use of reformation in its processing of insurance claims is found in Farmers' Branch Claims Office Procedure Manual (hereinafter, the "Farmers Manual"). In the Farmers Manual, Farmers states: "Reformation may be required where there is a mistake or misunderstanding as to the nature of coverage afforded by the policy." (*Id.*, p. II-16.) Claims managers are given authority, as with many insurers, to recommend "reformation of [the] contract." (*Id.*, p. II-18.)

Counsel should insist, even before filing any action, that the insurer reform the insurance contract. This demand should be accompanied by a detailed reputable estimate by a licensed contractor which sets forth accurately the amount that the policy should be reformed to. Such a demand should be characterized as an early attempt to resolve the dispute without the necessity of litigation. Where the insurer rejects the proposed reformation, its claim file will now contain a documented proposal to reform the policy, which was rejected. This can be significant evidence in the bad-faith action against the insurer.

It may also be possible to argue that the insurers have voluntarily assumed a duty to determine the dwelling policy limits. (See Restatement (Second) of Torts § 323; and see *Artiglio v. Corning Incorporated* (1998) 18 Cal.4th 604, 613 [noting that California courts have adopted Restatement (Second) of Torts § 323].) At least one court has so held. (See *Schanz v. New Hampshire Ins. Co.,* 418 N.W.2d 478 (Mich. 1988).)

Insurers are likely to contend that the alleged failure to set the replacement cost limit properly is not a breach of

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contract because the additional amount sought by the insured was not a term of the contract. A leading treatise on insurance litigation observed: "When the policy as written provides no coverage, an insurer cannot be liable for a bad faith claim denial even if the policy is later reformed to provide retroactive coverage. Since the denial was reasonable at the time the claim was presented, 'the insurer may not be held liable for bad faith for failing to have the foresight to know that the policy would be reformed.'" (Croskey, et al., *Cal. Practice Guide, Insurance Litigation* (Rutter 2019) § 12:824.1; but see *Saddleback Inn, LLC v. Certain Underwriters at Lloyd's London* [Mar. 30, 2017, G051121], 2017 WL 1180419 [affirming bad-faith judgment and punitive-damage award against insurer based on reformed policy].)

Discovery in these cases will be critical. The Farmers documents discussed above likely set forth only some of the history of Farmers' attempts to properly set the replacement cost, which also likely covers many years. It is imperative that the discovery seek to obtain all documents throughout the insurer's history of addressing replacement cost. This is done in order to be able to show that the insurer knew that it was not setting the limits correctly, and yet never advised its insured of that fact. As a result, policyholders never know the likelihood that their policy limits may be inadequate. (See Klein 2017, p. 100.) Indeed, counsel may want to contend that the insurer should have notified the insured of this fact. Absent such notice, the insured oftentimes has no reason to believe that the replacement cost set by the insurer is inaccurate.

Although possibly not yet in force, California Regulation section 2695.183, which sets forth the criteria that an insurer must consider in setting replacement cost, may still be offered as a standard that the insurer should have followed in setting policy limits. The Supreme Court upheld the regulation, in part, based on Insurance Code Section 790.03, which is the Unfair Claims Settlement Practices Act (the "Act"; See *Ass'n. of Cal. Ins. Cos. v. Jones,* 2 Cal.5th, 390-391). The Act provides that it is a violation of the Act to "[m]isrepresent[ ] to claimants pertinent facts or insurance policy provisions relating to any coverages at issue." (Ins. Code § 790.03, subd.(h)(1).) The Act may also set standards for insurance company conduct and thereby support a claim for bad faith. (See *Rattan v. United Services Auto. Ass'n.* (2000) 84 Cal.4th, 715, 724.) There appears to be no reason why section 2695.183 cannot also be used as a standard the insurance industry should have followed since 2011.

In some cases, it may be advisable to join the manufacturer of the software that is used by the insurer to set the replacement cost in the action. When this is done, the manufacturer will likely contend that it is not a party to the insurance contract, and, therefore, should be dismissed.

Accordingly, it will be necessary to show that the manufacturer involved itself in setting up, among other activities, the software with the insurer. In other words, the manufacturer acted hand-in-glove with the insurer. This will require that counsel demonstrate that the software manufacturer had material and substantive input on the way information is:

• Gathered (e.g., what sources are used, and how proprietary is it?)

• Structured (what fields do they have, and what is the business justification for collecting them?)

• Cleaned (e.g., what limits do they use on identifying good vs. bad information, how do they correct for user input error, and how do they combine observations in the dataset that resolve to the same entity?)

• Characterized (how do they "bin" categorical information like structure or roof type, and how do they account for missing values?)

• Summarized (how do they identify features of interest, what initial statistical tools do they use to perform those steps, and how clean is the data?)

• Modeled (once clean data is obtained, what algorithms do they apply to make predictions?)

• Reported or displayed (how are the results of each of the above steps presented to the stakeholder responsible for making business decisions?)

In addition, counsel should start by getting the license agreement and scope of work between the insurer and software manufacturer. The scope of work will provide insight into the manufacturer's involvement in the business decisions that drive the selection of the policy limit. What options did the insurer select? What custom steps were taken, and why? What was the final configuration or tuning performed? How much guidance did the manufacturer provide at each step, and how much did the manufacturer forecast the cause-and-effect or pros-and-cons of each option, custom step, or configuration/tuning variable? How much testing and retuning was performed? What development methods were used (e.g., agile, waterfall, etc.), what were the data presented and the decisions made at each step, and what was the relative input from each side?

Conclusion

As the foregoing discussion demonstrates, California has adopted a number of required warnings to policyholders regarding their homeowners' policy limits and available replacement cost coverages. However, there still is no notice to insureds that the insurers' attempts to accurately determine replacement cost are unreliable. Given the insurance industry's historic knowledge of underinsurance, its present failure to provide insureds with such notice may not only be a violation of the California Unfair Claims Settlement Regulations and Act but may also amount to fraud.

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