

No. 05-4265
UNITED STATES COURT OF APPEALS
For the Second Circuit

LOUISE M. HARRIS, M.D.
Plaintiff-Appellant,

v.

FIRST UNUM LIFE INSURANCE COMPANY,
UNUM LIFE INSURANCE COMPANY OF AMERICA
and UNUMPROVIDENT CORP.
Defendant-Appellees.

APPLICATION OF UNITED POLICYHOLDERS TO FILE BRIEF
AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANT LOUISE M. HARRIS, M.D.

Eugene R. Anderson, Esq.
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Attorneys for Amicus Curiae
United Policyholders

Comes now the applicant United Policyholders and respectfully requests that this court grant it permission to file a Memorandum of Law as amicus curiae in the above captioned action on behalf of Plaintiff-Appellant Louise M. Harris, M.D.

United Policyholders was founded in 1991 as a not-for-profit, 501(c)(3) organization dedicated to educating the public on insurance issues and consumer rights. United Policyholders is funded by donations and grants from individuals, businesses, and foundations. United Policyholders aids home, property and business owners who have suffered major losses, and is a policyholder-oriented information resource on all types of insurance coverage and claim issues. The organization monitors legal and marketplace developments that impact policyholders and participates in forums aimed at formulating public policy on insurance transactions. United Policyholders publishes materials that give practical guidance on insurance coverage and claim issues to property and business owners and advocates, including disaster relief personnel, attorneys and adjusters.

United Policyholders' activities are limited only to the extent that United Policyholders exists exclusively on donated labor and contributions of services and funds. This brief has been prepared pro bono by United Policyholders' counsel with no financial contributions from any source.

United Policyholders previously has appeared as amicus curiae in over one hundred and thirty cases throughout the United States. United

Policyholders has appeared as amicus curiae in cases before the United States Supreme Court. See Humana, Inc. v. Forsyth, No. 97-303 (U.S. Sept. 18, 1998); FL Aerospace v. Aetna Casualty and Surety Co., No. 90-289 (U.S. Sept. 13, 1990), and the United States Supreme Court cited United Policyholders' brief in Humana, Inc. v. Forsyth, 525 U.S. 299 (1999). United Policyholders was the only national consumer organization to submit an amicus brief in the landmark case of State Farm v. Campbell, 538 U.S. 408, 123 S. Ct. 1513 (2003).

United Policyholders has submitted numerous briefs on ERISA-related matters and in disability insurance claim disputes in which there were conflicting opinions by medical and insurance company personnel.¹ United Policyholders has a vital interest in seeing that insurance companies do not abuse the governmental duty delegated to them under the ERISA scheme as against public policy. United Policyholders has an interest in ensuring that insurance companies live up to their promises to their policyholders.

The issues addressed in the Harris decision will affect policyholders throughout the State of New York and nationwide. United Policyholders seeks to appear as amicus curiae to address ERISA-related public policy

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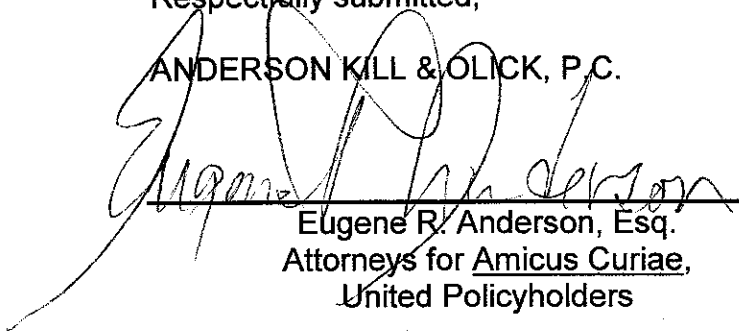
concerns presented by this appeal that are of significance well beyond the application of law to the specific facts of this case.

United Policyholders would like the opportunity to file a Memorandum of Law in this litigation.

Dated: November 2, 2005

Respectfully submitted,

ANDERSON KILL & OLICK, P.C.

A large, stylized handwritten signature in black ink, appearing to read "Eugene R. Anderson", is written over a horizontal line. The signature is fluid and cursive.

Eugene R. Anderson, Esq.
Attorneys for Amicus Curiae,
United Policyholders

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Lauren Bisordi, Esq.
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PROOF OF SERVICE

I, Efrat Menachemi, declare:

1. I am over the age of eighteen of years and not a party to this action. I am employed in the County of New York, State of New York, by the law firm of Anderson Kill & Olick, P.C. My business address is 1251 Avenue of the Americas, New York, NY 10020. I have first-hand personal knowledge of the following facts, and if called upon, could and would testify competently thereto.

2. On November 2, 2005, I caused to serve by Federal Express Priority Overnight the following document entitled:

APPLICATION OF UNITED POLICYHOLDERS TO FILE MEMORANDUM
OF LAW AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-
APPELLANT LOUISE M. HARRIS, M.D.

on the United States Court of Appeals for the Second Circuit in this action by placing the original and two (2) true copies thereof enclosed in a properly addressed envelope and caused the same to be delivered to a messenger of Federal Express for priority overnight delivery:

SEE ATTACHED SERVICE LIST

3. On November 2, 2005, I served by mail the following document entitled:

APPLICATION OF UNITED POLICYHOLDERS TO FILE MEMORANDUM
OF LAW AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-
APPELLANT LOUISE M. HARRIS, M.D.

on the interested parties in this action by placing true copies thereof

enclosed in a sealed envelope with postage thereon fully prepaid, placed for collection and mailing following ordinary business practices, addressed as follows:

SEE ATTACHED SERVICE LIST

4. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice the envelope for the United States Court of Appeals for the Second Circuit would be picked up by a Federal Express messenger for priority overnight delivery. Under that practice the envelopes for the remaining parties would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed on November 2, 2005 at New York, New York.


Efrat Menachemi

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

Docket Number(s): 05-4265 CV
Affidavit of Eugene R. Anderson in Support of United Policyholders' Motion for Permission Motion for: to File Brief as Amicus Curiae in Support of Plaintiff-Appellant Louise M. Harris
Set forth below precise, complete statement of relief sought:

Louise M. Harris, M.D.
Plaintiff-Appellant,

vs.

First Unum Life Insurance Company,
et al.

Leave to file Amicus Curiae Brief

MOVING PARTY: Anderson Kill & Olick, P.C. OPPOSING PARTY:
Plaintiff Defendant (Amicus brief)
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Eugene R. Anderson OPPOSING ATTORNEY [Name]:
[name of attorney, with firm, address, phone number and e-mail]
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000
eanderson@andersonkill.com

Court-Judge/Agency appealed from:

Please check appropriate boxes:

Has consent of opposing counsel:
A. been sought? Yes No
B. been obtained? Yes No

Is oral argument requested? Yes No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No
If yes, enter date

Signature of Moving Attorney: Date: 11/8/05

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No

Requested return date and explanation of emergency:

Has service been effected? Yes No
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: By:

No. 05-4265 CV

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v.

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**AFFIDAVIT OF EUGENE R. ANDERSON IN SUPPORT OF UNITED
POLICYHOLDERS MOTION FOR PERMISSION TO FILE BRIEF
AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANT LOUISE M. HARRIS**

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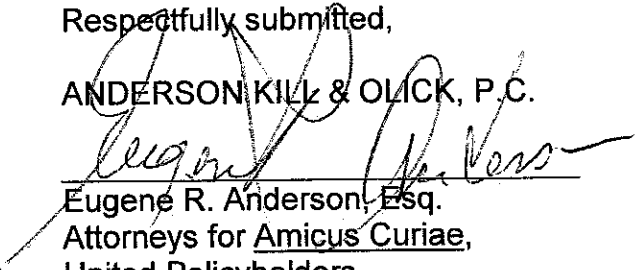
The issues addressed in the Harris decision will affect policyholders throughout the State of New York and nationwide. United Policyholders seeks to appear as amicus curiae to address ERISA-related public policy concerns presented by this appeal that are of significance well beyond the application of law to the specific facts of this case.

United Policyholders would like the opportunity to file a Memorandum of Law in this litigation.

Dated: November 16, 2005

Respectfully submitted,

ANDERSON KILL & OLICK, P.C.


Eugene R. Anderson, Esq.
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Sworn to before me this
16th day of November, 2004



Notary Public

DONALD FLYNN
NOTARY PUBLIC, State of New York
No. 01PL5046358
Qualified in Queens County
Certificate Filed in New York County
Commission Expires July 10, 2007