

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DOLORES PAYTON, as administratrix of the :
ESTATE OF ROBERT PAYTON, :

Index No. 99/100440

Plaintiff, :

- against - :

AETNA/US HEALTHCARE, :

ROBERT ROY, M.D., MEDICAL DIRECTOR OF :
AETNA/US HEALTHCARE, :

MARTIN KODISH, M.D., MEDICAL DIRECTOR OF :
AETNA/US HEALTHCARE, :

Defendants. :
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BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS
IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANTS'
MOTION TO DISMISS AND IN OPPOSITION TO
THE DEFENDANTS' MOTION TO DISMISS

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INTEREST OF AMICUS CURIAE

United Policyholders is a non-profit educational corporation dedicated to educating policyholders on their rights and duties under their insurance policies. Specifically, United Policyholders engages in charitable and educational activities by promoting greater public understanding of insurance issues and policyholder rights. United Policyholders's activities include organizing meetings, distributing written materials, and responding to requests for information from individuals, elected officials, and governmental entities. These activities are limited only to the extent that United Policyholders exists exclusively on donated labor and contributions of services and funds.

Amicus curiae have a vital interest in seeing that the standard form insurance policies sold to countless policyholders are interpreted properly and consistently by insurance companies and the courts. As a public interest organization, United Policyholders seeks to assist and to educate the public and the courts on policyholders' insurance rights and their efforts to have them enforced consistently throughout the country.

SUMMARY OF ARGUMENT

This amicus brief will cover the following issues¹:

1. The motion to dismiss should be denied (Point I);
2. Breaches of claims handling obligations (Point II);

1. All documents are available upon request of the parties or the Court from United Policyholders' counsel, Eugene R. Anderson of Anderson Kill & Olick, P.C., 1251 Avenue of the Americas, New York, NY 10020, (212) 278-1751.

3. Breaches of medical ethics (Point III);
4. Breaches of insurance ethics (Point IV)
5. Duty to Disclose Insurance Coverage (Point V)
6. Insurance is a product (Point VI);
7. The insurance company is a fiduciary (Point VII);
8. Insurance is in the public interest (Point VIII);
and;
9. Duty of good faith is continuing (Point IX).

STATEMENT OF THE CASE

United Policyholders accepts the facts stated in the complaint.

ARGUMENT

POINT I.

AETNA/U.S. HEALTHCARE MOTION TO DISMISS SHOULD BE DENIED

The Court should not accept Aetna/U.S. Healthcare's mischaracterization of plaintiff's claims and should not dismiss the complaint.

POINT II.

AETNA/U.S. HEALTHCARE HAS BREACHED
STANDARD CLAIMS HANDLING OBLIGATIONS

There are normal, usual, ordinary rules for proper insurance claims handling. Some of the sources of these standard, universally accepted claims handling rules are:

- a. New York Unfair Claim Settlement Practices, 26 Insurance Law § 2601 (1998);
- b. New York Unfair Claims Settlement Practices and Claim Cost Control Measures, 11 NYCRR § 216.0 (1998);
- c. Standard college level insurance textbooks teaching claims handling; and