

IN THE COURT OF APPEALS FOR THE STATE OF NEW MEXICO

ALLSTATE INSURANCE CO., COURT OF APPEALS OF NEW MEXICO

Defendant-Appellant,

FILED

AUG 26 2002

Case No.: 22,760

v.

*Peter R. Wallace*

JOSE PINCHEIRA and OLIVIA PINCHEIRA,

Plaintiffs-Appellees.

*F.*  
*Pincheira*  
*v.*  
*Allstate*

---

**MOTION FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF ON BEHALF OF UNITED POLICYHOLDERS**

---

Pursuant to Rule 12-215, NMRA, United Policyholders moves this Court for leave to file an Amicus Curiae brief in the above-entitled action. As grounds for this motion, applicant asserts that United Policyholders has a serious interest in the subject matter of this action, and that its brief may aid the Court in the resolution of the questions raised herein. More particularly applicant asserts:

1. United Policyholders was founded in 1991 as a non-profit organization dedicated to educating the public on insurance issues and consumer rights. The organization is tax-exempt under Internal Revenue Code Section 501(c)(3). United Policyholders is funded by donations and grants from individuals, businesses, and foundations.

2. United Policyholders has provided consumer-oriented insurance education in Florida, Texas, New Mexico, Oregon, and throughout California. Much of its work takes place in communities that have been hit by natural disasters such as hurricanes, wildfires, earthquakes, and floods giving rise to large numbers of insurance claims and resulting consumer confusion

and frustration. United Policyholders' publications are generally free of charges and include: Tips for Flood Claimants, Tips for Fire Claimants, Tips for Earthquake Claimants, Tips for Disability Claimants, Hiring an Attorney, Why, When and How, and a half hour videotape regarding claim settlements. In addition to serving as a resource on insurance claims for disaster victims and commercial insureds, United Policyholders actively monitors legal and marketplace developments affecting the interests of all policyholders. United Policyholders receives frequent invitations to testify at legislative and other public hearings, and to participate in regulatory proceedings on rate and policy issues.

3. Where the resources allow, United Policyholders submits Amicus Curiae briefs involving important insurance principles that are likely to impact large segments of the public. Because a diverse range of policyholders throughout the United States communicate on a regular basis with United Policyholders, it can provide current information on insurance matters to courts throughout the country.

4. United Policyholders' growing reputation as a source of useful information for appellate courts was confirmed when its Amicus Brief was cited in the U.S. Supreme Court's opinion in *Humana v. Forsyth*, 525 U.S. 299 (1999), and its arguments were adopted by the California Supreme Court in *Vandenberg v. Sup. Ct.*, 21 Cal.4<sup>th</sup> 815 (1999). United Policyholders has filed Amicus briefs on behalf of policyholders in over sixty cases throughout the United States.

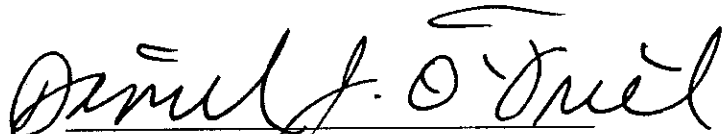
5. The issue involved in this case, concerning the confidentiality of discovery materials, particularly the McKinsey and Company documents, has significant ramifications for insurance policyholders seeking to hold their insurance companies responsible for the insurer's actions. This is an area of the law in which United Policyholders and the undersigned attorneys

submit it would be useful to the Court to allow the insurance policyholders' perspective to be heard.

6. The undersigned counsel for United Policyholders has significant experience in first-party bad faith litigation against major insurance companies, such as the appellant in this matter, and believe that they would be able to provide assistance in assessing the impact of this case. Counsel for United Policyholders are retained pro bono, and will accept no money for their legal work in this case.

7. Due to the nature of the relief requested the concurrence of opposing counsel has not been sought in this motion, and this motion is presumed to be opposed.

**WHEREFORE**, United Policyholders request leave to file the attached Amicus Curiae brief supporting the position of plaintiffs-appellees.



Daniel J. O'Friel, Esquire  
Law Offices of Daniel J. O'Friel, Ltd.  
644 Don Gaspar Avenue  
Santa Fe, New Mexico 87505  
Telephone: (505) 982-5929  
Facsimile: (505) 988-5973

and



William F. Merlin, Jr., Esquire  
Mary E. Kestenbaum, Esquire  
Gunn Merlin, P.A.  
601 Bayshore Boulevard  
Suite 800  
Tampa, Florida 33606  
Telephone: (813) 229-1000  
Facsimile: (813) 229-3692

**Attorneys for United Policyholders**

I hereby certify that I have caused a true and correct copy of this pleading to be served by U.S. mail upon:

Lisa Mann, Esquire  
Jennifer A. Noya, Esquire  
Modrall, Sperling, et al.  
P.O. Box 2168  
Bank of America Center  
Suite 1000  
500 4<sup>th</sup> Street N.W.  
Albuquerque, NM 87103-2168

Bennett Evan Cooper, Esquire  
Jon T. Neumann, Esquire  
Steptoe & Johnson LLP  
Collier Center  
201 East Washington Street  
Suite 1600  
Phoenix, AR 85004-2382

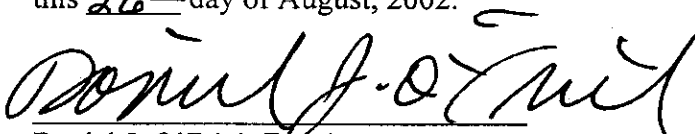
Whitney Buchanan, Esquire  
3200 Monte Vista Boulevard  
Albuquerque, NM 87106

David J. Berardinelli, Esquire  
Berardinelli & Associates  
P.O. Box 1944  
Santa Fe, NM 87504-1944

Dennis Murphy, Esquire  
Montoya, Murphy & Garcia  
P.O. Box 2124  
Santa FE, NM 87504-2124

Stephen M. Simone, Esquire  
Simone, Roberts & Weiss, P.A.  
8102 Menaul Blvd., N.E.  
Albuquerque, NM 87110

this 26<sup>th</sup> day of August, 2002.

  
Daniel J. O'Friel, Esquire