



CA

September 15, 2003

The Honorable Ronald George, Chief Justice
and The Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

re: Uhrich v. State Farm Fire & Cas. Co., Case No. S117639

Dear Chief Justice George & Associate Justices:

United Policyholders of California writes to support the petition for review filed in the above matter by plaintiff and appellant, Jean Marie Uhrich. (Cal. R. Ct. 28(f).)

I. The Nature Of United Policyholders' Interest

United Policyholders ("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. The organization administers a post-disaster insurance claim support network, an information clearinghouse, and an *Amicus* Project. UP monitors legal and marketplace developments affecting policyholders, and receives frequent invitations to testify at legislative and other public hearings, and participate in regulatory proceedings.

UP files *amicus curiae* briefs in cases throughout the country that involve important insurance principles. Its reputation as a source of useful information for appellate courts was confirmed when a UP *amicus* brief was cited by the U.S. Supreme Court in *Humana, Inc. v. Forsyth* (1999) 525 U.S. 299. UP has been invited by several California Courts of Appeal to participate in oral argument as *amicus curiae*. Arguments from UP's *amicus* brief were cited with approval by this Court in *Vandenburg v. Superior Court* (1999) 21 Cal. 4th 815. In the last eight years, UP has filed *amicus* briefs on behalf of policyholders in over 120 cases across the United States.

UP has chosen to appear as *amicus curiae* in support of this petition for review because State Farm is the nation's largest issuer of personal liability umbrella coverage. (J. Novak, *Leaky Umbrellas* Forbes (Mar. 11, 1996) 174.) In addition, as shown below, resolution of the petition for review is likely to affect more than one million California policyholders.

II. The Extent Of The Problem Addressed By The Petition For Review

The one million California policyholders likely affected by the decision below consist of holders of the policy at issue in this litigation – a State Farm Fire & Casualty Company “Personal Liability Umbrella Policy” – as well as the many holders of policies with coverage provisions similar to the State Farm policy. The available information on the size of the affected group is as follows:

- ❖ More than 500,000 Californians hold a State Farm Personal Liability Umbrella Policy like the one construed below.

According to the California Insurance Commissioner, approximately six million people in this State bought homeowners coverage in 2002. (California Department of Insurance, Statistical Analysis Division, Summary of 2002 Residential Market Totals

[\[http://www.insurance.ca.gov/SAB/Reports/Earthquake/Summary/2002SummaryData.html\]](http://www.insurance.ca.gov/SAB/Reports/Earthquake/Summary/2002SummaryData.html).)

State Farm's share of that market was 22.1 %, or 1,298,218 policyholders. (California Department of Insurance, Company Complaint Information, State Farm General Insurance Company, page 4 of 4

[\[http://cdinswww.insurance.ca.gov/pls/wu_co_prof/CAS_CPL_CMPR_UTL.CMPLNT\]](http://cdinswww.insurance.ca.gov/pls/wu_co_prof/CAS_CPL_CMPR_UTL.CMPLNT)

Forty percent of all insureds that buy homeowners' coverage also buy a personal liability umbrella policy. (Insurance Research Council, Public Attitude Monitor 2003, pp. 15, 25.)

Doing the math (40% of 1,298,218), there are approximately 519,287 holders of a State Farm Personal Liability Umbrella Policy in California.

- ❖ It also affects another 350,000 Californians who hold umbrella policies from another major carrier, Allstate, which has insuring provisions similar to those that were at issue in this case. (See, e.g., *Vigna v. Allstate Ins. Co.* (Me.1996) 686 A.2d 598, 599-600.)

Allstate has 15.3% of the California homeowners insurance market, or 898,766 insureds. (California Department of Insurance, Company Complaint Information, Allstate Insurance Company, page 6 of 6 [http://edinswww.insurance.ca.gov/pls/wu_co_prof/CAS_CPL_CMPR_UTL_CMPLNT].)

If Allstate's homeowner insureds are typical, 40%, or 359,506 of them also purchased an Allstate personal liability umbrella policy. (Insurance Research Council, Public Attitude Monitor 2003, *loc. cit.*)

- ❖ In addition, some commercial general liability policies contain coverage provisions similar to the State Farm and Allstate umbrella policies, and holders of those policies will also be affected by review of this matter. (See, e.g., *Hurst-Rosche Engineers, Inc. v. Commercial Union Ins. Co.* (7th Cir. 1995) 51 F.3d 1336, 1340, 1341.) UP is unable to put a number on this group, but it could easily swell the class of affected insureds to more than one million.

In sum, the decision below has the potential for extraordinary reach among California policyholders. As a voice for such policyholders, UP has an interest in showing further why this Court should grant review.

III. Reasons To Grant Review

The primary issue presented for review is whether a personal liability insurer can promise to defend and pay claims for enumerated intentional torts such as false arrest, false imprisonment, defamation, or invasion of privacy, and then deny coverage because the inherently intentional quality of the insured's act violates the policy requirement that the personal injury offense result from an "accident." (Petition for Review, pages 1, 6-8 ["Pet. Rev. 1, 6-8"].)

Both the Court of Appeal and defendant State Farm justify such a result with several California cases construing the term "accident" in quite a different sort of policy – one which covers only claims for bodily injury or property damage and omits any promise of indemnity or defense for enumerated personal injury offenses. (*Uhrich v. State Farm Fire & Cas. Co.* (2003) 109 Cal. App. 4th 598, 610 (citing *Quan v. Truck Ins. Exchange* (1998) 67 Cal. App. 4th 583, 610); Answer to Petition for Review, page 11 ["Ans. Pet. Rev."] (citing *Swain v. California Cas. Ins. Co.* (2002) 99 Cal. App. 4th 1, 9-10; *Interinsurance Exch. of Auto. Club of So. Calif. v. Flores* (1996) 45 Cal. App. 4th 661; *Merced Mut. Ins. Co. v. Mendez* (1989) 213 Cal. App. 3d 41, 50.)

The inherent contradiction lurking in State Farm's personal liability umbrella policy does not arise with policies that lack a promise to cover enumerated intentional tort offenses – the contradiction between promising to cover claims for specific personal injury offenses and then refusing to do so because the offense is (necessarily) predicated on an intentional act of the insured. It is that contradiction which is targeted by the petition for review, and which is currently unanswered by any published California decision. This Court should grant review and address it.

Courts in other jurisdictions have done so, and held that a policy including both a promise to cover enumerated intentional tort claims and a requirement that such claims result from an "accident" "are ambiguous and create an internal inconsistency" that "must be resolved in favor of the insured." (*Hurst-Rosche Engineers v. Commercial Union, supra*, 51 F.3d at 1345-1346; *see also, North Bank v. The Cincinnati Ins. Cos.* (6th Cir. 1997) 125 F.3d 983, 986 ("[t]he umbrella policy contains a studied ambiguity written into the policy by the defendant"); *Missouri Property Cas. Ins. Guar. Assoc.* (Mo. App. 1996) 918 S.W.2d 869, 872 ("[w]hen a policy promises something in one place and takes it away at another place an ambiguity exists").) The Sixth Circuit points out the vice of such policies: the insurer can use the intentional tort coverage to sell the policy, then cite the "accident" provision as grounds for denying a defense or indemnity. (*North Bank v. The Cincinnati Cos., supra*, 125 F.3d at 987.) The insurer profits by selling coverage it knows it will never – or only infrequently – incur the expense of providing.

Umbrella insurance is touted by both financial commentators and the insurance industry as a way consumers can protect themselves against the cost of defending and paying intentional tort claims. "One of the most common pieces of advice for financial planners these days is that clients take out an umbrella insurance policy." (Hehman, *Umbrella Insurance*, Austin American-Statesman (Sept. 10, 2000) [<http://www.austinasstetmanagement.com/AASartic/umbrella.html>] .) Those shopping for such a policy are told that "[a] typical personal umbrella liability policy provides . . . [p]rotection against non-business-related personal injury claims such as slander, libel, wrongful eviction, and false arrest." (<http://www.harrisoninsurance.com/umbrella.ntm>; *see also, Roha, "Shield Your Assets with an Umbrella Policy," Kiplinger.com* [<http://www.kiplinger.com/columns/fitness/archive/2002/ff021023.htm>].)

There can be no question that the decision below offers insurers a tool for withdrawing all the intentional tort coverage promised by an umbrella policy like State Farm's. First, the Court of Appeal held that even negligence allegations – which appeared in the underlying complaint against State Farm's insured, and were validated by a judgment on all causes of action – were not enough to satisfy the "accident" requirement. (*Uhrich v. State Farm, supra*, 109 Cal. App. 4th at 610, 617.)