



Office of Public Insurance Counsel

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May 25, 2017

Lyle W. Cayce
United States Court of Appeals for the Fifth Circuit
Office of the Clerk
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *Ariana M. v. Humana Health Plan of Texas, Inc.*
No. 16-20174,
Texas Office of Public Insurance Counsel as Amicus Curiae
in Support of Petition for Rehearing En Banc

Dear Mr. Cayce:

Statement of Interest

Under Texas law, OPIC represents the interests of Texas insurance consumers and advocates positions determined by the public counsel to be most advantageous to a substantial number of insurance consumers. Tex. Ins. Code §§ 501.002, 501.151, & 501.153(3). Like TDI, OPIC has a strong interest in ensuring that consumers challenging a benefit claim denial receive the same full and fair scope of *de novo* review no matter which federal appellate circuit considers their action.

Argument

OPIC supports and adopts the arguments made by the Texas Department of Insurance (“TDI”) in its amicus curiae brief. The reasons that require a reconsideration of *Pierre* are carefully addressed in the panel’s special concurrence and TDI’s amicus curiae brief. OPIC wishes to fully support and emphasize TDI’s position that *Pierre*’s continued application runs counter to the intent of ERISA and the State of Texas to establish uniform treatment for consumers and it negatively affects Texas’s statutory and regulatory efforts to protect all Texas consumers’ rights to a full *de novo* review by a neutral and independent adjudicator. This case should be used as an opportunity for *en banc* review to overturn *Pierre*.

Sincerely,

/s/ Joseph R. Matetich

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CERTIFICATE OF SERVICE

On May 25, 2017, this brief was electronically filed with the Clerk's Office for the United States Court of Appeals for the Fifth Circuit, using the Court's CM/ECF system, which will provide a notice of electronic filing to counsel of record.

/s/ Joseph R. Matetich
JOSEPH R. MATETICH
Office of Public Insurance Counsel

CERTIFICATE OF COMPLIANCE

This document complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 191 words, excluding the parts of the document exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface (14-point Times New Roman) size using Microsoft Word (the same program used to calculate the word count).

/s/ Joseph R. Matetich
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