

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

CASE NO. 06-13989-HH

TRISTAR LODGING, INC.,

Appellant,

v.

ARCH SPECIALTY INSURANCE COMPANY,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

**BRIEF OF UNITED POLICYHOLDERS AS *AMICUS CURIAE* ON BEHALF OF
APPELLANT, TRISTAR LODGING, INC., SUPPORTING REVERSAL**

Matthew R. Danahy, Esq.
Florida Bar No. 606693
Danahy & Murray, P.A.
2304 W. Cleveland Street, Suite 100
Tampa, Florida 33609
(813) 258-3600
Attorneys for *Amicus Curiae*
United Policyholders

OF COUNSEL:

Eugene R. Anderson
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020
Tel: (212) 278-1000

Amy Bach, Esq.
United Policyholders
222 Columbus Avenue, Suite 412
San Francisco, California 94133
(415) 713-3048

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.....	iii
STATEMENT REGARDING ORAL ARGUMENT	iv
STATEMENT OF INTEREST OF AMICUS CURIAE	1
PRELIMINARY STATEMENT	2
STATEMENT OF THE CASE AND FACTS	2
POINT 1 - RIGHT TO A TRIAL BY JURY	2
CONCLUSION.....	4
CERTIFICATE OF COMPLIANCE WITH FONT STANDARD	5
CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7).....	6
CERTIFICATE OF SERVICE.....	7

TABLE OF CITATIONS

<i>Balzac v. Porto Rico</i> , 258 U.S. 298, 310 (1922)	3
<i>Humana, Inc. v. Forsyth</i> , 525 U.S. 299 (1999)	1
Mark Galanter, <u>The Vanishing Trial: An Examination of Trials and Related Matters In Federal Court and State Courts</u> , Vol. 1, <i>Journal of Empirical Legal Studies</i> , 459 (2004)	3
Mark Galanter, <u>The Vanishing Trial</u> , Vol. 10, <i>Dispute Resolution Mag.</i> , 3 (2004)	3
<i>U.S. Underwriters Ins. Co. v. City Club Hotel, LLC</i> , 3 N.Y.3d 592 (N.Y. 2004)	2
<i>Vandenberg v. Sup. Ct. of Sacramento</i> , 21 Cal.4th 815 (1999).....	1,2

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel for United Policyholders, in compliance with FRAP 26.1 and 11th Cir. R. 26.1-1, certifies that the following listed persons, parties, and corporations have an interest in the outcome of this appeal.

Amy Bach, Esq.
United Policyholders

Eugene R. Anderson
Anderson Kill & Olick, P.C.

Matt Danahy, Esq.
Danahy & Murray, P.A.

STATEMENT REGARDING ORAL ARGUMENT

Appellant has requested oral argument be heard in this case. United Policyholders respectfully believes oral argument by the parties (not by *amicus*) would be helpful to the Court since the case presents a matter of great importance with respect to the right to jury trial.

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae, 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). United Policyholders is funded by donations and grants from individuals, businesses, and foundations.

In addition to serving as a resource on insurance claims for disaster victims and commercial policyholders, United Policyholders actively monitors legal and marketplace developments affecting the interests of all policyholders. United Policyholders 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 United Policyholders, which allows United Policyholders 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.

A United Policyholders' *amicus* brief was cited in the U.S. Supreme Court's opinion in Humana, Inc. v. Forsyth, 525 U.S. 299 (1999), and its arguments were adopted by the California Supreme Court in Vandenberg v. Sup. Ct., 21 Cal.4th

815 (1999), and the New York Court of Appeals in U.S. Underwriters Ins. Co. v. City Club Hotel, LLC, 3 N.Y.3d 592 (N.Y. 2004).

United Policyholders has filed *amicus curiae* briefs on behalf of policyholders in over one hundred and twenty cases throughout the United States, a testament to its position as a vanguard leader in interpreting the issues and dilemmas faced by policyholders in today's insurance markets.

United Policyholders has a vital interest in seeing that insurance companies do not attempt to shift risk assumed in insurance policies back to their policyholders through schemes unsupported by the language of their insurance policies or public policy. United Policyholders has an interest in ensuring that insurance companies live up to their promises to their policyholders.

PRELIMINARY STATEMENT

Amicus Curiae, United Policyholders, respectfully petitions this Court for a reversal of the District Court's rulings.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae United Policyholders adopts the Statement of the Case contained in the Brief of the Appellant, Tristar Lodging, Inc.

POINT I

THE RIGHT TO A TRIAL BY JURY

Tristar was denied its right to a jury trial by the District Court's ruling.

Judges are the gatekeepers to the civil justice system. Apparently, not all are friendly to the notion of trial by jury. This explains, in part, why the disposition of cases by juries is steadily declining. See; Marc Galanter, "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts," *Journal of Empirical Legal Studies*, Vol. 1, Issue 3, November 2004 at 459-570. There has been a 60% decline in the absolute number of trials since the mid 1980s. [Id at p. 459]

The portion of federal civil cases resolved by trial fell from 11.5% in 1962 to 1.8% in 2002. [Id] This drop in trials has been recent and steep. See; Marc Galanter, "The Vanishing Trial," 10 *NO. 4 Disp. Resol. Mag.* 3

The importance of trial by a jury in this nation is well established. When the Founders listed their grievances against "the present King of Great Britain" in the Declaration of Independence, they included among them "depriving us in many cases, of the benefit of Trial by Jury." The Bill of Rights and state constitutions, of course, expressly include the right to trial by jury.*

Jurors function as part of the judicial branch. See, e.g., *Balzac v. Porto Rico*, 258 U.S. 298, 310 (1922) (Taft, C.J., for the Court). As Chief Justice Taft noted, "[t]he jury system postulates a conscious duty of participation in the machinery of justice which it is hard for people not brought up in fundamentally popular

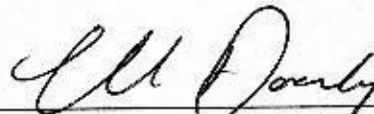
* See Florida constitution, Article I, Section 22.

government at once to acquire. One of its greatest benefits is in the security it gives the people that they, as jurors, actual or possible, being part of the judicial system of the country, can prevent its arbitrary use or abuse." *Ibid.*

CONCLUSION

The decision of the lower court should be reversed as an assault on the right to jury trial. United Policyholders respectfully requests that the Orders and Final Judgment be vacated and the matter be returned to the District Court for a jury trial on all issues so triable.

Dated: October 6, 2006
Tampa, Florida



Matthew R. Danahy, Esq.
Florida Bar No. 606693
Danahy & Murray, P.A.
2304 W. Cleveland Street, Suite 100
Tampa, Florida 33609
(813) 258-3600
Attorneys for *Amicus Curiae*
United Policyholders

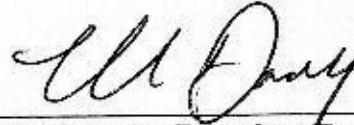
OF COUNSEL:

Eugene R. Anderson
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020
Tel: (212) 278-1000

Amy Bach, Esq.
United Policyholders
222 Columbus Avenue, Suite 412
San Francisco, California 94133
(415) 713-3048

CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

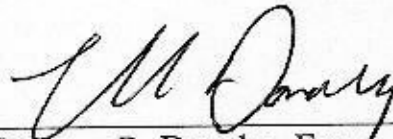
Undersigned counsel hereby respectfully certifies that the foregoing *Amicus* brief complies with all applicable Rules and has been typed in Times New Roman, 14 Point.



Matthew R. Danahy, Esq.
Florida Bar No. 606693
Danahy & Murray, P.A.
2304 W. Cleveland Street, Suite 100
Tampa, Florida 33609
(813) 258-3600
Attorneys for *Amicus Curiae*
United Policyholders

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7). This brief contains 723 words (from Statement of Interest of *Amicus Curiae* to Conclusion).



Matthew R. Danahy, Esq.
Florida Bar No. 606693
Danahy & Murray, P.A.
2304 W. Cleveland Street, Suite 100
Tampa, Florida 33609
(813) 258-3600
Attorneys for *Amicus Curiae*
United Policyholders

CERTIFICATE OF SERVICE

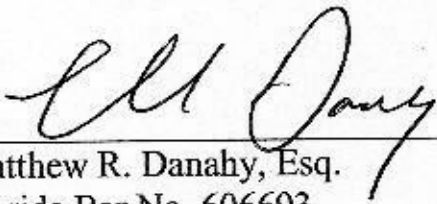
WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail this 6 day of October 2006 to the following:

J. Pablo Caceres, Esq.
Butler Pappas Weihmuller Katz Craig, LLP
Bayport Plaza, Suite 1100
6200 Courtney Campbell Causeway
Tampa, Florida, 33607

David J. Pettinato, Esq.
Merlin Law Group
777 S. Harbour Island Boulevard
Suite 950
Tampa, Florida 33602

Amy Back, Esq.
United Policyholders
222 Columbus Avenue
Suite 412
San Francisco, California 94133

Eugene R. Anderson, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020



Matthew R. Danahy, Esq.
Florida Bar No. 606693
Danahy & Murray, P.A.
2304 W. Cleveland Street, Suite 100
Tampa, Florida 33609
(813) 258-3600
Attorneys for *Amicus Curiae*
United Policyholders