

September 17, 2019

The Hon. Tani Cantil-Sakauye  
Chief Justice and Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, California 94102

**Re: *CSAA Insurance Exchange, etc., et al. v. Oscar  
Herrera, S256799***

**Amicus Curiae Letter in Support of Petition for  
Review, pursuant to California Rules of Court,  
rule 8.500(g)**

To the Chief Justice and Associate Justices of the California  
Supreme Court:

Pursuant to California Rule of Court 8.500(g), amicus  
curiae United Policyholders (“UP”) respectfully requests that  
the Court grant the petition for review in *CSAA Ins. Exch., etc.,  
et al. v. Oscar Herrera, S256799* [hereafter “CSAA”].

UP’s Interest as Amicus Curiae

UP is a non-profit public interest consumer advocacy  
organization dedicated to helping preserve the integrity of the  
insurance system. Based in San Francisco, California, UP  
serves as a voice and an information resource for consumers in  
all 50 states. UP’s work is supported by donations, grants, and  
volunteer labor. UP does not sell insurance or accept funding  
from insurance companies.

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Through its *Advocacy and Action Program*, UP regularly engages with regulators and public officials, including the Department of Insurance and Insurance Commissioner, academics, and various stakeholders in connection with legal and marketplace developments relevant to all policyholders and all lines of insurance. UP has a vital interest in making sure insurance policies across all lines are interpreted and applied fairly to help both consumers and the insurance marketplace as a whole. The *Advocacy and Action* program supplements UP's *Roadmap to Preparedness* and *Roadmap to Recovery Program* which are aimed at helping individuals and businesses purchase appropriate insurance and to help repair, rebuild, and recover after disasters.

A diverse range of individual and commercial policyholders throughout the U.S. regularly communicate their insurance concerns to UP, which allows UP to submit amicus curiae briefs to assist state and federal courts deciding cases involving important insurance principles. UP has filed amicus curiae briefs in approximately 450 cases throughout the U.S. since 1991. UP's amicus brief was cited in the U.S. Supreme Court's opinion in *Humana, Inc. V. Forsyth*, 525 U.S. 299 (1999) and arguments from UP's amicus curiae brief were cited with approval by this Court in *Vandenburg v. Superior Court* (1999) 21 Cal.4th 815 and many times since.

### Why Review is Warranted

While unpublished, if the First District Court of Appeal's decision is left standing, federal courts in California are free to rely on the Court of Appeal's decision. (See *Beeman v. Anthem Prescription Mgmt.* (9th Cir. 2012) 689 F.3d 1002, 1008, fn. 2; *Emp'rs Ins. Of Wassau v. Granite State Ins. Co.* (9th Cir. 2003) 330 F.3d 1214, 1220, n. [“[W]e may consider unpublished state decisions, even though such opinions have no precedential value.”]).

Any event can be viewed as the result of multiple different causes in a chain of events; this includes intentional acts as ‘but for’ causes. Insurance coverage often depends on whether an act was intentional or accidental. For that reason, the law for purposes of a causation analysis looks ‘to those causes which are so closely connected with the result and of such significance that the law is justified in

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imposing liability.’ *Prosser and Keeton on Torts* (5th ed. 1984) § 41, p. 264). The law does not want an insurer to defeat the purpose of a liability policy by simply following a chain back far enough until they find an intentional event that justifies voiding coverage.

Federal courts' future consideration and reliance on the *CSAA* opinion, and particularly the "course of events" analysis used by the Court of Appeal, could deprive California policyholders of liability coverage for unintentional and accidental acts and conduct. The "course of events" analysis could be used to preclude coverage for any accident that was arguably preceded by intentional conduct. This is true even if the accident constitutes a fortuitous event which meets the definitional requirements of an "occurrence" under liability insurance policies typically issued in California. This potential outcome is especially concerning since a significant percentage of insurance coverage disputes are decided in federal court.

Moreover, the approach taken by the Court of Appeal in *CSAA* threatens to circumvent, and conflicts with, the coverage analyses employed by this Court in *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Construction Co.* (2018) 5 Cal.5th 216 [*"Liberty Surplus"*] (coverage found) and in *Delgado v Interinsurance Exch. of Southern California* (2009) 47 Cal.4th 302 [*"Delgado"*] (finding no coverage). In *Delgado* and *Liberty Surplus*, this Court generally held that the focus of a coverage determination analysis should appropriately be directed to the actions and events occurring at the time of injury; not acts and events prior to the injury.

Accordingly, while unpublished, *CSAA* nevertheless provides a template for courts to end-run around this Court's thoughtful coverage determination analyses as set forth in *Delgado* and *Liberty Surplus*.

Review will afford the Court with the opportunity to direct lower courts concerning the specific analysis to be employed in cases involving coverage

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disputes where intentional antecedent conduct is later followed by accidental conduct that immediately causes an injury.<sup>1</sup>

Accordingly, UP strongly believes that this Court's best approach is to grant review and take a careful look at *CSAA*.

Respectfully submitted,

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Amy Bach, Esq.  
CA SB # 142029  
United Policyholders  
381 Bush St. 8<sup>th</sup> Fl  
San Francisco, CA 94104

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<sup>1</sup> Respondent's argument that review of the *CSAA* opinion is unwarranted because the opinion merely restates existing law is undermined by its own earlier request for publication of the opinion and its 22-page Answer to Appellant's Petition for Review filed herein.