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Advocates: Insurance ruling may hurt fire victims

By Elizabeth Marie Himchak August 6, 2008

The California Supreme Court's decision to publish the ruling in a lawsuit between a 2003 fire victim and her insurance company is going to hurt 2007 fire victims and those with total losses in the future, according to policyholder advocates.

In Agnes H. Everett v. State Farm General Insurance Company, California's 4th Appellate Court ruled in April that it is the responsibility of homeowners to set their policy limits based upon their reconstruction calculations, not the amount the insurance agent calculates.

In addition, the court ruled insurance companies are not obligated to annually adjust policies to keep up with inflation so 100 percent of the replacement cost is maintained.

Policyholder advocates tried to get the ruling "depublished" so it cannot be used as precedent within the 4th Appellate Court's district, which includes San Diego County.

"In just a few weeks, this opinion has already had a devastating impact on the hundreds of innocently under-insured California residents who lost their homes in last fall's San Diego area wildfires and who are in the throes of claim settlement negotiations," Amy Bach, United Policyholders executive director, wrote to the California Supreme Court in June. "Insurance companies and their attorneys are already waving the Everett decision around as a shield that's going to absolve them of any liability for deceiving their customers into thinking they were fully insured."

"Everett threatens the financial security of the 15 million homeowners in this state as well as the tax base of local and state governments," Bach wrote when asking the court to depublish the ruling.

"It was not unexpected," said George Kehrer, executive director at Community Assisting Recovery (CARE Inc.), about the depublication request denial on July 30. "It is very rare for the Supreme Court to overturn an appellate court."

One way CARE Inc. tried to get the evidence for the ruling to be depublished was through conducting a six-question survey designed to show the court that insurance companies, not policyholders, set policy limits and even when policy holders are willing to pay a higher premium for a policy with a higher limit, it is not always possible to purchase such a policy.

While unsuccessful this time, the organization, founded after the 1994 Northridge earthquake, is still asking all insurance policyholders — whether they have suffered a loss or not — to complete the survey because while no additional appeals are possible in the Everett case, Kehrer said there "is still work to be done."

He predicted similar cases will come up in the future.

The survey link is at <http://www.carehelp.org>.

Valerie Brown, RB United project coordinator, said it is "crazy" for the courts to expect property owners to accurately know how much rebuilding costs.

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"You are paying (the insurance companies) for that expertise," Brown said.

According to a United Policyholders survey completed in June, homeowners, on average, are under insured by \$240,000. Among the survey's 274 participants whose homes were damaged or destroyed in October's wildfires — 82 were from Rancho Bernardo — 75 percent were under insured.

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