

October 24, 2011

Hon. William F. Highberger  
Superior Court of the State of California  
for the County of Los Angeles  
West Los Angeles Courthouse  
1633 Purdue Avenue  
Los Angeles CA 90025

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Insurance Commissioner (1993-2001)  
Washington State

**William M. Shernoff**  
Shernoff Bidart Echeverria LLP

Re: *Fogel v. Farmers Group, Inc.*  
Case No. BC 300142

Dear Judge Highberger:

We respectfully request your consideration of the following perspective on the pending matter referenced above:

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The financial security that insurance policies provide is critical to consumers and is an integral part of the fabric of our economy and our society. United Policyholders, (“UP”) is a non-profit 501(c) (3) organization founded in 1991 that is an information resource and a voice for insurance consumers in all 50 states. Donations, foundation grants and volunteer labor support the organization’s work.

United Policyholders work is divided into three program areas: *Roadmap to Recovery*, (resources to help policyholders navigate and resolve large loss claims), *Roadmap to Preparedness*, (promoting disaster preparedness and insurance literacy) and *Advocacy and Action* (advancing the interests of insurance consumers in courts of law, before regulators, legislators, and in the media). UP monitors the national insurance marketplace with a particular focus on California and areas impacted by natural disasters.

United Policyholders is based in California and interfaces with the California Insurance Commissioner and his staff on a weekly basis. 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, and is currently serving on the American Law Institute’s Advisory Panel on the Principles of Liability Insurance. UP receives frequent invitations to speak to trade and civic associations and testify at public hearings on insurance rate and policy issues.

United Policyholders has appeared as *amicus curiae* in over three hundred cases throughout the United States in state, federal and the U.S. Supreme Court.<sup>1</sup> Arguments from our *amicus curiae* brief were cited with approval by the California Supreme Court in *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, 145 P.3d 472 (Cal. 2006), *Vandenburg v. Superior Court*, 982 P.2d 229 (Cal. 1999), *Watts Industries, Inc. v. Zurich American Insurance Co.*, (2004) 18 Cal. Rptr.3d 61, and *Julian v. Hartford*, (2005) 35 Cal.4th 747. United Policyholders has appeared as *amicus curiae* in the United States Supreme Court. See, e.g. *Metlife v. Glenn*, *Campbell v. State Farm*, *FL Aerospace v. Aetna Casualty and Surety Co.*, and *Humana, Inc. v. Forsyth* in which United Policyholders' brief was cited in the published opinion at 525 U.S. 299 (1999).

United Policyholders is vitally interested in the issues posed by the proposed nationwide settlement in this case.

### **I. Objection to the Proposed Settlement by United Policyholders.**

United Policyholders has become aware of the terms of the proposed settlement which were preliminarily approved by the court in its Order issued on March 2, 2011. It also understands that the fairness hearing originally scheduled for September 7, 2011 has been rescheduled to November 9, 2011.

United Policyholders has become aware of the objection filed by the State of Montana and is aware of the bases of that objection. United Policyholders also understands that various other states have joined in that objection, including the states of Illinois, Louisiana, Utah, Oregon, Indiana and Wyoming. United Policyholders joins in those objections and highlights the following:

The proposed settlement class includes every subscriber to three different Exchanges, three entities controlled by defendant Farmers Group, Inc. ("FGI"). The proposed settlement class covers a ten-year period: January 1, 1999 through December 31, 2010. According to the parties' declarations filed with the court, there exists between 13 and 20 million members of the proposed settlement class and these class members paid approximately \$9 billion in "attorneys-in-fact" ("AIF") fees during the class period. The estimated benefit per class member is \$22.

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<sup>1</sup> E.g., *L.A. Checker Cab Co-op., Inc. v. First Specialty Ins. Co.* (2010); *Villa Los Almos HOA v. State Farm General Ins. Co.* (2010); *Hyundai Motor America v. National Union Fire Insurance Company* (2009); *Kwikset Corp. v. S.C. (Benson)* (2009); *Meyer v. Sprint Spectrum L.P.* (2009); *Everett v. State Farm General Ins. Co.* (2008); *Medina v. Safe-Guard Products International, Inc.* (2008); *Cold Creek Compost, Inc., et. al v. State Farm Fire & Casualty* (2006); *First American Title Ins. Co. v. Superior Court* (2007); *Griffin Dewatering v. Northern Ins. Co. of N.Y.* (2007); *Hailey v. California Physicians' Service dba Blue Shield of California* (2007); *Padilla Construction Company, Inc. v. Transportation Insurance Company* (2007); *Medill v. Westport Insurance Corporation* (2006); *County of San Diego v. Ace Property & Cas. Ins. Co.* (2005); *Powerine Oil Co., Inc. v. Superior Court* (2005); *Johnson v. Ford Motor Co.* (2005); *Simon v. San Paolo U.S. Holding Co., Inc.* (2005); *Julian v. Hartford Underwriters Ins. Co.* (2005); *Garamendi v. Golden Eagle Ins. Co.* (2005); *American Ins. Ass'n v. Garamendi* (2005); *Watts Industries, Inc. v. Zurich American Ins. Co.* (2004); *Cassim v. Allstate Ins. Co.* (2004); *Marselis v. Allstate Ins. Co.* (2004); *Hameid v. National Fire Ins. of Hartford* (2003); *Rosen v. State Farm General Ins. Co.* (2003); *County of San Diego v. Ace Property & Casualty Ins. Co.* (2002); *Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002); *Bialo v. Western Mut. Ins. Co.* (2002); *Vu v. Prudential Property & Casualty Ins. Co.* (2001); *20th Century Ins. Co. v. Superior Court* (2001); and *AICCO, Inc. v. Insurance Co. of North America* (2001).

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The proposed \$450 settlement contains a reversion clause so that any unclaimed funds will revert to entities controlled by defendant FGI.

The complex and detailed claims-made process creates significant procedural hurdles to participate by class members which will result in only a small percentage of proposed settlement class members receiving settlement benefits. It has been well documented that relatively small monetary benefits for class members, coupled with a claims made system, results in only a fractional percent payout. In this case of the \$450 million, even if 1/3 of the class claims in, then the class would recover about \$150 million in the aggregate and \$305 *million* would revert to FGI. At the same time, the proposed settlement provides for attorneys' fees of \$90 *million* to plaintiffs' class counsel, 60 percent of the gross settlement that will likely be paid to class members. This is a staggering amount compared to the small percentage of settlement benefits that will be paid to eligible class members under the terms and procedures of the settlement.

For all of these reasons, United Policyholders joins in the objections set forth by the State of Montana and urges the Court to withhold its approval unless and until the Plan of Allocation is modified to require all of the settlement to be paid to the class.<sup>2</sup>

UNITED POLICYHOLDERS

By:



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Counsel for United Policyholders

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<sup>2</sup> Per the Settlement Agreement, "the Plan of Allocation is not a necessary term" and the Settlement Agreement "is not conditioned on the approval of any particular form of Plan of Allocation." Settlement Agreement at 2(B)(4).