Case No. A092096

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

AICCO, INC., et al.,

Plaintiffs and Appellants,

v.

INSURANCE COMPANY OF NORTH AMERICA, et al.,

Defendants and Respondents.

AMICUS CURIAE BRIEF OF UNITED POLICYHOLDERS, CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION, AND THE NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLANTS AICCO, INC. ET AL.

(Unfair Competition Case. See Bus. & Prof. Code § 17209 and Cal. Rules of Court Rule 16(d))
Appeal from the Superior Court of the State of California
In and for the County of San Francisco
Case No. 308869
The Honorable David A. Garcia

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INTRODUCTION

This case presents a seemingly simple question, but one that may have profound implications for California insureds, consumers, communities, local governments, tort victims, and the general public. That question is whether an insurer may unilaterally terminate its liability under an entire block of pre-existing insurance policies by "reorganizing" or "restructuring" itself into two companies – one of which (in this case, Respondent Insurance Company of North America ("INA")) retains the name, history, corporate identity, licenses, goodwill, creditworthiness, and profitable on-going business, and which continues to write new policies, while the other (in this case, Respondent Century Indemnity Company ("Century Indemnity")) is assigned all liability under the "old" policies, writes no new policies, has no on-going premium income, and is solely a "run-off" company capitalized with an apparently substantial, but ultimately finite, allocation of funds. Does California law allow the original insurer under these circumstances to abdicate its responsibility and liability to its "old" insureds, without their knowledge or consent, so as to proceed unencumbered with its "new" business?

The issue presented in the case is not, as Respondents repeatedly suggest, whether the restructuring itself was proper or whether the involved regulatory agencies, including the Pennsylvania Insurance Commissioner and the California Department of Insurance, were correct in approving the transaction. At the time this action was filed, the division of INA and the creation of Century Indemnity were essentially a *fait accompli*, and the Appellants' action does not ask the court to second guess regulatory approval of the division itself. Rather, the issue is whether, despite the division, INA continues to have legal and contractual obligations to its "old" policyholders, and more specifically, whether the plaintiffs in this action may state a cause of action under the broad provisions of the Unfair

Competition Law, Business and Professions Code § 17200, *et seq.*, seeking a declaration of that continuing liability, as well as other appropriate equitable relief.

In an obvious effort to avoid adjudication of INA's liability to its "old" policyholders, Respondents misrepresent the record before the Pennsylvania and California Insurance Departments, asserting that the agencies considered the issue and found that it was not ripe for determination. In fact, the issue of whether INA is liable to its "old insureds" and continues to have contractual and legal obligations under the spun-off policies was *not* resolved by the regulatory agencies. Both the Pennsylvania agency and the California Department of Insurance specifically recognized that the issue was beyond their jurisdiction and that INA's liability to its policyholders was an issue that would be *properly addressed in the courts.* As such, the INA restructuring and transfer of policies to Century Indemnity was approved as a matter of corporate reorganization, but the effect of the transfer on INA's legal obligations to its "old" policyholders was avoided and essentially punted to the courts. Now that that issue is squarely before a court of this state, for resolution as to California policyholders, Respondents argue that it should be punted back to the administrative realm.

Essentially what Respondent INA is attempting to do is to continue to represent to its "new" policyholders, creditors, the financial markets and to the various agencies that rate insurance companies, that it has shed liability under its "old" policies, thus reaping the substantial benefits of that perception, while at the same time representing in the courts of this state that the issue is not yet ripe for resolution, *refusing even to state its position on the issue*, and never having informed its "old" policyholders of the effect of the transfer. This classic example of attempting to both have and eat cake may serve the interests of Respondents, but it is deceptive, misleading

and unfair, and disserves the affected policyholders, INA's potential competitors, and the public.

Respondents' assertion, and the trial court's apparent conclusion, that plaintiffs' action did not allege any cognizable injury is not only without merit, but quite troubling. It is well-established that in order to state a claim for violations of the UCL, it is not necessary to allege actual harm or injury. As the Supreme Court has repeatedly emphasized, the statute has a very broad scope and prohibits "'anything that can properly be called a business practice and that at the same time is forbidden by law.'" Stop Youth Addiction , Inc. v. Lucky Stores, 17 Cal.4th 553, 560 (1998), quoting Bank of the West v. Superior Court, 2 Cal.4th 1223, 1266 (1992) and Barquis v. Merchants Collection Assn., 7 Cal.3d 94, 111 (1972). Moreover, a practice may be prohibited as "unfair" even if it is not strictly "unlawful," Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co., 20 Cal.4th 163, 180 (1999), and the standard for alleging a "fraudulent" or deceptive practice is simply that the public "is likely to be deceived." State Farm Fire & Casualty Co. v. Superior Court, 45 Cal.App.4th 1093, 1105 (1996) (disapproved on other grounds in Cel-Tech, supra, 20 Cal.4th at 184-85), citing Committee on Children's Television, Inv. v. General Foods Corp., 35 Cal.3d 197, 211 (1983); see also Bank of the West, 2 Cal.4th at 1267. Under these standards, the allegations in this action clearly state a claim under the UCL. In addition to specifically alleging an unlawful practice in violation of Civil Code § 1457, the action also alleges conduct that is unfair and deceptive.

Nevertheless, the trial court not only imposed a requirement that injury be shown, but went further and essentially made a finding of fact, on demurrer, that there had been no injury as a result of the spin-off of policies from INA to Century Indemnity, and *could be no injury* in advance of any insolvency or default by Century Indemnity. This finding did not comport

with either the well-established standards for ruling on demurrer, or with the standards of liability under the UCL.

The ruling below is also troubling because it fails to recognize the potential injury to the competitive marketplace. Indeed, Respondents imply throughout their Brief that Appellants' motives are somehow impure, and that their action is suspect, because they are competitors of INA. That argument fundamentally misses the point – both of the action, and of the UCL itself. The UCL is just as much addressed to "anti-competitive business practices" as it is to consumer protection. See Cel-Tech Communications, supra, 20 Cal.4th at 180.[1] The fact that AICCO and the other plaintiff parties may be competitors of Respondents in no way undermines the legitimacy of their claim under the UCL, and indeed, competitive harm is a potential "injury" that the trial court failed to acknowledge. If INA is able to shed its liability for an entire block of "old" policies that it perceived as creating a drag on its current business and credit rating, it may thereby attain a competitive advantage vis-à-vis other insurance companies that have not similarly spun-off potential liabilities. This may place other insurers who stand by their former policyholders at a competitive disadvantage, and/or by create an economic incentive for other insurance companies to follow suit. There is also the likelihood that if and when Century Indemnity lacks sufficient resources to pay claims, other insurers may be left "on the hook" for claims for which INA originally was, and should remain, responsible.

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[1] Indeed, when it was originally enacted in 1933 (as former Civil Code § 3369), the statute was perceived as applying primarily, if not *only*, to commercial activity. It was only later that the statute was specifically interpreted as applying in a much broader context, and as protecting individuals and consumers, as well as businesses. See Barquis v. Merchants Collection Assn., supra, 7 Cal.3d at 108-112.

Accordingly, *Amici* respectfully urge the Court to reverse the judgment of the court below, and remand the action for proceedings on the merits.

INTEREST OF AMICI

The *Amici* organizations on whose behalf this Brief is filed (hereinafter referred to jointly as "*Amici*") are non-profit and not-for-profit organizations committed to consumer education and advocacy. The background and focus of each organization is summarized briefly below.

United Policyholders ("UP") is a non-profit California corporation dedicated to consumer education on insurance issues, and the promotion of greater public understanding of the rights of insurance policyholders. Founded in 1991, the organization actively monitors legal and marketplace developments affecting the interests of policyholders, and serves as a resource on insurance claims for disaster victims and residential and commercial insureds. UP testifies at legislative and other public hearings, participates in regulatory proceedings on rate and policy issues, and frequently submits *amicus curiae* briefs in cases that involve important insurance principles likely to impact large segments of the public.

Consumer Federation of America ("CFA") is a not-for-profit organization and consortium of more than 260 consumer groups. For more than three decades, CFA has sought to advance the interests of consumers through advocacy and education, including in particular, disseminating information to consumers and the general public. In total, CFA represents the interests of more than 50 million consumers, millions of whom live in California. CFA has actively contested the transfer of ownership and liability under the INA insurance policies at issue in this case since the plan was first made public in 1995 in the Pennsylvania regulatory proceedings. CFA filed *amicus curiae* briefs in the Pennsylvania courts on the issue, and has continued its involvement through participation in this action because it

believes strongly that insurance policies, and the insurer's obligations thereunder, may not be transferred from an existing insurer to a third party without the consent of the policyholder.

The National Consumer Law Center ("NCLC") is a non-profit corporation established in 1969. One of its primary objectives is the provision of expertise and technical assistance to legal services attorneys, governmental agencies, and private attorneys who advocate for the interests of their low-income and elderly clients in the area of consumer law. NCLC staff have expertise on many highly complex consumer issues and consumer protection statutes. They write and publish a series of legal treatises, known as the *Consumer Credit and Sales Legal Practice Series*, on various federal and state statutes that affect consumer law. For more than 30 years, NCLC staff have provided oral and written testimony on consumer issues and advocated on behalf of consumers before Congress, the Federal Reserve Board, the Federal Trade Commission, and in courts throughout the country. Numerous NCLC staff members have been members of the Federal Reserve Board's Consumer Advisory Council and American Bar Association committees.

Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education, and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived form the sale of *Consumer Reports*, a well-known consumer information magazine, its other publications and services, and from noncommercial contributions, grants, and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions

which affect consumer welfare. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

The issues presented in this action, and those that will be discussed below, are of concern to *Amici* for several reasons. First and most obviously, if INA's shedding of liability under its "old" policies is effectively sanctioned, it places in jeopardy the coverage of insureds under those policies. Regardless of what subsequently transpires with the management and assets of Century Indemnity, those insureds have lost the essential guarantee of security for which they originally contracted when purchasing an INA policy. In addition, if the capitalization of Century Indemnity proves inadequate, the interests of injured parties whose claims would otherwise be covered under the former INA policies will be impaired in that there will be insufficient proceeds to cover their losses. This may be particularly detrimental to the public because the policies at issue insured potential asbestos and environmental claims. And at the market level, the issues are of concern because INA's "restructuring" may create economic pressure for other companies to do likewise. Accordingly, the *Amici* organizations respectfully submit that the primary issue presented in the case – whether INA remains liable to its former insureds under the policies transferred to Century Indemnity – should be resolved on the merits, and urge the Court to reverse the judgment of the court below.

ARGUMENT

I. RESPONDENTS MISSTATE THE PROPER STANDARD OF REVIEW.

Although *Amici* will primarily defer to the parties for briefing of the factual background and procedural issues, it is important to point out that Respondents have urged the Court to apply an incorrect standard of review. Specifically, Respondents have argued that the abuse of discretion standard applies to this appeal for two reasons – first, because the trial court

"declin[ed] to afford declaratory relief," and second, because it sustained the Respondents' demurrer based on the doctrine of primary jurisdiction. (Respondent's Brief at 2, 9.) Respondents' argument on this important, threshold issue is incorrect for at least three reasons.

First and foremost, the judgment from which this appeal arises follows the sustaining of a demurrer without leave to amend. The standard of review for an appeal from such a judgment is well-established. "On appeal from an order of dismissal after an order sustaining a demurrer, *our standard of review is de novo*, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law." Montclair Parkowners Assoc. v. City of Montclair, 76 Cal.App.4th 784, 790 (1999) (emphasis added); see also Quelimane Company, Inc. v. Stewart Title Guaranty Co., 19 Cal.4th 26, 38 (1998). In reviewing the sufficiency of the complaint against a general demurrer,.the court not only treats the demurrer "as admitting all material facts properly pled, but also 'give[s] the complaint a reasonable interpretation, reading it as a whole and its parts in their context.'" Quelimane, supra, 19 Cal.4th at 38 (citation omitted). "If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer." Ibid. "If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted." Quelimane, 19 Cal.4th at 39, citing Blank v. Kirwan, 39 Cal.3d 311, 318 (1985).

Thus, the applicable standard of review is de novo. The abuse of discretion standard applies only to the question of whether leave to amend should have been granted, as to which the courts have repeatedly instructed that if there is any possibility that a defect could be corrected, it is an abuse of discretion for a trial court to deny leave to amend. See Blank v. Kirwin,

supra, 39 Cal.3d at 318; Aubrey v. Tri-City Hospital Dist., 2 Cal.4th 962, 967 (1992).

Second, the trial court in this action did not "decline to afford declaratory relief" as characterized by Respondents. See Respondent's Brief, at 9. The merits of the action, and in particular, questions as to whether any relief was warranted, were not properly before the trial court at the pleadings stage. Rather, the sole issue was whether plaintiffs' First Amended Complaint stated a cause of action. As to that issue, this Court exercises de novo review, regardless of the trial court's stated reasons for sustaining the demurrer. Montclair Parkowners Assoc., supra, 76 Cal.App.4th at 790.

Third, if indeed the trial court sustained the Respondents' demurrer under the doctrine of primary jurisdiction as Respondents' claim, and it is not at all clear from the trial court's ruling that this is the case, then the lower court committed an error of law, separate and apart from any abuse of discretion. While trial courts have discretion as to whether to apply the primary jurisdiction doctrine, *the doctrine does not authorize the sustaining of a demurrer without leave to amend and subsequent dismissal of the action.* Rather, if and when the doctrine is found to apply, the proper remedy is for the trial court to *stay* the action pending administrative proceedings. See Farmers Ins. Exchange v. Superior Court, 2 Cal.4th 377, 390 (1992); Wise v. Pacific Gas & Electric, 77 Cal.App.4th 287, 296 (1999). As this Court explained in Wise, "[t]he doctrine does not permanently foreclose judicial action, but provides the appropriate administrative agency with an opportunity to act if it chooses to do so. . . . In applying the primary jurisdiction doctrine *the proper procedure is to stay the action* pending resolution of the issues within the administrative body's expertise." Wise, supra, 77 Cal.App.4th at 296 (emphasis added).

Implicit in this rule, as was recognized by the Court in Wise, is the notion that the doctrine may apply when proceedings relevant to the issues before the court are either pending before, or contemplated by, an administrative agency. See Wise, 77 Cal.App.4th at 298. In the absence of any such proceedings, and particularly in a case such as this in which the relevant agency has specifically *declined* to address the issue presented, it would make no sense for a trial court to stay an action pending proceedings that will never occur.

II. THERE ARE IMPORTANT POLICY IMPLICATIONS IN THE CLAIMS PRESENTED.

Although the immediate task before this Court is to determine, exercising its de novo review, whether the plaintiffs' First Amended Complaint states a cause of action under the UCL, *Amici* request that the Court bear in mind the important public policies of this state that are relevant to the issues presented. In particular, this state has a strong public policy of encouraging the purchase and maintenance of insurance coverage, and a parallel policy of requiring insurers to honor their contractual and legal obligations to insureds.

The state's policy of encouraging the purchase of insurance is reflected most explicitly in the courts' long-standing adherence to the collateral source rule in personal injury actions. That rule holds that "if an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor." Helfend v. Southern California Rapid Transit Dist., 2 Cal.3d 1 (1970). The California Supreme Court articulated the policy underlying the rule in the seminal Helfend decision as follows:

> The collateral source rule expresses a policy judgment in favor *of encouraging citizens to purchase and maintain insurance* for personal injuries and other eventualities. Courts consider insurance

a form of investment, the benefits of which become payable without respect to any other possible source of funds.

Id., 2 Cal.3d at 10 (emphasis added). While the collateral source rule obviously comes into play only in cases in which the insured himself has suffered an injury, the policy reflected in the rule would certainly apply to both first and third party coverage.

The state also has a strong public policy of requiring insurance companies to honor their obligations to policyholders. This policy is reflected in both the statutory and common law, including the well-established rules for interpretation of insurance contracts. Under those rules, when the language of the policy is clear, its plain meaning governs. When it is uncertain or ambiguous, however, it must be read in accordance with the objectively reasonable expectations of the insured. See e.g. Buss v. Superior Court, 16 Cal.4th 35, 45 (1997); Bank of the West v. Superior Court, supra, 2 Cal.4th at1264-65. If an ambiguity cannot be resolved by reference to the rules of interpretation, it is resolved against the insurer and in favor of coverage. Bank of the West, supra, 2 Cal.4th at 1265. While the courts have been careful to emphasize that they will not disregard or rewrite the terms of an insurance contract in order to find coverage, the rules of interpretation clearly reflect a policy judgment that insurers must be held to their promises, that the reasonable expectations of insureds should be protected, and that when the intent of the parties cannot otherwise be determined, ambiguity in a policy must be resolved in favor of coverage. See Bank of the West, supra, 2 Cal.4th at 1265; Buss, supra, 16 Cal.4th at 45; Montrose Chemical Corp. v. Admiral Ins. Co., 10 Cal.4th 654, 667 (1995).

Judicial recognition of the significance of the bargain struck in an insurance policy, and of the harm that may result when an insurer reneges on its obligations, is also reflected in the well-established rule that the duty

to defend is broader than the duty to indemnify and runs to claims that that are merely "potentially covered," see e.g. Buss v. Superior Court, supra, 16 Cal.4th at 46; Montrose, supra, 6 Cal.4th at 295, and in the substantial body of case law concerning the tort of insurance bad faith. See e.g. Kransco v. American Empire Surplus Lines, 23 Cal.4th 390, 400 (2000); Carlton v. St. Paul Mercury Ins. Co., 30 Cal.App.4th 1450, 1456 (1994). The courts of this state have emphasized that insurers not only have a duty to fulfill their contractual obligations to insureds, but also to fulfill the covenant of good faith and fair dealing. Kransco, 23 Cal.4th at 400 (the covenant "is aimed at making effective the agreement's promises") (citation omitted). Implicit in this duty is the insurer's obligation to be reasonable, to deal with insured honestly and in good faith, and to "to give equal consideration to the interests of its insured as it does to itself." Lee v. Crusader Ins. Co., 49 Cal.App.4th 1750, 1757 (1996).

The state's public policy of ensuring the integrity of insurance contracts, is also evident in the numerous statutory provisions that govern the conduct of insurers, and in the regulatory authority of the Department of Insurance. Insurers must be licensed to transact business in the state, are required to meet financial requirements, and must comply with reporting requirements, standards of conduct, and other statutory provisions. If violations occur, an insurer may be subject to regulatory enforcement proceedings, fines, and other penalties. The existence of such a regulatory scheme certainly reflects a policy recognition of both the importance of insurance companies to the economic health of the state, and the potential harm that can result from the failure of insurance companies to meet their contractual and statutory obligations.[2]

[2] As is discussed in the section following, the existence of such an administrative enforcement does *not* bar a claim under the UCL. See Manufacturers Life Ins. Co. v. Superior Court, 10 Cal.4th 257, 263 (1995).

Finally, the courts have recognized that California has a substantial public interest in the availability of insurance coverage for environmental claims, and that as a result of that interest, will apply California law to insurance coverage disputes involving conditions in this state. In Ford Motor Co. v. Insurance Co. of North America, 35 Cal.App.4th 604, 613-14 (1995), the defendant (INA) sought to have an insurance coverage dispute concerning environmental contamination at sites in California dismissed on the grounds of forum non conviens. The Court of Appeal rejected its argument, stating as follows:

> California, too, has a fundamental interest in the preservation of the quality of its natural environment and in the remediation of toxic contamination within its borders. . . . Indeed, it undoubtedly was the importance of this state's interest in the general availability of insurance coverage for environmental pollution cleanup and the importance of this point to the resident California plaintiff that encouraged the court in Northrop Corp. v. American Motorists Ins. Co, supra, [1990], 220 Cal.App.3d 1553 to favor California as a forum. In short, the weight of persuasive authority favors assigning to California a substantial interest in regulating the conduct at issue in this case. * * *
>
> Inasmuch as the insured risks at issue in this case are located in California, therefore, the law of this state applies to the interpretation and application of defendants' insurance policies.

Ford Motor, supra, 35 Cal.App.4th at 614.

In this case, because the conditions that may be insured under INA's block of "former" policies, for the affected insureds in California, are likely to be in California, and because this state has a significant public interest in the question of whether coverage may be available to remediate those conditions, public policy would certainly favor applying California law to the merits of the issues presented.

Notwithstanding the foregoing policy considerations, the trial court dismissed the Appellants' action, both figuratively and literally, concluding

quite wrongly that no harm had been alleged and no justiciable issues presented. The result effectively sanctions the proposition that an insurer may relieve itself of liability under all of its "old" policies by transferring those policies to a separate entity, without the consent or the even the knowledge of its policyholders. That proposition is fundamentally at odds with the policies outlined above – it undermines policyholders' confidence in the future viability of their policies, it runs contrary to the principle that insurers must honor their obligations to insureds, and it defeats the state's interest of adjudicating liability issues under policies issued to California insureds that cover damage, injuries and conditions occurring in California.

III. THE TRIAL COURT ERRED IN HOLDING THAT THE APPELLANTS' COMPLAINT FAILED TO STATE A CAUSE OF ACTION UNDER THE UNFAIR COMPETITION LAW.

A. The UCL Is Applicable to the Claims Asserted.

Aside from the policy issues, the primary error of the court below was in concluding that the Appellants' First Amended Complaint failed to state a cause of action under the UCL. It is well-established that the UCL has a very broad remedial purpose and scope. Recently, in Kraus v. Trinity Management Services, Inc., 23 Cal.4th 116 (2000), our Supreme Court reiterated the importance of actions under the UCL in enforcing the law and protecting the public from unfair practices.

> Through the UCL a plaintiff may obtain restitution and/or injunctive relief against unfair or unlawful practices in order to protect the public and restore to the parties in interest money or property taken by means of unfair competition. *These actions supplement the efforts of law enforcement and regulatory agencies.* This court has repeatedly recognized the importance of these private enforcement actions.

Kraus, supra, 23 Cal.4th at 126 (emphasis added).

The act prohibits "unfair competition," which is defined as including "*any* unlawful, unfair or fraudulent business act or practice," as well as deceptive and misleading advertising. Bus. & Profs. Code § 17200 (emphasis added). "The Legislature intended this 'sweeping language' to include 'anything that can properly be called a business practice and that at the same time is forbidden by law.'" Stop Youth Addiction, supra, 17 Cal.4th at 556, quoting Bank of the West, supra, 2 Cal.4th at 1266 and Barquis, supra, 7 Cal.3d at 111, 113. The statute "governs 'anti-competitive business practices' as well as injuries to consumers, and has as a major purpose 'the preservation of fair business competition.'" Cel-Tech Communications, Inc., supra, 20 Cal.4th at 180.

In proscribing "unlawful" business practices, the statute "borrows" violations of other laws, and makes them independently actionable under the UCL. Cel-Tech, 20 Cal.4th at 180; Stevens v. Superior Court, 75 Cal.App.4th 594, 602 (1999). Thus, a claim may be stated for relief under the UCL regardless of whether the predicate statute itself provides any private right of action or remedy. Stop Youth Addiction, supra, 17 Cal.4th at 562-63 ("as we have long recognized, it is enacting the UCL itself, and not by virtue of particular predicate statutes, that the Legislature has conferred upon private plaintiffs 'specific power' [citation omitted] to prosecute unfair competition claims.") "[V]irtually any law – federal, state or local – can serve as a predicate for a section 17200 claim." Stevens, supra, 75 Cal.App.4th at 602 (citation omitted).

A practice may also violate the UCL even if it is not strictly "unlawful" under another statute. Cel-Tech, at 180 (the statute "makes clear that a practice may be deemed unfair even if not specifically prohibited by some other law"). "Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition – acts or practices which are unlawful, or unfair, or

fraudulent. 'In other words, a practice is prohibited as "unfair" or "deceptive" even if not "unlawful" and vice versa.'" Cel-Tech, 20 Cal.4th at 180, quoting Podolsky v. First Healthcare Corp., 50 Cal.App.4th 632, 647 (1996).

A practice may be "unfair" if it "offends an established public policy or when the practice is immoral, unethical, oppressive unscrupulous, or substantially injurious to consumers," see People v. Casa Blanca Convalescent Homes, Inc., 159 Cal.App.3d 509, 530 (1984), or if the utility of the practice is outweighed by the gravity of harm to its victims. State Farm, supra, 45 Cal.App.4th at 1093. For cases involving allegations of competitive injury, a practice is "unfair" if it "threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable or the same as a violation of the law, or otherwise significantly threatens or harms competition." Cel-Tech, supra, 20 Cal.4th at 187.[3]

The standard for identifying a "fraudulent" practice in violation of the UCL is simply whether "the public is likely to be deceived." State Farm, supra, 45 Cal.App.4th at 1105; Bank of the West, supra, 2 Cal.4th at 1267. Unlike a common cause of action for fraud, a UCL violation may be shown even without proof actual deception, individual reliance, or damage. State Farm, at 1105; Bank of the West, at 1267.

In contrast to its sweeping scope, the remedies available the UCL, which are independent of and cumulative to those available under "all other

[3] In Cel-Tech, the Court adopted a new standard for allegations of "unfairness" in cases under the UCL in which the plaintiff claims to have suffered injury from the practices of a direct competitor. Id., 20 Cal.4th at 187. The Court specifically limited its holding to such claims, stating "[n]othing we say relates to actions by consumers or by competitors alleging other kinds of violations of the unfair competition law, such as 'fraudulent' or 'unlawful' business practices . . . ." Id., at 187, n. 12.

laws of this state," are relatively limited. Bus. & Profs. Code § 17205; Stop Youth Addiction, 17 Cal.4th at 573; Cel-Tech, 20 Cal.4th at 179. Business and Professions Code § 17203 authorizes courts to order injunctive relief and restitution, and to make such other orders "as may be necessary to prevent the use or employment by any person of a practice which constitutes unfair competition." Bus. & Profs. § 17203; Kraus v. Trinity Management Services, supra, 23 Cal.4th at 129. Although neither compensatory nor punitive damages are available, within the realm of the authorized remedies, courts have broad equitable powers to shape appropriate injunctive and other relief. See e.g. Kraus, 23 Cal.4th at 138 (courts may order individualized monetary restitution and require defendants to "identify, locate and repay" all affected victims); Hewlett v. Squaw Valley Ski Corp., 54 Cal.App.4th 499 (1997) (affirming broad prohibitory and mandatory injunction); Consumers Union v. Alta-Dena Certified Dairy, 4 Cal.App.4th 963, 972-74 (1992) (affirming injunction requiring affirmative curative disclosures); People v. Orange County Charitable Services, 73 Cal.App.4th 1054, 1078 (1999) (affirming an order requiring an accounting and imposing a constructive trust).

Under these standards, the facts alleged in the Appellants' action clearly state a cause of action under the UCL. The First Amended Complaint (Appendix A033-053, hereinafter "the Complaint") specifically alleges that Respondents' conduct violated the provisions of Civil Code § 1457, which prohibits the assignment of an obligation without the consent of the party entitled to its benefit. This was sufficient to allege an "unlawful" business practice. The Complaint also alleges that Respondents disseminated deceptive and misleading information to the affected policyholders and others, including the public, concerning the INA restructuring, and that as a result of restructuring California policyholders were stripped of protection under the California Insurance Guarantee

Association (CIGA). In addition, the Complaint alleges generally that Respondents contrived to escape their contractual obligations under "billions of dollars" in insurance policies issued to California policyholders, that they did so in order to improve INA's credit rating and market share as it proceeded with its "new" business, and that the interests of policyholders were and are threatened by Respondent's attempt to cap the revenues available for payment of claims under the "old" policies. These allegations, which the trial court was required to accept as true, see Quelimane Company, Inc., supra., 19 Cal.4th at 38, state a claim for both "unfair" and "fraudulent" practices as defined in the case law.

Significantly, the Appellants' action does not seek to "undo" the INA restructuring. Rather, the action seeks limited declaratory and injunctive relief, both to clarify that INA remains liable on the policies that it transferred to Century Indemnity, and to correct misleading information that INA previously distributed. Such remedies are available under the UCL.

In light of the foregoing, the trial court committed clear error in sustaining the Respondents' demurrer. The trial court's Order demonstrates that it not only failed to apply the relevant standards under the UCL, but also *made determinations on the merits*, rejecting rather than accepting, the truth of the allegations in the Complaint. Among other findings, the Order states that "plaintiffs have not alleged any present or reasonably foreseeable or imminent injury to policyholders as a result of Restructuring Plan" (Order, at 2, A830), which flatly contradicts the allegations of the Complaint.[4] The Order also states that "there is no basis

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[4] For example, page 2 of the First Amended Complaint alleges as follows: "Central to the scheme was the proposition that if Century Indemnity did not have funds sufficient to pay INA's "former" policyholders – i.e., the policyholders that INA no longer wishes to pay – INA will not be held

for the Court to find that the notices were deceptive or misleading in regard to their alleged failure to disclose aspects of the Restructuring Plan . . . ." (Order, at 3, A831), and goes on to state that "it is not possible for the Court to determine whether the notices are deceptive or misleading in light of the risks of possible future injury to policyholders arising from the present or future financial performance of defendants, ..." (Order, at 4, A832.) These "findings" were not proper in a ruling on demurrer. Rather, the court was required to accept the allegations of the complaint as true, and should have allowed Appellants the opportunity to prove their claims of unfairness and deception. Indeed, courts have cautioned that claims of unfairness under the UCL are not well-suited resolution on demurrer, and that the trial court's role is limited to determining the sufficiency of the complaint. See e.g. Quelimane, supra, 19 Cal.4th at 42 (arguments concerning justification for a practice are not properly before a court on demurrer); Saunders v. Superior Court, 27 Cal.App.4th 832, 840 (1994); Motors, Inc. v. Times Mirror Co., 102 Cal.App.3d 735, 740 (1980) ("if [the] pleading states a *prima facie* case of harm, having its genesis in an apparently unfair business practice, the defendant should be made to present its side of the story").

In attempting to defend the result in the trial court, Respondents make a number of arguments concerning the UCL that are simply wrong. These are addressed below.

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responsible to do so. All this was done without notice to or the consent, explicitly required under California law, of INA's policyholders whose claims were being relegated to the weaker remnant of INA." (First Amended Complaint, at 2, A035.)

B. Regulation by the Department of Insurance Does Not Preclude Claims Under the UCL.

Respondents' primary strategy, both in the court below, and in their Brief before this Court, has been to argue that the regulatory proceedings before the Pennsylvania Insurance Commissioner, and the subsequent approval by the California Department of Insurance of the INA restructuring, preclude any judicial review of the effect of the restructuring on INA's liability to its "old" policyholders under a UCL claim. This effort to evade liability under the UCL should be rejected for several reasons.

First, Respondents repeatedly mischaracterize the issue before the Court. As noted above, the issue presented in the Appellants' action is not whether the restructuring should have been approved – the issue is whether, notwithstanding the restructuring, INA remains liable to its "former" California policyholders, *as a matter of law*, under its "old" policies that have been transferred to Century Indemnity. Neither the Pennsylvania Insurance Commissioner, nor the California Department of Insurance, determined this issue, and in fact, both specifically declined to do so, properly recognizing the issue as one that called for a judicial resolution. See La Farge Corp. v. Com. Ins. Dept., 735 A.2d 74, 77 (Pa. 1999) ("Department approval does not insulate the insurer from liability. . . . It is equally clear that no judicial remedies are foreclosed by the department's approval of the plan of restructure and division. Such claims were outside the jurisdiction of the Insurance Department, and are not barred by department approval of restructuring plans."); see also the California Department of Insurance "Approval Letter," dated February 13, 1996, (Appendix at 211) ("this Department's consent to certain of the restructuring transactions does not foreclose creditors, including policyholders, from pursuing any remedy at law which may be available to them"). The court proceedings in Pennsylvania were addressed solely to

the question of whether the hearing procedures had been proper; they did not resolve, let alone address, the issue presented in this action. See LaFarge, supra, 735 A.2d at 75 ("This case requires us to . . . determine the type of hearing the insurance department must conduct before approving a plan for restructure").

Thus, Appellants' action does not seek judicial review or nullification of any matter resolved by the regulatory agencies; nor does it seek to "unwind" the restructuring. What it seeks is resolution of an important question of law that has a substantial impact on California insureds and the public, that has not previously been resolved, that is properly resolved in a court of law, and that Respondents have tried mightily to avoid. They have argued, on the one hand, that the issue is not ripe for adjudication because there has been no default by Century Indemnity. See e.g. Respondents' Brief, at 6, 9.[5] They have also argued, on the other hand, that any adjudication of the issue in Appellants' favor would overrule "findings to the contrary by agencies" and would unwind "a five-year old allocation, approved by those agencies and courts, of the assets and liabilities of respondents." (Respondents' Brief, at 30-31). Elsewhere, they suggest that they have not yet taken a position on the issue, (Respondents' Brief, at 8), and even argue that they can properly refuse to do so, (id., at 25) which is particularly disingenuous given that they have certainly taken a position in their representations to creditors and potential "new" policyholders. *Amici* submit that there is indeed an important question of law and public policy squarely presented by this action, and that it should be resolved.

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[5] As part of this argument, Respondents repeatedly assert that there has been no harm to policyholders, (see e.g. Respondents' Brief, at 9), an assertion that is (a) one of fact that has yet to be resolved, (b) that clearly contradicts the allegations of the Complaint.

Moreover, it is an issue of law that must properly be resolved by the courts, not by the Department of Insurance. This is the second reason that the Respondents' strategy is flawed – it urges the Court to defer to an administrative agency for resolution of an issue that involves interpretation of law. It is well-established, however, that the responsibility for interpreting the law rests with the courts, not with the Department of Insurance or any other administrative agency. In Baer v. Associated Life Insurance Co., 202 Cal.App.3d 117, 123 (1988), a case discussed at some length by Appellants, which addresses the question of whether Civil Code § 1457 precludes an insurer from transferring its responsibility under pre-existing policies to another entity in the absence of consent by the policyholder, the court specifically noted that such a question was properly a judicial, not an administrative issue. Rejecting an argument made by the assigning insurer that an opinion by personnel of the Department of Insurance was dispositive on the issue of its release from liability, the court stated: "With all due respect to his authority [the deputy commissioner of insurance], it simply does not encompass interpretation of law. Subject to review by the Supreme Court, we are the arbiters of what is meant by particular statutory language." Baer, supra, 202 Cal.App.3d at123; see also Travelers Indemnity Co. v. Gillespie, 50 Cal.3d 82, 95 (1990) (rejecting an interpretation of the Insurance Commissioner on the purpose and effect of reinsurance and assumption agreements, and holding that such agreements do not "in any way" release the original insurer from its policy obligations).

Thus, in this case, when the Department of Insurance declined to proffer an opinion on effect of the restructuring on INA's liability and obligations to its former policyholders, it properly recognized that such issues were beyond its purview. The questions presented in this case, just as in Baer and Travelers Indemnity, involve interpretations of law, including basic principles of contract law and interpretation, which are

neither within the special expertise of the Department of Insurance, nor within its ultimate realm of authority. Rather, it is the role of the courts, and of this Court in this case, to resolve the important questions of law presented.

The third reason that the Respondents' arguments are without merit is that a major theme of their Brief – that issues concerning the business of insurance are within the exclusive province of the Department of Insurance and that courts have "consistently abstained" from adjudicating such issues under the UCL – is simply wrong. (See Respondents' Brief, at 28 – 37.) This argument has repeatedly been made, *and rejected*, by the courts of this state, including in two recent decisions of the Supreme Court.

In Manufacturers Life Ins. Co. v. Superior Court, supra, 10 Cal.4th at 257, a UCL case involving claims against several insurance companies predicated on violations of the Cartwright Act, the Supreme Court specifically rejected an argument that claims involving unlawful or unfair practices of insurance companies are exempt from the UCL. "[T]he Legislature intended that rights and remedies available under those statutes [the UCL and state antitrust statutes] *were to be cumulative to the powers the Legislature granted to the Insurance Commissioner* to enjoin future unlawful acts and impose sanctions in the form of license and certification suspension or revocation when a member of the industry violates any applicable statute, rule, or regulation." Manufacturers Life, 10 Cal.4th at 263 (emphasis added). The Court further held that neither the relevant provisions of the Insurance Code nor any prior case law supported an argument that insurance companies are exempt from liability under the UCL, and that its prior decision in Moradi-Shalal v. Fireman's Fund Ins. Companies, 46 Cal.3d 287 (1988), was limited to claims predicated directly on Insurance Code § 790.03. Manufacturers Life, 10 Cal.4th at 279, 284.

Similarly, in Quelimane Company, supra, 19 Cal.4th at 26, a case challenging the practices of title insurance companies, the Supreme Court again rejected the argument that the provisions of the Insurance Code, and the existence of regulatory oversight, preclude claims under the UCL. The Court held that, with respect to issues of *rate-making*, the provisions of the Insurance Code barred any judicial action under the UCL, but with respect to other allegations of unfair or unlawful practices, the plaintiff could seek relief under the UCL. Id. at 45-48.

More recently, in Stevens v. Superior Court, supra, 75 Cal.App.4th at 594, the Court of Appeal held that the plaintiff could state a cause of action under the UCL against several insurance companies predicated on violations of Insurance Code § 1631 and various regulations implementing the section, which prohibit the transacting of insurance in this state without a proper license. Citing the Supreme Court's recent decisions in Stop Youth Addiction, supra, 17 Cal.4th at 552, Manufacturers Life, supra, 20 Cal.4th at 283-84, and Cel-Tech, supra, 20 Cal.4th at 182-83, the court correctly noted that "[t]he Supreme Court repeatedly teaches that the UCA [referring to the UCL] allows a private plaintiff to proceed under it to seek redress for conduct which violates any predicate statute, unless the defendant is privileged, immunized by another statute, or the *predicate statute itself expressly bars* its enforcement under the UCA." Stevens, supra, 75 Cal.App.4th at 604 (emphasis in original). The court found nothing in the relevant provisions of the Insurance Code that prohibited a claim under the UCL. Id., at 604. The court also rejected an attempt by the defendants to rely on the Department's approval of their insurance program.

> The approval contains *no finding* that the participants are transacting insurance or hold the necessary licenses to engage in the program. . . . The absence of a finding on an issue which was not before the department cannot be construed as an approval of that issue or an interpretation of any statute it is charged with enforcing. [Citation

> omitted.] We therefore reject amici curiae's and Guaranty National's arguments that we must defer to the department's approval of the *insurance program* and that our failure to do so will undermine the separation of powers doctrine. In any event, Stevens is not challenging the program itself; he seeks to allege that the transaction of insurance under the program without a license constitutes an unfair business practice. Stevens may state such a claim.

Stevens, 75 Cal.App.4th at 608 (emphasis in original).

The cases cited by Respondents are inapposite, either because they dealt with issues of rate-making, see e.g. Farmers Ins. Exchange v. Superior Court, 2 Cal.4th 554 (1996), an issue that has been explicitly recognized as being within the special expertise of the Department, or because they did not involve claims under the UCL. See e.g. Crusader Ins. Co. v. Scottsdale Ins. Co., 54 Cal.App.4th 121, 135 (1997) (plaintiff attempted to assert a cause of action *directly under* the relevant provision of the Insurance Code, rather than a claim under the UCL *predicated on* violations of the Insurance Code); see also Stevens, supra, 75 Cal.App.4th at 604, n. 9 (distinguishing Crusader on these grounds).

Finally, the Respondents' argument that the trial court properly deferred to the Department of Insurance is without merit because, even if the issues did fall within the special expertise of the Department, and even if the trial court had properly exercised its discretion under the doctrine of primary jurisdiction, the correct procedure was for the court to have stayed the action pending administrative proceedings, not to have sustained the Respondents' demurrer without leave to amend. See Farmer's Ins. Exchange, supra, 2 Cal.4th at 401; Wise v. PG&E, supra, 77 Cal.App.4th at 296. Moreover, absent any showing or findings that such proceedings were pending, contemplated, or even possible, it is difficult to imagine how it would have been a proper exercise of the trial court's discretion to have stayed the action.

C. Appellants' Action Properly States a Claim Predicated on Violations of Civil Code § 1457.

Respondents make several arguments to the effect that Civil Code § 1457 cannot serve as the predicate for Appellants' claims, all of which are unavailing. First, Respondents contend that "the sole effect" of Civil Code § 1457 is to prevent the transferor of an obligation from evading liability in the event of the default of the transferee. Thus, according to Respondents, "in the absence of breach, § 1457 gives rise to no cause of action." (Respondents' Brief, at 20.)

As an interpretation of Civil Code § 1457, this is a highly questionable proposition at best (particularly given that it contradicts the plain and very simple terms of the statute). More importantly, under the UCL, it is also *entirely irrelevant*. In an action alleging unlawful business practices under the UCL, the issue of what remedy, if any, is available under the statute that is alleged to have been violated, and indeed, whether *any cause of action at all* exists under the statute, is irrelevant. See Stop Youth Addiction, supra, 17 Cal.4th at 562; Stevens, supra, 75 Cal.App.4th at 603. Thus, regardless of whether a policyholder could state a claim directly under Civil Code § 1457 in absence of a prior default by Century Indemnity, and regardless of what remedy the policyholder could obtain under such a claim, if any, Appellants have properly stated a claim under the UCL predicated on alleged violations of Civil Code §1457. See Stevens, supra, 75 Cal.App.4th at 606 ("It is not necessary that the predicate law provide for private civil enforcement.")

Respondents also argue that Civil Code § 1457 does not apply because it bars "transfers" of obligations, whereas the restructuring approved in Pennsylvania involved a "succession" of liability by "operation of law." See Respondents' Brief, at 5 and 38. The Respondents further argue that Pennsylvania law should determine the appropriate

characterization of the transaction, and that even if California law does apply, it recognizes succession by merger, and that INA's spin-off of policies to Century Indemnity was actually a merger, not a division (even though, under the Pennsylvania law it asserts should govern, the restructuring was called a "division"). This mish-mash of arguments is unavailing.

It is clear that California law governs the issues raised in the Appellants' action. The Department of Insurance specifically acknowledged as much, and the case law is in accord. See e.g. Ford Motor Co., supra, 35 Cal.App.4th at 614. It is also clear that a determination as to the form of the transaction by which INA attempted to divest itself of liability under its "old" policies, whether a "transfer" or a "succession," a "merger" or a "division," is a question that involves interpretations of law, California law in particular, and that is properly resolved by the courts of this state. See Baer v. Associated Life, supra, 202 Cal.App. 3d at 123. A determination as to the precise nature of the transaction is also an issue that certainly required reference to matters outside of the pleadings, and that should not have been resolved on demurrer. Respondents' passing assertion that principles of "comity" and "full faith and credit" (which Respondents neither defined nor apparently understood) require this Court to apply Pennsylvania law can be disposed of summarily by reference to the decision of the Pennsylvania Supreme Court. That decision explicitly acknowledged that questions as to the insurer's liability to its policyholders as a result of the restructuring "were outside the jurisdiction of the insurance department." LaFarge, supra, 735 A.2d at 77.

Furthermore, entirely apart from Respondents' alleged violations of Civil Code § 1457, Appellants' action also states a claim for unfair and/or deceptive practices under the UCL. The Complaint specifically alleges that Respondents have made false and misleading representations to their

policyholders and to the public concerning the restructuring and its potential effect on their rights. These allegations must be accepted as true, and are sufficient to state a claim under the "fraudulent" prong of the UCL.

On a broader level, the gravamen of the Complaint is that Respondents have engaged in conduct that is fundamentally unfair – through an elaborate corporate "restructuring," INA has attempted to relieve itself of liability under "old" policies, without the knowledge or consent of its policyholders, by transferring responsibility for those policies to a spin-off company. Policyholders who purchased insurance from INA, a company with a 200-year history and vast array of financial resources, are now policyholders of Century Indemnity, a much newer company with a limited, finite allocation of assets that will necessarily act as a cap on available proceeds. Policyholders were not fully informed of the nature or intended effect of the transaction, and furthermore, have lost the protection of CIGA. Regardless of whether Respondents' conduct is specifically prohibited by Civil Code § 1457 or any other provision of law, it smacks of unfairness.

As the Supreme Court has observed on several occasions throughout the history of the UCL, the Legislature intended the "sweeping language" of the UCL to permit courts to redress wrongful business conduct "in whatever context such activity might occur. . . . [T]he section was intentionally framed in its broad, sweeping language, precisely to enable judicial tribunals to deal with *the innumerable new schemes which the fertility of man's invention could contrive*. . . . When a scheme is evolved with on its face violates the fundamental rules of honesty and fair dealing, a court of equity is not impotent to frustrate its consummation because the scheme is an original one." Cel-Tech, 20 Cal.4th at 181, quoting American Philatelic Soc. v. Claibourne, 3 Cal.2d 689, 698 (1935) (emphasis added) (internal quotations and citations omitted). See also Barquis v. Merchants

Collection Assn., supra, 7 Cal.3d at 111-112 ("given the creative nature of the scheming mind, the Legislature evidently concluded that a less inclusive standard would not be adequate"); People ex rel Mosk v. National Research Co. of Cal., 201 Cal.App.2d 765, 772 (1962) ("it would be impossible to draft in advance detailed plans and specifications of all acts and conduct to be prohibited [citations], since unfair or fraudulent business practices may run the gamut of human ingenuity and chicanery.")

D. Appellants Have Standing to Challenge Respondents' Conduct.

In argument that is on its face insupportable, Respondents also contend that the Appellants lack standing. This argument flies in the face of the entire body of case law under the UCL, including the Supreme Court's recent decision in Stop Youth Addiction, in which the Court reaffirmed, once again, that "a private plaintiff who has himself suffered no injury at all may sue to obtain relief for others." Stop Youth Addiction, supra, 17 Cal.4th at 561 (citations omitted). There are no exceptions to this rule, as Respondents suggest, for "private" as opposed to "public" claims; indeed, that distinction has no basis in the law. While courts have the discretion to fashion a *remedy* appropriate to the claims asserted, and could certainly conclude *after a full hearing of the facts and adjudication of the merits*, that no relief was warranted, they may not, on demurrer, dismiss a UCL action on the grounds that the plaintiff lacks standing. Indeed, one of the primary purposes of the statute is to allow courts to reach forms of unfair competition that would otherwise elude review for lack of a plaintiff with formal standing. Stop Youth Addiction, at 576 (citation omitted) ("[T]he UCL embodies the policy of permitting members of the public to police the spectrum of 'unfair competition.'")

To the extent Respondents suggest that Appellants' lack standing, or are otherwise improper parties, because they are competitors of INA, the

argument is equally unavailing. The fact that Appellants may be competitors of Respondents, or that they may have some self-interest at stake in the claims asserted, in no way undermines the validity of the claims presented under the UCL. As an initial matter, because Appellants have not specifically alleged any injury to themselves and seek no restitution or other relief on their own behalf, their motives are essentially irrelevant, and are certainly irrelevant to the issue of whether a cause of action has been stated. Moreover, as noted above, the UCL applies to "'anti-competitive business practices,'" as well as injuries to consumers, and claims asserted among competitors are as valid as any others. See Cel-Tech 20 Cal.4th at 180. Regardless of whether Appellants are competitors, policyholders, or interested observers, or simply concerned members of the public, they have standing to bring their claims under the UCL.

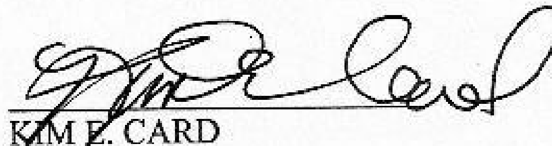
CONCLUSION

Accordingly, for the foregoing reasons, *Amici* request that the Court reverse the judgment of the court below, and remand for proceedings on the merits.

Dated: February 23, 2001

Respectfully Submitted,

CHAVEZ & GERTLER LLP

By: 

KIM E. CARD

Attorneys for *Amici Curiae*
United Policyholders, Consumer Federation of America, Consumers Union, and the National Consumer Law Center

PROOF OF SERVICE
(C.C.P. §1013a(3))

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

I am employed in the County of Marin, State of California. I am over the age of 18 years and not a party to the within action; my business address is Chavez & Gertler LLP, 42 Miller Avenue, Mill Valley, CA 94941.

On February 23, 2001, I served the following document:

- ***AMICUS CURIAE* BRIEF OF UNITED POLICYHOLDERS, CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION,AND THE NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLANTS AICCO, INC. ET AL.**

on the interested parties in this action by placing a true copies thereof enclosed in a sealed envelope addressed to each as follows:

Mark Wood
Martin S. Checov
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In addition, I also served ***AMICUS CURIAE*** **BRIEF OF UNITED POLICYHOLDERS, CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION,AND THE NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLANTS AICCO, INC. ET AL.** on the following additional interested parties, as required by applicable rules and statutes:

The California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(Five copies)

The Honorable David A. Garcia
San Francisco Superior Court
400 McAllister Street
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San Francisco, CA 94102
(One copy)

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(One copy, pursuant to B&P Code § 17209)

[X] **BY MAIL:** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Mill Valley, California.

Executed on February 23, 2001 at Mill Valley, California.

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

Kristine Salkeld