

No. 98-0218

CA No. 03-96-00509-CV

In The

SUPREME COURT OF TEXAS

WILLIAM E. CASTEEL,

Petitioner,

vs.

CROWN LIFE INSURANCE COMPANY,

Respondent.

BRIEF OF AMICUS CURIAE
TEXAS ASSOCIATION OF LIFE UNDERWRITERS

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Article 21.21 of the Texas Insurance Code passim

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TO THIS HONORABLE SUPREME COURT OF TEXAS:

AMICUS CURIAE, The Texas Association of Life Underwriters, respectfully submit this their Brief in support of the Petitioner William E. Casteel, and in support thereof would show unto this Honorable Supreme Court as follows:

I. PRELIMINARY STATEMENT

The Court of Appeals erred in affirming the Trial Court's granting of Judgment N.O.V. in favor of Crown Life Insurance Company ("Crown Life") on Casteel's ("Casteel") DTPA cause of action because consumer status is not required on at least one of the DTPA laundry list items submitted to the jury. The Court of Appeals correctly concluded that

Casteel possessed standing to sue Crown Life for its deceptive acts under Article 21.21 of the Texas Insurance Code. Crown Life's violations of the Texas Deceptive Trade Practices Act and the Texas Insurance Code resulted in direct and significant damages to Casteel who was the agent selling Crown Life policies to his clients. Such conduct perpetrated directly upon Casteel by Crown Life is actionable under the Texas Insurance Code and the Texas Deceptive Trade Practices Act, and at common law. For these reasons, Amicus Curiae request that Casteel's Petition for Review be in all things granted.

III. INTEREST OF AMICUS CURIAE

The Texas Association of Life Underwriters ("TALU") represents the majority of the full-time professional insurance agents licensed to do business in Texas. The Association is a non-profit trade association with approximately 10,000 members. The TALU has no direct interest in this litigation, but is rightly concerned that its members, as well as other life insurance agents doing business in Texas, will not be protected from the misrepresentations, material omissions, fraud, and negligence of their principals if the Court of Appeals' rulings are allowed to stand. Unless the insurance companies perpetrating such tortiously deceptive conduct upon their agents are regulated and deterred from such conduct by the various statutory provisions currently in place, the public in general will be harmed in addition to the damage inflicted upon the agents by this conduct. If insurance companies are left unregulated in their conduct towards their agents, a result openly sought by Crown Life, these companies are essentially free to make damaging misrepresentations and omissions to their agents without exposure to legal recourse from the agents damaged by their conduct. Amicus Curiae strenuously argue that insurance companies must be made

accountable under the current statutory safeguards for deceptive and misleading acts made to their agents asked to sell their policies. It would be inequitable to allow the insureds and intended beneficiaries to recover for misrepresentations and statutory violations made to them through the agents, but to likewise deny the agents similar recourse against the insurance companies for deceptive and misleading acts directed to the agents.

Amicus Curiae Texas Association of Life Underwriters urges the Court to reverse the Court of Appeals as regards Casteel's claims under the Deceptive Practice Act and common law, and to affirm the Court of Appeals as regards Casteel's standing to sue under Article 21.21 of the Texas Insurance Code.

III. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Casteel and Respondent Crown Life provide the pertinent factual background in this case. In short, Casteel sold life insurance policies for Crown Life as a "broker" under the direction of a "general agent," in this case, the James Hicks Agency of Austin, Texas. The evidence adduced at trial demonstrated Crown Life's actual knowledge that the insurance policies in question were not expected to perform as billed and represented, but did nothing to inform its agents, including Casteel, of these damaging facts. Naturally, the agents continued to pass on this misinformation to their customers without knowing the true state of affairs as regards the actual performance of the policies being sold. In fact, Crown Life knew the dividend rate on their policies would definitely drop, and did nothing to inform their agents of this crucial information that would have prevented the continued dissemination of false information. Petitioner Casteel, like other agents, continued to pass on to his clients the misleading information provided by Crown Life. This

deceptive and misleading conduct has resulted in nationwide litigation against Crown Life, including two class actions and a multi-district litigation proceeding in the United States District Court, Southern District of Texas.

As a result of passing on misinformation to his clients, Casteel was sued five times, was forced out of business, has lost his social standing, has suffered significant monetary damages, as well as recoverable damages for mental anguish. Prior to trial, the Trial Court granted Crown Life's Motion for Summary Judgment on all Casteel's common law causes of action, and trial therefore proceeded under the enforcement provisions of the Texas Deceptive Trade Practices Act and the Texas Insurance Code. At trial, the jury found that Casteel lost wages in the amount of \$ 1.5 million and suffered mental anguish damages in the amount of \$ 6 million; these damages were trebled pursuant to the provisions of the Texas Insurance Code and the Texas Deceptive Trade Practices Act. Additionally, Casteel was awarded 40% of all amounts recovered as attorney's fees and prejudgment interest. Following the jury's verdict in favor of Casteel, the Trial Court granted Crown Life's Motion for Judgment Notwithstanding the Verdict holding that Casteel lacked standing as a person entitled to sue under Article 21.21 § 2(a) and 16, Texas Insurance Code, or as a "consumer" under the DTPA.

The Court of Appeals reversed the judgment of the Trial Court as pertains to Casteel's claims under Article 21.21 of the Texas Insurance Code, and rendered judgment in favor of Casteel in the amount of \$ 1.4 Million, awarded as damages for past and future loss of income. Concluding that "consumer" status is required, the Court of Appeals also held that Casteel lacked standing to sue under the DTPA, and further determined that no

evidence was presented regarding Casteel's claim for mental anguish damages. Because "consumer" status was not required for Casteel's claims under the DTPA, the Court of Appeals erred in this regard and its judgment must be reversed on that ground. The Court of Appeals correctly concluded, however, that Casteel had standing to sue under Article 21.21 of the Texas Insurance Code, and must therefore be affirmed on that issue. The importance of an insurance agent's standing to sue an insurance company for deceptive and unfair practices under the DTPA and Insurance Code, necessitates the filing of this Brief as a friend of this Honorable Supreme Court.

IV. ARGUMENT AND AUTHORITIES

A. Standing

If Casteel has no standing to sue under Article 21.21 of the Texas Insurance Code or Section 17.46 of the Texas Deceptive Trade Practices Act, Crown Life is statutorily unregulated as to its misleading and deceptive conduct toward Casteel and other agents. In this case, Crown Life's actions were reprehensible. Despite knowing the policies in questions would not perform as represented, Crown Life failed to inform their agents of the truth. This resulted in agents such as Casteel passing on the misinformation to thousands of clients. Crown Life clearly preferred to sell additional insurance policies rather than lose those sales upon disclosure of the truth of their terms; in the process, numerous agents like Casteel sold misrepresented policies resulting in the complete destruction of their own business reputation and livelihood. It is as to this dissemination of false and misleading information to insurance agents that Crown Life pleads the nonapplicability of the Texas Insurance Code designed to regulate all engaged in the business of insurance. At bottom,

Crown Life's contention is that it is not regulated as to its agents under the Texas Insurance Code and Deceptive Trade Practices Act. As shown below, Texas law does not permit a principal to lie to its agents without statutory and common law liability. Petitioner Casteel has briefed the common law duties owed by principals to their agents, and said arguments are incorporated herein without repetition. See, Casteel Petition for Review, pp. 12-14.

Crown Life argues that there are a number of cases holding the term "person" used in Article 21.21 only includes insureds or intended beneficiaries of the policy. Neither the statute, nor the cases interpreting the same, limit the definition of "person" so narrowly. Crown Life disregards *Bellefonte Underwriters Co. v. Brown*, 663 S.W.2d 562 (Tex.Civ.App. - Houston [14th Dist.] 1983), *aff'd in part rev'd in part on other grounds*, 704 S.W.2d 742 (Tex. 1986). This case affirmatively provides agents the right to sue directly the company for violations of Article 21.21. In *Bellefonte*, the insurance company slandered its agent, Wisenberg, which was a violation of Article 21.21 and this Court affirmed the agent's recovery under Article 21.21 for such conduct. The other cases cited by Crown Life in support of its contention that a "person" under Article 21.21 must be an insured or intended beneficiary are distinguishable as has been done in the Casteel's Response to Crown Life's Petition for Review. See, Casteel's Response to Crown's Petition for Review, pp. 1-9. In none of the cases relied upon by Crown Life were the misrepresentations made directly to the agent, but rather were cases in which a "third party claimant" was attempting to obtain the benefits of another's insurance policy when they were neither the insured nor the intended beneficiary. Here, Casteel seeks no benefits whatsoever from the Ferguson's policy and cannot therefore be considered a "third party claimant" thereto. Specific cases are cited

in paragraph B below.

Crown relies heavily on *Allstate v. Watson*, 876 S.W.2d 145 (Tex. 1994), but fails to acknowledge that Watson was a "third party claimant" while Casteel is not. This Court in *Watson* specifically stated that "[e]xtra contractual obligations, rights, and remedies of Article 21.21, Section 16, do not extend to third party claimants." *Id. at 149*. Although it is true that "any person" does not mean "every person" as Crown Life asserts, Respondent's attempt to cast the case *sub judice* as one involving a third party claimant is unpersuasive. While it may make some sense to disallow a third party claimant the right to sue an insurance company directly since the third party claimant had no right to expect any benefits from someone else's policy because they paid no premiums and are contractually not entitled to policy benefits, this is a completely different type of claim. Casteel claims no benefits from Ferguson's policy. Moreover, in holding that Watson lacked standing to sue as a third party beneficiary under Article 21.21, this Court expressly noted the unique position of a third party claimant; "[a] third party claimant has no contract with the insurer or the insured, has not paid any premiums, has no legal relationship to the insurer or special relationship of trust with the insurer...." *Watson*, 876 S.W.2d at 149. In contrast, however, Casteel had a principal\agent relationship with Crown Life, and certainly stands in a position of trust and confidence as regards the information Crown Life issued regarding the features of the insurance products it expected Casteel to sell. The principal\agent relationship between insurer and its selling agents is a special relationship of trust rendering comparisons to third party claimants, such as Watson, inapposite.

Plainly stated, Casteel requests damages for misleading and deceptive acts directed

at him by Crown Life; even the cases relied upon by Crown Life recognize recovery under Section 21.21 of the Insurance Code under these factual circumstances. In *Hermann Hospital v. National Standard Ins. Co.*, 776 S.W.2d 249 (Tex.App. - Houston [1st Dist.] 1989, writ denied) the Houston Court of Appeals permitted direct recovery by Hermann Hospital against National Standard on the basis of direct misrepresentations made by National Standard to the Hospital regarding the availability of insurance coverage. Before admitting a patient, Hermann Hospital verified coverage with National Standard, the patient's insurance company. Although National Standard represented that the patient had coverage, it subsequently denied benefits to the insured; the Hospital sued and National Standard sought dismissal by arguing that, in the absence of privity of contract, Article 21.21 did not afford the Hospital relief. Disagreeing, the Court held that the insurer had made an negligent misrepresentation to the Hospital and permitted suit under Article 21.21. *Id.* *Hermann Hospital* therefore stands for the proposition that suit under Article 21.21 lies in circumstances of privity of contract, or reliance by the person bringing the claim on the words or deeds of the insurer. See, *Warfield v. Fidelity and Deposit Co.*, 904 F.2d 322, 327 (5th Cir. 1990) (reconciling *Chaffin* and *Hermann* decisions).

Those are precisely the factual circumstances of the case at bar; Crown Life made certain direct representations to Casteel regarding its insurance policies which were relied upon by Casteel, which turned out to be false, and which caused significant damages to Casteel's business livelihood, reputation, and consequently to his mental well-being. Just as hospitals justifiably rely on the insurer's representations of coverage in making decisions regarding admissions of potential patients, an insurance agent justifiably relies upon the

insurer's representations regarding the features of the insurance products the agents are charged with selling. More so than a hospital verifying insurance coverage, an insurance agent stands in a relationship of trust and confidence as regards the insurer and its insurance policies. Agents, just as hospitals, must and do rely upon the insurance carrier's representations in selling their policies to their clients. There is no material difference between the misrepresentation made to Casteel by Crown, and those at issue in the *Hermann Hospital* case. An insurer's direct misrepresentations to its agents regarding its insurance products causing harm to the agents relying on the same are compensable under Article 21.21, especially when, as in this case, those acts occur in relationships of trust and confidence deserving of the statute's protection. Crown Life urges this Court to follow the *Warfield* decision, and the Amicus Curiae agree; in situations of "reliance by the person bringing a claim on the words or deeds of the insurer, a suit will [] lie under art. 21.21." *Warfield*, 904 F.2d at 327; see also, *Hermann Hospital*, 776 S.W.2d 249.

In fact, Casteel was under no duty to sell a Crown Life policy to the Fergusons. In fact, Casteel represented other insurance companies and presented various other proposals to the Fergusons for their choosing. However, the Crown Life proposal as put forth by the Respondent, and disseminated by insurance agents such as Casteel, was false. Casteel relied on those false representations made directly to him in offering and selling Crown Life's policies. Now he is out of business, has been sued, and is emotionally and financially destroyed. The Fergusons relied on those representations in buying the policies. Crown Life agrees that the Fergusons have standing to sue for the harm caused by their reliance on Crown Life's deception. Crown Life, however, would deny Casteel any right to sue for

the harm caused him by his reliance on fraudulent and misleading statements made directly to him regarding Crown Life's insurance products. The decisional law in Texas clearly provides a remedy under Article 21.21 for parties injured by an insurer's misleading and deceptive statements made directly to them. *Hermann Hospital*, 776 S.W.2d 249; *Warfield*, 904 F.2d at 327.

Without cited authority, Crown Life argues that because Casteel was Crown Life's agent, his damages did not result from the act of "another" under Section 16(a) of Article 21.21 of the Texas Insurance Code; Crown Life also asserts that Casteel's damages arose from the passing on of the misleading information to the Ferguson's, and not from any separate act of another. Crown Life's Petition for Review, p. 5-6. To the contrary, however, Crown Life fails to recognize that Casteel's damages arose directly from the misleading and deceptive information provided to him by Crown Life; Crown Life clearly engaged in an unfair and deceptive act in providing misleading information to Casteel, and is therefore subject to Article 21.21, § 16(a). That the Ferguson's were likewise injured when the misleading information was passed on to them is of no moment; Crown Life's argument is simply that only one person can be injured through the dissemination of misleading information. It is nevertheless true that the number of injured parties will escalate as more individuals receive and rely on Crown Life's deceptive acts; the Fergusons and William Casteel are undoubtedly two persons relying on misleading insurance information issued directly to them, and redress under Article 21.21, § 16(a) is therefore appropriate.

Crown Life also presents the policy argument that affording injured insurance agents redress under Article 21.21 for misleading acts directed to them by insurance companies will

encourage insurance agents to misrepresent their products. Crown Life's Petition for Review, p. 6-7. This argument demonstrates that Crown Life has never walked a mile in William Casteel's shoes. Mr. Casteel's business reputation has been demolished by Crown Life's deception. Mr. Casteel's personal reputation has been likewise irreparably damaged by being lied to by Crown Life and encouraged to pass on the lies to clients, many of whom are friends, fellow parishioners in his church, and other long-time clients and business associates. Permitting Mr. Casteel to recover his damages against Crown Life for its misleading statements to him will not repair the aforementioned personal, mental, and emotional torment caused by Crown Life. Any insurance agent desiring to continue in the business, desiring to avoid litigation, and aiming to be considered anything but a charlatan will have an incentive to accurately represent the insurance products they sell. Moreover, the contrary to Crown Life's argument is true. Should Crown Life be permitted to directly deceive insurance agents regarding the insurance products they are to sell, without exposure to legal redress, there is likewise no incentive for Crown Life to deal fairly and honestly with insurance agents; the absence of any legal redress for that conduct may incentivize Crown Life and others to continue the conduct that has injured thousands of persons, including William Casteel.

B. Recent Authorities

Crown Life places heavily reliance on several cases readily distinguished from the case at bar. In *Shelton Ins. Co. v. St. Paul Mercury Ins. Co.*, 848 S.W.2d 739 (Tex. App. - Corpus Christi 1993, writ denied), the insurance agent, Shelton, sued the insurance carrier for failing to settle his client's claim, which resulted in the loss of the client by Shelton. Most

significantly, however, is the fact that no misrepresentations were made to Shelton by the insurance company, as were clearly made by Crown Life to Casteel. The State of Texas and the Texas Department of Insurance filed an Amicus Curiae Brief in Shelton supportive of the point that an insurance agent is a "person" under Article 21.21 (see Appendix "A"). This Honorable Supreme Court denied writ and thus has only written on this issue directly in *Bellefonte, supra*. Furthermore, the Corpus Christi Court of Appeals has clearly stated that the *Shelton* case "offered no opinion on whether an agent has standing under article 21.21 to bring claims of damages suffered as a result of unfair competition practices directed at the agent by an insurance company and should not be so read." *Tweedell v. Hochheim Prairie Farm Mut. Ins. Assn.*, 962 S.W.2d 685 (Tex. App. - Corpus Christi, n.w.h.). Accordingly, Crown Life's interpretation of *Shelton* is disavowed by the author of that opinion.

In *Favor v. Hochheim Prairie Farm Mut. Ins. Assn.*, 939 S.W.2d 180 (Tex. App. - San Antonio 1996, writ denied), the insurance agent, Favor, sued Hochheim for discharging her as an agent because of high loss rates on policies she sold. *Id at 181*. The court held that Favor did not have standing to sue under Article 21.21, and relied on the unduly restrictive interpretation of "person" announced by *Chaffin v. Transamerica Ins. Co.*, 731 S.W.2d 728 (Tex. App. - Houston [14th Dist.] 1987, writ ref'd n.r.e.). As explained previously, the narrow definition of "person" by the *Chaffin* court is no longer followed. See, *Warfield v. Fidelity and Deposit Co.*, 904 F.2d 322, 327 (5th Cir. 1990) (reconciling *Chaffin* and *Hermann* decisions). Furthermore, no direct misrepresentations were made by Hochheim to Favor, and therefore the case is factually inapposite. Lastly, the subsequent authority of *Keightley v. Republic Ins.*

Co. 946 S.W.2d 124 (Tex. App. - Austin 1997, no writ), judgment vacated by 1997 WL 420787 (Tex. App. - Austin July 24, 1997), stands for the proposition that privity of contract is not a necessary element of an injured party's standing to sue under Article 21.21. In *Feightley*, standing to sue was permitted even though the plaintiff was an assignee of the policyholder who had no direct contractual relationship with the company. Accordingly, the authorities cited by Crown Life narrowly defining "person" to an insured or intended beneficiary of the policy are not followed as a complete and accurate interpretation of the scope of Article 21.21.

The recent case of *Tweedell v. Hochheim Prairie Farm Mut. Ins. Assn.*, 962 S.W.2d 685 (Tex. App. - Corpus Christi, petition for review filed May 21, 1998) is directly on point. Mr. John Tweedell was an independent insurance agent authorized to sell insurance products for Hochheim. Hochheim refused to renew all policies issued by Tweedell because of combined overall high loss ratios. Tweedell sued under the DTPA and Article 21.21 of the Insurance Code. The trial court granted Hochheim's motion for summary judgment on the ground Tweedell did not have standing to pursue the referenced causes of action. Hochheim made the same arguments made herein by Crown Life to the effect that only insureds or their beneficiaries have standing to pursue claims under Article 21.21. The *Tweedell* court stated that "[a]fter a fair reading of section 16(a) we conclude that it does not restrict claims to insureds or beneficiaries of an insurance policy." *Id.* at 689. Noting that insurance agents are included in the definition of person in section 2, the Court held "that any agent who suffers actual damages because of another person's engaging in activities proscribed by article 21.21...has standing to bring a cause of action under article 21.21 of the

Insurance Code." *Id.* at 685. The *Tweedell* decision is directly on point, accurately interprets the definition of "person" under Article 21.21, and should be followed in holding that William Casteel is entitled to bring a claim under Article 21.21 for Crown Life's deceptive acts directed at him in the conduct of its insurance business.

Finally, this Court has recently authored an opinion further supportive of the lower Court's interpretation of Article 21.21 in this cause. In *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, No. 96-1013, 41 *Tex.Sup.Ct.J.* 637 (April 14, 1998), this Court granted review to consider "whether an insurance company employee is a "person" under section 2(a) of Article 21.21 of the Insurance Code." This Texas Supreme Court held that Robert Garrett, an employee-agent of Liberty Mutual, was a "person" under Section 2(a) of Article 21.21 of the Texas Insurance Code. This Court naturally recognized that the purpose of Article 21.21 is to regulate trade practices of insurance by providing that all such practices which constitute deceptive acts are prohibited. Liberty Mutual, like Crown Life herein, contended that its employees do not engage in the business of insurance, but rather in their employer's business and no purpose would be served by including an employee in the definition of "person." In fact, Liberty mutual agreed that independent agents and brokers were "persons" under Article 21.21. Following an analysis of the pertinent administrative regulations and the statute's legislative history, this Court concluded that employee-agents engaged in the business of insurance are "persons" under Article 21.21 and were therefore subject to suit under section 16. Notably, this Court found *Allstate Ins. Co. v. Watson*, 876 *S.W.2d* 145 (Tex 1994) to be inapposite because it involved a third party claim; Crown Life's strong reliance on *Watson* is therefore misplaced. Therefore, Crown Life's policy

arguments" notwithstanding, an insurance agent is a person subject to suit under Article 21.21, and should logically be included in the definition of "person" entitled to bring suit against an insurance company for misleading and deceptive acts directed to him.

C. The DTPA

As this Court is aware, Article 21.21 is incorporated into the DTPA. The recent cases of *Transport Ins. Co. v. Faircloth*, 898 S.W.2d 269, 273-74 (Tex. 1995) and *Webb v. International Trucking Co., Inc.*, 909 S.W.2d 220 (Tex. App. - San Antonio 1995, no writ) hold that in order to recover in a derivative capacity under the DTPA, a specific laundry list item violation must be found in favor of the plaintiff. Significantly, certain laundry list violations require consumer status while others do not. In Casteel's case, even given the narrow reading of the DTPA by *Faircloth* and *Webb*, at least one item on the laundry list in Jury Question 16 did not require consumer status as held by those cases, notably Section 17.46(b)(12). Subpart 12 did not require consumer status and is alone sufficient to uphold the jury's verdict in favor of Casteel on the DTPA claims. Additionally, the jury found that Crown Life violated a number of insurance board orders. The jury's verdict must be upheld if the jury found for Casteel on any sub-part of Question 16; five sub-parts of Section 17.46 were submitted to the jury, and clearly sub-part 12 does not require consumer status on the part of Casteel to recover. See, *Webb, supra*. Accordingly, the jury's affirmative finding on Section 17.46(12) is sufficient to sustain its verdict and the Third Court of Appeals erred in affirming judgment: NOV in favor of Crown regarding Casteel's DTPA claims.

D. Attorney's Fees

The jury found that Casteel was entitled to a recovery of 40% of the jury's verdict as attorney's fees. Subsequent to this trial and the jury's verdict, this Supreme Court has held, at least in DTPA cases, that a specific dollar amount must be testified to at trial. See, *Arthur Anderson & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812 (Tex. 1997). However, this case is only prospective in nature, has no application to this case tried in August and September of 1995, and in no way controls the recovery of attorney's fees allowed under Article 21.21. Absent an express retroactive application to the *Perry* decision, it has no application to this case and the same was error by the Third Court of Appeals.

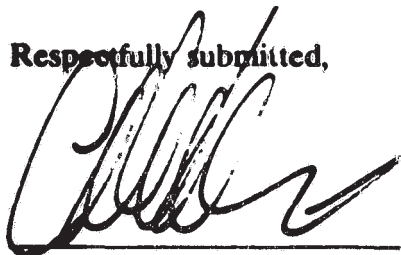
V. CONCLUSION AND PRAYER

In this case, Crown Life has argued that even if it defrauded and misled William Casteel, it is immune from liability for its deceptive and misleading conduct; Crown Life would exclude all insurance agents from any remedy whatsoever for the deceptive and unfair practices perpetrated upon them by insurance companies. Crown Life has destroyed investments and lives by its conduct. As this Supreme Court stated in *Faircloth*, "[w]e are compelled to follow the statutory definitions." *Faircloth, supra*. From the foregoing it is clear that the definition of "person" under Article 21.21 specifically includes "agents and brokers" as part of the regulatory scheme. As this Court has held, insurance agents are subject to suit under Article 21.21 as "persons", and should likewise be permitted to sue, under Article 21.21's provisions, any insurance company that directs misleading and deceptive information to them and on which the agent relies to his\her detriment. Nothing else would comport with the Legislature's intention to regulate the business of insurance as

regards such harmful and misleading conduct. There is simply no justification to exclude insurance companies from regulation for misleading and deceptive acts directed toward their agents as regards the insurance products the companies request the agents sell.

Crown Life's restrictive interpretation of "person" is designed to protect itself in the continued unregulated and, at times, deceptive conduct directed toward insurance agents. Mr. William Casteel was destroyed by that reprehensible conduct. The author of that deceit must be accountable under the statutory remedies in place to regulate and sanction that conduct. For the foregoing reasons, Amicus Curiae urges that Third Court of Appeals be affirmed on the issue of Casteel's standing to sue under Article 21.21, be reversed as to Casteel's recovery under the DTPA and for his attorney's fees, and for such other relief he is entitled.

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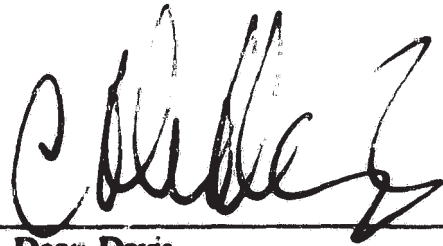
Certificate of Service

I hereby certify that a true and correct copy of the foregoing Brief of Amicus Curiae has been sent to the following certified mail, return receipt requested on this 10th day of June, 1998:

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