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April 17, 2013

Clerk of the Court  
Second Appellate District  
California Court of Appeal  
300 S. Spring Street, Fl. 2, N. Tower  
Los Angeles, CA 90013-1213

Re: Request for Publication  
*Leroy Brown v. Mid-Century Insurance Company*  
Appellate Case No. B238357  
Los Angeles County Super. Ct. No. BC433800

Dear Clerk:

This is a request for publication addressed to Division Seven. The Personal Insurance Federation of California (“PIFC”) requests publication of the Court’s opinion in *Brown v. Mid-Century Ins. Co.*, No. B238357, slip opinion filed April 2, 2013.

The *Brown* opinion addresses and resolves an important issue of insurance law that arises in many claims and lawsuits, but that has not previously been addressed in a published opinion. Publication of the Court’s decision will provide important guidance for trial courts, insurers and policyholders.

## **I. Nature of PIFIC’s Interest**

PIFC is a nonprofit insurance trade association dedicated to representing its member companies’ interests before governmental bodies, including the California legislature, the California Department of Insurance, and the courts. PIFIC’s members are insurers specializing in personal lines of insurance, primarily automobile and homeowners insurance, in California and other states. PIFIC’s members account for more than 50% of all personal lines of insurance sold in California. Therefore, PIFIC has an interest in the issues raised by the Court’s decision.

## **II. The Opinion Provides Important Guidance For Courts, Policyholders and Insurers**

Claims stemming from leaking pipes are one of the most common homeowners insurance claims. These claims often lead to disputes over the very issues that arose in this case. Because of the absence of judicial guidance regarding an insurer's obligations under these circumstances, these disputes often result in litigation.

The *Brown* opinion provides guidance to insurers and insureds on water leak claims. The decision applies "an existing rule to a set of facts significantly different from those stated in published opinions" and also "involves a legal issue of continuing public interest." (Cal. Rules of Court, Rule 8.1105 subd. (c)(2) and (6).)

Like the Mid-Century policy, most homeowners insurance policies limit coverage for water damage to events that are "sudden and accidental," and exclude coverage for damages caused incrementally by the release of water over a period of time. Therefore, insurers will deny claims when the water leaks gradually over a period of time, as opposed to when gallons of water gush out in a matter of seconds. But policyholders frequently contend, as Brown did here, that there should be coverage even for incremental damage caused by a slow leak because the initial breach of the pipe happened in an instant or nanosecond, and thus was "sudden." In fact, the argument is so common that courts outside California have given it a name: the "metaphysical moment" theory. E.g. *Saint Paul Surplus Lines Ins. Co. v. Geo Pipe Co.* (Tex.Ct.App. 2000) 25 S.W.3d 900, 905; *American Ins. Co. v. Fairchild Industries, Inc.* (E.D.N.Y. 1994) 852 F.Supp. 1173, 1182, fn. 18, affd. (2d Cir. 1995) 56 F.3d 435.

California courts have explained that "sudden" has a temporal element. But no published opinion has answered the question of whether the gradual release of water from a pipe can be considered sudden simply because the initial breach of the pipe occurred in an instant. In its thorough and well-reasoned opinion, this Court explained that the answer is "no," a loss involving these circumstances is not sudden:

There is always a time,  $t_1$ , before the first water molecule breaches the surface of a corroding pipe, and a time,  $t_2$ , after the first water breaches the surface, such that the breach can appear sudden if  $t_2 - t_1$  is small enough. Such a calculus, however, does not make a gradual release of water sudden. (Opinion, at p. 14)

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In so ruling, the Court relied exclusively on out-of-state authority, thus acknowledging that no California precedent has addressed this issue.

If the opinion is published, it will provide important guidance. For cases already in litigation, the Court's decision will ensure consistency among trial courts that must address the question of whether an instantaneous breach of a pipe followed by the gradual release of water over time is considered a sudden, and thus a covered, event. For disputed claims not in litigation, the benefit of publication will be at least as important. It will promote certainty among insurers and their policyholders about whether such claims are covered, prevent unmeritorious suits from being filed, and thus reduce future litigation.

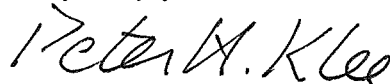
On the other hand, if the opinion remains unpublished, neither courts nor members of the public will be able to benefit from the clarity that it creates. Disputes between insurers and policyholders over claims like the one in *Brown* will continue, litigation will often ensue, and the risk of inconsistent trial court rulings followed by further appeals will remain – until a Court of Appeal opinion on the issue is finally published.

Thus, the time is ripe for the Court to publish its opinion.

### **III. Conclusion**

*Brown* resolves an important issue of insurance coverage that affects one of the most common types of insurance claims and that is often litigated in other cases, but which no published California opinion has previously addressed. The Court's analysis was careful, detailed, and thorough. Publication will create certainty and provide important guidance to trial courts, insurers and policyholders. Therefore, PIFC requests that the Court publish its opinion.

Very truly yours,



Peter H. Klee

PHK

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**PROOF OF SERVICE**

***Brown v. Mid-Century Insurance Company, et al.***

Superior Court of the State of California for the County of Los Angeles, Case No. BC433800

Court of Appeal, Second Appellate District, Division Seven, Case No. **B238357**

I, the undersigned, declare as follows:

I am employed with the law firm of MCKENNA LONG & ALDRIGE LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3391. I am over the age of eighteen years, and am not a party to this action.

On April 17, 2013, I caused the following documents to be served:

**Letter to Clerk of the Court requesting publication of the Court's opinion in *Brown v. Mid-Century Ins. Co.*, No. B2138357, slip opinion filed April 2, 2013.**

on the interested parties in this action, as follows:

X (BY U. S. MAIL) I placed a copy in a separate envelope, with postage fully prepaid, for each address named on the attached service list for collection and mailing on the below indicated day following the ordinary business practices at McKenna Long & Aldridge LLP. I certify I am familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit or mailing affidavit.

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

Executed at San Diego, California on April 17, 2013.

  
Barbara Specht

## SERVICE LIST

### *Brown v. Mid-Century Insurance Company*

Superior Court of the State of California for the County of Los Angeles, Case No. BC433800

Court of Appeal, Second Appellate District, Division Seven, Case No. **B238357**

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