

# Daily Journal

FEBRUARY 3, 2021

## TOP VERDICTS

THE LARGEST & MOST SIGNIFICANT  
VERDICTS AND APPELLATE REVERSALS  
IN CALIFORNIA IN 2020

### TOP DEFENSE RESULTS

## Sheahan v. State Farm Gen. Ins. Co. et al.

Following the disastrous Tubbs Fire in October 2017 in Northern California, several families who'd lost their homes sued State Farm General Insurance Co. upon discovering that the amounts they had insured their homes for were vastly less than the costs to rebuild.

They claimed they had been underinsured due to negligence, fraud and conspiracy by State Farm and Verisk Analytics Inc. which sells software that most insurers use to estimate the value of houses.

But the plaintiffs went further. They asserted that the defendants had violated antitrust laws because of the way Verisk fixed home valuations. *Sheahan v. State Farm Gen. Ins. Co.*, 3:18-cv-06186 (N.D. Cal., filed Oct. 9, 2018)

"This was a novel kind of claim," said Neal A. Potischman of Davis Polk & Wardwell LLP, whose team represented Verisk. "What makes this case so interesting is trying to expand liability to include providers of insurance analytics."

As U.S. District Judge Edward M. Chen explained the plaintiffs' allegations, State Farm and Verisk conspired to engage in predatory pricing by

using "defective financial technology tools" to sell inadequate insurance and so undercut other insurance companies.

The Davis Polk team responded that Verisk hadn't ever contracted with the homeowner plaintiffs nor misrepresented anything to them. At most, the plaintiffs might be considered indirect purchasers of the analytic applications Verisk sells to insurers.

Under longstanding antitrust law, purchasers who buy a product from someone who purchased it from the maker directly cannot sue the manufacturer for antitrust damages.

In response, the plaintiffs cited *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019), where the U.S. Supreme Court held that buyers of iPhone apps were direct purchasers of Apple Inc.'s App Store even though the apps came from independent creators.

"Verisk is sitting in the same position as Apple" in a hub-and-spoke conspiracy, said plaintiffs' attorney Julia Anne Donoho of Policyholder Pros LLP. "They're designing the software and they're deciding the price, and then the contractors have to play by their rules, basically."

#### case INFO

**Negligent misrepresentation, Negligence, Antitrust claims**

**Northern District of California  
U.S. District Judge Edward M. Chen**

**Defense Lawyers:** Davis Polk & Wardwell LLP, Neal A. Potischman, Micah G. Block, Andrew Yaphe, Daryl K. Griglak, Natalie Cha; Sheppard, Mullin, Richter & Hampton LLP, Frank Falzetta, Jeffrey S. Crowe, Jennifer M. Hoffman

**Plaintiff's Lawyers:** Policyholder Pros LLP, Rebecca McWilliams, Julia Anne Donoho



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Potischman said Verisk got the better of that argument. "[The plaintiffs] were not direct purchasers of insurance analytics, which is what we sell."

In finally dismissing the lawsuit March 4 last year, Chen repeatedly ruled that the plaintiffs had failed to plead any true antitrust injury.

Donoho said the plaintiffs did not appeal.

He also agreed with attorneys from Sheppard Mullin Richter

& Hampton LLP that the plaintiffs had not shown any negligence or other bad conduct by State Farm. A State Farm representative said the insurer is pleased by the court's decision.

— Don DeBenedictis