

U.S. Court of Appeals Docket Nos. 16-1111 and 16-1215

---

**THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

---

DALE SNYDER, et al., individually, and on behalf of all  
others similarly situated,  
*Plaintiffs/Appellants,*

vs.

ACORD CORPORATION, a Delaware non-profit  
corporation, et al.,  
*Defendants/Appellees.*

---

On Appeal from a Decision  
of the United States District Court  
for the District of Colorado  
Case No. 1:14-CV-01736-JLK  
The Honorable John L. Kane, Jr., Judge

---

**MOTION FOR LEAVE TO FILE A BRIEF OF  
*AMICUS CURIAE* IN SUPPORT OF APPELLANTS**

---

Amy Bach, Esq. (CA #142029)  
*10<sup>th</sup> Circuit admission pending*

**UNITED POLICYHOLDERS**

381 Bush Street, 8th Floor  
San Francisco, CA 94104  
Telephone: 415-393-9990  
[amy.bach@uphelp.org](mailto:amy.bach@uphelp.org)

Attorney for *amicus curiae* United Policyholders

## MOTION FOR LEAVE TO FILE A BRIEF OF AMICUS CURIAE

Pursuant to Fed. R. App. P. Rule 29(a) and 10th Cir. Rule 29-2, United Policyholders (“UP”) hereby moves this Court for an order allowing UP to file an amicus curiae brief in support of Plaintiff/Appellant Snyder *et al.* The motion and the attached proposed amicus curiae brief are being filed well within the seven-day deadline set forth in Circuit Rule 29-2(e)(1). UP submits this brief of *amicus curiae* in support of Plaintiff/Appellant Snyder *et al.* and asks this Court to reverse the District Court’s Order granting dismissal.

UP sought the consent of liaison counsel on July 19, 2016. Liaison counsel (Brian Hays, Esq.) replied and asked for a copy of the brief on July 20, 2016 for consideration. On the same day, counsel for UP (Daniel Wade, Esq.) replied with a short summary of the substance of the brief, Liaison counsel (Randall Hack, Esq.) replied that Defendants would not consent to the filing of the amicus brief on July 22, 2016, necessitating this motion.

Federal Courts have broad discretion to allow amicus status to a party with a valid interest and timely, relevant information. *See, e.g., Gerritsen v. De La Madrid Hurtado*, 819 F.2d 1511, 1514 n. 3 (1987). Courts generally exercise liberality in granting *amicus [curiae]* status when, as here, the matter is one of public concern. S. Thomas, *Corpus Juris Secundum*, “Amicus Curiae,” §3 (2012); *see also, e.g., Neonatology Associates, P.A. v. Comm’r of Internal Revenue*, 293 F.

3d 128, 133 (3rd Cir. 2002) (opinion by Circuit Judge Samuel Alito: “skeptical scrutiny of proposed amicus briefs may equal, if not exceed, the time that would have been needed to study the briefs at the merit stage if leave had been granted”).

### **INTEREST OF THE PROPOSED AMICUS CURIAE**

UP is a non-profit organization that is a voice and an information resource for policyholders in all 50 states and dedicated to maintaining integrity and fairness in insurance transactions. 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 gives individuals and businesses guidance and tools for buying suitable insurance and repairing, rebuilding, and recovering after disasters through its *Roadmap to Preparedness and Roadmap to Recovery* Programs. UP also engages with regulators, public officials, academics, and various stakeholders in legal and marketplace developments matters relevant to all policyholders and all lines of insurance. UP is an official consumer representative to the National Association of Insurance Commissioners where claims handling rules and the duty of good faith and fair dealing are routinely discussed.

A diverse range of individual and commercial policyholders throughout the United States regularly communicate their insurance concerns to UP which allows UP to submit *amicus curiae* briefs to assist state and federal courts in deciding cases involving important insurance principles. UP has filed more than

400 cases throughout the United States since the organization's founding in 1991. 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). Arguments from UP's amicus curiae brief were cited with approval by the California Supreme Court in *Vandenburg v. Superior Court*, 21 Cal.4th 815 (1999) and have been so cited in many other state supreme courts and federal courts of appeal.

UP has been assisting policyholders, regulators and courts since the organization was founded in 1991 after the Oakland-Berkeley Hills Firestorm and assisted many victims of the High Park and Waldo Canyon Fires in Colorado with insurance problems, including many of the underinsured plaintiffs here.

Accordingly, 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. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). UP's 25 years of experience aiding underinsured disaster victims and seeking solutions to this chronic problem makes it well suited to aid this Court in this case.

### **WHY AN AMICUS BRIEF IS DESIRABLE AND RELEVANT**

In the instant case, UP seeks to appear as amicus curiae in the instant case for the limited purpose of educating the Court about the severity of the underinsurance problem that afflicted Plaintiffs/Appellants. The important role that

property insurance plays in the economic health of households and communities is uniquely so in the wildfire-prone state of Colorado. Insurance spreads risk and provides financial security, making it possible for people and businesses to thrive. Insurance protection and coverage after an adverse event makes the difference between recovery and ruin. Because insurance is so important, it is a carefully regulated industry and imbued with the public interest.<sup>1</sup> Oversight agencies in every state have the authority to regulate the financial affairs of insurance companies, the rates they charge, and the way they sell their products and process claims made by policyholders. Legislatures have enacted statutes and courts have rendered decisions that define the standards that companies must adhere to when dealing with their insureds. In the end, however, it is up to private litigants, such as Plaintiff/Appellants and state and federal courts to enforce those standards.

Plaintiff/Appellants share the common bond of having experienced a catastrophic loss and the after-shock of learning their insurance safety net was grossly inadequate to cover their losses. These disaster victims, now litigants,

---

<sup>1</sup> 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 at 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”).

experienced the second nightmare of finding out they'd been misled at the point of sale, and the policies sold to them as providing "replacement cost" protection did not in fact provide that protection. They are by no means alone. Post-disaster underinsurance is such a severe and chronic problem that cities, counties, the American Red Cross and other charitable entities partner with UP to help solve it. Some states, such as California, have enacted regulations to address it. Colorado, despite its many consumer protections, has no regulation that speaks specifically to the obligation of an insurance company to set adequate coverage limits.

In a nutshell, the problem is this: Dwelling coverage limits are set by computer software that is highly susceptible to error and consistently underestimates the replacement value of the insured property. In virtually every property insurance sale situation, the consumer reasonably relies on an agent or insurer's superior knowledge and expertise and never challenges the estimated replacement value of their home. Disaster victims bear the brunt of this flawed estimating and underwriting and chronically find their coverage limits too low to rebuild when it is too late to increase their coverage because their property has been destroyed. Thus, many find that no contractor can or will rebuild their home even if they collect the maximum coverage available under their policy.

But insurers contend they are not intentionally underinsured homes. Insurers say they are doing their part by recommending that their policyholders consult with

a local contractor about rebuild costs in their area – an admission that the computer estimating software that sets the dwelling limits does not tell the whole story.

The Colorado Division of Regulatory Agencies has not been able to remedy the situation, nor is it feasible for each individual homeowner affected by underinsurance to pursue an individual lawsuit against each of their respective insurance agents or insurers. The instant case, however, is in fact the most judicially efficient method for Plaintiffs/Appellants to seek recourse. UP believes that the District Court's dismissal has prevented Plaintiff/Appellants from fully exploring the issues raised in their complaint. The aim of UP's *amicus curiae* brief is to attempt put some of these issues in perspective for the Court, given the organizations deep experience with the underinsurance issue.

Accordingly, for the reasons set forth above, UP respectfully requests that the Court grant UP's Motion for Leave to File a Brief of *amicus curiae*.

Dated: July 26, 2016

By: s/ \_\_\_\_\_

*Attorney for Amicus Curiae*

Amy Bach, Esq.  
United Policyholders  
381 Bush Street, 8th Floor  
San Francisco, CA 94104  
Telephone: 415-393-9990

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of July 2016, I electronically filed the foregoing *Motion to File an Amicus Brief in Support of Appellants*, with the Clerk of the Court of the United States Court of Appeals by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: s/ \_\_\_\_\_

*Attorney for amicus curiae*

Amy Bach, Esq.  
United Policyholders  
381 Bush Street, 8th Floor  
San Francisco, CA 94104  
Telephone: 415-393-9990  
[amy.bach@uphelp.org](mailto:amy.bach@uphelp.org)



CERTIFICATE OF COMPLIANCE

I certify that this brief complies with 10th Cir. Rule 25.3 and the ECF compliance requirements of Federal Rules of Appellate Procedure:

- a. All required privacy redactions have been made;
- b. The hard copies of this brief required to be submitted to the clerk's office are exact copies of the ECF filing; and
- c. The ECF submission was scanned for viruses with the most recent version of Microsoft Word for Mac 2011, lasted installed update version 14.6.0, and, according to the program is free of viruses.

Dated: July 26, 2016

By: s/ \_\_\_\_\_

*Attorneys for Amicus Curiae*

Amy Bach, Esq.  
United Policyholders  
381 Bush Street, 8th Floor  
San Francisco, CA 94104  
Telephone: 415-393-9990  
[amy.bach@uphelp.org](mailto:amy.bach@uphelp.org)

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements set forth in  
Rules 27(d)(2) of Federal Rules of Appellate Procedure.

Dated: July 26, 2016

By: s/ \_\_\_\_\_

*Attorney for Amicus Curiae*

Amy Bach, Esq.  
United Policyholders  
381 Bush Street, 8th Floor  
San Francisco, CA 94104  
Telephone: 415-393-9990