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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIFIED QUESTIONS
FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Mary Geiger Lewis, United States District Court Judge

Appellate Case No. 2021-001209
District Court Case No. 3:20-cv-02275

Sullivan Management, LLC,
Plaintiff,

v.

Fireman’s Fund Insurance Company,
and Allianz GLOBAL Risks US
Insurance Company,
Defendants.

Pursuant to Rule 213, SCACR, United Policyholders (“UP”) hereby moves for leave of this Court to file a brief as Amicus Curiae in the above-referenced matter.

UP is a highly respected non-profit 501(c)(3) organization and has operated as a dedicated advocate and information resource for individual and commercial insurance consumers throughout the United States, including South Carolina.

UP has a long history of assisting purchasers of insurance who are seeking a policy or pursuing a claim for loss reimbursement. Since March 2020, UP has been engaged in the critical effort to assist business owners whose operations have been impacted by COVID-19.

UP respectfully moves for leave to file the accompanying *amicus curiae* brief because the Court’s decision here will directly affect policyholders who have paid premiums for losses

suffered when property has been rendered unsafe and unusable for its intended purpose, whether or not physical alteration or permanent dispossession of property has occurred.

For over six decades, courts across the country have held that when property is rendered unfit for its intended use – as by smoke, toxic particles, fumes, noxious odors or dangerous bacteria – policyholders are entitled to coverage. If this Court departs from the decades of rulings on the meaning of “physical loss or damage” and adds new requirements not found in the insurance policy that Defendants sold here, then going forward, insurance coverage for all sorts of losses that do not involve either “permanent dispossession” or “physical alteration” of property will be called into question.

UP has a substantial interest in ensuring that cases such as these proceed beyond the pleading phase, and that claims are paid based on the terms of the insurance contract at issue as reasonably interpreted by policyholders and courts nationwide for over 60 years.

For all these reasons, UP respectfully requests that the Court grant leave to present an *amicus curiae* brief. A copy of UP’s proposed *amicus curiae* brief is attached hereto and is being filed with this motion in accordance with Rule 213, SCACR.

Dated: February 7th, 2022

Respectfully submitted,

/s/ **Mark M. Billion** (SC Bar 104512)

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