

SUPREME COURT OF LOUISIANA

DOCKET NO. 2014-CQ-1921

DANNY KELLY, Appellant

VERSUS

STATE FARM FIRE & CASUALTY COMPANY, Appellee

CIVIL ACTION

On Certified Questions from the United States Court of Appeals for the Fifth Circuit,
Docket No. 12-31064; United States District Court for the Middle District of Louisiana,
Docket No. 09-619-BAJ-SCR, Honorable Brian A. Jackson, Judge Presiding

**UNITED POLICYHOLDERS'S MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

Respectfully submitted:

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MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

MAY IT PLEASE THE COURT:

NOW INTO COURT, through undersigned counsel, comes United Policyholders, who respectfully moves this Honorable Court for leave to file an original brief of *amicus curiae* in support of Plaintiff-Appellant, Danny Kelly, on the questions certified from the United States Court of Appeals for the Fifth Circuit to the Louisiana Supreme Court in *Kelly v. State Farm Fire & Cas. Co.*, 582 F. App'x 290 (5th Cir. 2014), *certified question accepted*, 2014-1921 (La. 11/21/14).

United Policyholders is a unique national non-profit organization founded in 1991 that helps preserve the integrity of the insurance system. Donations, grants and volunteer labor support the organization's work. Through a Roadmap to Preparedness, Roadmap to Recovery and Advocacy and Action program, United Policyholders helps Louisiana residents to prepare for and recover from disasters and to protect their assets by making good insurance decisions. United Policyholders assisted Louisiana property owners after Hurricane Katrina, and regularly coordinates with Commissioner Jim Donelon and his staff to serve the State's insured home and business owners.

By submitting a brief in this matter, United Policyholders seeks to fulfill the "classic role of *amicus curiae* 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., Inc. 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. Greggman & S. Shapiro, *Supreme Court Practice*, 570-71 (1986) (quoting Ennis, *Effective Amicus Briefs*, 33 *Cath. U.L. Rev.* 603, 608 (1984)).

Since it was founded in 1991, United Policyholders has filed over three hundred and fifty *amicus* briefs in state and federal appellate courts throughout the United States. United Policyholders' *amicus* brief was cited in the U.S. Supreme Court's opinion in *Humana Inc. v. Mary Forsyth*, 525 U.S. 299 (1999). The organization has participated by court invitation in briefing and oral argument, and many of the arguments from United Policyholders' *amicus curiae* briefs have been cited with approval by reviewing courts.

United Policyholders has previously been granted leave to file *amicus curiae* briefs in the Louisiana Supreme Court, in the matters of *Sher v. Lafayette Ins. Co.*, 2007-2441 (La. 4/8/08), 988 So. 2d 186, *on reh'g in part* (July 7, 2008), and *Ducote v. Koch Pipeline Co., L.P.*, 98-0942 (La. 1/20/99), 730 So. 2d 432, *opinion modified on reh'g* (Feb. 26, 1999). United Policyholders has also been granted leave to file *amicus curiae* briefs in the United States Court of Appeals for the Fifth Circuit, in the matters of *Pendergest-Holt v. Certain Underwriters at Lloyd's of London*, 600 F.3d 562 (5th Cir. 2010), *Tuepker v. State Farm Fire & Cas. Co.*, 507 F.3d 346, 348 (5th Cir. 2007), and *Motiva Enterprises, LLC v. St. Paul Fire & Marine Ins. Co.*, 445 F.3d 381, 383 (5th Cir. 2006).

The certified questions concern the scope of duties owed by an insurer to its policyholder while it handles claims on its insured's behalf. The Court's resolution of these issues will have significant ramifications for insurance policyholders seeking to ascertain and understand their rights while insurers are defending or otherwise handling claims on behalf of their insureds. This matter will have a substantial impact on the abilities of policyholders to hold their insurers accountable, and will also impact the consistency of court decisions on a statewide basis. This is an area of the law in which United Policyholders and the undersigned attorneys submit it would be useful to the Court to allow the insurance policyholders' perspective to be heard.

The undersigned counsel for United Policyholders have significant experience in insurance litigation against major insurance companies, and believe that they will be able to provide assistance in analyzing the issues in this case and their public policy implications in a way that compliments the arguments raised by counsel for the parties to this appeal. Counsel for United Policyholders are retained *pro bono*, and will accept no money for their legal work in this case. The issues before this Honorable Court are of great importance to the citizens of the State of Louisiana.

WHEREFORE, United Policyholders respectfully requests leave of Court to file the attached brief as *amici curiae*.

Respectfully submitted:

/s/ Michael J. deBarros

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ORDER

Considering the foregoing United Policyholders's Motion for Leave to File *Amicus Curiae* Brief:

IT IS ORDERED that United Policyholders is hereby GRANTED leave to file the attached brief as *amicus curiae*.

THUS DONE AND SIGNED this ____ day of January, 2015, in New Orleans, Louisiana.

JUSTICE, LOUISIANA SUPREME COURT