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January 31, 2008

VIA UPS

Clerk's Office
Supreme Court of Louisiana
400 Royal Street, Suite 4200
New Orleans, LA 70130

Re: Landry vs. Louisiana Citizens Property Ins. Corp., Docket No. 2007-C-1908

Dear Clerk:

Enclosed for filing, please find the following:

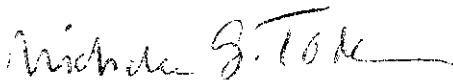
Motion of United Policyholders and the Williams Representative Policyholders for Leave of Court to File *Amicus Curiae* Brief in Support of Plaintiffs Mark Landry and Barbara Landry (original and 3 copies); and

Brief on Behalf of United Policyholders and the Williams Representative Policyholders *Amicus Curiae* in Support of Plaintiffs Mark Landry and Barbara Landry (original and 17 copies).

Also enclosed is our check in the amount of \$100.00 for the filing fee. Upon filing, kindly sent me two copies of each time-stamped in the enclosed UPS envelope.

Thank you.

Very truly yours,



Michelle G. Todd
Paralegal

mgt

cc: All Counsel of Record

SUPREME COURT OF LOUISIANA

CIVIL MATTER

DOCKET NO. 2007-C-1908

MARK LANDRY AND BARBARA LANDRY

Plaintiffs-Appellees

VERSUS

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION

Defendant-Appellants

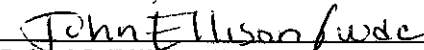
**BRIEF ON BEHALF OF UNITED POLICYHOLDERS AND THE WILLIAMS
REPRESENTATIVE POLICYHOLDERS AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS MARK LANDRY AND BARBARA LANDRY**

**PURSUANT TO WRIT OF CERTIORARI
DIRECTED TO THE THIRD CIRCUIT COURT OF APPEAL
ITS DOCKET NO. 07-00247-CA**

**15TH JUDICIAL DISTRICT COURT
PARISH OF VERMILLION, STATE OF LOUISIANA, ITS DOCKET NO. 85571-D
HON. EDWARD D. RUBIN, PRESIDING**

Respectfully submitted,

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

United Policyholders ("UP") is a unique national non-profit organization founded in 1991 that helps preserve the integrity of the insurance system. Donations, grants and volunteer labor support the organization's work.

As the citizens of Louisiana have been reminded over and over since the 2005 hurricane season, the financial security that insurance policies provide is critical to business and property owners and to this state's economy. Since the 2005 hurricane season, United Policyholders has worked with elected officials, businesses and homeowners to help solve insurance problems in Louisiana. State senators, assembly members, Congressional representatives and state agency officials participated in public forums hosted by United Policyholders across the state to air and trouble-shoot insurance concerns and problems. United Policyholders' witnesses have participated in the legislative process by providing testimony at hearings on insurance matters and input into legislation. For more information, visit www.unitedpolicyholders.org. In November of 2005 United Policyholders set up a free on-line "Road Map to Recovery" for Florida, Louisiana and Mississippi, and created and is maintaining a Hurricane Claim Help Library for residents of the impacted states.

By submitting a brief in this matter, United Policyholders seeks to fulfill the "classic role of *amicus curiae* 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. v. Commissioner of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have often 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)).

Genevieve Williams, Rosetta and Eric Irons and Ella and Howard Foster, Jr. (“Williams representative Policyholders”) filed a Class Action Complaint on June 2, 2006, on behalf of themselves and a class of homeowners insurance policyholders who, on August 29, 2005, were Louisiana residents who owned immovable property with improvements, principally houses or related residential structures which was destroyed or damaged by winds generated by Hurricane Katrina. The Williams Representative Policyholders’ Complaint names Citizens, Allstate Indemnity Insurance Company and Louisiana Citizens Property Insurance Company (collectively “Insurance Company Defendants”) as defendants.

In this brief, United Policyholders and the Williams Representative Policyholders seek 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. v. Commissioner of Labor & Indus., 694 F.2d 203, 204 (9th Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have often 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)).

United Policyholders has filed over two hundred and thirty-five *amicus* briefs, since it was founded, in state and federal appellate courts throughout the United States, including a number in Louisiana. See Ducote v. Koch Pipeline Co., 730 So.2d 432 (La. 1999); Norfolk Southern v. California Union Ins. Co., No. 2002-CA-371 (La. Ct. App. 1st Cir. 2002). 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); see also FL Aerospace v. Aetna Cas. & Sur. Co., No. 90-289 (U.S. Sept. 13, 1990).

United Policyholders' *amicus* brief was cited in the U.S. Supreme Court's opinion in Humana Inc. v. Mary Forsyth, 525 U.S. 299 (1999). The organization has participated by court invitation in briefing and oral argument, and many of the arguments from United Policyholders' *amicus curiae* briefs have been cited with approval by reviewing courts. UP was the only national consumer organization to submit an *amicus* brief in the landmark case of Citizens Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408 (2003). Arguments from our *amicus curiae* brief were cited with approval by the California Supreme Court in Vandenberg v. Superior Court, 982 P.2d 229 (Cal. 1999), and discussed in Julian v. Hartford Underwriters Insurance Co., 110 P.3d 903 (Cal. 2005). UP's *amicus* brief factored into the decision in Watts Industries, Inc. v. Zurich American Insurance Co., 121 Cal. App. 4th 1029 (Cal. App. 2d Dist. 2004).

The Third Circuit Court of Appeal in Louisiana granted *amicus* status to United Policyholders in Citizens' appeal of the trial court's partial summary judgment ruling in favor of the policyholders, Mark and Barbara Landry. See Landry v. Louisiana Citizens Prop. Ins. Co., 964 So.2d 463 (La.Ct.App. 3 Cir. 2007) writ granted, 969 So.2d 615 (La. Dec. 12, 2007). The Court quoted UP's *amicus* arguments and reaffirmed Louisiana's recognition of the "efficient proximate cause" doctrine. See id.

II. STATEMENT OF THE CASE

Louisiana Citizens Property Insurance Corp. ("Citizens") is attempting to evade the obligations imposed upon them by Louisiana's Valued Policy Law, La. Rev. Stat. Ann. § 22:695 ("VPL"), despite having invoked the VPL when it was in their fiscal interest to do so in

determining the premiums to be paid by the policyholders for their homeowners insurance coverage. The VPL provides that if an insurance company places a value on a property and uses such value to determine the premiums to be charged, then the insurance company must compute “any covered loss of, or damage to, such property” at such valuation “without deduction or offset.” La. Rev. Stat. Ann. § 22:695 (emphasis added). Citizens placed such valuations on policyholders’ property to determine premiums and subsequently collected the applicable premiums based on such valuations. Policyholders paid these premiums in order to obtain coverage for any and all losses to their residence and personal property caused by hurricanes. Only now, when faced with having to pay the full face value of such valuations in accordance with the VPL, Citizens contests the plain language of the statute.

United Policyholders adopts and incorporates into this *amicus* brief the Statement of the Case as set forth in the Brief of the Policyholders, Mark and Barbara Landry.

III. SUMMARY OF THE ARGUMENT

United Policyholders supports the Policyholders’ position and the Louisiana Third Circuit Court of Appeal’s decision that the VPL requires Citizens to make full payment to the Plaintiffs regardless that the total loss was a result of a combination of covered and excluded perils under the insurance policy so long as the efficient or proximate cause of the loss was a covered peril.

This brief first argues that the VPL clearly and unambiguously applies to situations where a total loss results from a combination of a covered and a non-covered peril. The Court, therefore, must reject Citizens’ untenable and unsupported suggested interpretation of the VPL which, in effect, seeks to render the VPL inapplicable to situations where a covered peril and a non-covered peril were each involved in the total loss to a covered property. Second,

this brief argues that Louisiana law and the lower court's decision in this case support a finding that conflicting insurance policy language, including the anti-concurrent causation clauses, must yield to the VPL. Third and most importantly, this brief explains that Citizens' position is in complete derogation of the "efficient proximate cause" doctrine, which has been adopted by the Louisiana Supreme Court and provides that a policyholder is entitled to coverage if a covered peril was the proximate or efficient cause of the loss or damage, notwithstanding that other excluded or non-covered perils contributed to the damage.

Citizens' position evinces an effort to avoid the contractual obligations it owes and sold to this class of Policyholders while abrogating or eviscerating the "efficient proximate cause" doctrine. In essence, Citizens is seeking to have the Court rewrite Louisiana insurance law on causation and valuation of homeowners' coverage in one fell swoop. Adoption of Citizens' position would result in significant consequences not only with regard to the current and future hurricane-related insurance litigation, but with regard to insurance coverage issues in general. As such, Citizens' wholly unsupported and novel interpretation of the VPL and Louisiana insurance causation law must be rejected.

IV. ARGUMENT

A. The VPL Clearly And Unambiguously Applies Where A Total Loss Results From A Combination Of A Covered And A Non-Covered Peril.

Louisiana's VPL provides, in relevant part, that:

Under any fire insurance policy insuring inanimate, immovable property in this state, if the insurer places a valuation upon the covered property and uses such valuation for purposes of determining the premium charge to be made under the policy, in the case of total loss the insurer shall compute and indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation without deduction or offset, unless a different method is to be used in the computation of loss, in which latter case, the policy, and any application therefore, shall set forth in type of equal size, the actual method of such

loss computation by the insurer. Coverage may be voided under said contract in the event of criminal fault on the part of the insured or the assigns of the insured.

La. Rev. Stat. Ann. § 22:695(A) (emphasis added). The plain language of the VPL provides that where a total loss exists, the insurance company shall compute, indemnify and compensate the policyholder for “any covered loss, or damage to,” the property at the valuation set forth by the insurance company “without deduction or offset.” The plain language of the statute requires only that a total loss occur and that under such circumstances the amount of compensation for “any covered loss” be the valuation amount, without any offset or deduction. There is no language in the VPL that limits its application exclusively to situations where a covered peril is the sole cause of the total loss. Similarly, there is no language in the VPL that restricts or apportions the valuation determination in situations where both a covered peril and an excluded or non-covered peril both cause the total loss.

Citizens is trying desperately to convince this Court to ignore the clear and unambiguous language of the VPL. If the Court accepts Citizens’ interpretation of the VPL, it would render portions of the statute irrelevant. In order to give effect to the entire statute, this Court must reject Citizens’ argument and adopt that of the policyholders, and the lower court.

B. Louisiana Precedent Requires That Conflicting Insurance Policy Provisions Yield To The VPL.

Citizens’ position in this case represents an attempt to have the Court effectively rewrite the VPL in an insurance-company friendly manner because it conflicts with Citizens’ flawed interpretation of its own insurance policy. Citizens argues that policy language somehow limits the application of the VPL to instances where no excluded or non-covered peril is involved in the total loss. Under Citizens’ theory, if a policy excludes coverage for water damage, the VPL does not apply if a property has become a total loss if the property sustained “some”

damage from a covered peril and some damage from a non-covered peril. In other words, if the excluded peril of water damage, which is almost certain to occur in some fashion in the context of damage caused by a hurricane, has visited “some damage” upon the property, then the VPL does not apply.

This contention is not only contrary to the express language of the VPL, it is patently unfair and punitive to the extent that, if adopted by the Court, wholly inequitable results could follow. For example, under Citizens’ theory, in the event of a total loss an insurance company could literally find one square inch of “water damage” to a property and, thus, avoid paying the full face value of the property as mandated by the VPL despite, of course, having previously collected premiums that were determined based upon such valuation.

In addition to the above assertion, now Citizens is also arguing that an anti-concurrent clause (ACC) in the insurance policy precludes this Court from giving the VPL effect. The ACC in Citizens’ policy states:

We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss:

3. Water damage, meaning: (a) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind.

This insurance policy provision is in direct conflict with the VPL’s language applying the statute to mixed causes of loss. Specifically, the VPL states that it applies to damage caused “in whole or in part,” which unequivocally provides an insurer will still be required to pay the full value of the loss even where damage was caused by covered and non-covered perils.

The Court of Appeal recognized that Louisiana views the VPL as “such a strong public policy that even clear and unambiguous insurance clauses or exceptions setting forth defenses in favor of the insurer in conflict with the VPL must yield to its purpose.” See Landry, 964 So.2d at 471 (citing Farmers-Merchants Bank & Trust Co. v. St. Katherine Ins. Co., 96-1138 (La. App. 3 Cir. 4/10/91), 693 So.2d 876 (La. App. 3 Cir. 1997); Rigdon v. Marquette Cas. Co., 163 So.2d 442 (La. App. 2 Cir. 1964); Southern Produce Co. v. Amer. Ins. Co., 166 So.2d 59 (La. App. 4 Cir. 1964); The Forge, Inc. v. Peerless Cas. Co., 131 So.2d 838 (La.App. 2 Cir. 1961). However, Citizens would have this Court completely ignore Louisiana statutory interpretation principles to modify the VPL such that its main purpose would be null and have no legal effect. The Court of Appeal was correct in recognizing that longstanding Louisiana precedent requires conflicting insurance policy provisions to yield to the VPL’s strong public policy interest and purpose. This Court must follow the Court of Appeal’s lead in recognizing the strength of the VPL statute rather than eviscerating it.

C. Citizens’ Suggested Interpretation Of The VPL Would Contravene Louisiana’s “Efficient Proximate Cause” Doctrine.

Citizens forwards the argument that its own policy language supersedes not only the plain language of the VPL, but also Louisiana’s “efficient proximate cause” doctrine. The position advocated by Citizens is completely contrary to the “efficient proximate cause” doctrine that the Louisiana Supreme Court has adopted in determining whether coverage exists. Roach-Strayhan-Holland Post No. 20, Am. Legion Club, Inc. v. Continental Ins. Co., 112 So.2d 680, 683 (La. 1959). “Efficient proximate cause” has been technically defined as “the efficient or predominant cause which sets into motion the chain of events producing the loss . . . not necessarily the last act in a chain of events.” Graham v. Public Employees Mut. Ins. Co., 656 P.2d 1077, 1081 (Wash. 1983). The “efficient proximate cause” analysis focuses on whether all

of the losses or claims can be traced to one original causative factor, regardless of the number of injuries or claims made. If the originating or dominant cause of the loss is a covered peril, there is coverage. Lorio v. Aetna Ins. Co., 232 So.2d 490 (La. 1970) (holding that policyholders may have coverage when covered peril causes an excluded peril).

The Louisiana Supreme Court and other courts in the Gulf region have interpreted the “efficient proximate cause” doctrine to permit coverage for hurricane-related losses where the evidence has shown that wind was the “proximate cause” of the damage, notwithstanding that flooding contributed to the loss. See, e.g., Roach-Strayhan-Holland Post No. 20, Am. Legion Club, Inc. v. Continental Ins. Co., 112 So.2d 680, 683 (La. 1959); Western Assurance Co. v. Hann, 78 So. 232, 236 (Ala. 1917); Glens Falls Ins. Co. of Glens Falls, N.Y. v. Linwood Elevator, 130 So.2d 262, 270 (Miss. 1961); Evana Plantation, Inc. v. Yorkshire Ins. Co., 58 So.2d 797, 798 (Miss. 1952). In the present case, the Court of Appeal acknowledged that “the courts of this State have not hesitated in rejecting any efforts by insurers to avoid their obligation to pay fully for covered peril because a non-covered peril or event may have contributed *in part* to a total loss.” See Landry, 964 So.2d at 480.

Under these cases and the underlying rationale behind the “efficient proximate cause” doctrine, if coverage exists where wind is ultimately shown to be the proximate cause of damage despite contribution from a non-covered peril, then the more restrictive application of the VPL being advocated by Citizens cannot be adopted by the Court. The VPL addresses the value which is to be paid when coverage exists and does not purport to address or set forth any substantive standard for determining causation. Adoption of Citizens’ position will limit application of the VPL to instances where the total loss was caused solely by a covered peril, contrary to Louisiana’s efficient proximate cause doctrine. Moreover, Citizens’ proffered

interpretation of the VPL would make the “efficient proximate cause” doctrine an academic exercise with no practical impact as the VPL would effectively pre-empt the doctrine by adding a second layer of causation analysis at the most critical juncture – valuation of the coverage amount to be paid – a practice nowhere authorized by the Louisiana Legislature.

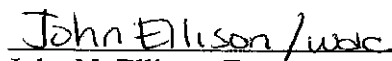
Under Citizens’ theory, a determination that wind or a covered peril was the “efficient proximate cause” of a loss would be meaningless if a Court, in applying the VPL to determine the amount of coverage owed to the policyholder, found “some damage” from an excluded peril. Citizens’ interpretation of the VPL and contention that its policy exclusion abrogates the plain language of the VPL, as well as the “efficient proximate cause” doctrine, cannot and should not be adopted by the Court as it is unsupported in the statute’s express language and would result in a sweeping change in the causation analysis and standard as it applies to policyholders in Louisiana.

V. **CONCLUSION**

For the aforementioned reasons, this Court should affirm the decision of the Louisiana Third Circuit Court of Appeal.

Respectfully submitted,

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Amy Bach /wdc

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amicus Brief on behalf of United Policyholders and the Willaims Representative Policyholders has been served upon all counsel of record in this matter by placing same in the U.S. Mail, first class postage prepaid and properly addressed, by hand delivery, by facsimile and/or by electronic mail on this the 31st day of January 2008.

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Honorable Michael G. Sullivan
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SUPREME COURT OF LOUISIANA

CIVIL MATTER

DOCKET NO. 07-C-1908

MARK LANDRY AND BARBARA LANDRY

Plaintiffs-Appellees

VERSUS

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION

Defendant-Appellants

**MOTION OF UNITED POLICYHOLDERS AND THE WILLIAMS REPRESENTATIVE
POLICYHOLDERS FOR LEAVE OF COURT TO FILE AMICUS CURIAE BRIEF IN
SUPPORT OF PLAINTIFFS MARK LANDRY AND BARBARA LANDRY**

**APPEAL FROM THE THIRD CIRCUIT COURT OF APPEAL, NO. 07-00247-CA,
HONORABLE SYLVIA R. COOKS, JOHN D. SAUNDERS, MICHAEL G. SULLIVAN,
GLENN B. GREMILLION, AND JAMES T. GENOVESE, PRESIDING**

NOW INTO COURT, comes United Policyholders and the Williams Representative Policyholders who respectfully moves this Honorable Court For Leave Of Court to file its Amicus Curiae Brief in the above numbered and entitled proceedings for the reasons set forth below.

1.

United Policyholders ("UP") is a unique national non-profit organization founded in 1991 that helps preserve the integrity of the insurance system. This amicus brief is submitted by and

on behalf of the citizens of the State of Louisiana, who happen to include all-risk homeowners and commercial insurance policy holders.

2.

As the citizens of Louisiana have been reminded over and over since the 2005 hurricane season, the financial security that insurance policies provide is critical to business and property owners and to this state's economy. Since the 2005 hurricane season, United Policyholders has worked with elected officials, businesses and homeowners to help solve insurance problems in Louisiana. State senators, assembly members, Congressional representatives and state agency officials participated in public forums hosted by United Policyholders across the state to air and trouble-shoot insurance concerns and problems.

3.

United Policyholders' witnesses have participated in the legislative process by providing testimony at hearings on insurance matters and input into legislation. For more information, visit www.unitedpolicyholders.org. In November of 2005 United Policyholders set up a free on-line "Road Map to Recovery" for Florida, Louisiana and Mississippi, and created and is maintaining a Hurricane Claim Help Library for residents of the impacted states.

4.

Genevieve Williams, Rosetta and Eric Irons and Ella and Howard Foster, Jr. ("Williams representative Policyholders") filed a Class Action Complaint on June 2, 2006, on behalf of themselves and a class of homeowners insurance policyholders who, on August 29, 2005, were Louisiana residents who owned immovable property with improvements, principally houses or related residential structures which was destroyed or damaged by winds generated by Hurricane Katrina. (Complaint, 1, attached as Exhibit "A.") The Williams Representative

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February 1, 2008

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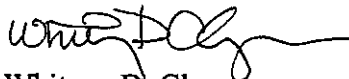
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Re: Landry v. Louisiana Citizens Property Ins. Corp.

Dear Counsel:

Please find the *amicus curiae* brief filed on behalf of United Policyholders and the Williams' Representative Policyholders in the Supreme Court of Louisiana on January 31, 2008. Feel free to contact me with any questions. Thank you.

Best regards,



Whitney D. Clymer
Reed Smith LLP

wdc

Enclosures