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July 7, 2008

Honorable Ronald M. George, Chief Justice  
Honorable Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Re: Opposition to Request for Depublication  
*Agnes H. Everett v. State Farm General Insurance Company*  
Appellate Case No. E041807  
Superior Court of San Bernardino County, No. SCVSS124763

Dear Chief Justice and Associate Justices:

On behalf of the American Insurance Association (AIA), this is to oppose the request by the Insurance Commissioner ("Commissioner"), filed on June 25, 2008, to depublish the decision of the Court of Appeal in *Everett v. State Farm General Insurance Company* (2008), 162 Cal. App. 4<sup>th</sup> 649. This well-reasoned decision (by a unanimous three-judge panel) reached the correct result, provides essential guidance for pending and future cases, and can only promote a healthy and stable homeowners' insurance market in California. The request to depublish<sup>1</sup> should be denied.

AIA is a leading national trade association representing major property and casualty (P&C) insurers writing business in California, nationwide and globally. AIA members collectively underwrote over \$18 billion in direct P&C premiums, including nearly one-third of the homeowners' insurance market, in this State in 2006. AIA's members, based in California and most other states, range in size from small companies to the largest insurers with global operations. On issues of importance to the P&C insurance industry and marketplace, AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the state and federal levels and files *amicus curiae* briefs in significant cases before federal and state courts, including this Court.

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<sup>1</sup> A request to depublish this decision also was filed with this Court, by letter dated June 5, 2008, by a group called "United Policyholders."

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“The court in *Everett*,” the Commissioner states, “held that a homeowner whose policy had been changed from ‘guaranteed replacement cost’ insurance (a form of insurance that *guarantees* payment of all amounts necessary to replace a home) to ‘replacement cost coverage’ (a form of insurance that pays to replace a home *only up to a specified limit*), was not entitled to coverage above the amount specified in her policy.” As the Commissioner further states, the Court held that State Farm adequately notified the insured (Everett) about the change in her coverage, the insured did not request any increase in her limits over the twelve-year life of the policy, and State Farm was entitled to enforce the policy limits.

The Commissioner states that he does not challenge the fact that the Court of Appeal reached the right result in this case. Rather, he requests depublication solely because the decision “contains two passages extending beyond the specific facts that could cause significant harm to consumers...”

The first passage questioned by the Commissioner is this sentence in the decision: “It is up to the insured to determine whether he or she has sufficient coverage for his or her needs.” The relevance of the unremarkable principle described in this sentence to the facts in this case is readily apparent when the sentence is read in context:

Insurance Code sections 10101 and 10102 do not require State Farm to set policy limits that equal the cost to replace the property. Nor is State Farm duty bound to set policy limits for insureds. It is up to the insured to determine whether he or she has sufficient coverage for his or her needs. In fact, the California Residential Property Insurance Disclosure statement provides that it is the insured’s burden to obtain sufficient coverage...

... Thus, contrary to Everett’s contention that it was State Farm’s duty to maintain policy limits equal to replacement costs, Everett bore such duty.

The notions that this passage is incorrect as a matter of law or could be harmful to consumers are misguided and unsupported in the Commissioner’s letter.

Contrary to the Commissioner’s letter, the Court of Appeal’s decision nowhere suggests that insureds should not take into account all relevant information, including advice provided by their insurers or agents, in determining if they have sufficient coverage. Thus, the decision references State Farm’s clear and consistent (i) advice to Everett that she should secure adequate coverage for her home, (ii) provision to Everett of an estimated replacement cost, (iii) suggestion that Everett obtain an appraisal or contractor estimate, (iv) advice to Everett that “Higher coverage amounts may be selected and will result in higher premiums,” and (v) provision to Everett of renewal certificates and disclosure statements

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(explaining relevant policy terms). The decision also references Everett's failures, in this case, to have her property inspected, review her policy, or increase its limits.

Consistent with the passage the Commissioner objects to, the Department's own web site ([www.insurance.ca.gov](http://www.insurance.ca.gov)) cautions California policyholders, in deciding "What Limits I Should Set on My Policy?" - to gather information they need to make decisions about the sufficiency of their homeowners' coverage. Thus, the site details the types of information that "can assist you [the policyholder] to determine if the limit set by your company accurately reflects the price it would cost to rebuild your home in the event of a total loss." The site further advises policyholders as follows:

An important part to owning any property is protecting the property to the best of your ability. Homeowners insurance is a vital component to the protection of your property. By knowing and understanding the coverage and limits of your policy, and by making sure that values are current, your [sic] greatly add to you and your family's peace of mind in any loss situation.

\* \* \*

If you have a replacement cost policy, the chances that you will be able to completely rebuild your home are better; however, there are many types of replacement cost policies, so you need to be careful to purchase a replacement cost policy that best meets your needs...

\* \* \*

As discussed earlier your agent, broker, or insurer can assist you in establishing a limit that is adequate to rebuild your home. It is important to update that limit periodically to maintain a limit that reflects current construction costs.

The Commissioner's letter states that a homeowner is "severely disadvantaged" in determining his home's replacement cost and "must, instead, rely on the insurer." The Department's web site debunks this unsupported statement, as do California's Residential Property Insurance Bill of Rights and Insurance Code sections 10103.5 (cautioning policyholders to "Take time to determine the cost to rebuild and replace your property in today's market" and providing specific suggestions on how a policyholder can make this determination) and 10102

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(requiring insurers to disclose to insureds that "Additional coverage may be available for an additional premium").

"If left to stand," the letter continues, "*Everett* could prejudice homeowners in pursuing legitimate claims based on agent or insurer assurances as to the scope of promised coverage." Putting aside the Commissioner's implication here that even depublication of this (unappealed) decision would not be sufficient, this statement is wholly groundless. The Court of Appeal affirms the availability, in appropriate cases, of actions in contract (*Desai v. Farmers Insurance Exchange*, 47 Cal.App.4<sup>th</sup> 1110 (1996)), or for fraud and negligent misrepresentation.

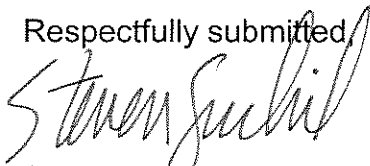
The Commissioner's arguments would lead to imposing on insurers an unbounded duty to determine the "right" amount of each homeowner's coverage, when it really is the homeowner who is in the best position to know the home's current condition, including additions and improvements made. The imposition of such a duty, ungrounded to the best of AIA's knowledge in any California law, could only encourage spurious litigation and increase the costs of homeowners' insurance in this State.

AIA endorses the analysis of this issue in a letter filed with this Court on June 30, 2008, by the Association of California Insurance Companies (ACIC) and the Personal Insurance Federation of California (PIFC).

In questioning the second passage in the decision, the Department states that "The Decision Incorrectly Holds That Agents Cannot Bind Insurers If There Is An 'Integration Clause' In The Policy." For reasons that are thoroughly addressed in the foregoing ACIC-PIF letter, AIA agrees that the Department simply is wrong.

AIA respectfully urges you to deny the Department's request for depublication and to leave this sound Court of Appeal decision undisturbed.

Respectfully submitted,



STEVEN SUCHIL  
Assistant Vice President  
State Bar Number 96143

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**Proof of Service**

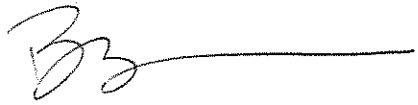
I declare that I am employed in the County of Sacramento, California. I am over the age of eighteen (18) and not a party to this action. My business address is 980 Ninth Street, Suite 2060, Sacramento, California 95814.

On July 7, 2008, I served the foregoing document on all interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows:

See attached service list.

X (BY MAIL) I deposited each envelope in the mail at Sacramento, California. The envelope was mailed with postage thereon fully prepaid with adequate postage for first class delivery and deposited each with the U.S. Postal Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 7, 2008, at Sacramento, California.

  
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Bobbie Zawkiewicz

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**Service List, continued**

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