IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

TAMARIN LINDENBERG,

Petitioner,

v.

No. M2015-02349-SC-R23-CV

JACKSON NATIONAL LIFE INSURANCE COMPANY,

Trial Court No. 13-cv-02657-JPM-cgc
(W.D. Tenn.)

Respondent,

and

STATE OF TENNESSEE,

Intervenor-Respondent.

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

GILBERT RUSSELL MCWHERTER
SCOTT & BOBBITT, PLC

J. Brandon McWherter (#21600)
bmcwherter@gilbertfirm.com
Emily S. Emmons (#33281)
eemmons@gilbertfirm.com
341 Cool Springs Blvd., Ste. 230
Franklin, Tennessee 37067
(615) 354-1144
Attorneys for Amicus Curiae United Policyholders

TABLE OF CONTENTS

TABLE OF AUTHORITIES

REPORTED CASES

STATUTES

OTHER SOURCES

IDENTITY AND INTEREST OF AMICUS CURIAE

UP is a non-profit public interest consumer advocacy organization dedicated to helping preserve the integrity of the insurance system. UP serves as a voice and an information resource for consumers in all 50 states and is based in San Francisco, California. UP was founded in 1991 after the Berkeley/Oakland Hills Firestorm to assist homeowners with coverage and claim problems. UP's work is supported by donations, grants, and volunteer labor. UP does not sell insurance or accept funding from insurance companies.

Much of UP's work is aimed at helping individuals and businesses purchase appropriate insurance and repair, rebuild, and recover after disasters through its *Roadmap to Preparedness* and *Roadmap to Recovery Programs*. UP engages with local governments, stakeholders, and other advocates to provide insurance claim and coverage guidance for victims of natural disasters, including recent fires in California. UP hosts a library of publications for consumers on its website at www.uphelp.org. Through its A*dvocacy and Action Program*, UP engages with regulators, including the California Department of Insurance and Commissioner Dave Jones, legislators, academics, and various stakeholders in connection with legal and marketplace developments relevant to all policyholders and all lines of insurance with a special emphasis on lessons learned in disaster areas. UP's Executive Director is an official consumer representative to the National Association of Insurance Commissioners.

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 decide cases involving important insurance principles. UP has filed *amicus curiae* briefs in approximately 400 cases throughout the United States since the organization's founding in 1991, the majority of which have been filed in California. UP's

amicus curiae brief was cited in the United States 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 the Court in *Vandenburg v. Superior Court,* 21 Cal. 4th 815 (Cal. 1991). Additionally, UP appeared as *amicus curiae* in the Supreme Court case, *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408 (2003).

UP considers this case to be of special significance because a policyholder's ability to be awarded punitive damages by a jury is the most effective method to prevent insurance companies from engaging in bad faith claims handling practices. Erosion of the centuries-old function of punitive damages by virtue of arbitrary statutory caps saps needed deterrence—harming the insurance consumers for which UP advocates. Because the issues in this case go to the very heart of Tennessee insurance consumers' only meaningful remedy to counter unfair and deceptive claim practices, they fall squarely within UP's advocacy interests.

In this brief, UP seeks to fulfill the "classic role of *amicus curiae* by assisting 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., Inc. v. Comm'r. of Labor & Indus.,* 694 F.2d 203, 204 (8th Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have stressed, an *amicus curiae* is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." (R. Stern, E. Greggman & S. Shapiro, *Supreme Court Practice*, 570-71 (1986) (quoting Ennis, *Effective Amicus Briefs*, 33 Cath. U.L. Rev. 603 (1984)).

SUMMARY OF ARGUMENT

Insurance is not a luxury, but rather is a daily necessity and a critical part of modern society. Families and businesses spend their hard-earned money to buy insurance as a hedge against disaster, calamity, illness, and death. The deliberate and calculated refusal of an insurer to provide the benefits it promised converts calamity into catastrophe. For this reason, the wrongful refusal to pay a first party insurance claim is like a rock dropped into a lake - - the ripples are felt far and wide. Like an earthquake in the depths of the ocean, the aftereffects reverberate and grow into a tsunami of economic and emotional consequences that destroy lives. After a catastrophe, homeowners and businesses are often left destitute. Without the means to return to their prior economic stability, the economy suffers every time a family is rendered homeless, jobless, and uncompensated; taxpayers have to make up the shortfall in medical care and disaster relief. That is why insurance companies that have a business practice of denying legitimate claims to enhance their own bottom line must be punished without arbitrary caps set by legislators who did not hear the proof or feel the insured's pain. This is especially true when the insurer engages in a corporate-wide, institutional policy of purposefully denying valid and covered claims. Like parents and business-owners must punish their children and employees for bad behavior, punitive damages allow juries to teach by example and deter insurers so that they, and other insurers, will honor the public's trust.

In Tennessee, the model of a punitive damage award that matches the reprehensibility of the defendant's conduct has played a significant role in improving insurance claims handling and increasing the payment of insurance benefits to deserving insureds. However, the punitive damages caps change this otherwise effective model and drastically erode these crucial protections for policyholders. Punitive damages caps not only violate the Tennessee Constitution by allowing the legislature to categorically adjudicate claims, they render the

defendant's reprehensibility (and the jury's assessment of same) essentially meaningless, and the deterrent effect of punitive damages is virtually eliminated in the insurance context.

Imposition of a cap on punitive damages wrongly encourages well-funded insurers to compare the maximum dollar risk of denying valid claims with the anticipated increased profits such practices will generate. An economically rational insurer has less and less financial incentive to act in good faith as its wrongful profits increase in relation to the amount of an individual's actual damages, especially if the insurer knows that caps will protect it no matter how wrongful its conduct may be. Such callous calculations are the logical outcome of a system in which punitive damages lack a real world deterrent function because they are capped.

A legislatively imposed cap upon punitive damages, to a level that is not painful for the defendant in light of its wealth, revenues, and wrongfully obtained profits, will defeat the deterrent effect that is one of the dual goals of punitive damages. *City of Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 266-67 (1981) ("Punitive damages…are…intended to…punish the tortfeasor whose wrongful action was intentional or malicious, and to deter him and others from similar extreme conduct."); *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 350 (1974) ("[Punitive damages] are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.").

It is axiomatic that plaintiffs must continue to receive the constitutional protections afforded to them by the right to an *individual* jury trial. Yet, United Policyholders wishes to emphasize the importance and practical implications of these constitutional questions in the unique context of insurance. This Court's decision will determine whether policyholders in this State will continue to receive the needed protections afforded them by punitive damage awards, which have the ability to effectively deter insurers from engaging in malicious, fraudulent and

oppressive conduct when the awards are commensurate with the reprehensibility of the insurers' conduct in each particular, individualized case.

LAW & ARGUMENT

I. THE STATUTORY CAPS PREVENT PUNITIVE DAMAGES FROM ACTUALLY DETERRING REPREHENSIBLE BEHAVIOR.

The Supreme Court has long endorsed the states' fundamental and individual interest in the utilization of punitive damages to deter wrongful conduct that injures their residents. *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, 416 (2003) (citing *Cooper Indus. v. Leatherman Tool Grp., Inc.,* 532 U.S. 424, 432 (2001)*)* ("punitive damages . . . are aimed at deterrence and retribution"); *BMW of N. Am. v. Gore,* 517 U.S. 559, 568 (1996) ("[p]unitive damages may properly be imposed to further a State's legitimate interest in punishing unlawful conduct and deterring its repetition"); *Pac. Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 19 (1991) ("punitive damages are imposed for purposes of retribution and deterrence").

Like federal law, it is well-established in Tennessee that punitive damages are "an effective deterrent of truly reprehensible conduct." *Hodges v. S. C. Toof & Co.*, 833 S.W.2d 896, 900-01 (Tenn. 1992); *Culbreath v. First State Bank Nat'l Ass'n*, 44 S.W.3d 518, 528 (Tenn. 2001) ("the primary purpose of a punitive award is to deter misconduct"); *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 909 (Tenn. 1999) (punitive damages serve "punitive and deterrent purposes"); *Anderson v. Latham Trucking Co.*, 728 S.W.2d 752, 755 (Tenn. 1987) ("[p]unitive damages are intended to punish the defendant for his wrongful conduct and to deter others from similar conduct in the future").

Insurers have a unique role in the efficient operation of our society. The very nature of

insurance places insurers in a position of power over their insureds. Insurance is not only a wise investment, it is often compulsory. Tennessee law requires that drivers be minimally insured. Tenn. Code Ann. §§ 55-12-101, *et seq.* Federal law mandates the purchase of health insurance. 42 U.S.C. § 300gg-13. Indeed, insureds do not purchase insurance for the purpose of profit, but rather to offset the financial damage of an often catastrophic event.

For this reason, the United States Supreme Court has recognized a special nexus between the business of insurance and the public interest. *See, e.g., Cal. State Auto. Ass'n. Inter-Ins. Bureau v. Maloney*, 341 U.S. 105, 109-10 (1951) (insurance has always had special relation to government); *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 415-16 (1946) ("[insurance] business affected with a vast public interest"); *Robertson v. California*, 328 U.S. 440, 447 (1946); *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 540 n.14 (1944) ("evils" in the sale of insurance "vitally affect the public interest"); *Osborn v. Ozlin*, 310 U.S. 53, 65 (1940) ("Government has always had a special relation to insurance."); *O'Gorman & Young, Inc. v. Hartford Fire Ins. Co.,* 282 U.S. 251, 257 (1931) ("The business of insurance is so far affected with a public interest that the State may regulate the rates and likewise the relations of those engaged in the business.").

Accordingly, when insurers engage in reprehensible conduct, as the District Court found that Respondent did here, it is vital that meaningful punitive damages are available to temper the behavior of a member of this quasi-public industry. Although the cap on punitive damages may nonetheless offer an amount that is significant to the *insured*, that same amount is often trivial to the *insure*r in comparison to its net worth, and can be justified as a business expense. "An award which is so small that it can be simply written off as a part of the cost of doing business would have no deterrent effect. An award which affects the company's pricing of its product and

thereby affects its competitive advantage would serve as a deterrent." *Grimshaw v. Ford Motor Co.,* 174 Cal. Rptr. 348, 389 (Ct. App. 1981).

This is especially true in Tennessee, where punitive damages are the *only* true deterrent of bad faith claims practices. In 2011, the Tennessee legislature amended the Tennessee Unfair Trade Practices and Unfair Claims Settlement Act of 2009, making titles 50 and 56 the exclusive *statutory* remedies applicable to insurers for unfair claim settlement practices.[1] Tenn. Code Ann. § 56-8-113 (2012). In that same legislation, the legislature explicitly acknowledged the existence of additional *common law* remedies for insurers' unfair or deceptive acts or practices in connection with a contract of insurance. *Id.* ("Nothing in this section shall be construed to eliminate or otherwise affect any: (1) remedy, cause of action, right to relief or sanction available under common law."). Specifically, the statute provides:

> Notwithstanding any other law, title 50 and this title shall provide the sole and exclusive statutory remedies and sanctions applicable to an insurer, person, or entity licensed, permitted, or authorized to do business under this title for alleged breach of, or for alleged unfair or deceptive acts or practices in connection with, a contract of insurance as such term is defined in § 56-7-101(a). Nothing in this section shall be construed to eliminate or otherwise affect any:
>
> (1) Remedy, cause of action, right to relief or sanction available under common law;
>
> (2) Right to declaratory, injunctive or equitable relief, whether provided under title 29 or the Tennessee Rules of Civil Procedure; or
>
> (3) Statutory remedy, cause of action, right to relief or sanction referenced in title 50 or this title.

---

[1] Title 50 of the Tennessee Code is titled "Employer and Employee" and contains the insurance requirements for workers' compensation in Tennessee, none of which is applicable to the case at bar. Title 56 is titled "Insurance" and contains the 25% statutory bad faith penalty at Tenn. Code Ann. § 56-7-105.

Tenn. Code Ann. § 56-8-113.

The most apparent purpose of the legislation was to remove the insurance industry from the purview of the Tennessee Consumer Protection Act, which Tennessee courts had frequently applied to insurers prior to the enactment of Tenn. Code Ann. § 56-8-113. *See, e.g., Myint v. Allstate*, 970 S.W.2d 920, 926 (Tenn. 1998). Accordingly, other than punitive damages, the only remedy presently available to policyholders impacted by insurers' bad faith conduct is the 25% statutory bad faith penalty at Tenn. Code Ann. § 56-7-105.[2] A 25% statutory bad faith penalty serves no true deterrent purpose, and can simply be written off by insurers as a cost of doing business. For example, on the average $20,000 residential roof claim, the bad faith penalty would only expose the insurer to an additional $5,000. For that reason, the availability of non-capped punitive damages awards are critical to ensure the protection of the general public from unscrupulous insurance carriers. Punitive damages must financially hit hard in order to effectively deter insurance companies from the temptations of bad faith behavior. Otherwise, insurers have no financial incentive to alter their conduct. "[O]bviously, the function of deterrence will not be served if the wealth of the defendant allows him to absorb the award with

---

[2] Tenn. Code Ann. § 56-7-105 states:

> (a) The insurance companies of this state, . . ., in all cases when a loss occurs and they refuse to pay the loss within sixty (60) days after a demand has been made by the holder of the policy . . . on which the loss occurred, shall be liable to pay the holder of the policy . . ., a sum not exceeding twenty-five percent (25%) on the liability for the loss; provided, that it is made to appear to the court or jury trying the case that the refusal to pay the loss was not in good faith, and that the failure to pay inflicted additional expense, loss, or injury including attorney fees upon the holder of the policy . . .; and provided, further, that the additional liability, within the limit prescribed, shall, in the discretion of the court or jury trying the case, be measured by the additional expense, loss, and injury including attorney fees thus entailed.

Tenn. Code Ann. § 56-7-105(a).

little or no discomfort." *Neal v. Farmers Ins. Exch.,* 582 P.2d 980, 990 (Cal. 1978). Insureds are put in a very dangerous position when it is more profitable for an insurer to deny claims in bad-faith because the only risk is "capped" punitive damages on a small percentage of claims that are actually litigated. "[C]apping punitive damages at an arbitrary level would result in under-deterring conduct that is condemned by society." Amelia J. Toy, Comment, *Statutory Punitive Damage Caps and the Profit Motive: An Economic Perspective*, 40 Emory L.J. 303, 305 (1991).

United Policyholders respectfully suggests that the Court should not uphold the punitive damages cap, but rather should strike it down as unconstitutional. Respondents invite the public, and thus the Court, to trust them to abide by a very high standard of propriety. They market themselves as a "Provider who puts you first."[3] Further stating, "We invite you to explore our commitment to you. We're a different kind of company." *Id.* These such advertisements (think also of Travelers' "umbrella," Prudential's "rock," or State Farm's "good neighbor") are very intentionally designed to attract customers by creating a sense of security. When insurers maliciously leave their insureds in their time of need without the security for which they bargained, punitive damages provide the most effective consequence. "Without a reasonable means to assure prompt and bargained-for compensation when disaster strikes, the peace of mind bought and paid for is illusory*." State Auto Prop. & Cas. Ins. Co. v. Hargis,* 785 F.3d 189, 197 (6th Cir. 2015) (internal citation omitted). Punitive damages caps only provide further financial justification for an insurer's misconduct.

[3] Jackson National Life Insurance Company "Why Jackson" Web Page https://www.jackson.com/about/WhyJacksonAbout

II. THE PUNITIVE DAMAGES CAPS VIOLATE A PLAINTIFF'S RIGHT TO TRIAL BY JURY BY TAKING THE DECISION AWAY FROM THE TRIER OF FACT.

A. The Jury is in the Best and Only Position to Determine Appropriate Punitive Damages.

On a theoretical basis, judges and legal scholars can debate deterrence endlessly. However, there is not one number, or a cap, that can effectively serve as a necessary deterrent in every circumstance. Moreover, a reviewing court–and certainly an uninvolved legislature–should not be charged with making this categorical determination. Legislators are not judicial factfinders. They do not sit through trials, listen to witnesses, sift through evidence, or discuss the merits of the size of the proposed punitive damages award with other members of a full-time fact-finding panel. Even appellate judges, who have a crucial due-process review function, are not charged with deciding what punitive damages award is necessary to provide effective deterrence on a case-by-case basis. To be sure, neither should legislators be such decision makers.

Duties of fact-finding and weighing evidence belong to the jurors. *Tenn. Coach & R.R. Co. v. Roddy*, 5 S.W. 286, 289 (Tenn. 1887). Only in the most extreme cases should the judgment of jurors who weighed the facts and evidence be overturned. *Thompson v. French*, 18 Tenn. 452, 459 (Tenn. 1837). This jury, like other juries regularly grappling with punitive damages questions, complied with the principle that it should assess punitive damages in an amount which will deter defendant and others from committing similar misdeeds. *Edwards v. Travelers Ins.*, 563 F.2d 105, 119 (6th Cir. 1977).

Hundreds of years of legal tradition, and the stated intent of our national and state constitutional framers, make clear that a jury is in the best and *only* position to make such determination. By infringing on the jury's duty and constitutional mandate to exclusively make that decision by imposing arbitrary and categorical caps, the legislature has destroyed a plaintiff's inviolate right to trial by jury.

B. Jury Awards May Be Limited, When Necessary, Without Violation of a Plaintiff's Right to Trial by Jury.

Even absent a cap on punitive damages, defendants are afforded sufficient protection from unconstitutional punitive damages awards. As the U.S Supreme Court has established, allowable punitive damages awards must bear some reasonable relationship to the amount of compensatory damages. *BMW of North America, Inc. v. Gore,* 517 U.S. 559, 582 (1996); *State Farm Mut. Ins. Co. v. Campbell,* 538 U.S. 408 (2008). These cases also established that a defendant is entitled to the due process protections guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution in the assessment of punitive damages. Those protections require review of punitive damages awards to ensure that they are "the product of the jury's 'rational decision making' and are not 'tainted by passion, partiality, or prejudice.'" *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 18-20 (1991).

Gore also established a fundamental three-prong test for constitutionality of punitive damages. 517 U.S. at 575. Courts must consider the reprehensibility of the tortfeasor's conduct; the ratio of punitive to compensatory damages; and civil or criminal sanctions for similar conduct. *Id.* After a jury renders its verdict, judicial remittitur is available to ensure that a defendant is only subjected to a constitutional punitive damages award as set forth by *Gore,* 517 U.S. at 575. *Campbell* mandates that due process protections are always considered in the

assessment of punitive damages. 538 U.S. at 417. Therefore, even without the arbitrary caps imposed by the legislature, defendants are afforded sufficient protection. The protection of the court's judicial remittitur power is designed to correct the excessiveness (or inadequacy) of a jury's verdict. *Foster v. Amcon Int'l*, 621 S.W.2d 142, 147 (Tenn. 1981). The doctrine of remittitur allows a trial court to suggest a reduction of a jury verdict if it finds the verdict excessive. *Meals ex rel. Meals v. Ford Motor Co.,* 417 S.W.3d 414, 420-21 (Tenn. 2013).

If this Court finds that the caps violate the Tennessee Constitution, which United Policyholders respectfully suggests that it should, defendants will nonetheless be afforded valid, constitutional protections from unreasonable jury verdicts—due process protection and judicial remittitur. However, legislative remittitur, which the caps essentially function as, violate a plaintiff's inviolate right to trial by jury, which this Court should not allow. *Lakin v. Senco Prods., Inc.,* 987 P.2d 463, 472-73 (Or. 1999); *Lebron v. Gottlieb Mem'l Hosp.,* 980 N.E.2d 895, 908-09 (Ill. 2010)

III. THE CAPS VIOLATE THE SEPARATION OF POWERS DOCTRINE BY ALLOWING THE LEGISLATURE TO CATEGORICALLY ADJUDICATE CLAIMS.

Tennessee courts wield the judicial power of the state. Tenn. Const. Art. VI, § 1. "'Judicial power' is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for a decision." *Morro v. Corbin,* 62 S.W.2d 641, 644 (Tex. 1933), *cited with approval, State v. Mallard,* 40 S.W.3d 473, 483 (Tenn. 2001). Importantly, the exercise of judicial power requires individualized adjudication of a particular claim. *See Armstrong v. Manzo,* 380 U.S. 545, 552 (1965).

In enacting the caps, the legislature intentionally took this function away from judge and jury. The caps deprive insured plaintiffs of this right and sanction categorical adjudication which

"frustrate[s] or interfere[s] with the adjudicative function of the courts." *Underwood v. State,* 529 S.W.2d 45, 47 (Tenn. 1975). It is well-settled that "[e]ach case awarding punitive damages must rest upon its peculiar facts." *Edwards v. Travelers Ins. of Hartford,* 563 F.2d 105, 119 (6th Cir. 1977); *Klein v. Elliott*, 436 S.W.2d 867 (Tenn. Ct. App. 1968); *Booth v. Kirk,* 381 S.W.2d 312 (1963); *Suzore v. Rutherford,* 251 S.W.2d 129 (Tenn. Ct. App. 1952).

The caps produce a situation where a jury renders a verdict, only to have it deemed meaningless and instead, categorically adjudicated by the legislature. "Indeed, a 'court's constitutional function to independently decide controversies is impaired if it must depend on, or is limited by, another branch of government in determining and evaluating the facts of the controversies it must adjudicate.'" *State v. Mallard,* 40 S.W.3d 473, 483 (Tenn. 2001) (quoting *Opinion of the Justices,* 1 688 A.2d 1006, 1016 (1997)). Statutory caps on punitive damages mock the prerogative of the jury, and scoff at the founders of our great state and this nation by disregarding the right to a trial by jury and the most basic notion of separation of powers.

Not only does this violate basic constitutional principles, it has devastating effects on insureds with meritorious claims. *Ferdon v. Wis. Patients Comp. Fund,* 701 N.W.2d 440, 488 (Wis. 2005) ("Certainly the limitation of recovery does not provide adequate compensation to patients with meritorious claims; on the contrary, it does just the opposite for the most seriously injured claimants. It does nothing toward the elimination of nonmeritorious claims."); s*ee also* Marc Galanter, *Real World Torts: An Antidote to Anecdote,* 55 Md. L. Rev. at 1120-1123 (large damages correlate with very severe injuries). These caps effectively rob affected claimants of the reimbursement they are owed for the harms they have suffered. As set forth more fully in Section I, *supra,* this is particularly true in the insurance industry, which requires safeguards to keep insurers' legitimate profit motive balanced with their customers' legitimate interests. The

civil justice system and the remedy of punitive damages have long served as an important and effective means for maintaining that balance. The legislatively-imposed caps destroy it.

CONCLUSION

For the foregoing reasons, United Policyholders respectfully submits that the Court should find the punitive damages cap unconstitutional.

Respectfully submitted,

GILBERT RUSSELL McWHERTER
SCOTT BOBBITT PLC

_____

J. BRANDON McWHERTER (TN Bar No. 21600)
EMILY S. EMMONS (TN Bar No. 33281)

Attorneys for *Amicus Curiae*
UNITED POLICYHOLDERS

341 Cool Springs Blvd, Suite 230
Franklin, Tennessee 37067
Telephone: (615) 354-1144
Facsimile: (731) 664-1540
bmcwherter@gilbertfirm.com
eemmons@gilbertfirm.com

DANIEL WADE, Staff Attorney (CA Bar No. 296958)
AMY BACH, Executive Director (CA Bar No. 142029)
United Policyholders, *Amicus Curiae*
384 Bush St., 8th Floor
San Francisco, CA 94104

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served upon the following by mailing a copy thereof to them by first class U.S. Mail, this the ____ day of April, 2016.

Molly Glover
Gary S. Peeples
Charles Silvestri Higgins
BURCH, PORTER & JOHNSON, PLLC
130 North Court Avenue
Memphis, TN 38103
Attorneys for Petitioner

Daniel W. Van Horn
R. Campbell Hillyer
Michael C. McLaren
BUTLER SNOW LLP
6075 Poplar Avenue, Suite 500
Memphis, TN 38119
Attorneys for Respondent

Joseph Ahillen
OFFICE OF THE ATTORNEY GENERAL
Civil Rights and Claims Division
P.O. Box 20207
Nashville, TN 37202-0207
Intervenor

Braden H. Boucek
BEACON CENTER OF TENNESSEE
P.O. Box 198646
Nashville, TN 37219
Attorney for Amicus Curiae, Beacon Center of Tennessee

W. Morris Kizer
GENTRY, TIPTON & McLEMORE, P.C.
P.O. Box 1990

Knoxville, TN 37901
Attorney for Amici Curiae, Tennesseans for Economic Grown, National Association of Manufacturers, NFIB Small Business Legal Center, American Tort Reform Association, HCA, Inc., State Volunteer Mutual Insurance Company, The Bun Companies, and Beaman Automotive Group

Robert L. Echols
W. Brantley Phillips, Jr.
Matthew J. Sinback
BASS, PERRY & SIMPS, PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Attorneys for Amicus Curiae, National HealthCare Corporation