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IN SUPREME COURT
OF TEXAS

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By JOHN T. ADAMS, Clerk
Deputy

NO. D-4095

IN THE SUPREME COURT OF TEXAS

STATE FARM FIRE & CASUALTY CO.,

Petitioner,

v.

JAMES AND CYNTHIA SIMMONS,

Respondents.

AMICUS CURIAE BRIEF
OF
UNITED POLICYHOLDERS
AND APPENDIX

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INTEREST OF AMICUS CURIAE

United Policyholders is a non-profit 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.

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.

PRELIMINARY STATEMENT

Respondents, James and Cynthia Simmons, the policyholders, sued their homeowners' insurance company for enforcement of their homeowners' policy following fire loss. Policyholders sought contractual damages as well as damages for insurance company's bad faith and for violation of the Deceptive Trade Practice Act ("DTPA"). The 221st Judicial District Court, Montgomery County, Lee G. Alworth J., entered judgment on jury verdict for policyholders. The insurance

company appealed. The Court of Appeals, Walker, C.J., held that: (1) evidence supported finding that the insurance company acted in bad faith; (2) the insurance company failed to show that policyholders burned their own home; and (3) punitive damages award of \$2 million was not excessive. State Farm Fire & Cas. Co. v. Simmons, 857 S.W.2d 126 (Tex. App.-Beaumont 1993, writ granted).

STATEMENT OF FACTS

Twelve years after the fire, Mr. and Mrs. Simmons insurance claim has not yet been finally resolved.

POINT I.

INSURANCE NULLIFICATION BY LITIGATION

The availability of the tort of bad faith is indispensable in combatting the common insurance industry practice of nullifying valid insurance coverage through litigation. Insurance companies win by saying "NO." As the conservative Supreme Court of Delaware recently held:

Insurance is different. Once an insured files a claim, the insurer has a strong incentive to conserve its financial resources balanced against the effect on its reputation of a 'hard-ball' approach. Insurance contracts are also unique in another respect. Unlike other contracts, the insured has no ability to 'cover' if the insurer refuses without justification to pay a claim. Insurance contracts are like many other contracts in that one party (the insured) renders performance first (by paying premiums) and then awaits the counterperformance in the event of a claim. Insurance is different, however, if the insurer breaches by refusing to render the counter-performance. In a typical contract, the