IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

DENI ASSOCIATES OF FLORIDA, INC.,

Petitioner,

vs.

STATE FARM CAS. INS. CO.,

Respondent.

_____/

Supreme Ct. No. 89,115
4th DCA Case No. 94-2354

17th Circuit Court
L.T. CASE NO. 93-23021-02

E.C. FOGG, III, LISBETH A. FOGG, ELIZABETH FOGG LANE and JOHN ROGER CLARK, individually and as partners doing business as LAND-O-SUN GROVES, AND MATTHEW BLUE,

Petitioner,

v.

FLORIDA FARM BUREAU MUTUAL INSURANCE COMPANY

Respondent,

_____/

CASE NO.: 89,300

AMICUS CURIAE, UNITED POLICYHOLDERS' LETTER BRIEF
IN SUPPORT OF MOTION FOR RE-HEARING

Pursuant to Fla. R. App. P. 9.370 United Policyholders, a non-profit organization, hereby moves this Court for leave to appear as amicus curiae and to file a Brief in support of Petitioner Deni Associates of Florida's Motion for Re-Hearing and Petitioner's E.C. Fogg, III, Lisbeth A. Fogg, Elizabeth Fogg Lane and John Roger Clark, individually and as partners doing business as Land-O-Sun Groves.

In support of its Motion, United Policyholders states as follows:

1. Under the doctrine of ambiguities as expressed by this Court, "exclusionary provisions which are ambiguous or otherwise susceptible to more than one meaning must be construed in favor of the insured...." State Farm Mutual Automobile Ins. Co. v. Pridgen, 498 So.2d 1245, 1248 (Fla. 1986) ("Pridgen"). A provision is ambiguous when "reasonable men could differ as to whether the said insuring language fairly covers the loss sustained by the plaintiff." Continental Cas. Co. v. Borthwick, 177 So.2d 687, 690 (Fla. 1st DCA 1965).

2. That the "absolute" pollution is ambiguous is amply demonstrated by the fact that, as acknowledged in the Court's opinion, the Florida Department of Insurance has filed an amicus brief with this Court it interprets the "absolute" pollution exclusion not to exclude insurance coverage under the circumstances of this cae, i.e. the Insurance Department supports the Petitioners' interpretation of insurance coverage. See, slip op. at 6 n.4. Unless this Court believes that the Florida Department of Insurance is not comprised of reasonable people, the conclusion is inescapable that the "absolute" pollution exclusion is ambiguous. This Court's finding of non-ambiguity can only be correct if the Court has determined that the interpretation offerred by the Insurance Department was an unreasonable one.

3. The business of insurance is so highly tinged with the public interest that insurance is the only business that has a separate department charged with overseeing it. The Legislature has charged the Florida Insurance Department with reviewing, approving, and setting policy premiums rates for comprehensive general insurance policy forms such as the one at issue herein.

Insurance policies containing the "absolute" pollution exclusion required approval of the Florida Insurance Department before being marketed to Florida policyholders.

4. If an insurance policy provision is such that even officials of the government agency charged with reviewing and approving insurance policy language, and which reviewed and approved the language at issue herein, cannot understand its allegedly correct meaning, the insurance policy provision is per se "ambiguous or otherwise susceptible to more than one meaning [and] must be contrued in favor of the insured...." Pridgen, 498 So.2d at 1248.

5. Florida policyholders are entitled to receive at least as much insurance coverage under the insurance policies approved by the Insurance Department as the Insurance Department believes that the insurance policies that it approved provide.

6. If this opinion is left to stand, United Policyholders respectfully submits that the fundamental disparity between this Court's interpretation and the scope of insurance coverage that the Department believes that its approval of the policy language entitles Florida policyholders to, and the necessary implication that the Florida Insurance Department's position is unreasonable, will result in an erosion of public confidence in the insurance regulatory system, the judiciary, or in both.

7. United Policyholders respectfully submits, as will be more fully developed in its brief, that this Honorable Court's conclusion that the majority view is that an ambiguity is required before the objectively reasonable expectations doctrine can be

invoked and this Court's interpretation of Max True Plastering Co. v. United States Fidelity and Guaranty Co., 912 P.2d 861 (Okla. 1996) as supporting this proposition are fundamentally incorrect. See, slip op. at 6.

8. A careful reading of Max True Plastering reveals that the Oklahoma Supreme Court stated that it was "join[ing] the majority of jurisdictions which have considered application of the doctrine and apply it to cases in which policy language is ambiguous and to situations where, although clear **[i.e. not ambiguous]**, the policy contains exclusions masked by technical or obscure language." 912 P.2d at 870 (emphasis and brackets supplied). In other words, the Oklahoma Supreme Court stated that the majority of states which have considered the doctrine also apply it where there is no ambiguity but the existence or intent of the exclusion is obscured through the use of technical, obscure, or hidden language.

9. Indeed, the classic and almost universally cited formulation of the objectively reasonable expectations doctrine, that of Professor, now Judge, Keeton, leaves no doubt that the central theme of the doctrine is that there are circumstances in which insurance coverage should be afforded notwithstanding that the unambiguous language of the insurance policy would yield to a contrary conclusion. These circumstances exist when either the policyholder or policyholding-public-at-large have an objectively reasonable expectation that coverage will be provided:

> As Professor Keeton analyzes it, the principal of reasonable expectations insures that "the objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though

painstaking study of the policy provisions would have negated those expectations." R. Keeton, Basic Text on Insurance Law, §6.3(a), at 351 (1971).

Lambert v. Liberty Mut. Ins. Co., 331 So.2d 260, 263 (Ala. 1976).

10. Thus, the objectively reasonable expectations allows coverage properly to be afforded despite the lack of ambiguity in situations such as where the insurance agent or insurance agent leads the policyholder to believe that coverage will be provided, but the insurance policy ultimately provided does not provide the requested or understood coverage. See e.g., Reliance Ins. Co. v. Moessner, 121 F.3d 895 (3d Cir. 1997) (reasonable expectations doctrine applied notwithstanding lack of ambiguity where insurance company unilaterally substituted harsher pollution exclusion in renewal policy). The reasonable expectations doctrine would also apply were the insurance policy, although not ambiguous, was consistent with the general public's expectations. Sparks v. St. Paul Ins. Co., 495 A.2d 406, 414 (N.J. 1985) (citing Keeton and others) (invalidating entire insurance policy as inconsistent with the policyholding-public's expectations). Another appropriate application of the doctrine is where, as here, the insurance industry achieved regulatory approval of policy language on the basis of an interpretation which is at odds with what the insurance industry now urges is the correct and only interpretation of the language at issue.

11. United Policyholders' research reveals that the overwhelming majority of states that have adopted the reasonable expectations doctrine do not require any ambiguity in order for the doctrine to be invoked, although many of the courts in these states utilize the doctrine in cases of ambiguity in addition to cases

involving non-ambiguity. In this instances, the reasonable expectations doctrine is commonly utilized as an alternate reasoning for the finding of coverage.

12. The Supreme Court of Minnesota noted that "[a]s of 1980, approximately ten states had adopted the newer rule of reasonable expectations regardless of ambiguity." Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co., 366 N.W.2d 271, 277 (Minn. 1985) (citing Davenport Peters Co. v. Royal Globe Ins. Co., 490 F. Supp. 286, 291 (D. Mass. 1980). United Policyholders' research has identified the following high courts that have adopted the Keeton formulation of the objectively reasonable expectations doctrine and do not require any ambiguity before applying the doctrine: Lambert v. Liberty Mut. Ins. Co., 331 So.2d 260, 263 (Ala. 1976); Travelers Ins. Co. v. Jones, 529 So.2d 234, 239 (Ala. 1988); State of Alaska v. Underwriters at Lloyds, London, 755 P.2d 396, 400 (Ala. 1988) (quoting R. Keeton, Basic Text on Insurance Law, Section 6.3(a) at 351 (1971)); State Farm Mut. Auto. Ins. Co. v. Nissen, 851 P.2d 165, 167-168 (Colo. 1993); Hawaiian Ins. & Guar. Co., Ltd. v. Brooks, 66 P.2d 23, 27 (Haw. 1994) (citations omitted); Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903, (Iowa 1973); Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 786 (Iowa 1988); Bradley v. Mid-Century Ins. Co., 294 N.W.2d 141, 162-163 (Mich. 1980); Canadian Universal Ins. Co. v. Fire Watch, Inc., 258 N.W.2d 570 (Minn. 1977); Transamerica Ins. Co. v. Royle, 656 P.2d 820, 824 (Mont. 1983) (citing Keeton); Western Alliance Ins. Co. v. Gill, 686 N.E.2d 997 (Mass. 1997) (citing Keeton); Sparks v. St. Paul Ins. Co., 495 A.2d 406, 414 (N.J. 1985) (citing Keeton and others) (invalidating entire insurance policy as inconsistent with

the policyholding-public's expectations); Kievit v. Loyal Protective Life Ins. Co., 170 A.2d 22, 26 (N.J. 1961); Collister v. Nationwide Ins. Co., 388 A.2d 1346, 1353-54 (Pa. 1978), cert. denied, 439 U.S. 1089 (1979) (the policyholder's reasonable expectations, as determined by analyzing the totality of the circumstances, will be enforced even if the exclusionary language is unambiguous); Tonkovic v. State Farm Mut. Auto. Ins. Co., 521 A.2d 920, 924-25 (Pa. 1987) (holding that an unambiguous policy limitation on coverage is not enforceable unless it has been explained to the insured).

13. Silk v. Flat Top Construction, Inc., is representative of the minority of cases purporting to adopt the doctrine but limiting it cases involving ambiguity. 453 S.E.2d 356, 360 (W.V. 1994). As this Court correctly pointed out, the doctrine of reasonable expectations is unnecessary in cases involving an ambiguity because the doctrine of resolving ambiguities against the insurance industry drafters necessarily results in the ambiguity being interpreted in favor of the policyholder. United Policyholders submits that courts that say that the doctrine only applies in cases of ambiguity are not truly applying the doctrine. What these courts are doing is merely applying the reasonableness component of the ambiguity doctrine (an ambiguous provision has more than one reasonable meaning) and mis-calling it the objectively reasonable expectations doctrine.

14. United Policyholders also wishes to point out that the Massachusetts Supreme Court's recent decision in Western Alliance Insurance Co. v. Gill, 426 Mass. 115, 686 N.E.2d 997 (1997), is illustrative of the modern trend holding that the

absolute pollution exclusion is both ambiguous and contrary to policyholder's objectively reasonable expectations when applied to ordinary accidents, i.e., those which do not involve the disposal of hazardous substances. The Massachusetts Supreme Court recognized that the terms in the absolute pollution exclusion "such as 'discharge,' 'dispersal,' 'release,' and 'escape' are terms of environmental law which are generally used with reference to damage or injury caused by improper disposal or contaminant hazardous waste." 415 Mass. at 118 (citation omitted); See also, Atlantic Mut. Ins. Co. v. McFadden, 595 N.E.2d 762 (Mass. 1992) (same).

15. The Massachusetts Supreme Court provided citations to numerous cases across the country in which the courts refused to apply the absolute pollution exclusion to ordinary accidents which only incidentally involved pollutants. See 426 Mass. at 118-120 (citing cases in which the exclusion was found to be ambiguous or otherwise inapplicable in circumstances such as the inhalation of poisonous fumes from carpet adhesive, exposure to fumes from toxic cements and solvents created by rubber fabricating processes, fumes released from muriatic acid used to finish a floor surface, inhalation of chemical fumes from a carpet, injuries from fumes from cement used to install a plywood floor, injuries from exposure to photographic chemicals, injuries from malathion released during a municipal pesticide spraying operation, injuries caused from ammonia leaks from a refrigeration system, property damage caused by paint overspraying, injuries caused by inadequately ventilated carbon monoxide in an office building, and injuries caused by faulty heating and ventilation systems) (citations omitted). The Supreme Court noted that "an objectionably reasonable insured,

reading the language of the typical pollution exclusion, would not expect a disclaimer of coverage for these types of mishaps even though they involve 'discharges,' 'dispersals,' 'releases,' and 'escapes' of 'contaminants' and 'irritants'." 426 Mass. at 120 (footnote omitted).

16. The Massachusetts Supreme Court opined that those cases which have found the pollution exclusion unambiguous when applied to situations such as those described above (similar to those existing herein) are inconsistent with the doctrine of objectively reasonable expectations. Id. at 426 Mass. 121 (n. 7), (citing and quoting, Keeton, Basic Text on Insurance Law, Section 63(a) at 351 (1971)).

17. The Gill decision and the cases cited therein are exemplars of the recent trend of courts that closely examine the purpose and intent of the absolute pollution exclusion as well as the factual context in which it is being applied in order to assess ambiguity. Recent examples of this trend are: American States Insurance Co. v. Koloms, 687 N.E.2d 72, 1997 Ill. LEXIS 448 (Ill. Oct. 17, 1997) (absolute exclusion both ambiguous and only intended to apply to environmental pollution cases); Donaldson v. Urban Land Interests, Inc., 564 N.W.2d 728 (Wis. 1997) (exclusion not applied to injuries from carbon monoxide confined within a building); Reliance Ins. Co. v. Moessner, 121 F.3d 895 (3d Cir. 1997) (absolute pollution exclusion did not apply to injuries caused by a carbon monoxide release); Garfield Slope Housing Corp. v. Public Service Mut. Ins. Co., 973 F. Supp. 326, 337 (E.D.N.Y. 1997) (absolute pollution exclusion not applicable to toxic fumes released from a carpet; "ambiguous with respect to non-

environmental pollutants."); In re: Asbestos Products Liability Litigation (No. VI), No. 96-968, Section K, 1997 U.S. Dist. LEXIS 13383 (E.D.La. Sept. 2, 1997) (absolute pollution exclusion "ambiguous" with respect to exposure to asbestos); Horace Mann Ins. Co. v. Jackson, No. CX-97-175, 1997 Minn. App. LEXIS 1005, at * (Minn. Ct. App. Sept. 2, 1997), review denied, 1997 Minn. LEXIS 897 (Minn. Nov. 13, 1997) (absolute pollution exclusion "directed at claims involving pollution of the natural environment"; held not applicable to lead poisoning caused by ingestion of lead in paint); Nationwide Mut. Ins. Co. v. Raymond Fair, No. CA-96-1975, Transcript of Proceedings (W.D. Pa. Oct. 3, 1997) (not applicable to lead paint injuries); Kevin Peace v. Northwestern Nat'l Ins. Co., No. 96-0328 (Wis. Ct. App. Nov. 18, 1997) (not applicable to injuries caused by exposure to lead paint, chips, and dust).

18. This court cited American States v. F.H.S., Inc., 843 F. Supp. 187, 190 (S.D. Miss. 1994) as support for the conclusion that the absolute pollution exclusion does not employ technical environmental terms of art. In F.H.S., however, the issue was whether the court should consider the scientific communities' understanding of the operative terms in the definition of "pollutants," i.e., should the terms be interpreted "in the manner employed by environmental engineers..." See, 843 F. Supp. 189-90.

19. The issue raised by parties in this case, however, has nothing to do with the understanding of environmental scientists. The issue is whether the insurance industry's conscious crafting of the crucial definition of "pollutants" to comport with environmental statutes indicates the insurance

industry intended the exclusion to only apply to traditional environmental pollution incidents and not ordinary commercial accidents. American States v. F.H.S., Inc. does not address the crucial question.

20. A significant and continually-increasing number of courts have found that these terms in the absolute pollution exclusion are environmental terms of art, terms which the insurance industry knowingly borrowed from environmental statutes.[1] The New York Court of Appeals found that the terms "discharge," "dispersal," "release," and "escape" are environmental terms of art. Continental Cas. Ins. Co. v. Rapid-American Corp., 609 N.E.2d 506, 512 (N.Y. 1993); see also, American States Ins. Co. v. Koloms, , 687 N.E.2d 72, 1997 Ill. LEXIS 448 (Ill. 1997); Western Alliance Ins. Co. v. Gill, 1997 Mass. LEXIS 392 (Mass. Nov. 10, 1997) LeFrak Organization, Inc. v. Chubb Custom Ins. Co., 942 F. Supp. 949, 955 (S.D.N.Y. 1996) (insurance company argument ignores that "'discharge,' 'dispersal,' 'release,' and 'escape' are environmental terms of art, regardless of the language that follows"); Atlantic Mut. Ins. Co. v. McFadden, 595 N.E.2d 762, 764 (Mass. 1992); Sullins v. Allstate Ins. Co., 667 A.2d 617, 623 (Md. 1995); Essex Ins. Co. v. Avondale Mills, Inc., 639 So. 2d 1339, 1341 (Ala. 1994); West American Ins. Co. v. Tufco Flooring East, Inc., 409 S.E.2d 692, 699 (N.C. Ct. App. 1991); Thompson v. Temple,

---

1. Although the insurance industry cannot craftily use technical terms in order to defeat the policyholder's objectively reasonable expectations of insurance coverage or the common layperson's understanding of technical terms, it is fair to use the industry's conscious use of technical terms evidence to demonstrate that the industry's drafting intent differed from that which is now represented to the Court.

580 So.2d 1133 (La. App. 4th Cir. 1991); Stoney Run Co. v. Prudential-LMI Commercial Ins. Co., 47 F.3d 34 (2d Cir. 1995) (a reasonable interpretation of the pollution exclusion clause is that it applies only to environmental pollution); Westchester Fire Ins. Co. v. Pittsburg, Kansas, 768 F.Supp. 1463, 1468 (D. Kan. 1991) (substances must generally be recognized as polluting the environment); see, also Schumann v. State of New York, 610 N.Y.S.2d 987, 990 (N.Y. Ct. Cl. 1994) ("the exclusion clause may be reasonably interpreted to apply only to instances of environmental pollution"); Karroll v. Atomergic Chem. Corp., 600 N.Y.S.2d 101, 102 (N.Y. Sup. Ct., App. Div. 2d Dep't 1993) (same); GA Ins. Co. of N.Y. v. Naimberg Realty Assocs., 650 N.Y.S. 2d 246 (N.Y. App. Div. 2d Dep't 1996) (same); Cepeda v. Varveris, 651 N.Y.S. 2d 185 (N.Y. App. Div. 2d Dep't 1996) (same); General Acc. Ins. Co. of Am. v. IDBAR Realty Corp., 646 N.Y.S.2d 138, 140 (N.Y. App. Div. 2d Dep't. 1996) (the absolute pollution exclusion is "limited to environmental and industrial pollution").

21. Further evidence of the insurance industry's intent to use environmental terms of art in its pollution exclusion is evidenced by the insurance industry's written submissions to the National Association of Insurance Commissioners. The federal Superfund Statute, adopted in 1981, provides for liability for "a release or threatened release" of "hazardous substances. See, 42 U.S.C.A. 9607(a). It is significant that the industry informed the Insurance Commissioners that:

> Experience with the federal EPA has indicated that the following definitions and concepts are acceptable:

> 3. "hazardous substances" means smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids, or gases, waste materials, waste constituents, or other irritants, contaminants, and pollutants.

American Insurance Association, Comments on Environmental Pollution, Legislation & Regulation, (Dec. 28, 1981), 1982 NAIC Proceedings Vol.II, available on LEXIS, Insure Library; NAIC file, 1982-1 NAIC Pro. 596, * 685. When the insurance industry adopted the definition of "pollutants" in the "absolute" pollution exclusion, it embodied all of the key terms that it knew would be acceptable to EPA. Further evidence that the "absolute" pollution exclusion designed to address liability imposed by environmental statutes can be found in the industry's inclusion of the concept of "threatened discharge, dispersal, release, or escape of pollutants...." The "threatened" concept, absolutely novel in insurance policies, was also directly imported from the Superfund Statute. See 42 U.S.C.A. §9607(a) (4) (A) (imposing liability for "a release or threatened release" of hazardous substances).[2]

22. Further confirmation that the absolute pollution exclusion only applies to traditional environmental pollution is found in the public comments of Louisiana Insurance Commissioner James H. Brown. In a letter to the editor, Commissioner Brown pointed out that "[w]hen the Insurance Services Office submitted

---

2. Should the Court wish to view additional evidence concerning the insurance industry's use of environmental terms of art in the "absolute" pollution exclusion, the Court is respectfully referred to the extensive documentation appearing in an article recently published by its counsel, an article which United Policyholders believes has previously been forwarded to the Court in this proceeding. See MacDonald, Decades of Deceit: The Insurance Industry Incursion into the Regulatory and Judicial Systems, 7 ABA Coverage No. 7 (Nov./Dec. 1997) at 9-12 ("Decades of Deceit") (attached at Tab A).

the APE in the mid-1980s, it also submitted a buyback policy to restore the coverage carved out by the exclusion." Commissioner James H. Brown, Letter to the Editor, National Underwriter Prop. & Casualty Ed. (April 22, 1996) at 30. Directly quoting the buyback policy, Commissioner Brown pointed out that the buyback policy only provided insurance coverage if there was "'environmental damage'" which was defined in the policy as "'the injurious presence (injurious to the environment, not just the claimant) in or upon land, the atmosphere, or any watercourse or body of water of solid, liquid, gaseous or thermal contaminants, irritants, or pollutants.'" Id. (quoting ISO buyback policy). Commissioner Brown pointed out that ISO represented that the buyback policy would restore the coverage taken away in the "absolute" pollution exclusion. Id. at 54. Commissioner Brown underscored that the exclusion could not be interpreted any more broadly than the buyback coverage. Id. at 30, 54. The injuries at issue herein do not fall within the scope of the buyback policy that restored that which was taken away by the "absolute" pollution exclusion. For that reason and others, the exclusion should not be interpreted to exclude insurance coverage for the injuries at issue herein.

23. In a recently published article, a Senior Attorney with the Louisiana Insurance Department and Chairperson of the Insurance Department's Absolute Pollution Exclusion Task Force wrote:

> [A] ranking member of the [Louisiana Department of Insurance] staff, who was employed with the Louisiana Insurance Rating Commission in the mid-80s when ISO first introduced the APE [absolute pollution exclusion], upon being told of the insurance industry's position on the scope of the APE

> stated that the interpretation advanced by the industry was not consistent with the representations made at the time it was submitted for approval. He also stated to the attorneys that had the industry represented that they would use and interpret the APE in such a broad manner, it most likely would not have been granted approval at least not without a rate decrease.

C. Noel Wertz, The Role of Regulators in Environmental Claims, 7 ABA Coverage, No. 6 (Nov./Dec. 1997) at 27 (attached at Tab B). It is instructive that the insurance industry position that the ranking member of the Insurance Department was referring to was the position taken in South Central Bell v. Ka-Jon Food Stores of Louisiana, Inc., 644 So.2d 357, vacated and remanded, 644 So.2d 368 (La. 1994). See, id. The interpretation by the insurance companies in this litigation and the result reached by this Court is identical to the interpretation the insurance companies urged in Ka-Jon.

24. United Policyholders submits that the insurance companies' arguments in this case are symptomatic of a wider problem of 30-year inconsistency between the interpretations of pollution exclusions that the insurance industry provided state insurance regulators and the interpretations elements of the insurance industry have subsequently provided to the courts. An extensive discussion of this inconsistency is found in Decades of Deceit.

25. United Policyholders respectfully asserts that Justice Overton's forceful dissent in Dimmitt Chevrolet has equal application herein:

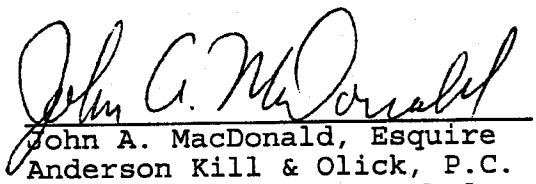
> Given the representations the insurance industry made to Florida and other states, ..., as a matter of public policy, the Court should not allow the insurance industry to benefit from its misrepresentations and nondisclosures. To do so would essentially now reward insurance companies with windfall profits for nondisclosures and misrepresentations the insurance industry made to this State ... when it was seeking approval of the pollution exclusion clause at issue here. As noted by the Florida Attorney General in his amicus brief to this Court:
>
> > The important public policy of protecting ... consumers from misleading coverage representations would be reduced to a sham if insurers were permitted to characterize the pollution exclusion as a mere clarification in order to obtain regulatory approval and then characterize it in court papers as a radical reduction of coverage ... years later at the point of claim. To protect the integrity of Florida's regulatory scheme, insurers ... should be held to the formal explanations originally made to the Florida Insurance Department, which represents the interests of Florida citizens in approving and reviewing form endorsements. The public policy of the state is entitled to no less weight than the identical public policy of the State of New Jersey.

Dimmitt Chevrolet v. Southeastern Fidelity Insurance Corp., 636 So. 2d 700, 714 (Fla. 1994) (Overton, J., dissenting).

26. In closing, United Policyholders wishes to submit that the insurance companies' arguments in this case are symptomatic of a 30-year manipulation of the judicial by elements of the insurance industry. An extensive discussion of this manipulation is found in Decades of Deceit.

27. It is respectfully submitted that although this Court may not ultimately agree that there has been insurance industry inconsistency and misrepresentation in the presentation of the "absolute" pollution exclusion, this Court's recognition of the tremendous public importance of the issue raised in this appeal, combined with what United Policyholders believes are fundamental problems with this Court's analysis of the precedent concerning both the doctrine of objectively reasonable expectations and the "absolute" pollution exclusion, as well as strong evidence of inconsistent positions being taken before Florida's regulatory bodies and courts, warrant the granting of the Petitions for Rehearing.

WHEREFORE, United Policyholders respectfully requests that this Court grant the Petitions for Re-Hearing.



John A. MacDonald, Esquire
Anderson Kill & Olick, P.C.
1600 Market Street, 32nd Floor
Philadelphia, PA 19103
(215) 568-4202

Amy S. Bach, Esquire
United Policyholders
Citicorp Center
One Sansome Street, Suite 1610
San Francisco, CA 94104
(415) 343-9990

ATTORNEYS FOR AMICUS CURIAE