IN THE SUPREME COURT

STATE OF ARIZONA

GEORGE NORMAN, an Individual, Plaintiff-Appellant-Petitioner, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign Corporation, Defendants-Appellee,	No. CV-01-0454-PR Court of Appeals No. 1 CA-CV 01-0105 MARICOPA County Superior Court No. CV1999-07660

AMICUS CURIAE BRIEF OF UNITED POLICYHOLDERS RE PETITION FOR REVIEW

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I. INTEREST OF AMICUS RESTATED.

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

UP serves as a resource for insurance claimants and actively monitors legal and marketplace developments affecting the interests of all policyholders. UP 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 policyholders throughout the United States communicate on a regular basis with UP, which allows us to provide important and topical information to courts throughout the country via the submission of *amicus curiae* briefs in cases involving insurance principles that are likely to impact large segments of the public.

UP's *amicus* brief was cited in the U.S. Supreme Court's opinion in *Humana v. Forsyth*, 525 U.S. 299 (1999), and our arguments were adopted by the California Supreme Court in *Vandenberg v. Sup. Ct.* 21 Cal.4th 815 (1999). UP has filed *amicus* briefs on behalf of policyholders in over ninety cases throughout the United States.

UP has an interest in filing an Amicus Brief with respect to the Opinion of a Panel of the Court of Appeals in *Norman v. State Farm*, 33 P.3d 530, 2001 Ariz. App. LEXIS 157, 359 Ariz. Adv. Rep. 21 (Ariz.App. 2001), because the Panel's Opinion significantly erodes protection of Arizona auto insureds, and all drivers in Arizona, by, in essence, negating the statutory requirement that insurers provide final notice that auto coverage has cancelled. That result threatens to increase the number of drivers on the road who are unwittingly driving without auto liability coverage, and the number of injured auto accident victims who are unable to obtain compensation. Accordingly, UP files this Brief in hopes of

protecting directly the statutory rights of auto liability policyholders to clear and final notice of cancellation of coverage, and indirectly, the interests of all other insureds on the road who may become injured victims needing to seek compensation from such coverage.

II. INTRODUCTION

It is a time-honored truism that bad facts make for bad law. It could certainly be argued that that is what occurred in the present case. Apparently swayed by Plaintiff-Appellant-Petitioner's lackadaisical effort to pay his insurance premiums on time, followed by his lack of responsibility in paying with a check that bounced, and then failing to correct the error by making good on the amount of his check at any time before an accident, the Court of Appeals upheld State Farm's cancellation of auto coverage despite State Farm's clear failure to satisfy the requirements of Arizona's auto insurance cancellation provision, A.R.S. § 20-1632.01, mandating written notice of cancellation "effective on the date the notice is mailed to the policyholder." In the process, the Court of Appeals has seriously undermined not only the clear language of A.R.S. § 20-1632.01, but also the protection to insureds it was intended to provide.

The purpose of the Amicus in this Brief is not to defend George Norman or his failure to make timely payment of his auto insurance coverage. It is, however,

to point out that A.R.S. § 20-1632.01 is an important remedial statute, passed in order to provide crucial notice to Arizona drivers if and when their auto insurance has actually been cancelled and is no longer in existence. By essentially "gutting" the notice requirement of A.R.S. § 20-1632.01 in order to uphold State Farm's cancellation in this case, the Court Of Appeals has put in jeopardy the legitimate interest of all Arizona auto insureds, and has negated protection to those insureds and the driving public in general which the Statute was intended by the legislature to provide. For that reason, Amicus requests that this Court reverse the Court of Appeals, or, at a minimum, depublish its Opinion.

III. ENFORCEMENT OF THE CLEAR LANGUAGE OF A.R.S. § 20-1632.01 PROVIDES AN ESSENTIAL LAYER OF PROTECTION TO ARIZONA INSUREDS AND THE DRIVING PUBLIC, WHICH THE COURT OF APPEALS' OPINION DESTROYS.

It is a reality of modern life that not everyone pays their bills on time, and that includes insurance premiums. The reasons range from lost mail and misplaced premium notices, through temporary lack of funds and over-extended finances, all the way to simple procrastination. An insurance company cannot be expected to extend coverage without payment, and for that reason policies and state statutes provide for cancellation for non-payment of premiums.

It is also true, however, that cancellation of auto liability coverage can have a dramatic effect not only on the uninsured driver, but on other members of the

driving public who become injured victims of his or her tortious driving conduct. Arizona, like other states, has recognized the importance to its driving citizens of widespread liability coverage, as evidenced by mandatory financial responsibility laws governing the privilege of driving in Arizona.

That concern is served best by making sure that drivers who have lost their liability coverage receive unequivocal notice of that fact. Clear notice of the stark fact that coverage has been cancelled is the one thing most likely to spur a delinquent driver into either obtaining replacement coverage, or avoiding driving until new insurance is obtained.

A.R.S. § 20-1632.01 was written to accomplish that purpose by directing insurers to provide written notice of cancellation "**effective on the date the notice is mailed to the policyholder**." What the statute requires is not merely a threat of future cancellation, but actual notice that cancellation has occurred. The difference is that actual notice of cancellation leaves no room for doubt in the policyholder's mind, and no room for procrastination. The delinquent driver is informed in the most simple terms that coverage has cancelled, and that he or she needs to immediately obtain replacement coverage or not drive.

A.R.S. § 20-1632.01 is a remedial statute, designed by the legislature to address a very real and serious problem. As such, it should be enforced according

to its clear terms. In order to uphold State Farm's cancellation of coverage in the present case, however, the Court of Appeals' Opinion was forced to remove all teeth from the statute, holding that its requirement of final notice of cancellation was simply "permissive," and holding that an insurer's threat of future cancellation was sufficient as long as the threat "unequivocally expresses the insurance company's intention to cancel. . . ." (¶ 17 of Opinion)

In effect, the Court of Appeals has re-written the requirements of A.R.S. § 20-1632.01 out of existence. For the reasons discussed above, expression of an "intention" to cancel is simply not the same thing as notice of an actual cancellation which has already occurred. It neither serves the same purpose of finality and an end to false hope and procrastination, nor does it provide the delinquent driver with the same warning that he is driving without liability coverage and needs to immediately obtain replacement insurance.

As noted above, it is not the purpose of this Amicus Brief to argue whether or not upholding the cancellation of Plaintiff-Appellant-Petitioner in this case was justified, but rather to emphasize that accomplishing that result by stripping A.R.S. § 20-1632.01 of any remedial effect has done a disservice not only to other insureds who are late in paying their auto premium, but also to the Arizona

driving public at large. The Opinion does so by thwarting the clear intention of the Arizona legislature which enacted the statute.

IV. STRICT ENFORCEMENT OF A.R.S. § 20-1632.01 DOES NOT PRECLUDE ADVANCE NOTICE OF CANCELLATION BY THE INSURER.

The Court of Appeals mistakenly concludes that enforcing the statute by its clear terms would offer "no option to the insurer for leniency toward its policyholder by extending termination to a later date." (¶ 10 Opinion) The Court of Appeals then mistakenly concludes that interpreting the statute to be merely "permissive" somehow "encourages a company to give a helping hand to its policyholder while at the same time continuing coverage during the pending cancellation period, thereby affording protection to the public that would otherwise not exist if cancellation upon mailing were the only option."

The Court of Appeals' reasoning sets up a false choice. There is nothing inherent in the strict enforcement of the cancellation statute which would preclude an insurance company from providing an insured with advance warning of intended cancellation. In fact, most auto insurance policies' cancellation provisions require it. It only makes good sense, as insurance companies have an interest in keeping customers, and warning customers in advance that they must

pay their overdue premiums is the procedure most likely to retain delinquent insureds and return them to the fold of paying customers.

A.R.S. § 20-1632.01 does not in any way preclude or discourage such warnings. What it does require is that after such warnings and threats have failed, the insurer bring finality to the situation by informing its customer, effective upon the date of mailing, that coverage has indeed cancelled. Only by doing so is the remedial purpose of the statute to provide unequivocal notice to the insured, not of threats, but of actual cancellation, satisfied.

Insurers are easily capable of accommodating both advance warning and notice of actual cancellation as required by the statute. *See, for example,* the form cancellation documents used by a small insurer in California to conform with Arizona statutes, attached as Exhibits A and B to this Brief. (The insured's name and address have been deleted for privacy purposes.) Those two documents provide first, a clear example of an insurer providing an advance warning and reminder of the danger of future cancellation after the grace period, and, second, a separate form to comply with A.R.S. § 20-1632.01 sent later to inform the insured that "your insurance has been cancelled" as of the date of the letter. It is that second notice, required by the statute, which State Farm failed to send in the

present case, and apparently fails to send as a matter of practice. Such practice violates the clear language of the statute.

V. CONCLUSION.

The Court of Appeals' Opinion renders the remedial automobile insurance cancellation statute meaningless. In striving to uphold the cancellation of coverage for Plaintiff-Appellant-Petitioner, the Opinion ignores clear and explicit statutory language and eviscerates any remedial purpose contained in the statute. If cited as authority in the trial courts of this state, the Opinion will allow insurers in the future to ignore the requirements of A.R.S. § 20-1632.01, and to fail to provide Arizona insureds with the minimal, but clear, notice that their coverage has been cancelled.

Amicus asks, on behalf of auto insurance consumers in Arizona and members of the driving public, that this Court reverse the Opinion and uphold the requirements and purpose of A.R.S. § 20-1632.01. If this Court concludes that the facts of the present case do not merit reversal or a published analysis of the statute, then Amicus requests that the present Opinion be depublished since it provides questionable, and dangerous precedent to trial courts in other cancellation cases, and to insurers writing coverage in the state of Arizona.

Respectfully submitted: _____

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 14(b), I certify that the attached brief:

Uses proportionately spaced type of 14 points or more, is double spaced using a roman font and contains 1,895 words.

By _____
Attorneys for *Amicus Curiae* UP

CERTIFICATE OF MAILING/DELIVERY

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Phoenix, Arizona 85007

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