STATE FARM
FARMERS
21ST CENTURY
SAFECO
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NAMIC

March 4, 2008

Via Overnight Mail

Honorable Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-7303

RE: ***Village Northridge Homeowners Association v. State Farm Fire & Cas. Co.,*** reported at 157 Cal.App.4th 1416 (decided December 17, 2007), as modified, January 15, 2008
Docket No. S161008
Amicus letter in support of Petition for Review

Dear Chief Justice and Associate Justices:

On behalf of *amicus curiae*, the Personal Insurance Federation of California ("PIFC"), we are writing in support of State Farm's Petition for Review in the above-referenced case.

NATURE OF PIFC'S INTEREST

PIFC is a non-profit insurance trade association dedicated to representing its member companies' interests before governmental bodies, including California's Legislature, Insurance Commissioner, and courts. PIFC's members are insurers specializing in personal lines insurance, primarily private passenger automobile and homeowners insurance, in California and elsewhere. In addition, the National Association of Mutual Insurance Companies is an association member of PIFC. PIFC's members account for approximately 48.7 percent of all personal lines insurance sold in California. As such, PIFC has an interest in the issues raised by the Court of Appeal's decision.

REASONS REVIEW SHOULD BE GRANTED

As *amicus*, PIFC would like to emphasize three points: (1) the Court of Appeal's decision undermines the certainty of non-personal injury civil settlements; (2) the plain language of California's rescission statute is clear; and (3) the release State Farm sought in adjusting Village Northridge's claim is expressly permitted by the Insurance Regulations.

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Finality of Civil Settlements

PIFC believes that review should be granted, among other reasons, in order to settle the uncertainty of settlement agreements created by the Court of Appeal's opinion.
The Court of Appeal's published decision drastically undermines the certainty that accompanies the settlement of non-personal injury civil actions in this state by distinguishing settlement of those cases from personal injury settlements. For over 80 years, when parties settled a disputed claim, if one party later believes that it was defrauded into entering into the settlement agreement and "wants out" of the settlement, it had to rescind the settlement agreement and return the consideration paid. (*Garcia v. California Truck Co.* (1920) 183 Cal. 767, 772-773 (*Garcia*).) This Court has also held that a party cannot avoid the *Garcia* rule by purporting to "affirm" the settlement agreement and seeking damages for fraud. (*Taylor v. Hopper* (1929) 207 Cal. 102, 103-105 (*Taylor*).)

Garcia and *Taylor* comport with fundamental fairness and common sense: if one party "wants out" of an arms-length, negotiated settlement agreement, it should have to return the benefit or consideration it received to the other party. Otherwise, one party (normally the plaintiff) gets all of the benefits of the agreement (typically money), while the other party (the defendant) is deprived of the money and the "peace" it sought to "buy" by entering into the settlement agreement.

Under the Court of Appeal's decision, parties represented by counsel can settle a disputed claim and waive in writing the protections of Civil Code section 1542. Thereafter, if one party feels that it has been defrauded, that party can keep every dime of the consideration paid and then sue for damages based upon the nature of the very claims that were released. The result of the Court of Appeal's decision is that the settlement amount simply becomes the "floor" for the plaintiff's damages, while the defendant is deprived of what it paid the money for: freedom from being sued.

The uncertainty created by the Court of Appeal's ruling undermines the finality of certain civil settlements by creating an exception to longstanding California case and statutory law regarding rescission and settlement releases, and therefore, warrants review.

California's Rescission Statute is Clear

Garcia and *Taylor* are also consistent with the plain language of the rescission statute, which requires that the consideration "must" be returned in order to rescind an

agreement. (Civ. Code § 1691.) The California Legislature amended the rescission statutes in 1961 and did not seek to revise the rules announced by this Court in *Garcia* and *Taylor*. (*See Runyan v. Pacific Air Industries, Inc*. (1970) 2 Cal.3d 304, 311, fn.9, 311-313 [discussing legislative history of 1961 amendments].) The inference that should be drawn is that Legislature did not intend to alter *Garcia* and *Taylor*. However, the practical effect of the Court of Appeal's decision is to allow a plaintiff to rescind a settlement agreement in violation of the legislative mandate that the consideration "must" be returned.

Settlement Releases are Encouraged By Public Policy and Insurance Regulations

There is nothing improper about an insurer seeking a release from its insured in order to settle a disputed first-party property claim. Indeed, State Farm's request for a release in exchange for payment of a disputed claim is expressly permitted by the Insurance Regulations. (Cal. Code Regs., tit. 10, §§ 2695.4(e)(2), 2695.7(h).)

The Court of Appeal's opinion incorrectly suggests that Village Northridge was entitled to "some portion" of the settlement amount. (Typed opn. at pp. 8-9.) That statement is incorrect and is utterly belied by the settlement agreement itself, which recites that the parties were settling a "disputed" claim. (6AA 1437-1438, 1441-1442, ¶ 8.) These recitals are binding under Evidence Code section 622 (*Plaza Freeway Ltd. Partnership v. First Mountain Bank* (2000) 81 Cal.App.4th 616, 621-622, 629), unless the settlement agreement was rescinded. (*Estate of Wilson* (1976) 64 Cal.App.3d 786, 801.) The Court of Appeal's opinion effectively rewrites the parties' arms-length settlement agreement.

There is a strong, long-standing public policy of encouraging settlements – and the ability to attain *and rely upon* a release, is essential to settlements.

For these reasons, and those set forth in State Farm's petition, PIFC respectfully urges this Court to grant review and to reverse the Court of Appeal's decision.

Respectfully submitted,

Kimberley Dellinger
General Counsel

Proof of Service Attached

PROOF OF SERVICE BY MAIL
(1013A, 2015.5 C.C.P.)

State of California)
) ss.
County of Los Angeles)

I am over the age of eighteen years and not a party to the within entitled action; my business address is 1201 K Street, Suite 1220, Sacramento, CA 95814.

On **March 4, 2008**, I served the foregoing **AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW** on the interested parties in this action, by placing a true copy thereof, enclosed in a sealed envelope and mailing same at Sacramento, California, addressed as follows:

SEE ATTACHED MAILING LIST

(XX) (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Sacramento, California.

( ) (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the office of the addressee(s).

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

( ) (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: March ___, 2008

_____
Gwen Walker

SERVICE LIST

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Judge of the Superior Court
Case No. BC265328

Clerk, California Court of Appeal
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