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MAR 22 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
John J. Milling, Special Referee

HARLEYSVILLE GROUP INSURANCE, A PENNSYLVANIA CORPORATION,  
*Appellant-Respondent,*

v.

HERITAGE COMMUNITIES, INC., *et al.*,  
*Respondents*

and

MAGNOLIA NORTH HORIZONTAL PROPERTY REGIME, *et al.*,  
*Respondents-Appellants*

Appellate Case No. 2013-001281

AND

HARLEYSVILLE GROUP INSURANCE, A PENNSYLVANIA CORPORATION,  
*Appellant-Respondent,*

v.

HERITAGE COMMUNITIES, INC., *et al.*,  
*Respondents*

And

RIVERWALK AT ARROWHEAD COUNTRY CLUB HORIZONTAL PROPERTY  
REGIME, *et al.*,  
*Respondents-Appellants*

Appellate Case No. 2013-001291

JOINT MOTION OF THE COMPLEX INSURANCE CLAIMS LITIGATION  
ASSOCIATION AND THE PROPERTY AND CASUALTY INSURER'S ASSOCIATION  
OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF  
APPELLANTS' PETITION FOR REHEARING

Pursuant to South Carolina Appellate Rule 213, the Complex Insurance Claims Litigation  
Association and the Property and Casualty Insurers Association of America respectfully request

leave to file an *amici curiae* brief in support of the Appellants-Respondents in this case. The proposed brief is attached to this motion.

*Amici's* participation in this appeal is desirable and will aid the Court's disposition of these issues because, as explained below, *amici* and their counsel have extensive experience in cases involving complex insurance coverage issues. *Amici* can also offer the broad perspective of their members on the issues in this case.

### INTEREST OF THE AMICI CURIAE

The proposed *amici* are trade associations of major property and casualty insurance companies, which collectively represent over a thousand insurers across the country. They seek to assist courts in understanding and resolving important coverage issues that are of great consequence to insurers, policyholders, and the public.

The problems with this Court's decision in Opinion 27698 highlighted by the Appellant/Respondent's petition for rehearing could have a far-reaching effect on the insurance industry. Through the instant petition for rehearing, this Court has been asked to address (1) the extent to which it intended to permit non-parties to insurance contracts to argue breach of contract against the insurer; (2) whether or not all insurers must now seek to intervene in trials against their policyholders in order to preserve the right to seek future allocation of a potential verdict between covered and non-covered damages; and (3) whether or not an award of punitive damages based in part on acts occurring outside the policy period are subject to pro rata allocation based on the insurer's time-on-the-risk.

The position adopted by the Special Referee and this Court in Opinion 27698 will throw into doubt settled law regarding standing to assert breach of contract arguments and allocation of damages across multiple policy periods, and raises a number of other policy concerns. The proposed *amici* are vitally interested in this case because their members provide a substantial

percentage of the commercial liability coverage within the state of South Carolina and across the country through insurance policies similar or identical to the ones at issue in this case.

### ARGUMENT

*Amici*'s participation in this appeal is desirable and will benefit the Court through *amici*'s broad perspective and extensive experience with complex insurance coverage issues. *Amici* regularly file briefs in cases addressing important insurance issues, and courts have cited their contributions as *amicus curiae* approvingly in their decisions.<sup>1</sup> Because of their members' extensive experience, *amici* respectfully submit that their participation as *amici curiae* may assist this Court in deciding the issues presented in this case.

*Amici* will not address issues the parties have not raised or seek relief the parties have not requested. As trade associations whose membership includes many of the country's largest property and casualty insurers, *amici* will provide a unique and broader perspective about the meaning and application of the insurance contract's provisions and the potential impact of this Court's decision on the insurance system.

Courts nationwide have recognized the value of *amicus curiae* participation. As one commentator noted, "[a]n *amicus* would often be in a superior position 'to inform the court of interests other than those represented by the parties, and to focus the court's attention on the

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<sup>1</sup> See, e.g., *Federated Mut. Ins. Co. v. Abston Petroleum, Inc.*, 967 So. 2d 705, 711 (Ala. 2007) (citing with approval to the arguments regarding a pollution exclusion made by CICLA in support of the party-insurer); *ACMAT Corp. v. Greater N.Y. Mut. Ins. Co.*, 282 Conn. 576, 593 n.14, 923 A.2d 697, 708 n.14 (2007) ("Indeed, we find more persuasive the argument of the *amicus curiae* [CICLA] that [the policyholder's] position assumes too much and sweeps too far."); *Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 112 Ohio St. 3d 482, 485 n.1, 861 N.E.2d 121, 125 n.1 (2006) ("The court acknowledges with appreciation the briefs provided by *amici curiae* . . . the Complex Insurance Claims Litigation Association."); *Travelers Ins. Co. v. Eljer Mfg. Co.*, 197 Ill. 2d 278, 313, 757 N.E.2d 481, 502-03 (2001) (stating that the court "agree[d] with the observation of *amicus*" and quoting from its brief); *Munzer v. St. Paul Fire & Marine Ins. Co.*, 538 N.Y.S.2d 633, 636 (N.Y. App. Div. 1989) (noting that the Association's submissions reflect "[t]he concern of the insurance industry"); *Int'l Minerals & Chem. Corp v. Liberty Mut. Ins. Co.*, 168 Ill. App. 3d 361, 370, 522 N.E.2d 758, 764 (1st Dist. 1988).

interests other than those represented by the parties, and to focus the court's attention on the broader implications of various possible rulings.” See Eugene Gressman et al., *Supreme Court Practice* 737 (9th ed. 2007) (quoting Bruce Ennis, *Effective Amicus Briefs*, 33 Cath. U.L. Rev. 603, 608 (1984)). In a detailed opinion, then-Judge Samuel Alito – a former chairman of the Advisory Committee of Appellate Rules for the Judicial Conference of the United States – examined the criteria for determining *amici* participation, concluding that “a broad reading is prudent.” *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 132 (3d Cir. 2002); see also Luther T. Munford, *When Does the Curiae Need an Amicus?*, 1 J. App. Prac. & Process 279 (1999) (arguing in favor of generous threshold for granting *amicus* status). *Amici* respectfully submit that their brief, consistent with the proper role of *amicus* briefs, may similarly assist the Court in considering the issues presented by this case.

### CONCLUSION

For these reasons, the Court should grant the motion for leave to file an *amici curiae* brief in the above-captioned case.

March 22, 2017



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Appellate Case No. 2013-001291

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CERTIFICATE OF SERVICE

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I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Plaintiff, do hereby certify that I have served a copy of the Joint Motion of the Complex Insurance Claims Litigation Association and the Property and Casualty Insurer's Association of America for Leave to File Brief as *Amici Curiae* in Support of Appellants Petition for Rehearing, in connection with the above-

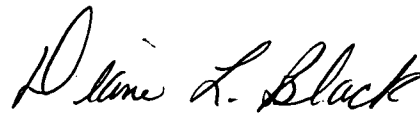
referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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Diane L. Black

Columbia, South Carolina  
March 22, 2017



# The Supreme Court of South Carolina

Murphy & Grantland

03/22/2017

## RECEIPT #82835

**Case No:** 2013-001281  
**Case Short Title:** Harleysville Group Ins. v. Heritage Communities  
**Event:**  
**Fee Type:** Motion Fee  
**Amount:** \$25.00  
**Payment Type:** Check  
**Reference No:** 54303  
**Check/Money Order Date:** 03/22/2017  
**Comments:**