

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel could not be contacted.

—Jaclyn Stewart

INSURANCE

Bad Faith — Denial of Claim — Rescission

Insurer rescinded policy after fire damaged plaintiffs' home

VERDICT	Defense
CASE	Maria Duran and Irene Lisa Martinez, individually, and Irene Lisa Martinez as Guardian Ad Litem for minors Alexis Christine Sanchez, Allyis Lorenzo Martinez and Robert Antonio Garcia v. Pacific Insurance Company, The McGraw Group, Victor Gomez, individually and d/b/a Victor Gomez Insurance Company, No. CV 031678
COURT	Superior Court of San Joaquin County, Stockton, CA
JUDGE	Lauren P. Thomasson
DATE	3/24/2009
PLAINTIFF ATTORNEY(S)	Steven Kaiser, Kaiser & Chew, LLP, Sacramento, CA Stanley R. Parrish, Shepard & Haven, LLP, Sacramento, CA
DEFENSE ATTORNEY(S)	Daniel P. Costa, The Costa Law Firm Attorneys at Law, Gold River, CA

FACTS & ALLEGATIONS On March 4, 2006, the plaintiffs — Maria Duran, 55; Irene Lisa Martinez, 28; Alexis Christine Sanchez, 13; Allyis Lorenzo Martinez, age 7; and Robert Antonio Garcia, age 4 — sustained fire damage to their Stockton home. They filed a claim for insurance benefits pursuant to a policy with Pacific Specialty Insurance Company.

After conducting an investigation, Pacific Specialty rescinded the insurance policy. The initial basis for the rescission was that the plaintiffs failed to disclose that the home had been purchased while it was going through foreclosure, which is deemed an unacceptable risk. Later, Pacific Specialty determined that the insured, Duran, never signed the application — which was a specific requirement — and never answered any underwriting questions.

The plaintiffs sued Pacific Specialty, alleging breach of insurance contract, bad faith, and/or insurance agency malpractice.

They also sued their insurance agent, Gomez Insurance Agency Inc., alleging fraud, misrepresentation and insurance agency malpractice based on failing to secure valid insurance. The plaintiffs settled with Gomez Insurance for \$375,000.

The plaintiff insurance claims handling expert opined that Pacific Specialty fell below the standard of care by not investigating the plaintiffs' claims and paying the loss promptly.

Pacific Specialty argued that no effective contract for insurance was consummated due to material misrepresentations during the application process. Pacific Specialty contended that Duran's signature was forged, that she did not answer the underwriting questions, that she never authorized Gomez Insurance, and that she did not reside at the residence.

The defense insurance claims handling expert opined that Pacific Specialty acted reasonably and in compliance with insurance regulations.

The defense insurance industry standards expert opined that Pacific Specialty was justified in rescinding the policy.

INJURIES/DAMAGES *depression; emotional distress*

The plaintiffs alleged \$350,000 in real property and personal property damages.

They also claimed emotional distress from losing their home. The plaintiffs' primary care physician testified that Duran experienced panic attacks and depression, and that Irene Martinez experienced depression.

They demanded about \$1.25 million in total.

RESULT The jury returned a defense verdict.

DEMAND	\$800,000
OFFER	\$150,000 (CCP 998)
TRIAL DETAILS	Trial Length: 12 days Jury Composition: 5 male, 7 female
PLAINTIFF EXPERT(S)	Gracilla Barzaga, M.D., primary care physician, Stockton, CA E. Everette Herndon, claims handling, Rancho Murieta, CA
DEFENSE EXPERT(S)	Paul Hamilton, claims handling, Santa Rosa, CA Elliott Rothman, broker standard of care, Los Angeles, CA

POST-TRIAL The plaintiffs moved for a new trial.

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—Joseph Falso