

Calvin C. Thur (SBN 001237)
Howard L. Andari (SBN 016350)
THUR & O'SULLIVAN, P.C.
8170 N. 86th Place, Suite 100
Scottsdale, Arizona 85258
(480) 368-9888

Attorneys for *Amicus Curiae*
UnitedPolicyholders

IN THE SUPREME COURT

STATE OF ARIZONA

ELIZABETH HAISCH, a single person, on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

Supreme Court No. CV-00-0272-PR

Court of Appeals No. 1CA-CV 98-
0703

Maricopa County Superior Court
No. CV 96-02918

**APPLICATION FOR
PERMISSION TO FILE *AMICUS
CURIAE* BRIEF RE: PETITION
FOR REVIEW**

United Policyholders ("UP"), pursuant to Rule 16, ARCAP, respectfully requests permission to file the attached *Amicus Curiae* Brief in connection with the issues raised in the Petition for Review filed on behalf of Elizabeth Haisch and others

similarly situated, seeking review of the 6/6/00 opinion of the Arizona Court of Appeals, reported at 323 Ariz. Adv.Rep. 9.

INTEREST OF THE AMICUS

Amicus Curiae UP was founded in 1991 as a non-profit organization dedicated to educating the public on insurance issues and consumer rights. UP is a tax-exempt organization under the Internal Revenue Code §501(C)(3) and is funded by donations from individuals, businesses, and various foundations.

In addition to serving as a resource on insurance claims for disaster victims and residential and commercial insureds, UP actively monitors legal and marketplace developments affecting the interests of all policyholders. UP receives frequent invitations to testify at legislative and other public hearings, and to participate in regulatory proceedings on rate and policy issues.

When UP's resources permit, UP submits amicus *curiae* briefs in cases involving important insurance principles that are likely to impact large segments of the public. Because a diverse range of policyholders throughout the United States communicate on a regular basis with UP, UP can provide current information on insurance matters to courts throughout the country.

UP has filed amicus briefs on behalf of insureds in over fifty cases throughout the United States, including a recent case before the Supreme Court, *Zilisch v. State*

Farm Mut. Auto, Ins. Co., 317 Ariz.Adv.Rep. 21, 995 P.2d 276 (Ariz. 2000). In addition, the United States Supreme Court specifically referenced UP's amicus brief in its opinion recently in *Humana v. Forsyth*, 525 U.S. 299 (1999), and the California Supreme Court adopted UP's arguments in *Vandenberg v. Sup. Ct.*, 21 Cal.4th 815 (1999).

As a public service organization, UP has a vital interest in assisting and educating the public and the courts on policyholders' insurance rights and in ensuring that those rights are consistently enforced throughout the country.

REASONS FOR ACCEPTING APPLICANT'S *AMICUS CURIAE* BRIEF

In short, the *Haisch* case involves Allstate repeatedly selling Medical Payments ("Med Pay") coverage to consumers without disclosing that it intended to rely on an obscure state statute to severely limit that coverage if the consumer happened to be enrolled in an HMO. The Majority's opinion approves of Allstate's conduct, thereby encouraging insurance companies to extract windfall premiums from uninformed consumers for coverage that is largely uncollectable.

The Majority's opinion virtually eliminates the insurer's duty of disclosure and undermines the doctrine of reasonable expectations. These legal doctrines developed in Arizona and in other jurisdictions to protect consumers from overreaching insurers

who would otherwise rely on a litany of boilerplate terms to limit or eliminate apparent coverage.

It is safe to say that Arizona consumers who purchase Med Pay coverage reasonably expect to recover those benefits without regard to their underlying choice of health insurance coverage, i.e., HMO or Indemnity Plan. If there are to be any exceptions to this reasonable expectation, then Allstate is bound to disclose them before accepting a premium.

The *Haisch* class action did not seek recovery of unpaid Med Pay benefits; rather, the action sought the return of the Med Pay premiums paid by Haisch and other similarly situated HMO insureds. The Majority maintains that Med Pay is "bonus coverage" in the case of an HMO insured, and without explanation, assigns the windfall premium for this uncollectable "bonus coverage" to Allstate rather than returning it to the insured.

In effect, the Majority sanctions the idea that an insurer can pocket an excessive premium that was obtained by fraudulent or deceptive means. This development in Arizona law stands in stark contrast to past precedent and is a serious setback in the protections afforded to Arizona consumers.

UP's Amicus Brief is aimed at better highlighting the important public policy consequences from the Majority's published opinion. Specifically, in order to

understand the full impact of he Majority's decision and its impact on the public, the Court should consider its legal impact on the duty of good faith, the duty of disclosure, and the doctrine of reasonable expectations when considering the Petition for Review. It is in this light that UP applies to file its *Amicus Brief*.

Dated this 20th day of October, 2000.

THUR & O'SULLIVAN, P.C.

By 

Calvin C. Thur
Howard L. Andari
8170 N. 86th Place, Suite 100
Scottsdale, AZ 85258
Attorneys for *Amicus Curiae* UP

ORIGINAL AND SIX COPIES of the foregoing hand-delivered/mailed this 20th day of October, 2000, with:

Clerk of the Court
SUPREME COURT OF ARIZONA
1501 W. Washington, Rm. 4022
Phoenix, Arizona 85007

and

TWO COPIES each of the
foregoing hand-delivered/mailed this
20th day of October, 2000, to:

ATTORNEYS FOR PETITIONER:

Steve W. Berman, Esq.
Sean R. Matt, Esq.
HAGENS & BERMAN, LLP
1301 Fifth Avenue, Suite 2929
Seattle, WA 98101

Christopher A. O'Hara, Esq.
HAGENS BERMAN & MITCHELL, PLLC
2425 East Camelback Road, Suite 620
Phoenix, Arizona 85601

Richard A. Dillenburg, Esq.
Richard A. Dillenburg, P.C.
18 East University Drive, Suite 204
Mesa, Arizona 85201

ATTORNEYS FOR RESPONDENT:

Floyd P. Bienstock, Esq.
Bennett Evan Cooper, Esq.
Two Renaissance Square
40 North Central Avenue, 24th Floor
Phoenix, Arizona 85004-5200

Jeffrey Lennard, Esq.
Mark Hanover, Esq.
8000 Sears Tower
Chicago, Illinois 60606



FILED
OCT 23 2000
NOEL K. DESSAINT
CLERK SUPREME COURT
BY *[Signature]*

SUPREME COURT OF ARIZONA

ELIZABETH HAISCH, a single person,) Arizona Supreme Court
on behalf of herself and all) No. CV-00-0272-PR
others similarly situated,)
) Court of Appeals
Plaintiff-Appellant,) Division One
) No. 1 CA-CV 98-0703
v.)
) Maricopa County
ALLSTATE INSURANCE COMPANY,) Superior Court
) No. CV 96-02918
Defendant-Appellee.)
) **ORDER**
)

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United Policyholders have filed an "Application for Permission to File Amicus Curiae Brief Re: Petition for Review", with the brief received.

IT IS ORDERED granting United Policyholders' application to appear as amicus curiae. The brief shall be filed this date.

DATED the 23rd day of October, 2000.

Noel K. Dessaint
NOEL K. DESSAINT
Clerk of the Court

TO:
Christopher A O'Hara, Esq., Steven C Mitchell, Esq., Steve W Berman, Esq. and Sean R Matt, Esq., Hagens Berman Mitchell LLC, Seattle
Richard A Dillenburg, Esq.
Floyd P Bienstock, Esq. and Bennett Evan Cooper, Esq., Steptoe & Johnson LLP
Jeffrey Lennard, Esq. and Mark Hanover, Esq., Sonnenschein Nath & Rosenthal
Calvin C Thur, Esq. and Howard L Andari, Esq., Thur & O'Sullivan PC

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