No. 98-36001

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES MATHIS AND DIANE MATHIS,

Plaintiffs-Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Washington

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the termination of an insurance company employee for that employee's refusal to engage in an act of "bad faith" contravenes a clear mandate of public policy and, thereby, subjects the insurance company employer to liability in tort for wrongful discharge?

STATEMENT OF THE CASE

Amicus curiae, United Policyholders, accepts the statement of the case filed by the Plaintiffs-Appellants, James and Diane Mathis.

INTEREST OF AMICUS CURIAE

United Policyholders is a national, not for profit, educational organization whose mission is to educate the public, legislators and the courts on insurance issues and consumer rights, and to assist policyholders in securing prompt and fair insurance settlements. United Policyholders is vitally interested in eradicating bad faith conduct on the part of insurance companies.

SUMMARY OF ARGUMENT

Courts should provide insurance company employees with every incentive to act fairly and in good faith toward their policyholders by declaring unequivocally that the termination of an insurance company employee for his or her refusal to engage in bad faith conduct contravenes a clear mandate of public policy, and subjects the insurance company employer to liability in tort for wrongful discharge.

ARGUMENT

The district court erred when it concluded that Mr. Mathis's allegations of bad faith conduct "must be rejected as a basis for a claim of discharge in violation of public policy." See Mathis v. State Farm Mutual Automobile Ins. Co., No. C97-15522, at 6 (W.D. Wash., Sept. 8, 1998) (C.R. 69) (hereinafter "Dist. Ct. Op. at __").

The State of Washington has a clearly expressed public policy against bad faith conduct committed by insurance companies against their policyholders. By statute and judicial precedent, the State of Washington has stated that an insurance company commits an illegal act and violates public policy when it acts unfairly, deceptively, and in bad faith toward its policyholder.

The business of insurance is so affected by the public interest that the termination of an insurance company employee for his or her refusal to engage in bad faith conduct contravenes a clear mandate of public policy and, therefore, gives rise to a cause of action in tort for wrongful discharge. See Reninger v. Department of Corrections, 951 P.2d 782, 787 (Wash. 1998); Dicomes v. State, 113 Wn.2d 612, 617, 782 P.2d 1002 (1989). To hold anything less will, without question, chill any attempts by insurance company employees to resist or report bad faith conduct.

I. The State of Washington Forbids The Termination Of An Employee For Refusing To Commit An Illegal Act Or For Performing A Public Duty

The District Court in this case recognized that Washington Courts have found a discharge to contravene a clear mandate of public policy when an employee is fired for any of the following reasons: (1) refusing to commit an illegal act; (2) performing a public duty or obligation; (3) exercising a legal right or privilege; or (4) reporting employer misconduct, i.e., whistleblowing. See Dist. Ct. Op. at 5 (citing Reninger v. Department of Corrections, 134 Wn.2d 437, 447, 951 P.2d 782 (1998)).

The District Court found, as a matter of law, that the allegations of "bad faith" and "unfairness" -- including Mr. Mathis's citation to RCW 48.30.010 -- did not fall within any of the above-listed categories. Dist. Ct. Op. at 4-5. The

District Court found that Mr. Mathis had "fail[ed] to state a claim for discharge in contravention of public policy" as a matter of law. See Dist. Ct. Op. at 5-6. Clearly, the District Court erred.

As explained more fully below, a refusal to commit or permit bad faith conduct falls within the first two categories elucidated by the District Court. The refusal to commit a bad faith or deceptive insurance practice constitutes both the refusal to commit an illegal act and represents the performance of a public duty or obligation.

II. Bad Faith Conduct Is Illegal And Violates An Insurance Company's Public Duty To Act Fairly And In Good Faith Toward Its Policyholders

Through statutory law and judicial precedent, the State of Washington has established the duty of all those engaged in the business of insurance to act in good faith toward policyholders. An insurance company's duty to its policyholder is not solely contractual, but is based also on a public obligation. Insurance companies themselves, inside and outside of the courtroom, have recognized that their duties toward their policyholders are imbued with the public interest.

The State of Washington has enacted a law that prohibits all people engaged in the business of insurance from engaging in bad faith or deceptive conduct. The Consumer Protection Act provides, in part, that "[n]o person engaged

in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business. . . ." RCW § 480.30.010. The Washington Supreme Court has held that unfair or deceptive insurance acts and practices are unlawful, against public policy, and privately actionable under the Consumer Protection Act. See Federated Am. Ins. Co. v. Strong, 689 P.2d 68, 74-75 (Wash. 1984), overruled on other grounds by Safeco Ins. Co. of Am. v. Butler, 823 P.2d 499, 511 (Wash. 1992).

In this case, Mr. Mathis refused to violate the Consumer Protection Act. United Policyholders understands that Mr. Mathis has submitted evidence showing that his refusal to violate the Consumer Protection Act caused, at least in part, his termination. It is clear, under Washington law, that an employer may not terminate an employee for refusing to violate the law. Simply put, State Farm fired Mr. Mathis for refusing to violate Washington law, which gives rise to a cause of action for wrongful discharge.

In addition, Mr. Mathis was performing a public obligation when he refused to act in bad faith toward State Farm's policyholders. Insurance professionals have a public duty, one that extends beyond any contractual obligation, to treat their policyholders in good faith and in accordance with their duties as fiduciaries. The public interest nature of insurance is clearly recognized in Washington both by statute and by precedent:

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance.

RCW 480.01.030. See also Kueckelhan v. Federal Old Line Ins. Co., 418 P.2d 443, 452 n.12 (Wash. 1966).[1]

The United States Supreme Court has recognized the unique status of insurance in protecting not only policyholders, but also injured parties and the public in general:

> The contracts of insurance may be said to be interdependent. They cannot be regarded singly, or isolatedly, and the effect of their relation is to create a fund of assurance and credit, the companies becoming the depositories of the money of the insured, possessing great power thereby and charged with great responsibility.

German Alliance Ins. Co. v. Lewis, 233 U.S. 389, 414 (1914). Subsequent Supreme Court decisions reemphasized the "specialness" of the insurance industry and of the persons who work within the insurance industry.[2]

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[1] Citing, inter alia, German Alliance Ins. Co. v. Hale, 219 U.S. 307 (1911); Continental Ins. Co. v. Fishback, 282 P. 44 (Wash. 1944); 1 Richards Insurance §39 (1952); 2 Couch Insurance §21:1 (2d ed. 1959); Public Regulation or Control of Insurance Agents or Brokers, Annot., 10 A.L.R.2d 950 (1950).

[2] See e.g., La Tourette v. McMaster, 248 U.S. 465, 467 (1919); Osborn v Ozlin, 310 U.S. 53, 65 (1940); United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944); Robertson v. California, 328 U.S. 440 (1946); California

Similarly, Dean Roscoe Pound wrote:

> [W]e have taken the law of insurance practically out of the category of contract, and we have established that the duties of public service companies are not contractual, as the nineteenth century sought to make them, but are instead relational; they do not flow from agreements which the public servant may make as he chooses, they flow from the calling in which he has engaged and his consequent relation to the public.[3]

Another commentator has noted:

> The insurers' obligations are . . . rooted in their status as purveyors of a vital service labeled quasi-public in nature. Suppliers of services affected with a public interest must take the public's interest seriously, where necessary placing it before their interest in maximizing gains and limiting disbursements. . . . [A]s a supplier of a public service rather than a manufactured product, the obligations of good faith and fair dealing encompass qualities of decency and humanity inherent in the responsibilities of a fiduciary. Insurers hold themselves out as fiduciaries, and with the public's trust must go private responsibility consonant with that trust.[4]

In addition to courts and commentators, the insurance industry has emphasized repeatedly the special public interest nature of insurance. Indeed, the

State Auto. Ass'n Inter-Insurance Bureau v. Maloney, 341 U.S. 105 (1951).

[3] Roscoe Pond, The Spirit of the Common Law (1929), attached to the Appendix of Amicus Curiae, United Policyholders as Exhibit "A" (hereinafter, Appendix, Exhibit "__").

[4] William M. Goodman and Thom Greenfield Seaton, Foreward: Ripe for Decision, Internal Workings and Current Concerns of the California Supreme Court, 62 CAL. L. REV. 309, 346-47 (1974), Appendix, Exhibit "B".

very first canon of ethics for the American Institute of Chartered Property and Casualty Underwriters provides that "CPCUs Should Endeavor at All Times to Place the Public Interest Above Their Own."[5] One standard insurance textbook, which is used to train insurance company personnel, emphasizes:

> Notwithstanding the often stated opinion that the insurance contract is a contract affected with a public interest, insurers often view their policies as simple contractual obligations between parties. While an insurance policy does represent a contractual commitment, the attitudes of the general public, the legislatures, and the courts make clear that the insurance agreement is viewed as having broader ramifications than a mere contract. The public has a definite interest in the reliability of the insurance product. Insurance involves an obligation that affects the public interest as well as the policyholder and therefore is necessarily subject to certain restrictions.[6]

Another insurance industry text echoes that statement: "Insurance companies provide such a vital and necessary service to society that the selling and servicing of insurance is imbued with a public trust."[7]

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[5] Canon 1, Code of Professional Ethics Of the American Institute for Chartered Property and Casualty Underwriters, at 5 (AICPCU 4th ed. 1995), Appendix, Exhibit "C".

[6] 1 James J. Lorimer et al., The Legal Environment of Insurance, at 30-38 (3d ed. 1987), Appendix, Exhibit "D".

[7] James J. Markham, et al., The Claims Environment, at 28 (1st ed. 1993), Appendix, Exhibit "E".

Similarly, the American Insurance Association has stated:

> Insurance leaders are fond of saying, without exaggeration, that the insurance industry is imbued with the public interest -- that insurance is essential to commercial activity and necessary to daily living.
>
> We focus the spotlight on ourselves. We convince others of the leading role insurance plays in society. We encourage them to expect superior performance from us.[8]

One insurance company recently noted:

> The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters.[9]

In a letter to shareholders, Chairman Warren Buffet of Berkshire Hathaway Inc., the corporate parent to several insurance companies, explained:

> The buyer of insurance receives only a promise in exchange for his cash. The value of that promise should be appraised against the possibility of adversity, not prosperity. At a minimum, the promise should appear

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[8] "The Burgeoning of Litigation," 1981 Proceedings of American Insurance Association Annual Meeting, New York City, (May 28-29, 1981), at 62 (speech by Jack Mosely, then Chairman of the AIA), Appendix, Exhibit "F". The American Insurance Association is the insurance industry's principal lobbying organization and a frequent sponsor of pro-insurance industry and anti-policyholder briefs.

[9] Brief of Appellant at 19, Century Indem. Co. v. Truck Ins. Exch. of the Farmers Ins. Group, 887 P.2d 455 (Wash. Ct. App. 1995) (No. 13141-6-III), Appendix, Exhibit "G".

> able to withstand a prolonged combination of depressed financial markets and exceptionally unfavorable underwriting results.[10]

In a September 22, 1970 speech entitled "There's Got To Be A Better Way," the then President of Crum and Forster Insurance Company noted:

> If studied even casually, the history of our business proves that in the United States, as nowhere else in the world, insurance has functioned to set men's minds free from economic worry so they could think about more constructive things; it has functioned to maintain productive enterprise so that more people could enjoy the fruits of our enterprise system; it has provided the means to rebuild burned and shattered cities and towns -- to replace property -- both private and public -- that has been destroyed, damaged, or wrongfully taken away; to relieve physical pain as well as economic distress.[11]

Because the business of insurance is so affected by the public interest and because all who are employed in the business must act fairly and in good faith according to law, any act of bad faith by an insurance company contravenes public policy. For someone like Mr. Mathis to act in bad faith or to sanction bad faith would be both illegal and in violation of his public obligations. The refusal of Mr. Mathis to act in bad faith was met with a "pink slip." If the public policy of the

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[10] Letter from Warren Buffet, Chairman of Berkshire Hathaway Inc., to the shareholders of Berkshire Hathaway Inc., at 9 (Feb. 25, 1985), Appendix, Exhibit "H".

[11] Speech by B.P. Russell, President of Crum and Forster Insurance Company, delivered Sept. 22, 1970, at 9, Appendix, Exhibit "I".

State of Washington is to be preserved and advanced, such a discharge must be considered wrongful.

III. The Termination Of Insurance Company Employees For Refusing To Engage In Bad Faith Conduct Or For Exposing Such Conduct Necessarily Contravenes A Clear Mandate Of Public Policy

Because insurance companies (like all corporate entities) act only through their employees, those employees must be given every incentive to act fairly and in good faith. United Policyholders asks this Court to declare unequivocally that the termination of an insurance company employee for his or her refusal to engage in bad faith conduct contravenes a clear mandate of public policy. Anything less will have a chilling effect on employee resistance to bad faith conduct.

The importance of this Court's decision must not be underestimated. Insurance company bad faith is an epidemic, one whose cure is largely dependent upon responsible insurance company employees. A triumvirate of recent cases from this region illustrates the perniciousness of State Farm's bad faith conduct and illuminates the unquestionable importance of employee assistance in ferreting out that misconduct.[12] See Campbell v. State Farm Mut. Auto. Ins. Co., Civ. No.

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[12] Of course, bad faith conduct is restricted neither to this region nor to State Farm. Indeed, the United States Supreme Court recently decided (by affirming this Court) a case involving a RICO conspiracy by an insurance company against its policyholders. See Humana, Inc. v. Forsyth, No. 97-303, 1999 U.S. LEXIS 744

890905231 (Salt Lake Cty., Utah, Aug. 3, 1998);[13] State Farm Fire & Cas. Co. v. Taylor, 54 Cal. App. 4th 625 (Cal. Ct. App.), review denied, No. 1997 Cal. LEXIS 4311 (Cal. July 9, 1997); Robinson v. State Farm Mut. Auto. Ins. Co., Case No. CV OC 94-98099D (Ada Cty., Idaho, Aug. 7, 1998).[14]

In Campbell, the court, in response to State Farm's various post-trial motions to reduce a $145 million punitive damage judgment, detailed, in exhaustive fashion: (1) the public interest nature of insurance; (2) the numerous ways in which State Farm promotes bad faith conduct by its employees; and (3) State Farm's actions to discourage employee disclosure of that misconduct.

The Campbell opinion began with a general discussion of the public interest nature of insurance and the concomitant importance of having insurance companies adjust claims free from any profit motive.

> In brief, insurance is a public trust sort of business, in which the insurance company takes in premiums to cover a pool of risk, and the customer, as well as the public generally, has to be able to trust that the insurance company, once a risk turns into a harm at a later date, will timely pay fair value on

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(U.S. Jan. 20, 1999). United Policyholders participated in that case as amicus curiae, and its amicus brief was cited favorably by the Supreme Court, noting the fact that insurance companies were taking inconsistent positions. Id., 67 U.S.L.W. 4085, 1999 U.S. LEXIS at *27, Appendix, Exhibit "J".

[13] Court's Findings, Conclusions and Order Regarding Punitive Damages and Evidentiary Rulings, Appendix, Exhibit "K".

[14] Memorandum Decision, Appendix, Exhibit "L".

> the claim after due investigation. The claims adjuster should be allowed to handle each claim on its merits, without having incentives or pressures to underpay claims in an attempt to meet arbitrary average payment-per-claim goals designed to enhance corporate profits. In the insurance business, it is universally accepted and was uncontroverted at trial, that insurers must not seek to enhance profits by intentionally underpaying claims, but that companies must focus on building profits by such means as enhancing their ability accurately to assess risk and thus price their product appropriately, increasing their customer base by effective marketing, maximizing their investment income on premium monies prior to payout, and achieving efficiencies in their operations generally.

Campbell, slip op. at 18.

The Campbell court then found that State Farm did adjust claims based on profit, not merit, by promoting adjusters who met certain targets and threatening the continued employment of those adjusters who did not.

> Indeed, the slogan that State Farm purports to have its adjusters follow is that "we pay what we owe, not a penny more, not a penny less." Unfortunately, reality does not comport with this slogan. The record contains extensive evidence that for approximately two decades, State Farm has disregarded well-accepted industry rules by turning its claims-adjusting process into a profit center, to the point of giving its claim adjusters specific numerical targets with regard to average payouts per claim. Meeting these targets leads to better pay and promotional prospects; missing them leads to criticism, retarded prospects at the company and, ultimately, a threat to one's continued employment.

Id. at 19 (emphasis added).

Indeed, the Campbell court found that employees who object to State Farm's profit-motivated claims adjusting were criticized and encourage to quit.

> The effect of the PP&R ["Performance, Planning and Review"] program's arbitrary claim payout targets on operations here in Utah, and particularly the constant pressure to reduce the money paid out on a year-to-year basis, was established by testimony that started with low-level claims adjusters, such as Felix Jensen and Ray Summers, and went up through the ranks of management. The collective picture of operations under the PP&R program presented by this evidence was one of unrelenting pressure to keep down payouts to meet arbitrary claim payment goals. For example, Felix Jensen, a current Utah State Farm employee of more than 30 years, testified as to the "many, many, many times" that high-level claims managers would pressure adjusters to revise downward their evaluation of what should be paid out on claims. Jensen went to top managers and pointed out the "intolerable situation" that was being created for adjusters, who were simply unable to run a property functioning system in which fair value would be paid for claims. Jensen was bluntly instructed to "get out of the kitchen" if he could not stand the heat.
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> * * * *
>
> Samantha Bird, a longtime Utah State Farm claims supervisor, also experienced pressure to reduce payouts to well below fair value as a "recurrent, running theme." She, too, went to high-level management in an attempt to do something about it. Instead of being taken seriously, her complaints led to advice that she should be "more of a team player." Bird was criticized by those higher in the management structure as being the only supervisor who argued against downward claim payout pressures. She endured for years constant criticism of her approach to claims handling. At times even she was forced to commit dishonest acts and to knowingly underpay claims. Bird ultimately tired of being forced to commit dishonest acts and resigned from the company.

Id. at 23-24 (emphasis added).

On the other hand, employees who engaged in dishonest, bad faith acts were encouraged and promoted.

> Finally, the record demonstrates in considerable detail the use by State Farm adjusters of a wide variety of highly unfair and dishonest methods to drive down average payouts on claims, in circumstances that make it clear that the affected consumers are being routinely denied the fair benefits of the relevant insurance policies. Just the testimony of Ray Summers alone (the adjuster who handled the Campbell case and who was a State Farm employee in Utah for almost twenty years) outlined more than a dozen such methods, including the falsifying or withholding of evidence in claim files, one of the fraudulent tactics which was used, at Bill Brown's direction, in handling the Campbell case. 12 Tr. 188. Summers was praised for his effective use of unfair and dishonest claims practices and was encouraged by management to teach them to others. His supervisor told current long-term State Farm employee, Marilyn Poulson, who questioned the honesty of the practice, that Summers' falsification of documents was "good business, it helped to settle claims." 13 Tr. 162-63.

Id. at 25.

The Campbell court also found that State Farm trained its employees to avoid disclosure and detection of State Farm's bad faith conduct.

> The record also contains ample evidence that, throughout at least the past two decades, State Farm has resorted to a variety of wrongful means to attempt to evade detection of, and liability for, its unlawful profit scheme. Using these tactics, State Farm has managed to construct a nearly impenetrable wall of defense against punishment for its wrongdoing, one so effective that it is able to pressure its adjusters to deny consumers insurance benefits with impunity, knowing: (1) that

few of its victims will even realize that they have been wronged; (2) that fewer still will ever be able to sue; (3) that only a small fraction of those who do sue will be able to weather the years of litigation needed to reach trial; and (4) that any victims who do actually reach trial will have great difficulty establishing the basis for punitive damages when met with claims that only an "honest mistake" was made, supported by a body of evidence that has been systematically sanitized, padded, purged, concealed, destroyed or rehearsed.

* * * *

The record indicates that these evasion tactics are so successful that State Farms trains its employees to ignore the threat of punitive damages in making their claim-handling decisions. State Farm has relied on five principal evasion tactics, each of which is reprehensible.

a. Systematic targeting of vulnerable and defenseless consumers.

* * * *

b. Systematic destruction of documents, requested in litigation, that reveal the profit scheme.

* * * *

c. Systematic manipulation of individual claim files to conceal claim mishandling.

* * * *

d. Systematic manipulation of testimony by employees.

* * * *

e. Systematic efforts to intimidate opposing claimants, witnesses and attorneys.

Id. at 26-33.

State Farm's bad faith in Campbell was not an isolated incident by a rogue claims handler. Rather, it was the outgrowth of systematic corporate practices designed to increase State Farm's bank account at the expense of its policyholders.

> State Farm's main response to the Campbells' explanation of how the Campbell bad-faith claim handling was, in fact, an application of State Farm's unlawful profit scheme, is to call this an "irrational thesis," stating that it does not explain "why State Farm would adopt a corporate policy of wasting money by trying no-brainer cases." State Farm Surreply Brief at 28-29. Again, however, the essence of State Farm's claims-handling profit scheme was its disciplined insistence on having claims adjusters and employees work on a systematized basis to meet arbitrary, present targets, one year at a time -- and then, if that strategy yields an occasional setback threatening to take money out of the corporate coffers (through a lawsuit alleging bad faith), relying on a panoply of techniques for bullying the complaining victim into backing down rather than doing to State Farm what apparently only the Campbells, in the history of bad-faith litigation against State Farm, have managed to do: get to a jury on a punitive damages claim, armed with a reasonably complete factual record concerning the nature of State Farm's unlawful policies and practices.

Id. at 40.

In Robinson, the court, on post-trial motions upheld the jury's award of $9.5 million in punitive damages for State Farm's bad faith conduct. In

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Robinson, as in this case, State Farm utilized a bogus review company to review insurance claims:

> I find that the evidence was clear and overwhelming that State Farm, beginning with its claims adjuster and running up through its management, participated in the egregious process of manufacturing fictitious reports and obtaining biased opinions under the guise of obtaining independent and objective medical reviews. State Farm knew these evaluation processes were tainted and not objective. The only conclusion to be drawn from this was that State Farm intended by these processes to reduce the amount of money it would have to pay on legitimate claims submitted by the insureds. This clearly was in deliberate disregard for the interests of its insureds, and in deliberate disregard for their expectations under their insurance policies. One buys and pays for first party insurance protection to avoid the very series of hassles and confrontations that State Farm put its insured through in this case. State Farm cannot be said to claim that it was unaware of the consequences of its actions would have upon its insureds.
>
> I do not mean to suggest that this conduct is the only conduct which merits an award of punitive damages. The overall handling of this claim by the line adjuster, under the direction of the local supervisor, was replete with instances of oppressive conduct. While these circumstances, which are enumerated in plaintiff's brief, are sufficient to justify an award of punitive damage, it is the actions of the defendant at the corporate level in creating the machinery to deliberately drive benefit payments down through the use of the bogus evaluations from biased independent review entities and partisan physicians, and in specifically directly the training of its claims adjusters toward this end which, to my mind, is the egregious conduct which transcends the level of damage which might be assigned to the conduct of the individual claims adjuster and his local office, and justifies an award intended to reach the home office.

> Based on my own assessment of the evidence, I conclude that punitive damages were fully warranted in this case. Further, I conclude that the practice of encouraging and permitting the use of fictitious or slanted medical reports, under the guise that such constituted and could be presented to their insureds as independent and objective medical reviews, was, and is, a reprehensible practice, justifying substantial punitive damages intended to reach the top level of management.
>
> The jury award of $9.5 million in punitive damages appears, on first impression, to be exorbitantly high. However, after examination of the award against the principles of law under which punitive damages are to be awarded and measured, I conclude the award is not excessive.

Robinson, slip op. at 16-17 (emphasis added).

In Taylor, the California Court of Appeals addressed whether a declaration by a former State Farm employee (Amy Girod Zuniga) fell within the crime/fraud exception to the attorney-client privilege. In concluding that the crime/fraud exception had been met and permitting disclosure of even privileged portions of the Zuniga Declaration, the Taylor Court discussed, in detail, the allegations of State Farm's bad faith conduct:

> Turning now to the declarations of Ms. Zuniga, we set out verbatim paragraphs 3 through 5. "3. . . ., I am aware that there were many other State Farm claims arising out of the Northridge earthquake like the Taylors' involving unauthorized signatures by State Farm agents or agency employees on applications omitting earthquake coverage. At the time of the Taylor claim, the Company was well aware that this was a problem. As a matter of practice, the Company would pay these claims, if it believed that the forgery issue would be brought to light and proven by the insured. Because of the

forgery issue in the Taylor case, if the case was not dismissed on summary judgment, it was my impression that the claim was going to be reconsidered. However, we were waiting to see if we could save money on the Taylor claim by having summary judgment granted, and as part of that plan I was instructed not to provide certain relevant information at my depositions. [P] 4. Specifically, my supervisor in the SAC unit, Vanessa Gudelj, and her supervisor, John Poptanich, put pressure on me to withhold the existence of documents memorializing certain State Farm claims handling guidelines from plaintiffs' counsel Bernie Bernheim at my deposition, which they believed, if revealed, would defeat summary judgment and ultimately lead to payment of the Taylors' claim. They pressured me into not revealing the existence of claims handling documents which established guidelines under which claims like the Taylors were to be handled. These included a three ring binder called 'CATHR Management Information and Memos Manual' used and maintained by Claim Superintendent Tinga Nicholson who was the Claim Superintendent that denied the Taylors' claim. It was responsive to the Taylors' discovery request and we simply chose not to produce it. Similarly, Ms. Nicholson had prepared a breakdown of earthquake claims in her unit . . . by category of claim, and one of the categories was 'unauthorized signatures.' This document showed the percentage of total earthquake claims which involved unauthorized signatures. This document, too, was never produced. [P] 5. The Taylors' claim was denied by personnel working in the so-called 'Special Handling Unit.' In addition to the claims handling documents mentioned above, we never produced to Mr. Bernheim a document memorializing a SHU meeting at which the subject of unauthorized signatures on applications omitting earthquake insurance was discussed."

Those portions of the September 25 declaration, which are not privileged, contain similar accusations by Ms. Zuniga. She identifies an "Administrative Services" manual for the AIM system which was responsive to real parties request for production but which was not produced. She identifies information which she claims contradicts statements made by

> Charles Hook in his declaration in support of the motion for summary judgment. She declares that she was involved in a conversation with "one of the Company's senior executives" in which he advised "that State Farm witnesses should not admit that forgeries happen, unless and until they are compelled to do so by Court order." In the same conversation he also advised that "we have to decide how to tell our story should the Company be compelled to admit that it has knowledge of the 'unauthorized signatures.' He said we should try to make this practice look like a 'service.'" She states that she was aware of the existence of a number of documents "pertaining to the Company's practices and procedures regarding signatures and the taking of applications by agents which were never produced to plaintiffs in the Taylor case." She also declares that State Farm prepares witnesses "on how to give up as little information as possible at deposition." n.5 But for trial, the witnesses "were trained to appear helpful and polite, and to drop the evasive tactics used to keep information from being disclosed at deposition."

Taylor, 54 Cal. App. 4th at 647-49 (footnote omitted) (emphasis added).

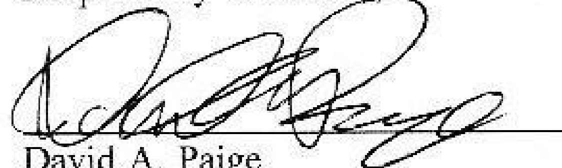
The Campbell, Robinson and Taylor cases make clear that State Farm both encourages bad faith conduct by its employees and threatens their continued employment if they resist. Because insurance company bad faith is inimical to the public interest, insurance company employees must be encouraged to resist and disclose such bad faith conduct. To that end, this Court must declare unequivocally that the termination of an insurance company employee for his or her refusal to engage in bad faith conduct contravenes a clear mandate of public policy and subjects the insurance company employer to liability in tort for wrongful discharge.

IV. Conclusion

For all of the reasons discussed herein, amicus curiae United Policyholders respectfully requests this Court to reverse the judgment entered by the district court and to declare that the termination, by an insurance company, of an employee who refuses to participate in or to conceal bad faith conduct contravenes a clear mandate of public policy which subjects the insurance company to liability in tort for wrongful discharge.

Dated: February 5, 1999

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Brief Of Amicus Curiae United Policyholders and accompanying Appendix were served this date, via first class mail, postage prepaid, on counsel listed below:

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