

No. 12-2074

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

**TODD ROCHOW and JOHN ROCHOW,
as personal representatives of the
ESTATE OF DANIEL J. ROCHOW,**

Plaintiffs-Appellees,

v.

LIFE INSURANCE COMPANY OF NORTH AMERICA,

Defendant-Appellant.

**On Appeal from the Judgment of District Judge Arthur J. Tarnow,
United States District Court for the Eastern District of Michigan**

**UNOPPOSED MOTION OF UNITED POLICYHOLDERS
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**Disclosure of Corporate Affiliations
And Financial Interest**

Sixth Circuit

Case Number: 12-2074

Case Name: Rochow, et al. v. LINA

Name of Counsel: Mark D. DeBofsky

Pursuant to 6th Cir. R. 26.1, United Policyholders makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on May 5, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ Mark D. DeBofsky

Mark D. DeBofsky

**UNOPPOSED MOTION OF UNITED POLICYHOLDERS
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
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Pursuant to Federal Rule of Appellate Procedure 29(b), United Policyholders (“UP”) respectfully moves the Court for leave to file the attached brief (attached as Exhibit A) as *amicus curiae* in support of Plaintiff-Appellees and affirmance of the district court’s judgment. All parties consent to the filing of the attached brief.

I. LEGAL STANDARD

A motion for leave to file an amicus brief must state “(1) the movant’s interest; and (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b). The resolution of this request is “a privilege within the sound discretion of the court, depending upon a finding that the proffered information of the amicus is timely, useful, or otherwise necessary to the administration of justice.” *United States v. Michigan*, 940 F. 2d 143, 165 (6th Cir. 1991).

II. ARGUMENT

A. Statement of Interest

United Policyholders is a non-profit 501(c)(3) organization founded in 1991 that serves as an independent information resource and a voice for insurance consumers in all 50 states. Donations, foundation grants and volunteer labor support the organization’s efforts. United Policyholders’ work is divided into three

program areas: *Roadmap to Recovery* (resources to help policyholders navigate and resolve large loss claims), *Roadmap to Preparedness* (promoting disaster preparedness and insurance literacy), and *Advocacy and Action* (advancing the interests of insurance consumers in courts of law, before regulators, legislators, and in the media). UP offers a library of tips, sample forms and articles on commercial and personal lines insurance products, coverage and the claims process at www.uphelp.org.

United Policyholders participates in the proceedings of the National Association of Insurance Commissioners as an official consumer representative and is part of the American Law Institute's Advisory Panel on the Principles of Liability Insurance. UP receives frequent invitations to speak to trade and civic associations and testify at public hearings on insurance rate and policy issues.

Advancing the interests of policyholders through participation as *amicus curiae* in insurance-related cases throughout the country is an important part of UP's work. UP's reputation as a reliable friend of the court was enhanced when its *amicus curiae* brief was cited in the Supreme Court's opinion in *Humana v. Forsyth*, 525 U.S. 299 (1999), and UP's arguments were adopted by the Texas Supreme Court in *Excess Underwriters at Lloyd's, London, et al. v. Frank's Casing Crew & Rental Tools Inc.*, 246 S.W.3d 42 (Tex. 2008), as well as by the California Supreme Court in *Vandenberg v. Superior Court*, 88 Cal. Rptr.2d 366

(Cal. 1999) and numerous other proceedings, including *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, 145 P.3d 472 (Cal. 2006). Other ERISA cases in which UP has been granted leave by the Supreme Court to participate as *amicus curiae* include: *US Airways v. McCutchen*, 133 S. Ct. 1537 (2013); *Hardt v. Reliance Standard Life Insurance Co.*, 130 S. Ct. 2149 (2010); *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105 (2008); *Aetna Health, Inc. v. Davila*, 542 U.S. 200 (2004); and *Rush Prudential HMO v. Moran*, 536 U.S. 355 (2002). UP also was granted leave by this Court to file *amicus* briefs in *Demolition Contrs., Inc. v. Westchester Surplus Lines Ins. Co.*, 381 Fed. Appx. 526 (6th Cir. 2010); *GenCorp Inc. v. AIU Ins. Co.*, 138 Fed. Appx. 732 (6th Cir. 2005); and *Advance Watch Co. v. Kemper Nat'l Ins. Co.*, 99 F.3d 795 (6th Cir. 1996).

As part of its mission, UP is concerned about the implementation and application of laws and rules under ERISA because a substantial percentage of the insurance market is governed by ERISA. This case is one of particular interest to UP because it touches upon two important issues affecting policyholders: (1) deterrence of insurer bad faith, particularly where (as here) the insurer claims that a judgment is excessive; and (2) claims of burden or prejudice by an insurer when its own actions lead to the dispute. The resolution of this case will impact the scope of equitable remedies under the ERISA statute and has important implications for employees and policyholders.

B. How United Policyholders' Brief Will Assist the Court

United Policyholders' brief will assist the Court by providing a plaintiff's perspective on the legal and policy issues before the Court. UP will discuss the need for greater deterrence of insurer misconduct under the ERISA statute, which presently incentivizes insurers to delay the payment of claims. Contrary to the concerns of Life Insurance Company of North America and its *amici*, permitting disgorgement of profits in exceptional ERISA benefit denial cases will not dramatically increase the burden and expense of ERISA litigation, and may even reduce litigation by aligning the interests of insurers with those of policyholders, consistent with ERISA's stated purpose of protecting plan participants and beneficiaries. *See* 29 U.S.C. § 1001(b). Finally, UP will explain why the district court's decision is consistent with Supreme Court precedent, most notably *CIGNA Corp. v. Amara*, 131 S. Ct. 1866 (2011), as well as with the precedents of this Circuit and its sister circuits.

III. CONCLUSION

Accordingly, UP respectfully requests leave to file a brief as *amicus curiae* in support of Plaintiffs-Appellees to facilitate a full consideration by the Court of the issues this appeal presents, and if this motion is granted, to consider the attached brief as filed on the date the motion is granted.

Dated: May 5, 2014

Respectfully submitted,

/s/ Mark D. DeBofsky

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Attorneys for *Amicus Curiae* United Policyholders

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2014, the foregoing Unopposed Motion of United Policyholders for Leave to File a Brief as *Amicus Curiae* in Support of Plaintiffs-Appellees and Affirmance was filed with the Court via electronic mail to beverly_harris@ca6.uscourts.gov, and a copy of the brief will be served on all counsel of record by the office of the clerk.

/s/ Mark D. DeBofsky

Mark D. DeBofsky