

Case No. B254409

**COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SEVEN**

DANIEL TABARES; RHODA TABARES; JUDY L. TAYLOR; and
ELIZABETH YOUNG. On behalf of themselves and all other similar
situated individuals

Plaintiff and Appellant,

v.

EQUITRUST LIFE INSURANCE COMPANY; JOSEPH SACKKEY;
and DOES 1 through 100, inclusive

Defendant and Appellee.

**MOTION FOR LEAVE
TO SUBMIT AN AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFF AND APPELLANT
BY UNITED POLICYHOLDERS**

From a Decision by the Los Angeles Superior Court
Case No. BC390195, Hon. Lee Smalley Edmon, Presiding

Amy R. Bach (142029)
Daniel R. Wade (296958)
UNITED POLICYHOLDERS
381 Bush St., 8th Floor
San Francisco, CA 94104
Telephone: (415) 393-9990

Attorneys for Amicus Curiae
UNITED POLICYHOLDERS

**APPLICATION IN SUPPORT OF MOTION FOR LEAVE TO
SUBMIT AN AMICUS CURIAE BRIEF IN SUPPORT OF
PLAINTIFF AND APPELLANT DANIEL TABARES**

United Policyholders (“UP”) 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 as a §501(c)(3) entity. UP is funded by donations and grants from individuals, businesses, and foundations. UP does not accept financial contributions or support from insurance companies.

Through a *Roadmap to Recovery*[™] program United Policyholders helps individuals navigate the insurance claim process and recover fair and timely settlements. Through an *Advocacy and Action* program, UP works with public officials, other non-profit and faith-based organizations and a diverse range of entities – including insurance producers, insurers and trade associations to solve problems related to claims and coverage. UP’s Executive Director is serves as an appointed consumer representative to the National Association of Insurance Commissioners (“NAIC”), and works closely with the California Department of Insurance and Commissioner Jones on a variety of issues affecting California insureds.

A diverse range of policyholders throughout California communicate on a regular basis with UP, which allows us to provide important and topical information to courts via the submission of *amicus curiae* briefs in cases involving insurance principles that are likely to impact large segments of the public and business community. UP's *amicus curiae* brief was cited in the U.S. Supreme Court's opinion in *Humana v. Forsyth*, 525 U.S. 299, 314 (1999), and its arguments have been adopted by the California Supreme Court in *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, 40 Cal.4th 19 (2006) and *Vandenberg v. Superior Court*, 21 Cal.4th 815 (1999).

UP has filed *amicus curiae* briefs on behalf of policyholders in over 360 cases throughout the U.S, including the following recent California cases: *Association of California Insurance Companies v. Dave Jones, Insurance Commissioner* (Case No. B248622, Court of Appeal, Second District, Division One, 2014); *Nickerson v. Stonebridge Ins. Co.* (Case No. S213873, California Supreme Court, 2014); and *Stephens v. Fireman's Fund Ins. Co.* (Case No. A135938 & A136740, Court of Appeal, First District, Division One, 2014).

Accordingly, UP seeks to fulfill the "classic role of *amicus curiae* 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. v. Commissioner of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). This is an appropriate role for amicus curiae. As commentators have often stressed, an amicus is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." Robert L. Stem, et al., *Supreme Court Practice* 570 71 (1986), quoting Ennis, *Effective Amicus Briefs*, 33 *Cath. U. L. Rev.* 603, 608 (1984).

UP has a particular interest in this case because of the predatory and confusing nature of the deferred annuity products at issue, especially with respect to the negative effect of bonuses and commissions on the rate of return for policyholders of deferred annuity products. As a voice and information resource for insurance consumers, including current and would-be deferred annuity policyholders, UP must work to ensure that the sale and execution of deferred annuity contracts do not take advantage of or mislead consumers. As discussed above and below, these products are risky, relatively unrelated, and confusing and thus require judicial scrutiny as to fairness, equity, and consumer protection.

Dated: April 17, 2015

UNITED POLICYHOLDERS

By _____s/ _____

Daniel R. Wade

Attorneys for Amicus Curiae

United Policyholders

PROOF OF SERVICE

I, declare that I am a resident of the State of California, over the age of 18 years, and not a party to the within action. My business address is 381 Bush Street, 8th Floor, San Francisco, California 94104. On April 16, 2015, I served the attached *amicus curiae* brief on the parties listed below by electronic submission to the Court of Appeals, Second Appellate division:

Robert S. Gianelli
Gianelli and Morris
550 South Hope St., Suite 1645
Los Angeles, CA 90071
Counsel for Plaintiff

Robert S. Gerstein
Law Offices of Robert S. Gerstein
12400 Wilshire Blvd, Suite 1300
Los Angeles, CA 90025
Counsel for Plaintiff

Ronald Marron
Law Offices of Ronald Marron
652 Arroyo Drive
San Diego, CA 92103
Counsel for Plaintiff

C. Joe Sayas
The Law Offices of Joe Sayas
500 N. Brand Avenue #980
Glendale, CA 91203
Counsel for Plaintiff

Douglas A. Scullion
Laura L. Geist

Fletcher C. Alford
Dentons U.S. LLP
535 Market Street, 26th St.
San Francisco, CA 94111
Counsel for Defendant

Margaret M. Grignon
Robert D Phillips
James C. Martin
Zareh A. Jaltorossian
Kathy J. Huang
Reed Smith LLP
355 South Grand, Suite 2900
Los Angeles, CA 90071
Counsel for Defendant

Thomas A. Evans
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Counsel for Defendant

Clerk of the Court
Honorable Lee Smalley Edmon
Central Civil West Courthouse
600 Commonwealth Avenue Dept. 322
Los Angeles, CA 90005

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 17, 2015, at Oakland, California.

_____s/_____¹

Daniel R. Wade

¹ Printed copy signed per Cal. Rule of Ct. 8.77(a).

