

PROOF OF SERVICE

Re: **Letter to Hon. Ronald M. George and Associate Justices**
Caption: *Agnes H. Everett v. State Farm General Insurance Company* (2008)
Fourth District, Division 2, Case No. E41807, 08 C.D.O.S. 5181

046-4136
SF# 2005-09649
MGO/WDV
JRR/AW
NAK/LB
CLIENTS

I declare that I am employed in the County of San Diego, California. I am over the age of 18 years and am not a party to the within action; my business address is 16776 Bernardo Center Drive, Suite 110, San Diego CA 92128. On July 3, 2008, I served the forgoing document described as **Letter to Hon. Ronald M. George and Associate Justices**, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

 X (BY MAIL) I deposited such envelope in the mail at San Diego, 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:

Everett, Agnes : Plaintiff and Appellant	Christian J. Garris Law Offices of Christian Garris 633 West Fifth Street, 28th Floor Los Angeles, CA 90017
State Farm General Insurance Company : Defendant and Respondent	Randall M. Nunn Hughes & Nunn 401 "B" Street, Suite 1250 San Diego, CA 92101 James R. Robie Robie & Matthai 500 S. Grand Avenue, Suite 1500 Los Angeles, CA 90071-2609
Court of Appeal , Fourth District, Division 2	3389 Twelfth Street Riverside, CA 92501

I declare under penalty of perjury under the State of California that the foregoing is true and correct. Executed on July 3, 2008 California.



Valerie M. Brown

Valerie Brown



June 26, 2008

The Honorable Chief Justice Ronald M. George
and the Honorable Associate Justices
of the California Supreme Court
350 McAllister Street
San Francisco, California 94102

RE: *Agnes H. Everett v. State Farm General Insurance Company*
(2008) Fourth District, Division 2,
Case No. E41807, 08 C.D.O.S. 5181

Dear Honorable Chief Justice Ronald M. George and the Associate Justices of the
California Supreme Court,

RB United, the fire recovery center serving three impacted communities devastated by the October 2007 Witch Fire in San Diego County, respectfully submits this request for depublication of *Agnes H. Everett v. State Farm General Insurance Company*. As a community based long-term fire recovery organization working all facets of recovery for our fire-impacted residents, we are uniquely informed of the myriad difficulties faced by catastrophic insured homeowners and very grounded in the realities of what the practical implementation of the insurance and rebuilding process are.

Everett involves the very serious issue of underinsurance, defined as inadequate coverage for dwelling and contents replacement. We serve over five hundred families who suffered total destruction of their home and one hundred plus partial and severely smoke-damaged homes in the communities of Rancho Bernardo, Rancho Santa Fe, and the City of Poway. Approximately seventy five percent of our insured residences were underinsured, through no fault of their own. Both those residents in our communities who experienced loss and those who did not have no expertise in valuing their dwelling, no construction experience in building a home, and have generally accepted the insurance model presented by the insurance carriers as the only way to do business, since that is what service the insurance company offers.

Everett places responsibility on the homeowners to set the policy limits for their dwelling, even though the majority of homeowners are not in construction and do not have knowledge of what is involved in building a house, let along how much raw materials and labor and course of construction insurance and permits and fees and building code upgrades will cost. Most insurance policies and notices state clearly that

16776 Bernardo Center Drive, Suite 110, San Diego CA 92128 858.485.8502

the insurance “company has determined the estimated cost to replace your home,” since this is the product insurance carriers offer and the business they are in. The insurers are the experts in this area and have in-house experts and affiliate associations to make sure their business is profitable. In all aspects of the purchase of a home, the homeowner depends on the various businesses associated with it to ensure all details are covered, from title insurance to homeowners insurance. Homeowners buy an insurance policy with the assurance that they are dealing with professionals who conduct business in this area on a daily basis and with professionals who are serving their best interests as clients.

Everett also places, in my experience, an unrealistic responsibility on the homeowner to verify the full coverage offered by an insurance carrier is adequate. A catastrophic loss survivor from the 2003 Cedar Fire contacted me immediately following the 2007 Witch Fire upon receipt of a letter from State Farm advising her she would be responsible for settling the valuation of her homeowner’s insurance coverage, with recourse to their three suggestions: obtain a construction bid from a contractor, hire a home appraisal, or use State Farm’s software. Both she and I attempted to follow these suggestions in December, less than two months after the Witch Fire. We were unable to obtain a bid from a contractor since there was no work to be done (the house was not being replaced since it still existed). Real estate home appraisers would contract only with financial institutions, not individual homeowners, since the appraisal is a tool for lending valuation, not a means of determining rebuilding valuation. Based on her prior experience, she knew the software State Farm utilized undervalued the cost to replace her dwelling. Working with this model outlined in her correspondence from her insurer, which *Everett* appears to echo, we discovered the first two options offered by State Farm were not executable and the last, utilizing their software, depended on her non-existent expertise in new home construction to second guess and determine if the policy limits State Farm offered were adequate.

I find the idea that the insurance companies would accept a catastrophic loss survivor’s valuation unrealistic since the reality of assisting in negotiations with insurance adjusters has been just the opposite. In dealing with insurance adjusters from the major insurance carriers in California with our clients on a daily basis, we have yet to find a consistent acceptance of the traditional means of valuation. Catastrophic loss survivors who contract with an adjuster for a professional scope of loss have been consistently rejected and directed to obtain a bid from a contractor. Those survivors who obtain a bid from a contractor willing to rebuild their home are rebuffed by their adjuster, saying this is not a professional scope of loss. When a survivor has been directed to offer their “bottom line” to their carrier’s policy adjuster, in effect asking the catastrophic loss survivor to set the value on their dwelling, it is rejected since they do not have the necessary knowledge to offer realistic numbers since the insurance adjuster is represented this as the expert. For the thousands of residents who are now aware of the underinsurance issue, when they proactively have contacted their insurance agency to increase their coverage, I have only spoken to a handful of individuals who were able to convince their insurance company to raise their policy limits. They were simply told their limits met underwriting guidelines and their limits were more than adequate. One resident, actively involved in the Cedar Fire in 2003 and the 2007 Witch Fire and an elected public official and attorney,

contacted her insurance company in November, one month after the fires, to raise her limits and was informed they would not raise her policy limits since they had determined her coverage was more than adequate.

Everett also denies the reality of how insurance companies conduct business. If the insured were adequately able to determine the valuation for their policy limits, then the “extended coverage” endorsements would not be in the industry standard in the State of California, it would not be necessary. The insured pay higher premiums for these “extended coverage” endorsements, which commit the insurer to pay the increased cost to rebuild due to inflation, fluctuations in the building market, and building code upgrades. The idea is these products will allow the catastrophic loss survivor to replace their dwelling with one of like kind and quality in compliance with applicable building codes and laws. Also, if the insured could determine their contents coverage and landscaping, then we would not be facing the majority of our clients underinsured by more than half in these categories, regardless of the adequacy of their dwelling coverage. The reality of these additional coverages is they are set by the insurance company as a percentage of the dwelling’s policy limits.

I disagree with these assertions in the opinion handed down in *Everett*:

1. *Regardless of any and all representations or assurances that have been made orally or in writing by an insurance agent, broker or company representative, it is a policyholder’s legal duty to determine whether or not their property is adequately insured. In no other service offered by professionals is the client asked to determine the cost of coverage/procedure. Auto and medical insurance are determined by the insurer; there is no question the average insured is not in a position to determine insurance coverage. Why would dwelling coverage be any different?*
2. *Regardless of the fact that insurers pay claims every day all across the United States and are in possession of all available information on current construction and repair costs, it is a policyholder’s legal duty to calculate and maintain policy limits that are adequate to fully replace their home and contents in the event of a total loss.—If the insured were a new home construction contractor, this could conceivably be a realistic solution. The materials dependent and labor-driven nature of new construction precludes a lay person from calculating this valuation.*
3. *Regardless of any and all representations or assurances that have been made orally or in writing by an insurance agent, broker or company representative, it is a policyholder’s legal duty not to accept an agent or insurers’ replacement cost figures for their home but to independently determine whether or not those figures are accurate. If there were recourse for obtaining a second opinion that was accurate and available and a methodology within the insurance industry that wouldn’t flag you for an arsonist if they requested additional coverage for dwelling, contents and landscaping, this could be a course of action. Everett, in advocating this position, places a duty on the insured that can not be implemented.*

4. An inflation protection provision in an insurance policy that creates the expectation that it will function to adjust policy limits upward to account for increased costs over time need not actually do that. If this is a legitimate argument, then why are the insurers marketing a product that consumers are paying a premium for if it does not exist? It is akin to selling the air we breathe just because you can.

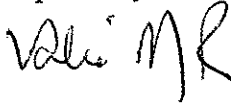
In the few weeks since the decision on *Everett* was handed down, I have had clients, catastrophic loss survivors, face suddenly recalcitrant insurance policy adjusters who had previously acknowledged the policy limits were set too low by the insurance agent while disagreeing about the cost to replace and who are now saying they will only give the insured policy limits. One of these is a resident with a home insurance policy limit set at \$87 a square foot, which could not have replaced the home if it had been destroyed immediately after purchase. However, the homeowner had no way of realizing they were underinsured. They, in good faith, purchased a product from a reputable national insurance carrier, as required by their mortgage company in a transaction handled in escrow. A home is the biggest asset for the majority of homeowners across the country, it is the embodiment of the American Dream. This opinion threatens the protection for that asset these homeowners thought they obtained when they purchased homeowners insurance.

Statement of Interest

RB United is one of six long-term fire recovery centers funded by The San Diego Foundation serving the communities impacted by the October 2007 Firestorm that struck San Diego County. We are a coalition of community organizations providing a one-stop location for all fire-related recovery issues for catastrophic loss survivors and the general community. RB United is a disaster recovery program under fiscal sponsorship of Interfaith Community Services. We work with and for these impacted families on a daily basis, dealing intimately with insurance issues with the individual homeowners, construction firms, public adjusters and professional scope of loss providers, insurance adjusters, United Policyholders, and the California Department of Insurance. These fire survivors have been traumatized by losing their homes and everything that made up their lives inside and we exist solely to recover the community and survivors whole, in a home of like kind and quality to what they lost.

As someone working in the trenches with the reality of obtaining an insurance settlement in conjunction with a fire survivor with the many hurdles facing our insured fire families, I would argue *Everett* is not a simple, nor an adequate solution. Absolving the insurers of their responsibilities after the fact, after taking payment for services to be rendered for peace of mind in protecting the largest assets these families will have in their lifetimes, is inexcusable. The expectation that the responsibility for adequate coverage can be transferred to the insured with no realistic manner for them to obtain viable data to make an informed decision and transferred away from the insurance professionals who handle these types of claims as their daily business cannot be implemented.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Valerie M. R.", with a long horizontal line extending to the right from the end of the signature.

Valerie Brown
Project Coordinator
RB United Coalition
Long Term Fire Recovery Center