

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA**

**FIRST APPELLATE DISTRICT  
DIVISION FOUR**

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**THE VILLA LOS ALAMOS HOMEOWNERS ASSOCIATION  
Plaintiff and Appellant,**

**v.**

**STATE FARM GENERAL INSURANCE COMPANY,  
Defendant and Respondent.**

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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF  
UNITED POLICYHOLDERS**

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**From the Superior Court of Sonoma County  
Case No. SCV243013  
The Honorable Elaine Rushing**

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Dated: March 16, 2011

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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE***  
**BRIEF OF UNITED POLICYHOLDERS**

Attorneys for *Amicus Curiae* United Policyholders respectfully move pursuant to Rule 8.200(c) of the California Rules of Court for permission to file an *amicus* brief in support of Plaintiff, The Villa Los Alamos Homeowners Association, individually and on behalf of all others similarly situated. The amicus party will be prepared to file its brief on March 16, 2011. In support of this Motion, *amicus curiae* United Policyholders states the following facts:

United Policyholders is a non-profit 501(c) (3) consumer organization founded in 1991 that has nineteen years of experience helping solve insurance problems and advocating for fairness in insurance transactions. Donations, foundation grants and volunteer labor fuel the organization. United Policyholders' Board of Directors includes the former Chief Justice of the Arizona Supreme Court and the former Washington State Insurance Commissioner.

United Policyholders' work is divided into three program areas: *Roadmap to Recovery* provides tools and resources that help individuals and businesses solve insurance problems that can arise after an accident, illness, disaster, or other adverse event; the *Roadmap to Preparedness* program promotes insurance and financial literacy as well as disaster preparedness; and the *Advocacy and Action* program advances policyholders' interests in courts of law, legislative and public policy

forums, and in the media. The organization's Executive Director was recently re-appointed to a two-year term as an official consumer representative to the National Association of Insurance Commissioners (NAIC). United Policyholders offers an extensive library of publications, legal briefs, sample policies, forms and articles on commercial and personal lines insurance products, coverage and the claims process at [www.unitedpolicyholders.org](http://www.unitedpolicyholders.org).

In addition to serving as a resource on insurance claims for individuals and commercial policyholders in California and elsewhere, United Policyholders 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 oversight proceedings.

Since 1992, United Policyholders has filed more than 280 *amicus curiae* briefs on behalf of policyholders in courts throughout the United States,<sup>1</sup> with approximately 100 in California courts alone. Most recently, United Policyholders has filed *amicus curiae* briefs in *Nieto, Julie v. Blue*

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<sup>1</sup> See e.g., *U.S. Fid. & Guar. Co. v. USSSA*, No. 20090657-SC, Utah Supreme Court, 2010; *Pincheira v. Allstate Ins. Co.*, *Allmerica Fin. Corp. v. Certain Underwriters at Lloyd's, London*, 449 Mass. 621 (2007); *Vandenberg v. Superior Court*, 88 Cal. Rptr. 2d 366 (Cal. 1999); *Knotts v. Zurich Ins. Co.*, 197 S.W.3d 512 (Ky. 2006); *Advance Watch Co., v. Kemper Nat'l Ins. Co.*, 99 F.3d 795 (6th Cir. 1996); *Aircraft Holdings, LLC v. XL Specialty Ins. Co.*, 935 So.2d 1219 (Fla. 2006); *SCI Liquidating Corp. v. Hartford Ins. Co.*, 272 Ga. 293 (2000); *Pilkington N. Am. v. Travelers*, 106 Ohio. St. 3d 1451 (Ohio 2005); *Excess Underwriters Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42 (Tex. 2004).

*Shield of California Life & Health Ins. Co.*, (2010) 181 Cal.App.4th 60 in California Supreme Court, *L.A. Checker Cab Coop, Inc. vs. First Specialty Insurance Co.*, (2010) 186 Cal.App.4th 767 in California Court of Appeal, and *Hyundai Motor America vs. National Union Fire Insurance Co.*, (9th Cir. 2009) 600 F.3d 1092 in California federal court. Arguments for our amicus curiae were cited with approval in *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, (Cal. 2006) 145 P.3d 472, *Vandenberg v. Superior Court*, (Cal. 1999) 982 P.2d 229, *Watts Industries, Inc. v. Zurich American Insurance Co.*, (2004) 18 Cal. Rptr.3d 61, and *Julian v. Hartford*, (2005) 35 Cal.4th 747. Moreover, United Policyholders has filed *amicus curiae* briefs in numerous cases before United States Supreme Court.<sup>2</sup> The U.S. Supreme Court cited United Policyholders' *amicus curiae* in *Humana, Inc. v. Forsyth*, (1999) 525 U.S. 299. Indeed, United Policyholders was the only national consumer organization to submit an amicus curiae brief in the landmark case of *State Farm v. Campbell*, (2003) 538 U.S. 408.

United Policyholders has a vital interest in ensuring that insurance companies fulfill the promises they make to their California policyholders. While insurance companies are in business to earn profit through risk assumption, businesses and individuals rely on insurance to protect

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<sup>2</sup> See, e.g., *Fuller-Austin Insulation Co., v. Highlands Ins. Co.*, 549 U.S. 946 (2006); *Philip Morris USA v. Mayola Williams*, 547 U.S. 1162 (2006); *Aetna Health, Inc. v. Juan Davila*, 542 U.S. 200 (2004); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *Rush Prudential HMO v. Debra Moran*, 533 U.S. 948 (2001); *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999).

property and livelihoods. United Policyholders seeks to prevent insurance companies from shifting risk back to policyholders through schemes that are not authorized by insurance contracts or public policy. The organization works to counterbalance the widely-represented interests of insurance companies by serving as an advocate for large and small policyholders in forums throughout the country.

In the case at bar, United Policyholders seeks to appear as *amicus curiae* to address certain questions before the Court that are of significance well beyond the application of California law to the specific facts of this litigation. These important issues will affect policyholders nationwide. All of the legal research and writing in this brief has been performed by unpaid volunteer counsel, and no party to this appeal participated in the drafting of this brief or funded this work.

## CONCLUSION

For these reasons, the Court should grant leave for United Policyholders to file the *amicus* brief accompanying this Motion for Leave.

Dated: March 16, 2011

Respectfully submitted,

By:



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Attorney for *Amicus Curiae*  
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**DECLARATION OF AMY BACH, ESQ. ON BEHALF OF *AMICUS CURIAE*,  
UNITED POLICYHOLDERS IN SUPPORT OF PLAINTIFF AND APPELLANT  
THE VILLA LOS ALAMOS HOMEOWNERS ASSOCIATION, and all others  
similarly situated**

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Attorneys for *Amicus Curiae*  
United Policyholders

Dated: March 16, 2011

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**DECLARATION OF AMY BACH, ESQ.**

I, Amy Bach, hereby declare as follows:

1. I am a co-founder and Executive Director of United Policyholders, attorney for *Amicus Curiae* United Policyholders. I am admitted to practice in this Court.
2. I make this declaration upon personal knowledge.
3. I make this declaration in support of United Policyholders' motion pursuant to Rule 8.200(c) of the California Rules of the Court to file a brief as *amicus curiae* in support of Plaintiff-Appellant The Villa Los Alamos Homeowners Association, individually and on behalf of all others similarly situated. The Villa Los Alamos Homeowners Association likewise supports our brief as *amicus curiae*. A copy of the *amicus* brief is attached.
4. In support of this Motion, *amicus curiae* United Policyholders states the following facts:
5. United Policyholders is a non-profit 501(c)(3) consumer organization founded in 1991 that has nineteen years of experience helping solve insurance problems and advocating for fairness in insurance transactions. Donations, foundation grants and volunteer labor fuel the organization. United Policyholders' Board of Directors includes the former



Chief Justice of the Arizona Supreme Court and the former Washington State Insurance Commissioner.

6. United Policyholders' work is divided into three program areas: *Roadmap to Recovery* provides tools and resources that help individuals and businesses solve insurance problems that can arise after an accident, illness, disaster, or other adverse event; the *Roadmap to Preparedness* program promotes insurance and financial literacy as well as disaster preparedness; and the *Advocacy and Action* program advances policyholders' interests in courts of law, legislative and public policy forums, and in the media.

7. As the organization's Executive Director, I was recently re-appointed to a two-year term as an official consumer representative to the National Association of Insurance Commissioners (NAIC). United Policyholders offers an extensive library of publications, legal briefs, sample policies, forms and articles on commercial and personal lines insurance products, coverage and the claims process at [www.unitedpolicyholders.org](http://www.unitedpolicyholders.org).

8. In addition to serving as a resource on insurance claims for individuals and commercial policyholders in New York and elsewhere, United Policyholders 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 oversight proceedings.

9. Since 1992, United Policyholders has filed more than 280 *amicus curiae* briefs on behalf of policyholders in courts throughout the United States,<sup>1</sup> with approximately 100 in California courts alone. Most recently, United Policyholders has filed *amicus curiae* briefs in *Nieto, Julie v. Blue Shield of California Life & Health Ins. Co.*, (2010) 181 Cal.App.4th 60 in California Supreme Court, *L.A. Checker Cab Coop, Inc. vs. First Specialty Insurance Co.*, (2010) 186 Cal.App.4th 767 in California Court of Appeal, and *Hyundai Motor America vs. National Union Fire Insurance Co.*, (9th Cir. 2009) 600 F.3d 1092 in California federal court. Arguments for our *amicus curiae* were cited with approval in *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, (Cal. 2006) 145 P.3d 472, *Vandenberg v. Superior Court*, (Cal. 1999) 982 P.2d 229, *Watts Industries, Inc. v. Zurich American Insurance Co.*, (2004) 18 Cal. Rptr.3d 61, and *Julian v. Hartford*, (2005) 35 Cal.4th 747. Moreover, United Policyholders has filed *amicus*

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<sup>1</sup> See e.g., *U.S. Fid. & Guar. Co. v. USSSA*, No. 20090657-SC, Utah Supreme Court, 2010; *Pincheira v. Allstate Ins. Co.*, *Allmerica Fin. Corp. v. Certain Underwriters at Lloyd's, London*, 449 Mass. 621 (2007); *Vandenberg v. Superior Court*, 88 Cal. Rptr. 2d 366 (Cal. 1999); *Knotts v. Zurich Ins. Co.*, 197 S.W.3d 512 (Ky. 2006); *Advance Watch Co., v. Kemper Nat'l Ins. Co.*, 99 F.3d 795 (6th Cir. 1996); *Aircraft Holdings, LLC v. XL Specialty Ins. Co.*, 935 So.2d 1219 (Fla. 2006); *SCI Liquidating Corp. v. Hartford Ins. Co.*, 272 Ga. 293 (2000); *Pilkington N. Am. v. Travelers*, 106 Ohio. St. 3d 1451 (Ohio 2005); *Excess Underwriters Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42 (Tex. 2004).

*curiae* briefs in numerous cases before United States Supreme Court.<sup>2</sup> The U.S. Supreme Court cited United Policyholders' *amicus curiae* in *Humana, Inc. v. Forsyth*, (1999) 525 U.S. 299. Indeed, United Policyholders was the only national consumer organization to submit an *amicus curiae* brief in the landmark case of *State Farm v. Campbell*, (2003) 538 U.S. 408.

10. United Policyholders has a vital interest in ensuring that insurance companies fulfill the promises they make to their New York policyholders. While insurance companies are in business to earn profit through risk assumption, businesses and individuals rely on insurance to protect property and livelihoods. United Policyholders seeks to prevent insurance companies from shifting risk back to policyholders through schemes that are not authorized by insurance contracts or public policy. The organization works to counterbalance the widely-represented interests of insurance companies by serving as an advocate for large and small policyholders in forums throughout the country.

11. In the case at bar, United Policyholders seeks to appear as *amicus curiae* to address certain questions before the Court that are of significance well beyond the application of California law to the specific

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<sup>2</sup> See, e.g., *Fuller-Austin Insulation Co., v. Highlands Ins. Co.*, 549 U.S. 946 (2006); *Philip Morris USA v. Mayola Williams*, 547 U.S. 1162 (2006); *Aetna Health, Inc. v. Juan Davila*, 542 U.S. 200 (2004); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *Rush Prudential HMO v. Debra Moran*, 533 U.S. 948 (2001); *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999).

facts of this litigation. These important issues will affect policyholders nationwide.

12. All of the legal research and writing in this brief has been performed by unpaid volunteer counsel, and no party to this appeal participated in the drafting of this brief or funded this work.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct, except for those matters stated herein on information and belief, and, as to those matters, I believe them to be true.

Executed on the 16th day of March at San Francisco, California.



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Amy Bach, Esq.,  
CA. State Bar No. 142029