

IN THE SUPREME COURT OF THE STATE OF OREGON

CHRISTINE MOODY, individually, and in her capacity as the Personal Representative of the Estate of Steven “Troy” Moody, Deceased,  
Plaintiff-Appellant/Respondent on Review,

v.

OREGON COMMUNITY CREDIT UNION, aka OCCU, an Oregon entity, association, union, or corporation et al.,  
Defendants,

and

FEDERAL INSURANCE COMPANY, an Indiana corporation,  
Defendant-Respondent/Petitioner on Review.

Court of Appeals

A172844

S069409

**MOTION—APPEAR *AMICUS CURIAE*  
BY UNITED POLICYHOLDERS**

In accordance with Oregon Rule of Appellate Procedure 8.15, United Policyholders (“UP”) respectfully moves the Court for an order allowing its appearance as *amicus curiae* in the above-captioned case in support of Plaintiff-Appellant/Respondent on Review Christine Moody, individually, and in her capacity as the Personal Representative of the Estate of Steven “Troy” Moody,

Deceased. UP seeks to appear both in support of Ms. Moody, and on the merits of the case on review.

**I. COMPLIANCE WITH OREGON RULE OF APPELLATE PROCEDURE 8.15**

UP represents as follows:

- a. UP present this Motion—Appear Amicus Curiae by United Policyholders (the “Motion”) in its private interest.
- b. The Brief submitted by the UP is aligned with Ms. Moody and supports review of a legal issue raised by Ms. Moody.
- c. The deadline for filing an *amicus brief* aligned with Ms. Moody is September 15, 2022, based on Oregon Rule of Appellate Procedure 8.15(5)(c)-(d) and the filing of Ms. Moody’s Brief on September 15, 2019.
- d. The Motion is timely as it was filed on September 15, 2022.

**II. BASIS OF MOTION TO APPEAR AS *AMICUS CURIAE***

UP requests leave to appear and to file their Brief of *Amicus Curiae*, submitted herewith. This case presents issues of critical importance that will affect the rights of numerous Oregon insureds—consumers and businesses—who find themselves in a financial crisis

and desperately need not just insurance benefits, but to be treated fairly by their insurers. The main question on review is simple: when an insurance company denies insurance benefits to an insured in a manner that violates an Oregon statute that prohibits such denials, can the insured bring a negligence *per se* action against the insurance company?

UP is a highly respected national non-profit section 501(c)(3) organization. Founded in 1991, UP has served as a voice for the interests of insurance consumers across the country for more than 30 years. Individual policyholders routinely call on UP for help in the wake of large-scale national disasters, such as hurricanes in the Gulf of Mexico and across the Eastern Seaboard; floods and windstorms in the Midwest; wildfires in the West; and, most recently, the novel coronavirus disease 2019 (“COVID-19”) pandemic. UP has been assisting Southern Oregon residents impacted by 2020 wildfires in coordination with public officials in the region.<sup>1</sup>

UP routinely engages in nationwide efforts to educate the

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<sup>1</sup> <https://uphelp.org/disaster-recovery-help/oregon-wildfires-insurance-claim-and-recovery-help/>.

public, governmental agencies, legislators, and the courts on policyholders' insurance rights. Grants, donations, and volunteers support UP's work, which is divided into three program areas:

- (1) Roadmap to Recovery (disaster recovery and claim help),
- (2) Roadmap to Preparedness (insurance and financial literacy and disaster preparedness), and (3) Advocacy and Action (advancing pro-consumer laws and public policy). UP does not sell insurance or accept money from insurance companies.

Public officials, state insurance regulators, academics, and journalists throughout the United States routinely seek UP's input on insurance and legal matters. UP serves on the Federal Advisory Committee on Insurance, which briefs the Federal Insurance Office and, in turn, the U.S. Treasury Department. UP's Executive Director has been an official consumer representative to the National Association of Insurance Commissioners since 2009. In these roles, UP assists regulators in monitoring policy language and claim practices through presentations and collaboration and the development of model laws and regulations.

UP chooses cases cautiously before it appears as *amicus curiae* nationwide. UP's briefs provide a counterweight to the claims of the insurance industry and facilitate evenhanded development of the law. Since 1991, UP has filed numerous amicus briefs in federal and state appellate courts across the country that seek to uphold the indemnity function of insurance. The United States Supreme Court and state supreme courts have cited UP's *amicus* briefs and studies in their opinions. *See, e.g., Humana Inc. v. Forsyth*, 525 US 299, 314 (1999); *Preferred Contractors Ins. Co., Risk Retention Grp. v. Baker & Son Constr.*, No. 100466-4 at 8 (Wash. Aug. 11, 2022); *Sproull v. State Farm Fire & Cas. Co.*, No. 126446, 2021 WL 4314060 (Ill. Sep. 23, 2021); *Pitzer Coll. v. Indian Harbor Ins. Co.*, 8 Cal.5th 93, 104-105 (2019); *Cont'l Ins. Co. v. Honeywell Int'l, Inc.*, 188 A.3d 297, 322 (N.J. 2018); *Ass'n of Cal. Ins. Cos. v. Jones*, 2 Cal.5th 376, 382-383 (2017).<sup>2</sup>

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<sup>2</sup> A list of *amicus curiae* briefs filed by UP can be found at <https://www.uphelp.org/resources/amicus-briefs> (last visited Sept. 7, 2022).

UP continues its mission of supporting policyholders through its *amicus* efforts here in support of Ms. Moody. Specifically, the outcome of this case will significantly affect whether insureds will be treated fairly by insurers. Therefore, UP would like to appear in support of Ms. Moody to assist the Court in understanding the implications of this case for Oregon insurance consumers. UP intends to appear to present its position on the correct rule of law at issue in this case that does not affect a private interest of its own.

### **III. CONCLUSION**

For the reason stated above, United Policyholders move for leave under ORAP 8.15 to appear as *amicus curiae* in support of Ms. Moody and file the brief that accompanies this Motion, which

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encourages the Supreme Court to affirm the decision of the Oregon Court of Appeals and recognize an independent common-law cause of action for negligence *per se* including against a first-party insurer.

DATED this 15th day of September, 2022.

MILLER NASH LLP

*s/Iván Resendiz Gutierrez*

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## CERTIFICATES OF FILING AND SERVICE

I certify that service of a copy of this motion will be accomplished on the following participants in this case, who are registered users of the appellate courts' eFiling system, by the appellate courts' eFiling system at the participants' email address as recorded this date in the appellate eFiling system:

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The following participant will be served by email on September 15, 2022, and by mail on September 16, 2022:

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DATED: September 15, 2022.

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