



September 17, 2008

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

RE: *State Farm Fire and Casualty Co. and State Farm
General Insurance Co. vs. Superior Court of the State
California for the County of Los Angeles*
Docket No. S165938 - Amicus Letter in Support of
Petition for Review

Dear Chief Justice and Associate Justices:

This letter is written on behalf of the Association of California Insurance Companies (ACIC) and the Personal Insurance Association of California (PIFC), as *amicus curiae* in support of State Farm's Petition for Review.

The ACIC is an affiliate of the Property Casualty Insurers Association of America (PCI) and represents more than 300 property/casualty insurance companies doing business in California. ACIC member companies write 41.8 percent of the total property/casualty insurance in California, including 57.3 percent of personal auto insurance, 45.7 percent of commercial automobile insurance, 40 percent of homeowners insurance, 32.5 percent of business insurance and 43.4 percent of the private workers compensation insurance. PCI is a national trade association composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association.

PIFC represents insurers who write over 50% of all personal lines of insurance sold in California, including State Farm, Farmers, Safeco, 21st Century, Progressive and NAMIC.

The opening paragraph of the Court of Appeal's decision in this case presents a notion that will have the effect of nullifying a fundamental concept of insurance. That concept is that insurance cannot, and should not cover losses resulting from intentional conduct. That concept has been embodied in California law since 1935 (Ins. Code §533). The public policy rationale behind this prohibition is obviously that if it were absent, the potential for abuse would be such that rating and transferring risk within the insurance system would be virtually impossible. Here, the insured intended to throw the plaintiff into the pool but made what the court characterizes as a "mistake" in not throwing "hard enough." The idea that a "mistake" may result in harm that is covered by insurance is hardly unusual. Here, however, the court concludes that a mistake – which essentially reflects a failure to fully carry out an intentional act resulting in harm greater than anticipated – essentially converts that intentional conduct into an "accident" for which insurance coverage could exist.

A far-fetched hypothetical is illustrative of the nonsensical result that could obtain in an admittedly extraordinary case. A person points a gun and fires it point blank towards another in order to scare that person, but mistakenly shoots the person fatally. The act, which was intended to inflict some injury, actually inflicts much greater injury. Is this an "accident"? The Court of Appeal's decision would answer in the affirmative because notwithstanding that the conduct was clearly willful; the actor harbored no desire to cause the injury that ensued. Indeed, the court itself cites a case in which an insured driver drove a passenger who fired a weapon from the moving automobile.

The court's hindsight analysis of damages resulting from intentional conduct jeopardizes the underlying predictability of losses for which insurance is designed. Regardless of the likelihood that harm will occur when a party engages in intentional conduct, insurers must have the ability to exclude that harm from coverage because the conduct is essentially under the control of the insured party. Had the insured not intentionally undertaken to throw the plaintiff into the pool, there would have been no injury at all. The fact that the insured could not fully carry out that conduct should not inure to his benefit in interpreting an insurance policy.

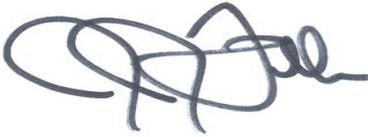
Further, the decision would expose the insurance system to indemnification for damages far beyond the reasonable expectations of insurers and policyholders alike. The Court of Appeal would force insurers to calculate the practically limitless exposure to harm caused by any intentional conduct of any insured – so long as the actor really didn't foresee the harm, in some

manner was incapable of fully carrying out the volitional act, or failed to accurately assess the harm that would result.

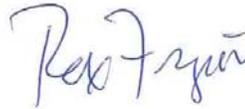
In other words, as a practical matter insurance policies could no longer be limited to accidents because the inevitable after-the-fact assessment of injuries – not the conduct itself – would lead to countless situations in which insurance coverage is found to exist. Insurers' initial analysis of the risk they are undertaking from insureds would unavoidably expand to include harm resulting from intentional conduct. To assure the actuarial integrity of the insurance system, insurers would be forced to set premium levels high enough to assure continued financial viability into the future following judicial scrutiny of intentional conduct that, though apparently not carried out entirely to plan, leads to harm. It is difficult to fathom how such an approach to the insurance system could function.

ACIC and PIFC respectfully urge this Court to grant the Petition for Review on file herein.

Very truly yours,



Jeffrey J Fuller
Vice President and General Counsel
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Personal Insurance Federation of
California

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1201 K Street, Suite 1220, Sacramento, CA 95814.

On September 17, 2008, I served the foregoing document(s) described as:

PETITION FOR REVIEW

On all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelop address as follows:

- (x) BY MAIL: as follows: I am "readily familiar" with the association's practices of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I now that the envelop was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 17, 2008, at Sacramento, California

Gwen Walker

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