

NO. 09-11075

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**ADVANCED ENVIRONMENTAL RECYCLING TECHNOLOGIES, INC.,  
Appellant**

vs.

**AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE  
COMPANY,  
Appellee.**

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**On Appeal from the United States District Court  
For the Northern District of Texas  
Dallas Division  
Civil Action No. 3:08-CV-0837**

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**MOTION OF UNITED POLICYHOLDERS FOR LEAVE OF COURT TO  
FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT'S  
BRIEF ON THE MERITS**

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United Policyholders (“UP”) request leave of Court to file an *amicus curiae* brief in this action in support of Appellant Advanced Environmental Recycling Technologies, Inc.’s (“Appellant”) Brief. United Policyholders are familiar with the questions involved in this case and the scope of their presentation and believe that there is a necessity for additional argument in the brief on the points specified below.

United Policyholders has a particular interest in promoting the rights of policyholders seeing policyholders obtain the full measure of the insurance they purchase. United Policyholders offers a comprehensive knowledge of evolving concepts of insurance law. The decision here by this Court may substantially impact on the rights of policyholders in Texas and nationwide. Any decision by this Court on the issue presented undoubtedly will be considered by sister jurisdictions. United Policyholders therefore requests leave to file an *amicus curiae* brief in this Court to inform this Court of the landscape of insurance law on the issues involved.

### **INTEREST OF THE *AMICUS***

United Policyholders was founded in 1991 as a non-profit organization dedicated to educating the public on insurance issues and consumer rights. The organization is tax exempt under Internal Revenue Code § 501(c)(3). United

Policyholders is funded by donations and grants from individuals, businesses and foundations.

In addition to serving as a resource on insurance claims for disaster victims and commercial policyholders, United Policyholders actively monitors legal and marketplace developments affecting the interest of all policyholders. United Policyholders receives frequent invitations to testify at legislative and other public hearings, and to participate in regulatory proceedings on rate and policy issues.

A diverse range of policyholders throughout the United States communicate on a regular basis with United Policyholders, which allows us to provide important and topical information to courts throughout the country via the submission of *amicus curiae* briefs in cases involving insurance principles that are likely to impact large segments of the public.

In this brief, United Policyholders seeks 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 considerations.” *Miller-Wohl Co. v. Commissioner of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have often stressed an *amicus* is often in a superior position to “focus the court’s attention on the broad implications of various possible rulings”. R. Stern, E. Greggnian & S.

Shapiro, Supreme Court Practice, 570-71 (1986) (quoting Ennis, Effective Amicus Briefs, 33 Cath. U.L. Rev. 603, 608 (1984).

Dated: March 18, 2010

Respectfully submitted,

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AFFIRMATION IN SUPPORT OF UNITED POLICYHOLDERS MOTION  
FOR LEAVE OF COURT TO FILE BRIEF OF AMICUS CURIAE IN  
SUPPORT OF APPELLANT'S BRIEF ON THE MERITS

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JOHN N. ELLISON, ESQ., an attorney duly admitted to practice law before the Fifth Circuit Court affirms the following under penalty of perjury:

1. I am a member of Reed Smith, LLP, attorneys for *amicus curiae*, United Policyholders. I make this affirmation in support of the *amicus* ' motion to file a proposed brief as *amicus curiae*, a copy of which is attached.
2. I am familiar with the proceedings in this Court in this case.
3. The proposed *amicus* is described in the proposed brief.
4. *Amicus curiae* has a vital interest in seeing that policyholders obtain the full measure of the insurance they buy.
5. The *amicus* believes that this proposed brief will provide the Court with special assistance by way of the broadened perspective and public interest they bring to the Court.
6. Appellant Advanced Environmental Recycling Technologies, Inc. has agreed to allow Appellee American International Specialty Lines Insurance Company additional time to respond to the proposed brief.
7. No party to this case has contributed directly or indirectly to the cost of the proposed *amicus* brief.

WHEREFORE, it is respectfully requested that this Court enter an order directing the Clerk of the Court to accept for filing the proposed *amicus* brief.

Dated: March 18, 2010

  
John N. Ellison, Esquire

Shapiro, Supreme Court Practice, 570-71 (1986) (quoting Ennis, Effective Amicus Briefs, 33 Cath. U.L. Rev. 603, 608 (1984).

Dated: March 18, 2010

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion of United Policyholders for Leave of Court to File Brief of *Amicus Curiae* in Support of Appellant's Brief on the Merits has been served upon the following counsel by First Class Mail, on this 18<sup>th</sup> Day of March, 2010:

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