

June 16, 2008

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

Re: Letter Brief in Opposition to Depublication Request in *Everett v. State Farm General Insurance Company*, E041807, S164120.

Dear Chief Justice George and Associate Justices:

The Civil Justice Association of California (CJAC)¹ opposes the two requests of which we are aware to depublish² the above well-written and reasoned opinion.

Both requests appear to be animated primarily by a desire to leave the law governing the duty of homeowners to determine the cost for which they wish to insure the replacement value of their homes in a state of flux and confusion so that litigation over that issue will continue to thrive. CJAC believes that clarity and certainty on that issue are preferable to the confusion that will abound if the opinion is depublished.

This unanimous 23-page opinion clarifies that homeowners are, as the annual renewal policy to the plaintiff expressly stated in compliance with statutory law,³ “responsible for selecting the appropriate amount of coverage [for which they] may obtain an appraisal or contractor estimate which [the insurer] will consider and accept,

¹ CJAC is a non-profit corporation whose hundreds of members are businesses, professional associations and local governments committed to improving the “fairness, efficiency and economy” of laws that determine who gets how much, and from whom, when injured by the wrongful acts of others. Toward these ends, CJAC has petitioned the Legislature, the courts and the people themselves for redress with respect to “unfair” and “overreaching” laws.

² Letter from Brian J. Heffernan, Engstrom, Lipscomb & Lack, to the Court, dated June 3, 2008; and letter from Amy Bach, United Policyholders, to the Court, dated June 5, 2008.

³ Cal. Ins. C. §§ 10101 & 10102.

if reasonable. Higher coverage amounts may be selected and will result in higher premiums.” (Slip Opinion, p. 4.) Despite this disclosure, which plaintiff received every year from 1997 when her insurer eliminated the guaranteed replacement cost coverage and replaced it with a stated policy limits declaration, plaintiff did not change her policy limits. When her home was destroyed by fire in 2003, she submitted her claim for loss to the insurer and was disgruntled when she received the policy limits but less than what she felt she should get. Not surprisingly, she sued claiming that she was defrauded by her insurer into believing she was insured for the “replacement” cost of her home.

Both the trial and appellate court, however, concluded that plaintiff, and not her homeowner’s insurer, was responsible for maintaining her policy limits:

Insurance Code sections 10101 and 10102 do not require [the insurer] to set policy limits that equal the cost to replace the property. Nor is [the insurer] 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.⁴

The requests to depublish are premised on the notion that homeowners are to be protected from their failure to read their insurance contracts or, if they do bother to read but do not understand them, seek written clarification from the insurer or a third-party. Fortunately, we do not live in a society where the government, including the judiciary, is a presumed “big brother” who will take care of us despite ourselves. We live instead, and fortunately, in a free society where the individual is vested with responsibility for making at least some decisions affecting his or her life, where citizens are sovereign and individual and popular sovereignty rule. Depublishing this opinion will take us further from individual responsibility toward a society where the government is charged with saving us from ourselves, from our own carelessness and stupidity, a society where, like Pogo eventually realized, we will end up admitting, “We have the met the enemy, and the enemy is us.” The Court should eschew that route in favor of the clarity and certainty stated in the governing insurance law and rightly affirmed by the opinion.

⁴ Slip Opinion, p. 16.

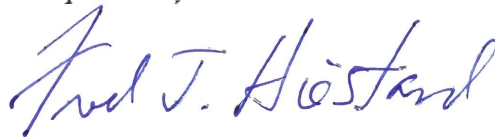
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This opinion deserves to remain published as a clear exposition of the law on the duty of homeowners to read their insurance policies and set their own limits, within reason, for liability from loss.

Respectfully submitted,



Fred J. Hiestand
General Counsel
The Civil Justice Association of California

FJH:dc
Proof of Service attached

PROOF OF SERVICE

I, David Cooper, am employed in the city of Sacramento, Sacramento County, State of California. I am over the age of 18 years and not a party to the within action. My business address is The Senator Office Building, 1121 L Street, Suite 404, Sacramento, CA 95814.

On June 16, 2008, I served the foregoing document(s) described as: Letter Brief of the Civil Justice Association of California in Opposition to Depublication Requests in *Everett v. State Farm General Insurance*, S164120 on all interested parties in this action by placing a true copy thereof in a sealed envelope(s) addressed as follows:

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(BY MAIL) I am readily familiar with the practice of the Senator Office Building for the collection and processing of correspondence for mailing with the United States Postal Service and such envelope(s) was placed for collection and mailing on the above date according to the ordinary practice of the law firm of Fred J. Hiestand, A.P.C.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 16th day of June 2008 at Sacramento, California.



David Cooper