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**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

S.C. SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
G. Thomas Cooper, Jr., Circuit Court Judge

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**No. 2020-000445**

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PCS NITROGEN, INC., *Petitioner,*

v.

CONTINENTAL CASUALTY COMPANY, ADMIRAL INSURANCE COMPANY, UNITED STATES FIRE INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S LONDON, THE AVIVA COMPANIES, THE WINTERTHUR COMPANIES, CERTAIN LONDON MARKET INSURANCE COMPANIES, PROVIDENCE WASHINGTON INSURANCE COMPANY (AS SUCCESSOR IN INTEREST BY WAY OF MERGER TO SEATON INSURANCE COMPANY, F/K/A UNIGARD SECURITY INSURANCE, F/K/A UNIGARD MUTUAL INSURANCE COMPANY), BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY (F/K/A STONEWALL INSURANCE COMPANY), LEXINGTON INSURANCE COMPANY, STARR INDEMNITY & LIABILITY COMPANY (F/K/A REPUBLIC INSURANCE COMPANY), AND FIRST STATE INSURANCE COMPANY, *Respondents.*

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF  
COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION  
IN SUPPORT OF RESPONDENTS AND AFFIRMANCE**

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The Complex Insurance Claims Litigation Association (“CICLA”) moves this Court for leave to appear as an amicus curiae under Rule 213 of the South Carolina Appellate Court Rules. CICLA’s amicus brief is being conditionally filed with this motion.

CICLA members write a substantial portion of the liability insurance policies in South Carolina, and they have written liability insurance policies in South Carolina and throughout the country with anti-assignment provisions similar or identical to those at issue in this case. Accordingly, CICLA is vitally interested in the judicial interpretation of these contract provisions and the enforcement of the contract’s plain terms.

In supplementing the parties’ arguments with this proposed amicus brief, CICLA will show that the consequences of failing to effectuate the language of insurance contracts, including a consent-to-assignment clause, are potentially far-reaching. All contracting parties, and the public, are interested in enforcing valid contractual terms, including anti-transfer clauses. The courts recognize that permitting entities, such as PCS Nitrogen, to claim coverage under policies issued to another entity would unfairly alter and expand an insurer’s risk while at the same time diminishing coverage available to the original policyholder. As CICLA will show, it would also adversely affect the insurance-buying public.

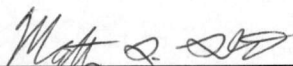
For decades, CICLA has been a strong voice in amicus submissions on complex insurance coverage issues and has sought to help courts resolve important insurance cases. CICLA regularly appears as amicus curiae to address issues of great consequence to insurers, their policyholders, and the public.<sup>1</sup> Through its amicus participation in this

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<sup>1</sup> For example, CICLA has appeared as an amicus curiae in several notable South Carolina cases, including *Harleysville Grp. Ins. v. Heritage Cmtys., Inc.*, 420 S.C. 321, 803 S.E.2d

case, CICLA will provide the Court with an important perspective on successor liability issues and the policies' requirement of insurer consent prior to the assignment of rights.

CICLA thus respectfully requests that this Court grant leave to file the proposed amicus curiae brief.



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April 16, 2021

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288 (2017); *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 736 S.E.2d 651 (2012); and *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 684 S.E.2d 541 (2009).