

10-20445

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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**CITIGROUP, INC.,**

*Plaintiff-Appellant,*

v.

**NATIONAL UNION FIRE INSURANCE Co., ET AL.,**

*Defendant-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS

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**MOTION FOR LEAVE TO FILE  
BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS  
IN SUPPORT OF PLAINTIFF-APPELLANT**

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This is a motion under Fed. R. App. P. 29(b) for leave to file the accompanying *amicus curiae* brief in support of Appellants and reversal of the district court's dismissal of the action. The motion is timely under Fed. R. App. 29(e) because it is being filed no later than seven days after the filing of Appellant's brief.

### **IDENTITY AND INTEREST OF AMICUS CURIAE**

Proposed *amicus curiae* 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 Trial 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. The *Advocacy and Action* program advances policyholders' interests in trial courts of law, legislative and public policy forums, and in the media. United Policyholders

participates in the proceedings of the National Association of Insurance Commissioners as an official consumer representative. 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, 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 trial courts throughout the United States.<sup>1</sup> Moreover, United Policyholders has filed *amicus curiae* briefs in numerous cases before United States Supreme Trial court.<sup>2</sup> Indeed, the U.S.

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<sup>1</sup> See e.g., *Pincheira v. Allstate Ins. Co.*, *Allmerica Fin. Corp. v. Certain Underwriters at Lloyd's, London*, 449 Mass. 621 (2007); *Vandenberg v. Superior Trial court*, 88 Cal. Rptr. 2d 366 (Cal. 1999); *Allstate Ins. Co. v. Gregory Serio*, No. 97 CIV-0670 (RCC), United States District Trial court, Southern New York District; *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 (2004)

<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*,  
*footnote continued*

Supreme Trial court cited United Policyholders' *amicus curiae* in *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999). United Policyholders was the only national consumer organization to submit an *amicus curiae* brief in the landmark case of *State Farm v. Campbell*, 538 U.S. 408 (2003).

In addition, United Policyholders has been giving information and recovery support to Texas businesses and individuals who've suffered losses due to tropical storms, hurricanes, hailstorms and other catastrophic events. UP is currently coordinating with the Texas Public Insurance Counsel's office to promote sound public policy on insurance matters that impact Texans.

United Policyholders has a vital interest in ensuring that insurance companies fulfill the promises they make to their 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.

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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).

In the case at bar, United Policyholders seeks to appear as *amicus curiae* to address an important insurance issue that will affect policyholders nationwide.

### **CONCLUSION**

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

Dated: September 1, 2010

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused the filing of the foregoing Motion with the appropriate numbers of copies of the BRIEF FOR AMICUS CURIAE UNITED POLICYHOLDERS with the United States Court of Appeals for the Fifth Circuit by sending one printed original and two printed copies and one copy in electronic format by Federal Express mail, to the Clerk of the Court, and I further certify that on the 1<sup>st</sup> day of September, 2010, one printed copy and one copy in electronic format was served by Federal Express mail upon the following:

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