

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GAMBLE FARM INN, INC., : CIVIL ACTION - EQUITY  
Plaintiff :  
v. :  
SELECTIVE INSURANCE COMPANY; :  
LARRY COPLOFF; MARY COPLOFF; :  
RONALD DREWERY; DEBRA DREWERY; :  
LOUIS WINNER; ROSE WINNER; and :  
MAILE MARSHALL, :  
Defendants. : NO. 92-01485

**BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS**  
**IN SUPPORT OF PLAINTIFF GAMBLE FARM INN, INC.'S**  
**MOTION FOR LEAVE TO AMEND ITS COMPLAINT**  
**PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1033**

JOHN N. ELLISON (I.D. NO. 51098)  
ANDERSON KILL OLICK & OSHINSKY, P.C.  
1600 Market Street  
32nd Floor  
Philadelphia, PA 19103  
(215) 568-4202

Attorney for Amicus Curiae  
United Policyholders

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Amicus curiae United Policyholders ("UP"), by its undersigned counsel, hereby files its brief in support of the motion of Plaintiff Gamble Farm Inn, Inc. ("Gamble Farm") for leave to amend its complaint ("Gamble Farm's Motion").

I. INTEREST OF AMICUS CURIAE

UP is a non-profit corporation dedicated to educating policyholders on their rights and duties under their insurance policies. Specifically, UP engages in charitable and educational activities by promoting greater public understanding of insurance issues and consumer rights. UP's activities include organizing meetings, distributing written materials, and responding to requests for information from individuals, elected officials, and governmental entities. These activities are limited only to the extent that UP subsists exclusively on donated labor and contributions of services and funds.

As policyholders, amicus curiae have a vital interest in seeing that the standard form commercial general liability insurance policies sold to countless policyholders like amicus curiae are interpreted properly and consistently by insurance companies and the courts.

The exclusion at issue in this case is a standard form, non-negotiated exclusion clause that was drafted by the insurance industry and subsequently added to the policyholder's Commercial General Liability policy by endorsement. Amicus Curiae assert that the plain language of this exclusion as well as its drafting and regulatory history conclusively show that the so-called "absolute"

pollution exclusion does not apply to a claim like that at issue in this case.

Amicus curiae further asserts that the so-called "absolute" pollution exclusion contained in policies, like that sold by Selective, were not intended to be applied literally, and were never intended to apply to claims like these. Under the interpretation offered by Selective (and other members of the insurance industry), the insurance coverage provided to policyholders like Gamble Farm would be rendered illusory, and countless policyholders would not have the protection they believe they purchased.

If Selective's interpretation and bad faith conduct goes unpunished, future policyholders in Pennsylvania may be stripped of the very protection they paid substantial premiums to receive. This Court should not permit such an injustice and should find Selective conduct amounts to bad faith under Pennsylvania law for which Gamble Farm deserves to be compensated.

## II. FACTUAL BACKGROUND

Defendant Selective Insurance Company ("Selective") sold a comprehensive general liability insurance policy (the "CGL Policy") to Gamble Farm, an operator of a restaurant. See Gamble Farm Inn, Inc. v. Selective Ins. Co., 440 Pa. Super. 501, 503-04, 656 A.2d 142, 143 (1995). Pursuant to the terms of the CGL Policy, Selective agrees to provide insurance coverage to Gamble Farm for a specified period of time for all sums that Gamble Farm became legally obligated to pay as damages for "bodily injury" or

"property damage" claims that were caused by an "occurrence." Id. In addition, the CGL Policy obligates Selective to defend Gamble Farm against any and all such claims. Id. The CGL Policy defines an "occurrence" as an "'accident, including continuous or repeated exposure to substantially the same general harmful conditions.'" Id.

During the CGL Policy's period of coverage, animals deposited nuts into the flue of a hot water heater located on Gamble Farm's premises, resulting in damage to the hot water heater. Id. The damage to the hot water heater caused the release of carbon monoxide fumes, which seeped into the restaurant operated by Gamble Farm. Id. As a result of ingesting such fumes, several patrons of Gamble Farm became ill and sought medical attention. Id. These patrons (the "Underlying Claimants") have made "bodily injury" claims against Gamble Farm, seeking the reimbursement of medical expenses they incurred in connection with the ingestion of carbon monoxide (the "Underlying Actions"). Id. Gamble Farm has paid approximately \$2,000 to settle some, but not all, of the Underlying Actions. Id.

Within a few days after the carbon monoxide emission incident, Gamble Farm submitted a general liability loss notice to Selective, requesting indemnification and defense costs associated with the Underlying Actions. Id. Selective denied coverage, relying upon the so-called "pollution exclusion" contained in the CGL Policy. Id. The CGL Policy's so-called "pollution exclusion" excludes coverage for damages arising out of a "pollution hazard,"