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SUPREME COURT OF ARIZONA

SCOT and JOANNA SOBIESKI, husband
and wife,

Petitioners/Plaintiffs/Appellees,

vs.

AMERICAN STANDARD INSURANCE
COMPANY OF WISCONSIN, a
Wisconsin Corporation; AMERICAN
FAMILY MUTUAL INSURANCE
COMPANY, a Wisconsin Company,

Respondents/Defendants/Appellants.

No. CV-16-0253-PR

Court of Appeals
Division One
No. 1 CA-CV 14-0416

Maricopa County Superior Court
No. CV2010-092624

**UNITED POLICYHOLDERS'
MOTION TO SUBMIT A
BRIEF AS AMICUS CURIAE**

Pursuant to Rule 16(b)(2) of the Arizona Rules of Civil Appellate Procedure, United Policyholders (hereinafter “UP”) files this Motion to submit the attached brief of *amicus curiae*. UP certifies that it has read the petition. UP further certifies that no financial contributions were made to fund the preparation of the attached brief. Counsel for UP prepared the attached brief *pro bono*.

INTEREST OF THE AMICUS CURIAE

UP is a national non-profit 501(c)(3) organization dedicated to promoting and preserving integrity in the insurance system. UP was founded in 1991 to be a voice and information resource for insurance consumers following a large firestorm that swept through the San Francisco Bay Area. UP is funded by individual and business donations and grants from foundations and government. UP does not sell insurance or accept money from insurance companies.

Through its *Roadmap to Preparedness* program, UP guides consumers on buying insurance and being economically prepared for adverse events. UP’s *Roadmap to Recovery*TM program helps individuals and businesses navigate the insurance claims process and recover fair and timely settlements. UP has been active in Arizona since the 2003 Aspen Fire. Finally, UP’s *Advocacy and Action* program works with public officials, other non-profits, faith-based organizations, and a diverse range of entities – including insurance producers, insurance trade associations, business groups, and community foundations – to solve problems

related to claims and coverage. UP's Executive Director serves as a seven-time elected consumer representative at the National Association of Insurance Commissioners and as an advisor to the Federal Insurance Office.

Since UP was founded in 1991, the organization has provided direct access to consumers across the country when they have suffered damage to and destruction of their homes and businesses. Because of this, UP is able to provide timely, relevant information to courts considering, *inter alia*, the duties of insurance companies to act in good faith when settling claims. One of UP's *amicus curiae* briefs was cited in the U.S. Supreme Court opinion *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999) and its positions have been adopted by numerous state and federal courts across the U.S.

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., Inc. v. Commissioner of Labor and Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). An *amicus curiae* 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)). *See also Booth v. State*, 207 Ariz. 61, 67, 83 P.3d 61, 67 (App. 2004)

(acknowledging the role of the amicus brief in guiding the Court's evaluation of public policy interests).

WHY REVIEW IS IMPORTANT TO THE PUBLIC INTERESTS REPRESENTED BY UNITED POLICYHOLDERS

An insurance consumer's ability to retain counsel and access the civil justice system to bring an action for bad faith is one of the most important rights that an insured has to keep an insurer accountable to their duty of good faith and fair dealing in handling claims. A meaningful punitive damages remedy is essential to preserve policyholders' access to the courts, because an individual cannot personally finance litigation against large insurance carriers in the absence of a remedy that is commensurate with the costs and risks of litigation. When an appellate court disregards the decision of a trial court judge serving as gatekeeper to the punitive damages remedy, and substitutes its own judgment on issues of fact for that of the jury, the punitive damages remedy becomes meaningless to the individual policyholder because it is no longer attainable. Under the Court of Appeals' opinion in this case, no punitive damages award can ever stand without a secondary review of the evidence by an appellate court making inferences without benefit of hearing the live testimony that is so critical to making any judgment about a person's motive or intent (*i.e.*, the foundation of a valid punitive damages award). With the discretion to evaluate the evidence taken from the jury room and

moved to the appellate courts, the costs and risks of litigation become so great that few individual policyholders will be able to access the courts.

The jury has found that the Sobieskis were victims of insurance bad faith, and the trial court and the Court of Appeals have both found that the evidence supports that finding. In the absence of review by this Court, when the next family comes along with a limited monetary claim, but similar evidence that they were victimized by their insurer's bad faith, the doors to the courtroom will likely be closed to them. Even if an attorney could be convinced that the evidence might persuade a jury that the insurance carrier acted with the requisite "evil mind" to justify punitive damages, the cost and risk of the inevitable paper review by an appellate court will simply be too great to justify the time and expense of the effort.

CONCLUSION

Because United Policyholders is uniquely qualified to raise important considerations relating to the impact the Court of Appeals' decision will have on insurance consumers' ability to access the courts in order to protect and enforce their rights, *amicus curiae* respectfully requests that the Court grant the Motion and accept and consider the attached brief in the above-captioned matter.

Respectfully submitted this 22nd day of December, 2016.

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Certificate of Service

On this date, the above-signing lawyer e-filed this document with the Arizona Supreme Court via TurboCourt, and served copies via U.S. Mail and e-service via TurboCourt to each of the following:

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