

**IN THE SUPREME COURT OF MISSOURI**

No. SC96107

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**THE DOE RUN RESOURCES CORP.,**

Plaintiff-Respondent,

**v.**

**AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY AND  
LEXINGTON INSURANCE COMPANY**

**AND**

**ST. PAUL FIRE AND MARINE INS. CO.,**

Defendant-Appellant

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**On Appeal from the Circuit Court of St. Louis County  
Cause No. 10SL-CC01716**

**On Transfer from the Missouri Court of Appeals, Eastern District  
Case No. ED103026**

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**MOTION OF UNITED POLICYHOLDERS FOR LEAVE TO FILE BRIEF AS  
*AMICUS CURIAE* IN SUPPORT OF RESPONDENT**

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NOW INTO COURT, through undersigned counsel, comes United Policyholders (“UP”), which, pursuant to Rule 84.05 (f), respectfully moves this Honorable Court for

leave to appear as *amicus curiae* in support of Respondent The Doe Run Resources Corp.<sup>1</sup>

The proposed *Amicus* is a national non-profit organization based in California that serves as a voice and information resource for insurance consumers in the 50 states. UP monitors legal and marketplace developments that impact policyholders and participates in the formation of public policy on insurance transactions. The organization is tax-exempt under Internal Revenue Code §501(c)(3). UP is funded by donations and grants and does not sell insurance or accept money from insurance companies. Most of its work is done by volunteers.

Accordingly, UP seeks leave to file an *amicus curiae* brief to fulfill the “classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Commissioner of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). UP has filed *amicus curiae* briefs on behalf of policyholders in more than 400 cases throughout the United States—one of which was cited in the United States Supreme Court’s opinion in *Humana v. Forsyth*, 525 U.S. 299 (1999).<sup>2</sup>

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<sup>1</sup> While Respondent has consented to *Amicus*’s participation in this matter, Appellant has not provided its consent. Accordingly, and consistent with the requirements of Rule 84.05(f)(3), *Amicus* now seeks leave to file the attached brief.

<sup>2</sup> UP also recently appeared in *Labrier v. State Farm Fire and Cas. Co.* (Case No. 16-3185/16-3562, U.S. Court of Appeals, 8th Cir., 2016) (arising under Missouri law).

In this appeal, Appellant seeks to disturb decades of settled Missouri law regarding the scope and application of the insurance policy exclusion. While Missouri has championed clarity and predictability in the drafting of insurance policies, Appellant submits that its vague and non-specific pollution exclusion can exclude the main risks of what it knew to be Respondent's primary business operations. However, as *Amicus* will show, this conflicts with the established limiting principle that Missouri has adopted when interpreting insurance policy exclusions: insurance companies must use clear and specific language if they wish to exclude coverage for what they know to be their policyholders' major source of potential liability. Because Appellant's policy contravenes this principle, it cannot rely on an overbroad and unclear exclusion to avoid its duty to defend.

### **CONCLUSION**

For these reasons, UP respectfully requests that the Court grant its motion for leave to file its proposed *amicus curiae* brief in the above-captioned case. A copy of the proposed brief is attached.

Respectfully submitted,

By: /s/ Timothy W. Burns  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2017, I electronically filed the foregoing document with the Clerk of the Court using the Missouri Courts e-Filing system, which will send a notice of electronic filing to the counsel of record in this case.

/s/ Timothy W. Burns