

IN THE
INDIANA SUPREME COURT

CAUSE NO. 795-00-9808 CV 458

Cincinnati Insurance Company, Inc.,) On Transfer From
et al.,) the Indiana Court of
Appellants) Appeals
)
) Cause No. 79A02-9806-CV-503
v.)
) Appeal from the Tippecanoe
David J. and Marica) Superior Court
Wills, et al.,)
Appellees) Trial Court
) Cause No. 79D01-9605-CP-132
)
) The Honorable Thomas J.
) Milligan, Special Judge

**BRIEF OF UNITED POLICYHOLDERS AS AMICUS CURIAE IN SUPPORT OF
APPELLEES**

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INTEREST OF AMICUS CURIAE

United Policyholders, is a non-profit corporation dedicated to educating policyholders about their rights and duties under their insurance policies. Specifically, United Policyholders engages in educational activities by promoting greater public understanding of insurance issues and consumer rights. United Policyholders' activities include organizing meetings, distributing written materials, and responding to requests for information from individuals, elected officials, and governmental entities. These activities are limited only to the extent that United Policyholders exists exclusively on donated labor and contributions of services and funds.

Amicus curiae has a vital interest in seeing that the standard form liability insurance policies sold to countless policyholders are interpreted properly by insurance companies and the courts. As a public interest organization, United Policyholders seeks to assist and to educate the public and the courts on policyholders' insurance rights and their efforts to have them enforced throughout the country.

In doing so, United policyholders, through their attorneys' Eugene R. Anderson and William G. Passannante of Anderson Kill & Olick, P.C., request this court affirm the trial court's decision to Disqualify Insurance Company attorneys from defending its own policyholders.

QUESTIONS PRESENTED

Amicus Curiae United Policyholders hereby adopt and fully incorporate by reference the statement of facts and

questions in the brief submitted to this Court by Appellees David J. and Marica E. Wills, et al.

SUMMARY OF ARGUMENT

In addition to the issues identified by appellees and amici in support of Appellee, the dual roles of the attorney as: (1) attorney-employee of the insurance company-employer; and (2) attorney for the policyholder-client give, rise to impermissible and unresolvable conflicts of interest and involve competing "undivided" loyalties. An employee owes an undivided loyalty to the employer, and an attorney owes an undivided loyalty to the client. Permitting the use of in-house insurance company employee-attorneys to defend policyholder-client will rob policyholders of a crucial portion of the policy they paid for -- the right to a vigorous, independent and zealous defense.

DISCUSSION

I. An Employee Owes Undivided Loyalty to the Employer.

An employee or agent of and insurance company or corporation has an undivided loyalty to the employer. The employee is charged with discharging this duties for the benefit of the employer in good faith. Potts v. Review Board of Indiana Emp. Sec. Div., 475 N.E. 2d 708, 711 (Ind. Ct. App. 1985).

[The employee] is prohibited from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his duties.

Lamdin v. Broadway Surface Adv. Corp., 272 N.Y. 133, 138 , 5 N.E. 2d 66 (1936); see also, Red Ball Interior Demolition Corp. v.