

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

NO. 99-1087

U. S. TEST, INC., and BOBBY COBB,

Petitioners,

v.

N.D.E. ENVIRONMENTAL CORP. and
UNITED COASTAL INSURANCE CO.,

Respondents.

**REQUEST FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
OF UNITED POLICYHOLDERS IN SUPPORT OF PETITIONERS'
PETITION FOR REHEARING FROM
THE DECISION OF THE PANEL FILED NOVEMBER 19, 1999**

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TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE

JUSTICES:

Attorneys for *Amicus Curiae* United Policyholders respectfully moves this Court, pursuant to Federal Rule of Appellate Procedure 29 *et seq.*, for leave to file the brief submitted herewith as *amicus curiae* in support of Petitioner-Appellant U.S. Test, Inc. and Bobby Cobb's (collectively "U.S. Test") Petition for Rehearing or, alternatively, for certification of the state law question concerning insurance coverage to the Louisiana Supreme Court.

A. United Policyholders' Interest

United Policyholders is a nonprofit corporation founded in 1991 and dedicated to educating the public on insurance policyholders' rights and duties. United Policyholders' activities include organizing meetings, distributing written materials, and responding to requests for information from individuals, elected officials, and governmental entities. Because a diverse range of policyholders throughout the United States communicate on a regular basis with UP regarding insurance-related concerns, UP can and does provide constructive input on insurance matters to courts throughout the United States through the filing of *amicus* briefs. United States Supreme Court Justice Ginsburg quoted from UP's *amicus* brief in the pro-policyholder decision in *Humana v. Forsyth*, 119 S. Ct. 710, 719 (1999) (citing to op. 19-23 of Brief for United Policyholders as *amicus curiae*). In September 1999, the

California Supreme Court adopted the pro-policyholder arguments uniquely set forth in UP's *amicus* brief in *Vandenberg v. Sup. Ct.*, 21 Cal. 4th 815, 838-842 (1999). These activities are limited to the extent that United Policyholders relies on donated labor and contributions of services and funds. United Policyholders is incorporated as a not-for-profit educational organization and was granted tax exempt status under § 501(c)(3) of the Internal Revenue Code.

With its brief, United Policyholders seeks to fulfill “the classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the Court’s attention to law that escaped consideration.” *Miller-Wohl Co., Inc. v. Commissioner of Labor & Indust.*, 694 F.2d 203, 204 (9th Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have stressed, an *amicus* is often in a superior position “to focus the Court’s attention on the broad implications of various possible rulings.” R. Stern, E. Greggman, & S. Shapiro, SUPREME COURT PRACTICE, 570-71 (1986) (*quoting* Ennis, EFFECTIVE AMICUS BRIEFS, 33 Cath. U.L. Rev. 603, 608 (1984)).

B. Significance of the Issue Addressed By Amicus Curiae

United Policyholders has a vital interest in seeing that the standard form insurance policies sold to countless policyholders are interpreted fairly and consistently by insurance companies and the courts. Here, the uniform interpretation

of the insurance coverage question at issue is of great import to companies doing business in Louisiana, such as those represented, among others, by United Policyholders. Such companies will be at a competitive disadvantage when marketing their products, especially products in the highly competitive and innovative high technology sector.

As more fully set forth in the brief, one critical issue addressed by the Court's decision is the question of whether the "advertising injury" provision of a standard general liability policy provides coverage for inducement for patent infringement, arising from 28 U.S.C. § 271(a). The correct answer is yes, contrary to the view represented by this court's decision, which failed to consider the weight of authority addressing this issue. We have reviewed the court of appeal's opinion and the briefs of the parties in this case. We are therefore very familiar with the issues in this case and the scope of their presentation. We can offer significant assistance to this Court by briefing the insurance coverage issue in a manner which adds materially, and thereby complements, the parties' briefs. United Policyholders' brief raises otherwise undiscussed points and authorities that provide important authority and argument for ruling in the Petitioners' favor.¹

¹See INSURANCE COVERAGE OF INTELLECTUAL PROPERTY ASSETS, by David A. Gauntlett © 1999 Aspen Law and Business.

Based on the foregoing, to adequately inform the Court of these issues we respectfully request permission to file an *amicus curiae* brief in support of Petitioner-Appellant U.S. Test, which brief and our Request to participate in Oral Argument are submitted concurrently herewith.

Dated: December ___, 1999

GAUNTLETT & ASSOCIATES

By _____
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Amicus Curiae Counsel