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## Plaintiffs can pursue class actions against Travelers, Farmers for Sand Fire

By Paula Lehman-Ewing

ALos Angeles Superior Court judge has ruled two class actions may proceed against insurers over a wildfire smoke sublimit clause that had minimized payouts to policyholders.

Judge Carolyn Kuhl on Wednesday overruled a demurrer by Travelers Commercial Insurance Co. to dismiss a case involving homeowners whose properties were damaged in the 2016 Sand Fire in Santa Clarita Valley. *Jackson v. Travelers Commercial Insurance Co.*, BC639944 (L.A. Super. Ct., filed Nov. 8, 2016).

Joshua H. Haffner, who is representing the plaintiffs, said insurance companies have been trying to argue smoke damage is distinct from fire damage and, therefore, subject to a sublimit. In this particular case, Travelers limited its payout to homeowners to \$2,500, though, according to the complaint, the insurance company estimated the actual damages exceeded that amount.

"From our perspective, insurance companies have been using sublimits unlawfully to deny a lot of Californians the damages they're owed," said Haffner, the principal attorney at Haffner Law. "This opinion hopefully goes a long way in changing that practice."

Haffner won a similar judgment Monday when Kuhl overruled a demurrer filed by Farmers Group Inc., which had issued a motion to demur on the grounds that the case, *Frias, et al. v. Farmers Group Inc., et al.*, BC638262 (L.A. Super. Ct., Oct. 26, 2016), was not a class action. The class in that case was also a group of homeowners affected by the 2016 wildfires. Both demurrers were heard and argued simultaneously.

Peter H. Mason, a partner at Norton Rose Fulbright LLP, declined to comment on behalf of Farmers.

Brian S. Kabateck, managing partner at Kabateck Brown Kellner LLP, represents clients in a similar suit against American Automobile Association, Inc. and said the problem stems from some insurance companies trying to rewrite the mandatory standard.

"It's like having a water damage policy and saying, 'We cover hydrogen but not oxygen,'" Kabateck said. "This is a major problem for homeowners. Smoke and ash can do tremendous damage to a property."

Friday, April 7, 2017

### Weekly Appellate Report Podcast

Presiding Justice of the 2nd District Court of Appeal's 6th Division, Arthur Gilbert offers wit and wisdom from his decades on the bench, guidance on best appellate practices, and an explanation of how he's maintained his mirthful monthly *Daily Journal* column for nearly 30 years.



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### California Supreme Court State Supreme Court declines Citibank credit card consumer contract

The state Supreme Court gave plaintiffs' lawyers a win Thursday, invalidating part of a credit card company's consumer arbitration contract, but lawyers were somewhat split on the ruling's significance.

### Litigation

#### Twitter sues Department of Homeland Security to protect anonymous users

Twitter Inc. sued the Department of Homeland Security on Thursday, claiming the agency attempted to force the tech company to reveal the identity of anyone associated with a social media account that purports to be run by government employees.

### Government

#### State Senate committee approves bill to overhaul state bail system

The state Senate Public Safety Committee this week passed legislation to overhaul California's bail system, bringing the bill one step closer to becoming law.

### Firm Watch

#### King & Spalding adds former assistant U.S. attorney in LA office

The law firm King & Spalding has hired a former assistant U.S. attorney to join its burgeoning Los Angeles litigation group.

According to court documents, Travelers is being represented by attorneys from Weston & McElvain LLP, who did not respond to requests for comment.

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### Labor/Employment

#### **\$110M rest break settlement approved, but nearly derailed by fee-splitting disagreements**

The agreement brought to a close more than a decade of litigation, including a pro-worker win at the state Supreme Court in December, that found it is illegal to require employees to remain on call during their rest breaks.

### Criminal

#### **Recently disbarred attorney pleads not guilty to threatening pedestrians with pellet rifle**

A former attorney pleaded not guilty this week to charges of threatening pedestrians with a pellet rifle from his Hollywood apartment.

### California Supreme Court

#### **State high court clarifies prevailing party attorney fee rules**

The state Supreme Court ruled Thursday that a litigant cannot collect attorney fees while a similar contract dispute continues in Florida.

### Media

#### **9th Circuit mulls "Walk of Shame" similarities**

Attorneys for the plaintiff claim the trial court judge took an overly narrow approach.

### Solo and Small Firms

#### **SM Law Group fights dunning of debtors**

As the debt collection industry has grown, so has the number of violations, according to Kian Mottahedeh, the founder of SM Law Group APC in Encino.

### Insurance

#### **Plaintiffs can pursue class actions against Travelers, Farmers for Sand Fire**

A Los Angeles Superior Court judge has ruled two class actions may proceed against insurers over a wildfire smoke sublimit clause that had minimized payouts to policyholders.

### Government

#### **Gorsuch should look forward, not behind**

My hunch is that many Americans would be troubled by a justice who can only look to the past and who, as a matter of principle, will ignore the immediate and future consequences of his or her decisions. By **Allan Ides**

### Law Practice

#### **Avoiding unintentional attorney-client relationships**

Carefully worded engagement and correspondence letters and disclaimers will help avoid creating an attorney-client relationship where none exists. By **J. Randolph Evans and Shari Klevens**

### Constitutional Law

#### **Where does LA DA stand on list of problem**