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In The  
**Court of Appeals  
of Maryland**

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**No. 18**

September Term, 2016

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NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

*Petitioner,*

v.

THE FUND FOR ANIMALS

*Respondent.*

*On writ of certiorari from the Court of Special Appeals  
Case No. 2598, Reported February 1, 2016 (Eyler, J)*

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**MOTION FOR LEAVE TO FILE A BRIEF OF AMICUS CURIAE  
ON BEHALF OF UNITED POLICYHOLDERS  
IN SUPPORT OF RESPONDENT**

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## MOTION FOR LEAVE

This appeal involves an issue of critical importance to proposed *amicus curiae* United Policyholders (“UP”) and to insurance consumers across Maryland: Whether Insurance Art. § 19-110 requires an insurance company who receives allegedly late notice of an insurance claim to show that a delay reporting caused actual prejudice to the insurance company. The answer to that question is a resounding “yes” and there are myriad reasons why. Thus, pursuant to Maryland Rule 8-511, UP moves for leave of this court to file the attached *amicus curiae* brief in order to address the Notice-Prejudice Rule and thereby 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. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982).

Maryland’s notice-prejudice rule, as it is known generally, is codified specifically as Insurance Art. § 19-110 and is a rule of fairness that prevents undue forfeiture and draconian, windfall results. Otherwise, an insurance company who otherwise owes coverage for defense and indemnity as to claims against its policyholder may escape liability on a mere technicality. If the insurance company can simply disclaim coverage without showing that, had it been in control of the litigation from the beginning, the outcome of the claim would have been different, then policyholders are unfairly and unjustly denied coverage. The old adage “equity abhors a forfeiture” is precisely why the notice-prejudice rule exists in Maryland and in a majority of jurisdictions. In the attached

brief, proposed *amicus curiae* seeks to bring a national perspective to an issue that affects consumers in Maryland and across the U.S.

UP is a non-profit organization founded in 1991 and dedicated to educating the public on insurance issues and consumer rights. UP serves as an information resource and a voice for a diverse range of insurance consumers across the United States, from low income homeowners to international businesses. Donations, foundation grants and volunteer labor support the organization's work, which is divided into three program areas: *Roadmap to Recovery*™ (helping disaster victims navigate the insurance claim process and recover fair settlements), *Roadmap to Preparedness* (promoting disaster preparedness and insurance literacy for homeowners and businesses), and *Advocacy and Action* (advancing the interests of insurance consumers in courts of law through the submission of *amicus curiae* briefs and before insurance regulators).

UP has been active since its founding in helping a diverse range of policyholders throughout the United States. UP's Executive Director has been appointed for seven consecutive terms as an official consumer representative to the National Association of Insurance Commissioners, and works closely with State Insurance Commissioners and regulators, including the Maryland Insurance Administration and the Maryland People's Insurance Counsel Division of the Maryland Attorney General's Office on issues affecting insurance consumers. Media and academics also regularly seek UP's input on insurance consumer issues. UP is regularly called upon to testify before legislators on

insurance and consumer rights policy. Since its founding in 1991, UP has filed *amicus curiae* briefs in numerous federal and state appellate courts in over 400 cases.<sup>1</sup>

Respondent-Appellee The Fund for Animals consents to UP's filing an *amicus* brief. Consent was requested from National Union Fire Insurance Company of Pittsburgh, PA, but was not received before the filing of this motion. No one other than UP, its members or its attorneys made any monetary or other contribution to the brief.

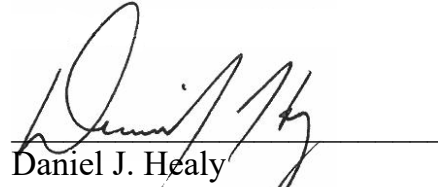
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<sup>1</sup> UP's arguments were adopted by the Texas Supreme Court in *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools Inc.*, 2008 Tex. LEXIS 92, 51 Tex. Sup. J. (Tex. Feb. 1, 2008), as well as by the California Supreme Court in *Vandenberg v. Superior Court*, 88 Cal. Rptr.2d 366 (Cal. 1999) and numerous other proceedings including *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, 145 P.3d 472 (Cal. 2006) and *In Re Salem Suede, Inc.*, 221 B.R. 586 (D. Mass. 1998).

UP has also been granted leave to file briefs as an *amicus curiae* in numerous U.S. Supreme Court cases, including the following: *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 134 S. Ct. 604 (2013); *US Airways v. McCutchen*, 133 S. Ct. 1537 (2013); *Hardt v. Reliance Standard Life Insurance Co.*, 130 S. Ct. 2149 (2010); *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105 (2008); *Aetna Health, Inc. v. Davila*, 542 U.S. 200 (2004); and *Rush Prudential HMO v. Moran*, 536 U.S. 355 (2002).

For the reasons set forth above, proposed *amicus curiae* UP respectfully requests that this court grant the instant motion and accept the attached *amicus curiae* brief.

Respectfully submitted,



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Dated: August 22, 2016

**CERTIFICATE OF SERVICE**

**Court of Appeals**

No. 18, September Term, 2016

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NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.

*Petitioner,*

v.

THE FUND FOR ANIMALS

*Respondent.*

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I, John C. Kruesi, Jr., being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by Anderson Kill P.C, Counsel for Amicus Curiae to print this document. I am an employee of Counsel Press.

On the **22<sup>nd</sup> Day of August, 2016**, I served the within **Motion** upon:

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**via Express Mail**, by causing 2 true copies of each to be deposited, enclosed in a properly addressed wrapper, in an official depository of the United States Postal Service.

Unless otherwise noted, the required copies of the brief have been sent to the Court on the same date as via hand delivery.

August 22, 2016

  
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John C. Kruesi, Jr.  
Counsel Press