

IN THE SUPREME COURT OF CALIFORNIA

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MOHAMMED A. HAMEID,

*Plaintiff and Appellant,*

vs.

NATIONAL FIRE INSURANCE OF HARTFORD,

*Defendant and Respondent.*

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After a Decision by the Court of Appeal, Fourth Appellate District,  
Division Three, Case No. GO26525

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**REQUEST FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF UNITED  
POLICYHOLDERS ON THE MERITS AND IN SUPPORT OF  
PLAINTIFF/RESPONDENT MOHAMMED A. HAMEID**

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**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE  
SUPREME COURT OF CALIFORNIA**

Attorneys for *Amicus Curiae* United Policyholders respectfully move this Court, pursuant to California Rules of Court, Appellate Rules, Rule 29.3(c), for leave to file the brief and request for judicial notice submitted herewith as *amicus curiae* in support of Plaintiff, Petitioner and Respondent Mohammed A. Hameid before this Court.

## MEMORANDUM OF POINTS & AUTHORITIES

### I. UNITED POLICYHOLDERS' INTEREST

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

In addition to serving as a resource on insurance claims for and commercial insureds and disaster victims, 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 oversight proceedings.

A diverse range of policyholders throughout the United States communicate on a regular basis with UP regarding the insurance claims process. Because UP monitors both marketplace developments and policyholders' real life experiences, the organization is qualified provide topical information to courts throughout the country via the submission of amicus curiae briefs in cases involving insurance principles that are likely to impact large segments of the public.

UP's *amicus* brief was cited in the U.S. Supreme Court's opinion in *Humana v. Forsyth*, 525 U.S. 299 (1999), and its arguments were adopted by the California Supreme Court in *Vandenberg v. Sup. Ct.* 21 Cal.4th 815 (1999). UP has filed amicus briefs on behalf of policyholders in over one hundred cases throughout the United States since 1992.

With its brief, UP seeks to fulfill “the classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the Court’s attention to law that escaped consideration.” *Miller-Wohl Co., Inc. v. Commissioner of Labor & Indust.*, 694 F.2d 203, 204 (9<sup>th</sup> Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have stressed, an *amicus* is often in a superior position “to focus the Court’s attention on the broad implications of various possible rulings.” R. Stern, E. Greggman, & S. Shapiro, *SUPREME COURT PRACTICE*, 570-71 (1986) (*quoting* Ennis, *EFFECTIVE AMICUS BRIEFS*, 33 *Cath. U.L. Rev.* 603, 608 (1984)).

## **II. SIGNIFICANCE OF THE ISSUE ADDRESSED BY AMICUS CURIAE**

UP has a vital interest in seeing that the standard form insurance policies sold to countless policyholders within the State of California are interpreted fairly and consistently by insurance companies and the courts. Here, the uniform interpretation of the insurance coverage questions at issue are of great import to companies doing business in California, such as those represented, among others, by UP.

As more fully set forth in the brief, this case places two critical issues before the court. First, does the standard form “advertising injury” offense of “misappropriation of advertising ideas” potentially cover allegations of trade secret misappropriation where : (1) the third party/underlying plaintiff has alleged that its trade secrets (customer list) was maintained and used for the purpose of advertising and soliciting customers and (2) the underlying plaintiff has also alleged that the policyholder took its customer list and used it to promote and solicit business in precisely the same manner as the underlying plaintiff.

Resolution of this issue is important to California policyholders as it will firmly establish the parameters of coverage under this widely disseminated and hotly disputed provision. Furthermore, in addressing this issue the court will necessarily analyze the “causal nexus” and “offense” requirements of “advertising injury” coverage, which have also been the subject of numerous legal disputes in California and nationwide. Given the weight often afforded California decisions in this arena, the Court’s decision will likely have far ranging impact across the Country.

This case also calls upon this Court to determine the proper definition of the term “advertising” as used in the “advertising injury” insuring provisions contained in most Commercial General Liability policies sold in the State of California. The definition put forth by National Fire would essentially vitiate “advertising injury” coverage for a large segment of California’s business community. By way of contrast, *amicus curiae* interpret California law as requiring a contextual definition of the “advertising” requirement that takes into account the size, scope and character of the insured’s business. Regardless of which position is adopted by the Court, the decision will have significant ramifications. It is therefore critical that the Court receive the benefit of comprehensive briefing from the group which is most likely to be impacted -- policyholders.

We have reviewed the court of appeal’s opinion and the briefs of the parties in this case. We are therefore very familiar with the issues in this case and the scope of their presentation. We can offer significant assistance to this Court by briefing the insurance coverage issue in a manner which adds materially, and thereby complements, the parties’

briefs. In particular, the briefing currently before the Court does not fully address the public policy reasons why National Fire's position (particularly with respect to how "advertising" should be defined) should not be adopted by the Court. These issues are addressed in UP's brief. UP's brief thus raises otherwise undiscussed points and authorities that provide important authority and argument for ruling in the Hameid's favor.

### III. CONCLUSION

Based on the foregoing, to adequately inform the Court of these issues we respectfully request permission to file an *amicus curiae* brief and request for judicial notice in support of Petitioner-Respondent Hameid, which are submitted concurrently herewith.

Dated: July 23, 2002

**GAUNTLETT & ASSOCIATES**

By: 

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