



# Trial Lawyers for Public Justice

## PRESS RELEASE

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## TLPJ AND CONSUMER GROUPS SEEK PUBLIC ACCESS TO COURT RECORDS SHOWING INSURERS' INCENTIVES TO CHEAT POLICYHOLDERS

### Jury Issued \$17 Million Bad Faith Verdict, But Key Evidence Is Sealed

Trial Lawyers for Public Justice (TLPJ) and a coalition of consumer groups are seeking public access to evidence of a secret agreement between two insurance companies – General American Life Insurance Company (GALIC) and Paul Revere – that contains significant financial incentives to terminate policyholders' benefits nationwide without justification. The evidence helped prompt a \$17 million punitive damage verdict and a subsequent settlement in *McKendry v. General American Life Insurance Company, et al.* The key trial testimony and exhibits, however, remain under seal in federal district court in Phoenix.

“The public has the right to know the details of the agreement between these insurance companies, which could be affecting thousands of policyholders nationwide,” said TLPJ Staff Attorney Rebecca E. Epstein. “The sealed testimony and trial exhibits apparently reflect the scope, strategy, and profit incentive for a spectacular swindle. The public needs to know the truth and the policyholders need to be protected.”

“We believe this critical evidence of insurance company misconduct should be unsealed,” said TLPJ co-counsel Stanley J. Marks of Begam, Lewis, Marks & Wolfe in Phoenix. “The Court never made any factual finding that secrecy was required and the insurers never submitted any evidence that there was a legitimate basis for keeping this incriminating evidence hidden from policyholders and the public.”

TLPJ moved to intervene and unseal the court records in *McKendry* on March 29 on behalf of three public interest groups: Consumer Action, a nonprofit, consumer advocacy organization that works to protect individuals from insurance bad faith and other deceptive practices; the Insurance Company Accountability Network, which seeks to eliminate abusive and unfair practices within the insurance industry; and United Policyholders, a nonprofit organization dedicated to educating the public on insurance issues and consumer rights.

The conflict that led to the lawsuit began when Steven McKendry, a GALIC policyholder, filed a claim for partial disability benefits in April 1988. GALIC began paying McKendry monthly benefits under the policy, but, concerned about its financial stability, the company tried to “buy

out” its more expensive policies by offering policyholders a flat sum to relinquish their rights to benefits. On the advice of the agent who sold him the policy, McKendry refused GALIC’s offer to buy out his policy for \$200,000. After he refused a second offer, the company subjected him to three independent medical examinations (IME’s). Evidence introduced at trial showed that the company was searching for a basis on which to deny his coverage. But the three IME’s, McKendry’s doctor, and GALIC’s medical consultant all supported his disability claim, along with a GALIC investigator, who interviewed McKendry’s supervisor and met with McKendry.

Meanwhile, GALIC asked another insurance company, Revere, for assistance in increasing its profits. A Revere employee later testified that one way to improve profits was to re-evaluate policyholders’ claims and terminate their benefits. GALIC authorized Revere in May 1994 to administer its disability claims, including McKendry’s. At that time, GALIC was paying McKendry monthly benefits of \$5,000. Revere’s medical director reviewed McKendry’s file and wrote, “I think it’s time to take a different path.” Revere then subjected McKendry to a fourth IME – this time, with a neuropsychiatrist, who would look for evidence of “fictitious malingering.” The fourth IME failed to find such evidence. However, the neuropsychiatrist found that McKendry was managing to function at work. On that basis alone, McKendry’s payments were terminated.

In 1999, the jury returned a verdict in McKendry’s favor, awarding him \$350,000 for past benefits and mental and emotional distress, plus \$17 million in punitive damages. The case later settled for an undisclosed amount.

“A jury considered the evidence and expert testimony, and found GALIC and Revere terminated Mr. McKendry’s claim in bad faith, solely to boost profits,” said TLPJ Staff Attorney Leslie Brueckner. “This kind of outrageous conduct will continue unless it is exposed. That’s why public access to this information is so important.”

TLPJ’s challenge in *McKendry* is part of Project ACCESS, TLPJ’s nationwide campaign against unnecessary court secrecy. Through Project ACCESS, TLPJ helps victims oppose unduly restrictive protective orders, intervenes in specific cases to fight for the public’s right to know, and educates courts and the public about the problems posed by litigation in secret. In addition to Marks, Epstein, and Brueckner, TLPJ’s legal team also includes Richard Traulsen of Begam, Lewis, Marks & Wolfe.

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**Trial Lawyers for Public Justice is the only national public interest law firm dedicated to using trial lawyers’ skills and resources to advance the public good. Founded in 1982, TLPJ utilizes a nationwide network of more than 2,400 outstanding trial lawyers to pursue precedent-setting and socially significant litigation. It has a wide-ranging litigation docket in the areas of consumer rights, environmental protection, toxic torts, worker safety, civil rights and liberties, and access to the courts. TLPJ is the principal project of The TLPJ Foundation, a not-for-profit membership organization. It has offices in Washington, DC, and Oakland, CA. TLPJ’s State Coordinator for Arizona is Stanley J. Marks, 602-254-6071.**