

IN THE SUPREME COURT OF CALIFORNIA

JONATHAN NEIL & ASSOCIATES, INC.,

Plaintiff and Appellant,

v.

FREDDIE JONES,

Defendant, Cross-complainant and

Appellant;

MILDRED JONES et al.,

Cross-complainants and Appellants.

CAL-EAGLE INSURANCE COMPANY,

Cross-defendant and Appellant;

JOHNSEY INSURANCE COMPANY,

Cross-defendant and Respondent.

S107855

Ct.App. 5 F029400/F030300

Fresno County

Super. Ct. No. 0512318-7

BY THE COURT:

MODIFICATION OF OPINION

The opinion in this case, filed on August 5, 2004 and appearing at 33 Cal.4th 917, is modified as follows:

1. The third sentence in the second paragraph on page 925 is modified to read: “In its original form, California’s rule 23 incorporated the generic, nationwide rule resulting in uncertainty concerning the way the rule applied in California.”

2. The first two sentences in footnote 2 on page 925 are modified to read: “Specifically, paragraph C of rule 23, as it existed at the time the Joneses’ policy was issued, provided two alternative methods of calculating premiums. The first alternative provided that ‘[t]ruckers may be written on a specified car basis according to the Trucks, Tractors and Trailers Classification Rule.’ ”

3. The third sentence in the first full paragraph on page 927 is modified to read: “Many insureds did not have the required detailed records readily available to establish their eligibility for the five criteria for excess coverage.”

4. The fourth sentence in the second full paragraph on page 927 is modified to read: “It charged the Joneses an initial estimated annual premium of \$14,088, based on the Joneses use of their own, specified vehicles in the business.”

5. The fourth sentence in the first full paragraph on page 928 is modified to read: “After speaking with Mohr, the Joneses received a consumer complaint form, which they filled out and returned to the DOI’s consumer services division as directed.”

6. The fifth sentence in the second full paragraph on page 935 is modified to read: “But the Joneses did not attempt to inform the DOI of Cal-Eagle’s misrepresentation, nor to press the matter with the DOI personnel in charge of handling the complaint, much less pursue an appeal.”

7. The second sentence in the second paragraph on page 940 is modified to read: “There, the overcharging of premiums was inextricably linked to the mishandling of claims – precisely the kind of bad faith behavior that goes to the heart of the special insurance relationship and gives rise to tort remedies.”

8. The paragraph on page 942 is modified by adding at the end the following sentence: “Each party is to bear its own costs on appeal.”

This modification changes the judgment.