



united policyholders

AN INSURANCE CONSUMER ORGANIZATION

March 11, 1996

The Honorable Malcolm Lucas, Chief Justice, and the
Honorable Associate Justices
Supreme Court of California
303 Second St., South Tower
San Francisco, CA. 94107-1317

Re: Laughlin E. Waters and Voula D. Waters v. United States Automobile Ass'n
Civil Case No. B088208, [LASC Case No. BC 68468]

Honorable Justices:

This amicus letter is submitted pursuant to California Rule of Court 979(a) to request Supreme Court review of the decision issued and published by the Second District Court of Appeal, Division One in the above entitled case. The decision was rendered February 2, 1996.

United Policyholders was incorporated in January, 1992 and granted tax exempt status as a non-profit organization dedicated to educating insurance consumers on their rights and duties in the claims process. Since late 1991, we have conducted meetings, educational seminars, and "hands-on" workshops for thousands of California property owners. We receive frequent requests for information and assistance from policyholders throughout the state, and from state and local officials. We work closely with the California Department of Insurance on a variety of insurance issues.

We aim to provide unbiased, practical information on residential property insurance and the insurance claim process to enable property owners to resolve their claims fairly and without the involvement of attorneys wherever possible. It is a fact, however, that economic objectives tempt insurance carriers to delay and deny claims they should pay promptly and fully.

We have encountered many property owners over the past four years who were forced to retain legal counsel to recover their full policy benefits. Their experiences show how important it is that legal remedies remain in place to ensure that profit maximization **cannot** and will not be insurers' top priority in making claim decisions. The erosion of the full range of established legal remedies for policyholders who are forced to litigate claims handling disputes in California will only result in more disputes and more litigation. The recent decision in Waters v. USAA poses this precise threat.

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United Policyholders has also been told by many property owners that the treatment they were subjected to by their insurance carrier was more stressful, upsetting and humiliating than the loss of or damage to their home, their most valued asset. These property owners were not upset because they blamed the insurance company for an act of nature. They were upset because their insurance carriers failed to deliver two of the most important benefits bargained for in the insurance contract: Peace of mind and the security of knowing their claim would be adjusted professionally and that they would be treated fairly. After a loss, events can be controlled. After a loss, insureds become entitled to **all the applicable benefits they bargained for before the loss.**

Decisional and statutory law in our state has long recognized that insurers' contractual obligations to their policyholders warrant strong law enforcement. This is due in part to practical concerns such as the adhesive nature of insurance contracts. Even more importantly, it is due to the intangible but **critically important** promise of security that policyholders pay consideration for when they buy an insurance policy. It is this promise that underlies the covenant of good faith and fair dealing in the insurance context. The breach of this promise must continue to be compensable in our courts through the remedy of general damages.

The case before you, Waters v. USAA is very typical, except for the fact that it involves a policyholder who is a member of the judiciary. The carrier attempted to under-pay a substantial claim, and only reversed their decision after the policyholder retained counsel and filed suit. For the entire period of time between the filing of the claim and the entry of a jury verdict, Judge Waters and his wife were deprived of peace of mind and security, two of the most significant benefits they bargained and paid for when they bought their homeowners insurance contract.

They paid consideration for these benefits just as they paid for benefits to cover like kind and quality replacement of damaged property. The denial of these benefits through threats, refusals to pay, arguments, letter writing, and ultimately, litigation, had as tangible an effect on the Waters, if not more so, than the denial of benefits for the full amount they needed to return their home to its pre-fire condition.

A trial court and a jury heard the evidence in their case and awarded this family compensation for the emotional distress they suffered because of USAA's conduct. The appellate decision offers no legitimate justification for reversing the award. The holding and directions to enter judgment for USAA is an affront to the rule of law and the dignity of hundreds of thousands of California property owners who pay good money for insurance premiums so they won't have to go through what the Waters went through if they are unlucky enough to suffer a major property loss.