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April 20, 2005

VIA NEXT DAY AIR
Chief Justice Ronald M. George and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-3600

Re: *Penn-America Ins. v. Mike's Tailoring*, S131639; Amicus support for Review [CRC, Rule 28(g)]

Dear Chief Justice George and Associate Justices:

On behalf of United Policyholders ("UP"), we respectfully request that this Court grant review in this matter in order to clarify the California doctrine of concurrent causation in first party property losses and settle an important question of law.

UP was founded in 1991 as a non-profit organization dedicated to educating the public on insurance issues and consumer rights. UP is funded by donations and grants from individuals, businesses, and foundations. UP serves as a non-commercial resource on insurance coverage and claims by monitoring legal and marketplace developments in insurance and by publishing materials that give practical guidance to policyholders.

The Petition for Review raises important questions of law with respect to the doctrine of concurrent causation in an area of particular concern to insurers and insureds in California, water losses. As a recent California Department of Insurance study found, "water claims play an important role in the [h]omeowners insurance risk distribution because of their share of a little over one third of the total [homeowners] claims [in California]." (*Spatial Analysis of Frequency and Severity for Water versus Non-water Homeowners Claims in California*, July 12, 2004 by Gurbhag Singh for the Policy Research Division of the California Department of Insurance.) The Petition also raises an "adjuster usage" issue which has not been directly addressed by this Court.

The Petition provides an avenue for this Court to simplify the terms used in concurrent causation analysis. Currently, cases find that causes can be "remote" or "proximate," "efficient" or "immediate," "dependent" or "independent," "triggering," "concurrent," "efficient proximate," and so forth. As explained in the Petition, the only terms needed are "concurrent," "predominate," and "substantial." This would replace the "efficient proximate cause" language of *Sabella v. Wisler* (1963) 59 Cal.2d 21, with the "predominate cause" terminology of *Garvey v. State Farm Fire & Cas.* (1989) 48 Cal.3d 395, confirming the analysis most consistent with the intended purpose of Insurance Code section 530.

The Petition also provides this Court with the means to provide a clear distinction between the interpretation of insurance policy language, which presents a question of law, and the determination of the elements in the chain of causation of a particular loss, which presents a question of fact. In our experience, this issue often gives rise to difficulties and confusion in claims adjusting. Indeed, the erroneous reliance by the Court of Appeal in this matter on *Pieper v. Commercial Underwriters Ins.* (1997) 59 Cal.App.4th 1008, shows clearly how urgent it is for this Court to provide guidance on this issue. Here, the court below should have acknowledged that there were two risks at work: damage from water and damage from sewage. Rather, by relying on the "single cause" analysis in *Pieper* and related appellate court cases, the court confused closely linked risks and found them to be one risk.

Finally, the Petition raises a seldom addressed issue in California – to what extent does usage in the insurance industry control insurance policy interpretation. The issue was tangentially addressed nearly forty years ago in *Crump v. Northwestern National Life Ins. Co.* (1965) 236 Cal.App.2d 149, 157, where the court held that an "insurer is bound by its interpretation of its own policy . . ." The issue is also addressed by Civil Code section 1644 which provides that a contract should be interpreted according to the usages of the industry in which the contract operates. The Petition presents an opportunity for this Court to analyze and explain how insurance "adjuster usage" of a particular term, where adjusters uniformly apply a policy term in the insured's favor, should require that coverage be found to exist.

For the foregoing reasons, and for such further reasons as are set forth in the Petition for Review and any other amicus support, this Court is respectfully requested to grant review in this matter.

Respectfully submitted,

David C. Parisi Suzanne Havens Beckman
On Behalf of United Policyholders

Enc. 7 copies

cc: See Attached Service List

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