

Case No. 12-14794-FF

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

GARDITH S. LEMY, et al., etc.,

Plaintiffs-Appellants,

v.

DIRECT GENERAL FINANCE
COMPANY, et al.,

Defendants-Appellees.

**Appeal from the United States District Court
for the Middle District of Florida**

MOTION FOR LEAVE TO FILE AMICUS BRIEF

UNITEDPOLICYOLDERS MOTION TO FILE AMICUS BRIEF

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Federal Rule of Appellate Procedure 29 and Rule 29-1 of the Eleventh Circuit Rules, United Policyholders move this Court for leave to file an amicus brief in support of rehearing so that it can provide the Court with the voice of Florida insureds with respect to the importance of this issue and how the Defendants in this case are in violation of Florida Public Policy with respect to the sale of the insurance policies in question. Amicus also requests that if the Panel does not decide to grant rehearing that it Certify a Question of Great Public Importance to the Florida Supreme Court to determine matters of Florida State Law.

INTEREST OF UNITED POLICYHOLDERS

United Policyholders, ("UP") is a non-profit 501(c) (3) organization founded in 1991 that is an information resource and a voice for insurance consumers in Florida and throughout the United States. The organization assists and informs disaster victims and individual and commercial policyholders with regard to every type of insurance product. Grants, donations and volunteers support our work. UP does not accept funding from insurance companies.

UP has been active in Florida since Hurricane Andrew in 1992. We work with the Insurance Commissioner Kevin McCarty and the Office of Insurance Regulation, other non-profits and individual home and business owners. We are

involved in projects related to property insurance availability, depopulating Citizens, promoting disaster preparedness and mitigation and educating and assisting consumers navigating claims.

UP has filed over two hundred and thirty-five *amicus* briefs, since it was founded, in state and federal appellate courts throughout the United States. The organization has participated by court invitation in briefing and oral argument, and many arguments from UP's *amicus curiae* briefs have been cited with approval by reviewing courts. UP's *amicus* brief was cited in the U.S. Supreme Court's opinion in *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999).

UP 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). UP hopes to provide assistance in analyzing the issues in this case and their public policy implications in a way that compliments the arguments raised by counsel for the parties to this appeal.

The matters addressed by the Panel in its initial opinion, in UP's opinion, is an over expansive reading of *QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc.*, 94 So.3d 541 (Fla. 2012), and is contrary to the holdings in two separate Florida Supreme Court decisions *Foundation Health v. Westside EKG Associates*, 944 So.2d 188, 194 (Fla. 2006) and *Town of Boca Raton v. Raulerson*, 146 So. 576

(Fla. 1933). Additionally, the Panel's opinion fails to address, *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246 (11th Cir. 2003), a prior published opinion by this Court, which permits an insured to assert that the sale of an insurance policy in violation of the Florida Insurance Code gives rise to a restitution action.

WHY AN AMICUS BRIEF IS DESIRABLE AND WHY THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE

One of the benefits of a permissive policy toward allowing amicus briefs, which is applicable to this situation, is to aid the court in understanding any broader ramifications of a specific decision, particularly where the decision affects an entire industry, or the public at large. *See* Michael E. Tigar & Jane B. Tigar, *Federal Appeals Jurisdiction & Practice* § 2:20 (3d ed. 1999) (“Amici can sometimes address the implications of a particular rule, ... in a broader context than the advocate for a party”); *Worthen Bank & Trust Co. v. National BankAmericard Inc.*, 485 F.2d 119, 120 n.2 (8th Cir. 1973) (inviting amicus submission because it was “apparent that any decision in this case would affect the bank credit card industry generally” and “the importance of the bank credit card industry to the general public was undisputed”).

United Policyholders, in its brief, discusses the wide-spread implications of the Panel's opinion and how a broad reading of the *Chalfonte*, opinion will affect all insurance policyholders in the State of Florida. The brief also discusses how dismissal of the types of claims asserted by Plaintiffs in this case will give

incentive to insurance companies to sell their products in the surplus lines market and essentially evade Florida's strong public policy to protect the general welfare of its citizens by regulating the sale of insurance by prohibiting excessive premiums and the sale of insurance through unauthorized insurance companies.

WHEREFORE, United Policyholders move this Court for entry of an order granting leave to file an amicus brief in support of Rehearing in this matter.

**CORPORATE DISCLOSURE STATEMENT AND
CERTIFICATE OF INTERESTED PERSONS**

In compliance with Local Rule 26.1-1, the undersigned certifies that the following is a complete list of all trial judge(s), attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case or appeal, and includes subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

1. Bajo Cuva Cohen Turkel, P.A. – law firm for Plaintiffs-Appellants
2. Brewer, Courtney – attorney for Plaintiffs-Appellants
3. Caldevilla, David M. – attorney for Plaintiffs-Appellants
4. Certain Underwriters at Lloyd's, London – Defendant-Appellee
5. Clark & Martino, P.A. – law firm for Plaintiffs-Appellants

6. Clark, J. Daniel – attorney for Plaintiffs-Appellants
7. Conroy, Simberg, Ganon, Krevans, Abel, Lurvey, Morrow & Schefer, P.A. – law firm for Defendant-Appellee Nation Safe Drivers, Inc.
8. Crist, Matthew A. – attorney for Plaintiffs-Appellants
9. David J. Sales P.A. – law firm for Plaintiffs-Appellants
10. Davis, Richard – attorney for Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
11. De La Parte & Gilbert, P.A. – law firm for Plaintiffs-Appellants
12. Direct Adjusting Company, Inc. – affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
13. Direct Administration, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
14. Direct Bay, LLC - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.

15. Direct Brevard, LLC - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
16. Direct General Agency of Georgia, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
17. Direct General Agency of Kentucky, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
18. Direct General Consumer Products, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
19. Direct General Corporation – parent company of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
20. Direct General Financial Services, Inc. (referred to in caption as Direct General Finance Company) – Defendant-Appellee
21. Direct General Insurance Agency, Inc. – Defendant-Appellee

22. Direct General Insurance Agency of Louisiana, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
23. Direct General Insurance Agency of North Carolina, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
24. Direct General Insurance Agency of South Carolina, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
25. Direct General Agency of Tennessee, Inc. - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
26. Direct General Insurance Company – Defendant-Appellee
27. Direct General Insurance Company of Louisiana - affiliate of Defendants-Appellees Direct General Insurance Company, Direct

General Insurance Agency, Inc., and Direct General Financial Services, Inc.

28. Direct General Insurance Company of Mississippi - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
29. Direct General Life Insurance Company - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
30. Direct General Premium Finance Company - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
31. Direct Insurance Company - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
32. Direct Life Insurance Company - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.

33. Direct National Insurance Company - affiliate of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
34. Elara Holdings, Inc. – parent corporation of Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
35. Foley & Lardner, LLP – former law firm for Defendants-Appellees Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
36. Goodis, Jeffrey M. – attorney for Defendants-Appellees Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
37. Greco, Jr., Dick – County Court Judge, Thirteenth Judicial Circuit of Florida
38. Grilli, Peter John – mediator at Middle District of Florida
39. Harper, C. David – attorney for Defendant-Appellee Direct General Financial Services, Inc.

40. Hassett, Lewis E. – attorney for Defendants-Appellees Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
41. Hill, Marilyn – Plaintiff-Appellant
42. Kalmanson, Mitchel – Defendant-Appellee
43. Kise, Christopher M. – former attorney for Defendant-Appellee Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
44. Kunin, Lawrence H. – attorney for Defendants-Appellees Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
45. Lemy, Gardith S. – Plaintiff-Appellant
46. Lester Kalmanson Agency, Inc. – Defendant-Appellee
47. Levy, Brian J. – attorney for Defendants-Appellees Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
48. McGuinn, Kerry C., Jr. – attorney for Plaintiffs-Appellants


49. McKee, James A. – former attorney for Defendant-Appellee Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
50. McLean, Patricia A. – attorney for Defendants-Appellees Certain Underwriters at Lloyd’s, London, National Insurance Underwriters, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Nation Safe Drivers, LLC, NSD Group, LLC, Lester Kalmanson Agency, Inc., and Mitchel Kalmanson
51. Merryday, Steven D. – District Judge, Middle District of Florida
52. Mills, John S. – attorney for Plaintiffs-Appellants
53. Morris, Manning & Martin, LLP – law firm for Defendants-Appellees Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
54. Mullen, John D. – attorney for Defendants-Appellees Certain Underwriters at Lloyd’s, London, National Insurance Underwriters, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Nation Safe Drivers, LLC, NSD Group, LLC, Lester Kalmanson Agency, Inc., and Mitchel Kalmanson
55. Nation Motor Club, Inc. – Defendant-Appellee

56. Nation Safe Drivers, LLC – Defendant-Appellee
57. National Adjustment Bureau, Inc. – Defendant-Appellee
58. National Insurance Underwriters, Inc. – Defendant-Appellee
59. NSD Group, LLC – Defendant-Appellee
60. Peter J. Grilli, P.A. – professional association of mediator at Middle District of Florida
61. Phelps Dunbar, LLP – law firm for Defendants-Appellees Certain Underwriters at Lloyd’s, London, National Insurance Underwriters, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Nation Safe Drivers, LLC, NSD Group, LLC, Lester Kalmanson Agency, Inc., and Mitchel Kalmanson
62. Porcelli, Anthony E. – Magistrate Judge, Middle District of Florida
63. Putative class of all similarly situated Florida citizens who purchased the Vehicle Protection Insurance from Defendants on or after December 2, 2004
64. Ramirez, Christina K. – attorney for Plaintiffs-Appellants
65. Remington, Bridget – former attorney for Defendants-Appellees Certain Underwriters at Lloyd’s, London, National Insurance

Underwriters, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Nation Safe Drivers, LLC, NSD Group, LLC, Lester Kalmanson Agency, Inc., and Mitchel Kalmanson

66. Right Choice Insurance Agency, Inc. – affiliate of Direct General Insurance Company, Direct General Insurance Agency, Inc., and Direct General Financial Services, Inc.
67. Rywant, Alvarez, Jones, Russo & Guyton, P.A. – law firm for Plaintiffs-Appellants
68. Sales, David Joseph – attorney for Plaintiffs-Appellants
69. Sisco, Michelle D. – Circuit Court Judge, Thirteenth Judicial Circuit of Florida
70. Stevens, John S. – attorney for Defendant-Appellee Nation Safe Drivers, Inc.
71. The Mills Firm, P.A. – law firm for Plaintiffs-Appellants
72. Thompson, Goodis, Thompson, Groseclose & Richardson, P.A. – law firm for Defendants-Appellees Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
73. Turkel, Kenneth George – attorney for Plaintiffs-Appellants

74. Van Schoyck, Sarah B. – attorney for Defendants-Appellees Certain Underwriters at Lloyd’s, London, National Insurance Underwriters, Inc., National Adjustment Bureau, Inc., Nation Motor Club, Inc., Nation Safe Drivers, LLC, NSD Group, LLC, Lester Kalmanson Agency, Inc., and Mitchel Kalmanson
75. Vitale, J. Ben – attorney for Defendants-Appellees Direct General Financial Services, Inc., Direct General Insurance Company, and Direct General Insurance Agency, Inc.
76. Zebersky, Edward H. – attorney for Plaintiffs-Appellants
77. Zebersky Payne, LLP – law firm for Plaintiffs-Appellants

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by email, pursuant to the written consent of counsel for Appellees, this 10th day of April, 2014, to:

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