

Battle Lines Drawn in Fight to Depublish Court of Appeal's Decision in Recent California Wildfire Cases

07.28.2008

The 2003 California wildfires spawned hundreds of lawsuits. The recent 2007 wildfires will likely do the same. In April 2008, the California Court of Appeal decided *Everett v. State Farm*, 162 Cal.App.4th 649 (Cal. Ct. App. April 29, 2008), the first published decision to address important issues of contract interpretation and allegations of underinsurance arising from a total property loss. Although the appellate decision is now final, plaintiffs' attorneys, consumer groups, and even the Department of Insurance have flooded the California Supreme Court with depublishation requests. The insurance industry and other organizations have fired back, opposing the depublishation requests. What is it about *Everett* that has caused such an uproar? Is it a sweeping decision that will shape the future of underinsurance cases or simply a coverage analysis limited to its facts? A brief discussion of *Everett* sheds some light on why so many are taking such a special interest in this decision.

In 1991, Agnes Everett purchased a home in San Bernardino and insured it with State Farm. The policy initially included an endorsement for guaranteed replacement cost coverage, which provided that State Farm would pay whatever it cost to rebuild Everett's house in the event of a total loss, regardless of the policy limits.

In 1997, State Farm notified Everett that it would no longer be offering guaranteed replacement cost coverage. Instead, the annual renewal certificates and biennial disclosure statements made it clear that (1) Everett's coverage was capped by the stated policy limits, plus an additional 20 percent if the loss exceeded the stated limits, and (2) it was Everett's responsibility – not State Farm's – to maintain adequate insurance on her property.

In October 2003, Everett's home was destroyed by fire. State Farm paid the full policy limits, plus an additional 20 percent. In March 2005, Everett sued State Farm for breach of contract, bad faith, negligence, reformation, and fraud, alleging that State Farm was required to pay the full cost to rebuild her home regardless of the stated policy limits.

In the Summer of 2006, the trial court granted State Farm's motions for summary adjudication and judgment on the pleadings on all of Everett's claims. She then appealed.

The Court of Appeal affirmed all of the trial court's rulings. It held:

1. State Farm did not breach the insurance contract or implied covenant of good faith and fair dealing by withholding additional benefits because Everett's policy unambiguously limited coverage to the stated limits, which State Farm paid.
2. State Farm owed no duty to maintain policy limits equal to the full replacement cost because, based on State Farm's renewal certificates and disclosure statements, that was Everett's responsibility.

3. State Farm did not violate Insurance Code section 678 because it provided adequate notice of the change from guaranteed replacement cost coverage to replacement cost coverage with extended limits.
4. Any oral representation that Everett's agent might have made about guaranteed replacement cost coverage when she purchased the policy was not actionable because (1) it was made at a time when Everett did have guaranteed replacement cost coverage and (2) in any event, Everett had no evidence of any misrepresentation.

Contrary to arguments made in the depublication requests, the Court's ruling was not so sweeping that it would deprive homeowners of tort remedies where the policy language was misleading or where their agent *did* misrepresent the scope of their coverage. But, the decision does make clear that insureds cannot pursue contract or tort remedies where (1) the policy language clearly limits coverage to the stated limits and the insurance company paid all that was owed, (2) the policy unambiguously states that it is the insured's responsibility to maintain adequate insurance, and (3) there is no evidence that the agent who sold the policy made any misrepresentations. We will soon learn whether the California Supreme Court will let this important decision stand.

Attorneys

Joseph E. Foss

Practice Areas

Insurance

Industries

Insurance