

IN THE SUPREME COURT OF MISSOURI

SANFORD SACHTLEBEN, et al.)

Plaintiffs/ Appellants,)

SC100238

v.)

ALLIANT NATIONAL TITLE
INSURANCE COMPANY,)

Defendant/ Respondent.)

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF MISSOURI
LAND TITLE ASSOCIATION

Pursuant to Rule 84.05(f)(3), of the Missouri Rules of Civil Procedure, Missouri Land Title Association respectfully moves this Court for leave to file a brief as *amicus curiae* supporting Respondent Alliant National Title Insurance Company, and states as follows in support of the motion:

1. Missouri Land Title Association (“MLTA”) seeks leave to file an amicus brief in this case in support of Respondent’s arguments. MLTA seeks to represent the interests of its members that might not otherwise be addressed by the arguments put forth by Respondent that are of importance to MLTA’s members and the title industry more generally.
2. MLTA has sought the consent of the parties to the filing of its amicus brief, but Appellants denied their consent to the same.

3. MLTA's interest in this case concerns the application of the unambiguous language of the ALTA form title policy as it relates to what are and are not considered "Public Records" which require coverage on the part of title companies. The decision of the Missouri Court of Appeals, Eastern District appears to impose a new and expansive obligation on title companies not contemplated in the plain language of the policy itself based on "actual" or "sufficient" notice of potential title defects, as opposed to the policy's clear coverage language focused on the notice provided by recorded documents under state statute.

4. While Respondent Alliant National Title Insurance Company may address some of these issues in its response brief because of their significant impact on the facts of this case, those arguments are unlikely to be focused on the implications that the change in interpretation of the standard-form 2006 ALTA title insurance policy would have on both existing and future title insurance policy issuance, or on the industry more broadly.

5. The specific issues on which MLTA's brief focuses are two related issues: 1) how the interpretation of form title insurance policies issued by the American Land Title Association, or ALTA, and utilized widely throughout the title insurance industry, could be varied by acceptance of the Missouri Court of Appeals, Eastern District's opinion in the underlying case that led to this appeal; and 2) the application of Covered Risk 5 in the standard 2006 form of ALTA title insurance

policy to situations in which a potential encumbrance or defect in title is not included in the "Public Records" as defined by the policy itself, but is known to exist to the title company or other third parties (including title agencies) at the time of issuance of the policy itself.

6. These matters are of explicit interest to MLTA and its more than 175 member companies because the changed interpretation of the long-standing ALTA form title insurance policy could have wide-ranging implications for the manner in which title searches are conducted, title commitments are issued, and title policies are bound by title companies. Accepting the manner in which the Eastern District's decision rewrites the terms of the policies themselves requires a potentially wholesale change in approach to how the land records themselves are reviewed and included in title insurance policies. It is doubtful that Respondent's brief will address this issue in the same detail as MLTA's proposed brief.

7. This is important, as a matter of public policy, because the increased strains that would be imposed on title companies by the Eastern District's decision would be borne not just by the title companies, but also by, among others, consumers who are purchasing properties and seeking title insurance; lenders who are seeking to protect their collateral and are seeking title insurance to do so; and borrowers from those lenders, who are inevitably passed the costs of the increased premium risks assumed by title companies as a result of the Eastern District's decision.

8. Further, some title companies may choose not to write new policies in Missouri at all as a result of the change in interpretation of the ALTA policy form, both for fear of what additional costs they will have to assume as a result of that new interpretation, and out of concern for what other aspects of the form might be judicially rewritten to impose other new and uncertain obligations on title companies in the future.

9. The deadline for filing Respondent’s brief in this case is December 11, 2023, meaning that this motion and the accompanying conditionally filed brief are filed timely under Rule 84.05(f)(2).

10. This motion and the accompanying conditionally filed brief are provided solely to demonstrate support for the plain language interpretation of the title policy form at issue in this and many other title insurance cases, and are intended to advance common sense legal and practical arguments for the interpretation afforded by the policy by the Circuit Court of St. Charles County, and to further address the potential flaws in reasoning and practical effects of the decision of the Eastern District in reversing the Circuit Court.

WHEREFORE, *amicus curiae* Missouri Land Title Association moves and prays for an Order granting it leave to file its amicus brief in the form conditionally submitted to the Court on December 11, 2023; or for the brief to be deemed filed as of December 11, 2023; and for such other and further relief as this Court deems just

and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2023, a true and correct copy of the foregoing was filed with the Court's electronic filing system, giving notice to all counsel of record.

/s/ Justin M. Nichols

**COUNSEL FOR *AMICUS CURIAE*
MISSOURI LAND TITLE
ASSOCIATION**