**S161008**

IN THE

# Supreme Court
## OF THE STATE OF CALIFORNIA

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VILLAGE NORTHRIDGE HOMEOWNERS ASSOCIATION,
*Plaintiff and Appellant,*

*vs.*

STATE FARM FIRE & CASUALTY COMPANY,
*Defendant and Respondent.*

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# ANSWER TO AMICUS CURIAE BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA

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REVIEW AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION EIGHT
[2d Civil No. B188718] [L.A.S.C. No. BC265328]

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## Statutes

Cal. *Insurance Regulation* 2695.4 . . . . . . . . . . . . . . . . . . . . . . . . . 5

The Civil Justice Association of California ("CJAC") has filed an amicus brief which is primarily based on a flawed legal argument – that because it is CJAC's opinion that Village Northridge could not possibly have relied upon State Farm's purported representation of policy limits (since the amount of the settlement was less than what Village Northridge believed to be the amount of the policy limits), that there is no "fact of damage" and therefore no viable fraud claim. This ignores both the applicable standard of review and the facts of the case as alleged in the operative complaint:

(1) The instant case is a review of a demurrer ruling; the facts as pled are presumed to be true for purposes of reviewing the ruling on demurrer. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Videotape Plus, Inc. v. Lyons* (2001) 89 Cal.App.4th 156,161.

(2) The operative complaint includes allegations of fact that State Farm misrepresented the amount of the policy limits, that Village Northridge relied upon this representation, and that Village Northridge's reliance on State Farm's representation was a substantial factor in causing its harm. [*APP1272*]

Even State Farm recognizes the limitations imposed by the standard of review

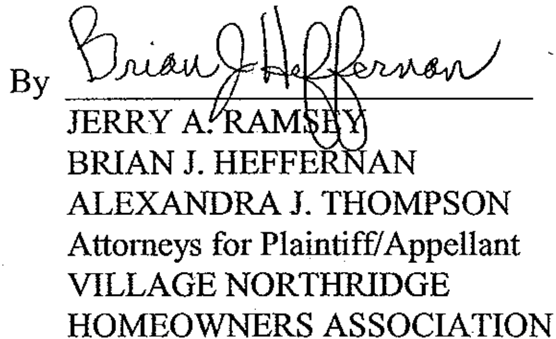
on a demurrer ruling. [*State Farm's Opening Brief on the Merits at p. 55*] Furthermore, it is not without relevance that in the first appeal, the Court of Appeals held that granting State Farm's Motion for Summary Judgment was inappropriate because the purported misrepresentation of policy limits created a triable issue of fact as to the materiality of the alleged misrepresentation. [*As cited in CJAC's Brief at p. 6*]

The remainder of CJAC's brief contains public policy arguments which are largely analogous those of fellow amici and Village Northridge has no desire to waste this Court's time by reiterating the specifics of the same arguments ad nauseam. Village Northridge respectfully maintains its position that it would be bad public policy to allow State Farm to prevail in this case given the blatant fraud being perpetrated against not only Village Northridge but now this very Court. Again, if this Court finds that upholding Court of Appeal's opinion would create dangerous precedent, Village Northridge submits that depublication would be the most appropriate method of limiting the impact of this decision. The Court of Appeal's decision reversing the trial court's order sustaining the demurrer as to the cause of action for fraud was the just result in this case and should be affirmed accordingly. CJAC's opinion that the allegations in Village Northridge's Second Amended Complaint cannot possibly be true is irrelevant and should be disregarded accordingly.

The fundamental flaw in CJAC's position is revealed in its framing of the issue: whether a first party insured who signed a release can "turn around and sue" and "eat his cake and having it too". The real issue is whether there is a remedy at law (fraud) for the misrepresentation of policy limits. Or, is this a crime for which no punishment is recognized as an action at law? If so, isn't it State Farm the party who would be "eating its settlement cake and having it too"? This scenario could occur in any number of circumstances. Imagine a trial judge conducting a Mandatory Settlement Conference in a catastrophic personal injury case with the same limits presented in this case. The injured plaintiff settles his $8 million plus case for $3.4 million under the false belief that only $4.9 in insurance is available, minus the deductible. He spends all of the money paying some of his medical bills. He then learns that $11.9 million in insurance benefits was actually available. No remedy at law? Any trial judge or settlement officer that was ever party to such a proceeding would be offended and would support this action proposed by Village Northridge. Our entire civil litigation system is dependent on this arrangement of insurers accurately representing the extent of coverage. Otherwise, if this "buyer beware" approach were to prevail we would have a case within a case at every settlement conference with judges and litigants suspiciously assessing policy limits representations. As a matter of public policy – the very policy urged in

Amicus' own brief – there must be an action at law available for the misrepresentation of policy limits. To deny the remedy would render California *Insurance Regulation* §2695.4 meaningless and would invite a recurrence of the crime committed in this case.

DATED: September 15, 2008 Respectfully Submitted:
ENGSTROM, LIPSCOMB & LACK



By ______________________
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**BRIEF FORMAT CERTIFICATION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.204(c)**

Pursuant to California *Rules of Court*, Rule 8.204(c), I certify that this Answer Brief is proportionately spaced, has a typeface of 13 points and contains 732 words, including footnotes.

DATED: September 15, 2008 ENGSTROM, LIPSCOMB & LACK

By [signature]
BRIAN J. HEFFERNAN
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HOMEOWNERS ASSOCIATION

**PROOF OF SERVICE BY MAIL**

In Re: ANSWER TO AMICUS CURIAE BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA; No. S161008
Caption: Village Northridge Homeowners Assoc. v. State Farm Fire & Casualty Co.
Filed: IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATE OF CALIFORNIA )
) ss:
COUNTY OF LOS ANGELES )

I am a citizen of the United States and a resident of or employed in the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 900 Wilshire Blvd., Suite 1530, Los Angeles, California 90017. On this date, I served the persons interested in said action by placing one copy of the above-entitled document in sealed envelopes with first-class postage fully prepaid in the United States post office mailbox at Los Angeles, California, addressed as follows:

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I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on September 16, 2008, at Los Angeles, California.

E. Gonzales

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