

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAMAICA HOSPITAL MEDICAL CENTER, INC.
and FLUSHING HOSPITAL MEDICAL CENTER,
INC.

Plaintiffs,

- against -

UNITED HEALTH GROUP, INC., OXFORD
HEALTH PLAN (NY), INC., OXFORD HEALTH
INSURANCE, INC., UNITED HEALTHCARE OF
NEW YORK, INC., UNITED HEALTHCARE
INSURANCE COMPANY OF NEW YORK,
WILLIAM MAGUIRE, PAUL CONLIN, PAUL
CRESPI, DANA D'ELIA, and "JOHN DOES" 1-50,

Defendants.

Civ. No. 07-0506 (SJ)

**BRIEF OF AMICUS CURIAE, UNITED POLICYHOLDERS, IN SUPPORT OF
PLAINTIFFS, JAMAICA AND FLUSHING HOSPITALS**

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STATEMENT OF INTEREST OF AMICUS CURIAE

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

While much of its work is aimed at individuals and businesses affected by disasters, United Policyholders actively monitors legal and marketplace developments affecting the interests of all policyholders. United Policyholders receives frequent invitations to testify at legislative and other public hearings and to participate in regulatory proceedings on rate and policy issues.

A diverse range of personal and commercial line policyholders throughout the United States communicate their insurance concerns on a regular basis to United Policyholders. United Policyholders advances policyholders' interests in courts throughout the country by filing *amicus curiae* briefs in cases involving important insurance principles.

United Policyholders' *amicus* brief was cited in the U.S. Supreme Court's opinion in Humana, Inc. v. Forsyth, 525 U.S. 299 (1999). United Policyholders has filed *amicus curiae* briefs on behalf of policyholders in over one hundred and twenty cases throughout the United States in the past six years. These activities are limited only to the extent that United Policyholders exists exclusively on donated labor and contributions of services and funds. No party to this case has contributed directly or indirectly to the preparation of this brief.

United Policyholders has a vital interest in seeing that insurance companies do not attempt to shift risk assumed in insurance policies back to their policyholders through schemes unsupported by insurance policies or public policy. United Policyholders has an interest in ensuring that insurance companies live up to their promises to their policyholders.

United Policyholders seeks to appear as *amicus curiae* to address certain issues presented in this case that are of significance well beyond the application of law to the specific facts of this case. These important issues will affect policyholders nationwide.

POINTS AND AUTHORITIES OF UNITED POLICYHOLDERS

This matter involves public health, medical and hospital services for low income New Yorkers – on the one hand – and a powerful for profit health maintenance organization “insurance” company on the other.

This is a public health matter, and the beneficiaries are the multitude of patients served by Jamaica and Flushing hospitals. The Court should look to the realities of the situation and to the public interest particularly that of the patients. If approached from the standpoint of the patients, then arbitration is grossly unfair. When patients’ cases are arbitrated, it denies them the right to have their cases heard in court. It’s not in their best interest; they are entitled to adjudication in court by a judge and a jury.

The “agreement” between Oxford and the two hospitals provides for arbitration pursuant to the rules of the American Arbitration Association. AAA, even though it is a not-for-profit, needs and carries new arbitration business. Carrying new business does not make AAA an evil enterprise but gives it a bent or an inclination favoring the sources of its business. The hospitals are not repeat players in arbitration – the insurance company is a repeat player.

Most patients have little or no meaningful choice about submitting to arbitration, from which there is no meaningful judicial review. Mandatory arbitration is growing rapidly as a requirement for patients to receive necessary medical services. United Policyholders submits that this is unfortunate and unfair.¹

¹ *But see* PAS-EBS v. Group Health, Inc. 442 F. Supp. 937 (S.D.N.Y. 1977).

Most patients first learn that they have supposedly lost the right to sue – that they have “waived” their constitutional right to trial by jury – only after a dispute arises. In most cases, an individual’s first awareness of an arbitration clause comes as a bitter surprise. In essence, companies can hand pick these private judging services to replace publicly accountable courts. Public policy should not be set in private.

Similarly, the question of whether a loan is usurious cannot be arbitrated at the request of the lender, thereby allowing him or her to insulate the transaction from judicial scrutiny,² although there is no public policy precluding the arbitration of such an issue at the request of the borrower.³ Likewise, matters for which a civil penalty is provided are not arbitrable.⁴

New York courts do not slavishly apply arbitration provisions. County of Chautauqua v. Civil Serv. Employees. Assoc., 838 N.Y.S.2d 1 (2007); City of Long Beach v. Civil Serv. Employees Assoc., Inc. – Long Beach Unit, 835 N.Y.S.2d 538 (2007). These cases involve the public policy exception to arbitration provisions.

The California Supreme Court presently has a case involving arbitration in the insurance context. O’Hanesian v. State Farm Mut. Auto. Ins. Co., 154 P.3d 996 (Cal. 2007).

² In re Sprinzen, 415 N.Y.S.2d 974 (1979); Mendelsohn v. A & D Catering Corp., 473 N.Y.S.2d 481 (2d Dep’t 1984); Durst v. Abrash, 253 N.Y.S.2d 351 (1st Dep’t 1964), aff’d 266 N.Y.S.2d 806 (1965).

³ Rosenblum v. Steiner, 403 N.Y.S.2d 716 (1978).

⁴ Kingswood Mgmt. Corp. v. Salzman, 70 N.Y.S.2d 692 (1st Dep’t 1947).

CONCLUSION

Wherefore, United Policyholders respectfully suggests that this Court refuse to compel arbitration and move this case forward to trial.

Respectfully submitted,

Dated: October 12, 2007
New York, New York

By: /s/ Eugene R. Anderson

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