

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

.....
IN THE MATTER OF: .

FOREIGN CAR CENTER .
et al., .

Plaintiffs .

v. .

TRAVELERS INDEMNITY .
.....

CASE NO. .
1:97-CV-12587 .

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

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I. INTEREST OF AMICUS CURIAE.

Amicus curiae United Policyholders ("United Policyholders" or "Amicus") is a non-profit corporation dedicated to educating policyholders about their rights and duties under their insurance policies.

Amicus curiae's briefs have been submitted to and accepted by numerous high courts across the country. Amicus curiae's briefs on use of drafting and regulatory history to determine the interpretation of the 1985 standard-form pollution exclusion were accepted by the Massachusetts Supreme Judicial Court ("SJC") in Western Alliance Insurance Co. v. Gill, 426 Mass. 115, 686 H.E.2d 997 (1997) ("Gill"), in which the SJC utilized drafting history and adopted the interpretation of the exclusion position and the doctrine of reasonable expectations advocated by United Policyholders. For a more complete statement of United Policyholders' interest, the court is respectfully referred to United Policyholders' Motion for leave to file its brief.

ARGUMENT

II. INSURANCE POLICIES DIFFER FROM ORDINARY CONTRACTS IN THAT THEIR SALE AND CONTENT ARE HIGHLY REGULATED IN MASSACHUSETTS.

This matter involves the interpretation of the 1966 standard-form Comprehensive General Liability ("CGL") insurance policy ("1966 CGL policy"), which was adopted nationwide and utilized by innumerable insurance companies including Travelers. From mid- or late-1970 through 1973 the CGL insurance policy contained an exclusion endorsement that has been referred to as the "sudden and accidental" pollution exclusion. In 1973, that exclusion was incorporated into the basic text of 1966 CGL policy. From 1970 onwards, Travelers utilized the 1966 CGL policy form, but substituted its own pollution exclusion (the "Travelers' pollution exclusion") for the "sudden and accidental" exclusion. Travelers' pollution exclusion was an endorsement from 1970 through 1973 and was incorporated as part of the basic text of Travelers' CGL insurance policy in 1973. As pertains

hereto, Travelers' CGL insurance policy is the same as the standard 1966 CGL policy, with the exception of the pollution exclusion.

The Travelers' CGL insurance policy is not an ordinary two-party contract. It is highly regulated by the Massachusetts Department of Insurance and can only be sold and interpreted by Travelers in accordance with Massachusetts law.¹ See generally, G.L. c. 175, c.175A.

A fundamental purpose of the regulation of insurance policy forms and premium rates is "to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making...." G.L. c. 175A § 2. See also, 15 U.S.C. § 1011 (state regulation "of the business of insurance is in the public interest). Accordingly, at all times relevant hereto, every insurance company had to "file with the commissioner or his designated representative every manual of classifications, rules and rates, and every modification of any of the foregoing which it proposes to use." G.L. c. 175A §6(a). Insurance companies are prohibited from "willfully withhold[ing] information from, or knowingly giv[ing] false or misleading information to, the insurance commissioner ... which will affect the rates or premiums chargeable..." for insurance policies. Id.

Each filing must "indicate the character and extent of coverage contemplated and the extent and the extent and nature of any change in rates, rating plans or premium

1. An exemption from the application of federal antitrust laws permits members of the insurance industry, including Travelers, to collectively discuss, adopt, and utilize standardized terms and provisions. See 15 U.S.C.A. §§ 1011-1033 (West 1976 and Supp. 1992). It was this exemption that allowed Travelers and other insurance companies to jointly develop, adopt, and utilize the 1966 CGL policy. The unique exemption from the application of federal antitrust laws for members of the insurance industry rests upon the recognition that insurance companies have public as well as private obligations. In particular, standardized terms are designed to serve the public interest by facilitating uniformity of insurance coverage and consistency in the interpretation of the terms of insurance policies. The federal antitrust exemption for the insurance industry is conditioned upon state regulation. See 15 U.S.C. § 1012.