



AN INSURANCE CONSUMER EDUCATION ORGANIZATION

January 16, 2008

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The Hon. Ronald M. George
Chief Justice of the California Supreme Court
And the Honorable Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *LA Sound USA, Inc., et al. v. St. Paul Fire & Marine Ins. Co.*
Case No. S159342

Dear Chief Justice George and Associate Justices of the Court:

This letter is submitted on behalf of United Policyholders to respectfully request that the Court grant the Petition for Review filed by LA Sound USA, Inc. ("LA Sound") after the Court of Appeal's decision filed on November 14, 2007.

United Policyholders is a non-profit organization that was founded in 1991 and is dedicated to education and advocacy on insurance issues and consumer rights. The organization is an information and assistance resource for individuals, businesses and disaster victims on solving coverage and claim problems. United Policyholders advances and protects the interests of policyholders by filing *amicus curiae* briefs in cases involving important proceedings on policy issues. United Policyholders has filed over 250 *amicus* briefs in state and federal appellate courts across the country. United Policyholders' *amicus* brief was cited in the U.S. Supreme Court's opinion in *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999). Arguments from our *amicus curiae* brief were cited with approval by the California Supreme Court in *Vandenburg v. Superior Court*, 982 P.2d 229 (Cal. 1999), and contributed to *Watts Industries, Inc. v. Zurich American Insurance Co.*, 18 Cal.Rptr.3d 61 (2004). United Policyholders' interest in this case is an outgrowth of its mission to advocate for and protect policyholders' rights.

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There are three issues in LA Sound's Petition for Review that are of particular interest to United Policyholders:

First, as expressed in the Petition, United Policyholders is concerned that the Court of Appeal's decision permitting an insurer to rescind a policy for alleged misrepresentations in an application despite express limitations on that right as set forth in the policy creates a trap for unsuspecting policyholders. We believe that the decision improperly provides an insurer the means to rescind policies and thereby avoid its policy obligations without first demonstrating that the insured **intended** to defraud the insurer. Further, we believe that the Court of Appeal's decision to allow for rescission without restitution of policy premiums to the insured contravenes well settled statutory and case law and further abridges the rights of policyholders.

Second, the Petition raises an important issue of whether the existence of an agency relationship between a broker and a policyholder should be presumed in all cases or it should be determined based upon facts and circumstances of each case. The Petition correctly points out that California lower courts automatically assume an agency relationship between a broker and a policyholder in all cases and for all purposes without examining the relationship on a case-by-case basis. In our experience, many of these brokers have much closer ties with insurance companies with whom they place business than with the policyholders. This case is a classic example of such a relationship. We submit that the determination of an agency relationship is a question of fact and it should be analyzed independently in each case. Despite the fact that this issue was fully briefed in the Court of Appeal, the decision fails to analyze it at all.

Third, the Petition raises the additional issue of whether a corporate officer, director and shareholder could be *personally* ordered to reconstitute the amount the insurance company had to pay while defending them only in their *corporate* capacities. Simply put, the Court of Appeal's sanction of such remedy is unprecedented, contravenes the reasonable expectations of insureds and can result in unjust windfall for insurance companies. This is particularly true in situations where, as here, there was no evidence to show that the corporate officers, directors and shareholders were personally responsible for any alleged misrepresentations in the insurance application.

In short, we believe that important legal issues are presented in the Petition for Review. We respectfully urge this Court to grant review in this case and provide much needed guidance to California courts, attorneys and policyholders.

Respectfully submitted,

Alice J. Wolfson, Esq.
Chair, Board of Directors
United Policyholders