

NO. 14-12568

In the
UNITED STATES COURT OF APPEALS
For the
ELEVENTH CIRCUIT

Amegy Bank National Association,

Plaintiff/Appellee,

vs.

Deutsche Bank Alex.Brown, a division of Deutsche Bank Securities, Inc.

Defendant/Appellant

**Amended Motion for Leave to File Amicus Curiae Brief by Georgia Defense
Lawyers Association in Support of Petition for Rehearing *En Banc***

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to F.R.A.P. 26.1, Eleventh Circuit Rule 26.1-1, and Eleventh Circuit Rules 35-5(b) and 35-6, this *amicus curiae* adopts the statement of Petitioner/Appellant/Defendant Deutsche Bank Alex.Brown (“Alex.Brown”) and adds to it the information pertinent to this amicus, as follows:

1. The following persons and entities may have an interest in the outcome of this case:

Adams, Eric S.

Amegy Bank National Association

Amegy Corporation

Bracken, Geoffrey H.

Brannock & Humphries

Brannock, Steven L.

Carlock, Copeland & Stair, LLP

Carroll, Hunter W.

Chappell, The Honorable Sheri Polster

Dalton Jr., The Honorable Roy B.

Daniel, Laurie Webb

DB Private Wealth Mortgage, Ltd.

DB USA Corporation

Deutsche Bank AG

Deutsche Bank Alex.Brown

Deutsche Bank Corporation

Deutsche Bank Securities Inc.

Deutsche Bank Trust Company Americas

Deutsche Bank US Financial Markets Holding Corporation

Eastmoore, Theodore C.

Frazier, The Honorable Douglas N.

Frisch, Eric J.

Gardere Wynne Sewell, LLP

Georgia Defense Lawyers Association (“GDLA”)

Holland & Knight LLP

Jones, Foster, Johnson & Stubbs, P.A.

Labrit, Suzanne Youmans

Mariani, John F.

Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A.

Mirando, The Honorable Carol

O'Connor, Joanne M.

Obenhaus, Stacey R.

Seely, Mike

Shutts & Bowen, LLP

Sprinkle, Shannon M.

Steele, The Honorable John E.

Stringer, Jordan T.

Taunus Corporation

Tomlinson, Allen

Weber, Janelle A.

Zions Bankcorporation

2. Alex.Brown further provides this corporate disclosure:

(a) Deutsche Bank Alex.Brown is a division of Deutsche Bank Securities, Inc.

(b) Deutsche Bank Securities, Inc. is a wholly owned subsidiary of Deutsche Bank U.S. Financial Markets Holding Corporation.

(c) Deutsche Bank U.S. Financial Markets Holding Corporation is a wholly-owned subsidiary of Taunus Corporation. On July 14, 2014, Taunus Corporation changed its name to DB USA Corporation.

(d) DB USA Corporation is wholly owned by Deutsche Bank AG.

(e) DB Private Wealth Mortgage, Ltd. (a defendant below but not a party to this appeal) is a subsidiary of Deutsche Bank Trust Company Americas.

(f) Deutsche Bank Trust Companies Americas is a subsidiary of Deutsche Bank Trust Corporation.

(g) Deutsche Bank Trust Corporation is a subsidiary of Deutsche Bank AG.

(h) Since October 3, 2001, the shares of Deutsche Bank AG have been publicly traded on the New York Stock Exchange under the ticker symbol DB. Deutsche Bank AG also trades on the following exchanges:

<u>Symbol</u>	<u>Exchange</u>
DBK:GR	Xetra
DBN:MM	Mexico
DBK:IM	BrsaItaliana
LBND:US	NYSE Arca
SBND:US	NYSE Arca

(i) Plaintiff/Appellee Amegy Bank National Association is a wholly owned subsidiary of Amegy Corporation, a Texas corporation, which is in turn a wholly owned subsidiary of Zions Bankcorporation. Zions Bankcorporation is a publically traded company on the NASDAQ Stock Market under the ticker symbol ZION.

**AMENDED MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
BY
GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF
PETITION FOR REHEARING *EN BANC***

Pursuant to Fed. R. App. P. 29(b), and Eleventh Circuit Local Rules 29-1, 35-6, and 40-6, the Georgia Defense Lawyers Association (“GDLA”), by and through its attorneys, respectfully requests leave of this Honorable Court to act as *amicus curiae* in this matter, and to file its brief as *amicus curiae* in support of the Petition for Rehearing En Banc filed by Defendant/Appellant Deutsche Bank Alex.Brown. A copy of the proposed *amicus* brief is attached hereto. *Amicus* further states:

1. The Georgia Defense Lawyers Association (“GDLA”) has more than 825 members, ranging from sole practitioners to lawyers in large firms. Though its members are diverse, they share a common interest in supporting and improving the civil defense bar, improving the adversary system of jurisprudence, eliminating delay in litigation, and otherwise improving the administration of justice.

2. The GDLA respectfully submits that an *amicus* brief is desirable, and the matters discussed therein are relevant to the disposition of this case, because this appeal presents important issues regarding the burden and quantum of proof when an injured party seeks to hold an alleged tortfeasor liable pursuant to a collusion theory. Specifically, the split panel’s decision dilutes the “collusion”

requirement of O.C.G.A. §11-8-115(2) and allows liability based on tacit collusion supported by negative inferences.

3. An *amicus* brief is further desirable and relevant to the disposition of this appeal, because it permits the GDLA to recommend that this Court rehear the appeal *en banc* and then certify the question to the Georgia Supreme Court. The GDLA respectfully submits that this case warrants this action because it involves an important issue of Georgia law that should be decided by the Georgia Supreme Court in the first instance rather than a divided panel of this Circuit. If there is concern that the statute means something other than what it says, the Georgia Supreme Court should hear the matter.

4. As an additional policy concern, the *amicus* brief is designed to show the Court that the majority's opinion, while not binding precedent, may encourage frivolous litigation based on ambiguous circumstantial evidence.

5. It is thus the GDLA's position that an *en banc* rehearing with certification to the Georgia Supreme Court is warranted because: (1) this case poses an important issue of Georgia law that should be decided by the Georgia Supreme Court; (2) there should be clarity regarding the burden of proof and quality of evidence needed to prove collusion generally; and (3) the panel's decision may burden the courts with frivolous litigation involving insufficient evidence.

6. Pursuant to Eleventh Circuit Local Rule 40-6, the proposed brief of *amicus curiae* is attached to this filing.

For the foregoing reasons, the GDLA respectfully requests that the Court grant *amicus* leave to file the attached *amicus curiae* brief in support of the Petition for Rehearing *En Banc* filed by Defendant/Appellant Deutsche Bank Alex.Brown.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

BY: /s/ Shannon M. Sprinkle
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CERTIFICATE OF COMPLIANCE

I certify that the attached *amicus* brief complies with the length requirements of Fed. R. App. P. 35 and Eleventh Circuit Rule 35–6. The proposed *amicus* brief does not exceed 15 pages, exclusive of items required by 11th Cir. R. 35-5(a), (b), (c), (d), and (j). It also complies with typeface requirements, and has been prepared in Times New Roman 14-point font.

/s/ Shannon M. Sprinkle
SHANNON M. SPRINKLE
Georgia State Bar No. 495095

CERTIFICATE OF SERVICE

I certify that on the 18th day of September, 2015, I have e-filed a copy of the foregoing Amended Motion for Leave to File Amicus Curiae Brief by Georgia Defense Lawyers Association in Support of Petition for Rehearing En Banc with the Clerk of Court and mailed and emailed copies of such filing to the following attorneys of record:

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