

S078962

SUPREME COURT OF THE STATE OF CALIFORNIA

ZUBAIR M. KAZI and KHATIJA KAZI,

Plaintiffs and Appellants,

- against -

STATE FARM FIRE & CASUALTY COMPANY,
TRUCK INSURANCE EXCHANGE and
FARMERS INSURANCE EXCHANGE,

Defendants and Respondents.

After a Decision By The Court of Appeal
Second Appellate District, Division Four
Case No. B089804

BRIEF OF *AMICUS CURIAE* UNITED POLICYHOLDERS
IN SUPPORT OF OPPOSING PARTIES

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UNITED POLICYHOLDERS

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October 12, 2001

Hon. Charles S. Vogel, Presiding Justice
Hon. Gary J. Hastings, Justice
Hon Daniel A. Curry, Justice
California Court of Appeal
Second District
300 South Spring Street, 2nd Fl.
Los Angeles, CA 90013-1213

Re: Proposed Letter Submission by United Policyholders in Support of
Plaintiff-Appellant regarding the LORE of Insurance,
Kazi v. State Farm Fire & Casualty Co., No. B089804, (Cal. Ct. App).

To the Honorable Justices of the California Court of Appeal:

AMICUS PARTY

United Policyholders is a California based non-profit public interest organization specializing in educating insurance policyholders and the courts regarding insurance matters. United Policyholders engages in charitable and educational activities by promoting greater public understanding of insurance issues and policyholder rights. United Policyholders' activities include organizing meetings, distributing written materials, and responding to requests for information from individuals, elected officials, and governmental entities. These activities are limited only to the extent that United Policyholders exists exclusively on donated labor and contributions of services and funds.

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United Policyholders *amicus* briefs have been accepted by many California courts and by the United States Court of Appeals for the Ninth Circuit. In fact, United Policyholders' *amicus curiae* briefs have been accepted by courts throughout the country. See, e.g., Humana, Inc. v. Forsyth, 525 U.S. 299, 313-14 (1999), which refers to Brief for United Policyholders as *Amicus Curiae*): Western Alliance Ins. Co. v. Gill, 686 N.W. 2d 997 (Mass. 1997).¹

LATE FILING AND FORM OF FILING

United Policyholders' counsel learned of the scheduling of this matter within the past week. The matters set forth in this letter should be relatively non-controversial and will provide important information to the Court. United Policyholders respectfully submits that the interests of justice will be served by this Court's acceptance of this letter.

INSURANCE LORE

A judge would not consider performing an appendectomy after reading medical malpractice cases. Cases are tombstones. They tell what went wrong. Further, the case law is "rigged" against policyholders.² Judges regularly dissect insurance claims without having any knowledge of proper claims handling.

¹ See also, Fleming v. United Services Auto. Assoc., 988 P.2d 378 (Or. 1999); Vandenberg v. Superior Court, 88 Cal. Rptr. 2d 366 (Cal. 1999); Peace v. Northwestern Nat'l Ins. Co., 596 N.W. 2d 429 (Wis. 1999); United States v. Brennan, 183 F.2d 139 (2d Cir. 1999); Board of Ed. of Township High School Dist. No. 211 v. International Ins. Co., 720 N.E.2d 622 (Ill. App. Ct. 1999), appeal denied, 729 N.E. 2d 494 (Ill. 2000); Ducote v. Koch Pipeline Co., L.P., 730 So.2d 432 (La. 1999) reversed by, Doerr v. Mobil Oil Corp., No. 00-0947, 2000 WL 1880265, at *6 (La. Dec. 19, 2000); Carter-Wallace, Inc. v. Admiral Ins. Co., 712 A.2d 1116 (N.J. 1998); Guaranty Nat'l Ins. Co. v. George, 953 S.W.2d 946 (Ky. 1997).

² See, Roger Parloff, Rigging the Common Law, Am. Law. (Mar. 1992) at 74.

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This Court should be aware of the way insurance works – the lessons taught to students of insurance in standard textbooks. Law books tell what has gone wrong. Insurance textbooks tell how to do it right.

A senior official of State Farm is one of the co-authors of a standard textbook used to teach tens of thousands of insurance practitioners and insurance students. He is Layne S. Thompson, CPCU, Fire Claim Superintendent, State Farm Companies. See, James J. Markham, et al., The Claims Environment, (1st e.d. 1993 Insurance Institute of America). Some of Mr. Thompson's teachings are set forth as follows:

1. "Claim representatives....are the people responsible for fulfilling the insurance company's promise,..."

Markham at vii.

2. "This text...describes the issues, skills, and concerns common to all claims....."

Markham at vii.

3. "Claim representatives must investigate the facts of specific claims to determine coverage, legal liability, damages, and reserves."

Markham at vii.

4. "The insurance transaction... is generally considered a personal transaction requiring complete honesty and full disclosure by both parties.....both the insurance buyer and the insurance company expect utmost good faith and fair dealing from one another."

Markham at 5, 6.

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5. "When a covered loss occurs, the insurance company's obligation under its promise to pay is triggered. The claim function should ensure the prompt, fair, and efficient delivery of this promise."

Markham at 6.

6. "In order to fulfill the insurance company's promise, a claim representative must follow a systematic process for gathering information and must be proficient in resolving issues of coverage, legal liability, and damages."

Markham at 8, 9.

7. "Following are four tasks the claim representative must accomplish:

1. Investigation
2. Evaluation of coverage, liability and damages
3. Negotiation or alternative dispute resolution (ADR) to achieve settlement
4. If necessary, litigation management"

Markham at 9.

8. "**Investigation.** When a claim is presented, the claim representative must carry out a basic background and factual investigation."

Markham at 9.

9. "...claim representatives must investigate the facts of each claim because policyholders do not know exactly what is covered, under exactly what circumstances it is covered, or exactly what amount should be paid."

Markham at 9.

10. "..., the insurance company should ascertain that the policy terms and language are clear and unambiguous as they relate to a given loss before relying on these terms to deny any claim."

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Markham at 12-13.

11. "...the insurance company should not place its interests above the insured's."

Markham at 13.

12. "The claim professional handling claims should honor the company's obligations under the implied covenant of good faith and fair dealings."

Markham at 13.

13. "It is to the insured that the insurance company owes the contractual obligation of utmost good faith and fair dealing."

Markham at 18.

14. "Good faith claim practices require that this investigation be objective, thorough, and timely."

Markham at 29.

15. "The decision on coverage should result from facts gathered during the investigation process."

Markham at 44.

15. "Claims are seldom investigated too much."

Markham at 44.

17. "The clear implication of these provisions is that the insurer can and will investigate."

Markham at 45.

18. "**Plan of Investigation.**"

Markham at 45.

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19. "...policyholders generally do not understand all of the circumstances that are or are not covered in the policy."

Markham at 59.

20. "When an insurance company fails to pay claims it owes or engages in other wrongful practices, contractual damages are inadequate. It is hardly a penalty to require an insurer to pay the insured what it owed all along."

Markham at 274.

21. "(1) All insurance contracts contain a covenant of good faith and fair dealing.

(2) If bad faith is a tort in a third-party claim, it should be a tort in a first-party claim as well.

(3) Insurance is a matter of public interest and deserves special consideration by the courts to protect the public.

(4) Insurance contracts are not like other contracts because insurers have an advantage in bargaining power. Insurers should therefore be held to a higher standard of care.

(5) Recovery for breach of an insurance contract should not be limited to payment of the original claim.

(6) The public's expectations are elevated by insurers' advertising, slogans, and promises, which give policyholders the impression that they will be taken care of no matter what happens.

(7) Policyholders buy peace of mind and are not seeking commercial advantage when they buy a policy. In addition, they are vulnerable at the time of the loss.

(8) Policy language is sometimes difficult to understand. The benefit of interpretation should be given to the policyholder."

Markham at 277, 278.

22. "Upper management also has a responsibility to maintain proper claim-handling standards and practices."

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Markham at 300.

23. "Most companies have a set of operating procedures that are circulated to all offices. Those procedures have detailed instructions on how to handle almost every type of claim."

Markham at 301.

24. "Bad faith claim denials and wrongful practices became recognized as torts because of the special relationship between insurers and insureds."

Markham at 309.

25. "The terms of insurance contracts are complex."

Markham at 374.

The Markham textbook is used to train thousands of students of insurance throughout California.

Training courses utilizing the Markham textbook are available at:

California

Entire State * 800/655-4432 Lynne Exton-Frampton, Ins. Educ. Assn (IEA)

Entire State J# 800/772-8998 David Garden, IBA West

Entire State *# 800/517-7500 Sandi Kruse, CPCU, CPIW, Sandi Kruse Ins Training

Bakersfield G 805/868-3868 John Mellow, ARM, Kern Cnty Risk Mgmt

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The consideration of these standard and uniform principles should aid this Court in its resolution of this case. In particular, standard insurance lore teaches that insurance companies have a multitude of obligations in addition to the duty to pay. Schwartz v. State Farm

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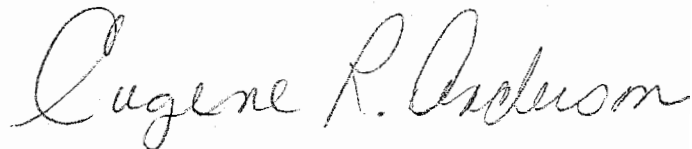
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Fire and Casualty Co., 88 Cal.App. 4th 1329 is a step in the right direction, but too limited.

Consideration of the way insurance works ("insurance lore") should lead to a holding that an insurance company can be held responsible for improper claims handling even though there is no coverage.

Very truly yours,

A handwritten signature in cursive script that reads "Eugene R. Anderson".

Eugene R. Anderson

ERA/ro

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