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Supreme Court No. 80357-9 (CA 56625-3-I)  
Consolidated with No. 80366-8 (CA 57068-4-I)

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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RAJVIR PANAG, on behalf of herself and all others similarly situated,  
*Respondent,*

v.

FARMERS INSURANCE COMPANY OF WASHINGTON, a domestic  
insurance company, and CREDIT CONTROL SERVICES, INC. d/b/a  
Credit Collection Services,  
*Petitioners.*

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MICHAEL STEPHENS, on behalf of himself and all others similarly  
situated,  
*Respondent,*

v.

OMNI INSURANCE COMPANY, a foreign insurance company,  
*Defendant/Appellant,*  
and  
CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,  
*Petitioner.*

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**BRIEF BY THE AMERICAN INSURANCE ASSOCIATION  
("AIA") AND PROPERTY CASUALTY INSURERS ASSOCIATION  
OF AMERICA ("PCI"), AMICI CURIAE**

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**A. Identities and Interest of *Amici Curiae***

This brief is presented by the American Insurance Association (“AIA”) and the Property Casualty Insurers Association of America (“PCI”) (jointly, the “*amici*”). *Amici* are the leading associations of property and casualty insurers in the United States. *Amici* members write a substantial amount of auto insurance in Washington and nationwide. PCI members write 51.4 percent of the nation’s auto insurance. Members of *amici*, including companies based in Washington and most other states, range in size from small companies to the largest insurers with global operations. *Amici* advocate sound public policies on behalf of their members in legislative and regulatory forums at the state and federal levels and file *amicus curiae* briefs on issues of importance to the insurance industry and marketplace in significant cases before federal and state courts.

*Amici* are familiar with the Court of Appeals’ decision below and the issues on Petitions for Review to this Court. Under RAP 10.6(b), they respectfully seek to file the enclosed brief in this matter because the Court of Appeals’ construction of the Washington Consumer Protection Act (“CPA”) implicates the rights and obligations of their members, causing *amici* to be vitally interested in the resolution of the issues in this case.

## B. Argument

Washington state has one of the highest rates of uninsured drivers in the country, estimated at 18-20 percent. *See Uninsured Motorists 2006 Report* by Insurance Research Council, June 2006, available from the Insurance Research Council, a division of the American Institute for Chartered Property Casualty Underwriters/ Insurance Institute of America, [www.rcweb.org](http://www.rcweb.org). When a car accident with an uninsured driver happens, the insurer pays its insured and becomes subrogated to the insured's claim against the uninsured driver.

It is common for insurance companies to outsource the recovery from uninsured drivers to companies such as Credit Control Services, Inc. (CCS). CCS and its counterparts pursue extrajudicial recovery through a combination of demand letters, negotiation and compromise. This process imposes low transactional costs on the participants and does not burden the state's resources. In *Camacho v. Auto. Club of Southern California*, 48 Cal. Rptr.3d 770 (Cal. Ct. App. 2006), the California Court of Appeals ruled that demand letters to uninsured drivers nearly identical in substance to the ones challenged in this case are lawful, fair, and non-deceptive under California's statute that is parallel to Washington's CPA.

The Court of Appeals' surprising contrary conclusion that a similar letter violates the CPA is of great concern to *amici* members. The Court of Appeals embraced the Plaintiffs' argument that a demand letter for an unliquidated claim that had not been reduced to judgment and may be disputed at some point cannot be referred to as a "debt" that is "due" or similar commonly-used terms. The problem is, there is no support for this sweeping and incorrect legal conclusion. Washington's own Collection Agency Act is to the contrary: it is entirely lawful, fair and non-deceptive to refer to disputed obligations (albeit those arising from consumer transactions) as "debts" and to those who owe them as "debtors." See RCW 19.16.100 (11).

If the use of the *same terms* in demand letters arising out of car accidents is enough to subject the sender to claims of "unfairness" or "deception" in class actions that threaten exposure to treble damages and attorney fees, the message to *amici* constituents is clear. No letter, no matter how carefully written, is safe from similar attack. If the notion of "unfairness" is not tethered to any established law -- or, worse yet, is generated *in spite of* such law based solely on plaintiffs' subjective impressions and their lawyers' imagination -- this creates a business risk that *amici* members cannot afford to take. The only alternative is to sue

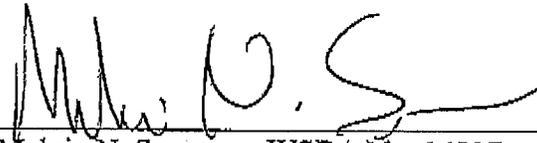
the uninsured drivers. This route would be safe from class-action attack but more expensive for everyone involved.

The CPA should not be tortured to force businesses to pursue remedies that are worse than the diseases CPA was intended to treat. The Court of Appeals construction of the CPA should be reversed.

DATED this 27th day of May, 2008.

Respectfully submitted,

CARNEY BADLEY SPELLMAN, P.S.



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Please find attached the following:

- 1) Motion requesting amicus curiae status
- 2) Amicus curiae brief
- 3) Certificate of service

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Thank you.

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