Case No. 70504

IN THE SUPREME COURT OF NEVADA

JAMES NALDER, Guardian Ad Litem on behalf of CHEYANNE NALDER; and GARY LEWIS, Individually,

Appellants,

vs.

UNITED AUTOMOBILE INSURANCE COMPANY,

Respondent.

CERTIFIED QUESTION

From the United States Court of Appeals for the Ninth Circuit
Ninth Circuit Docket No. 13-17441

AMICI CURIAE BRIEF OF COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION, AMERICAN INSURANCE ASSOCIATION, AND PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

IN SUPPORT OF RESPONDENT UNITED AUTOMOBILE INSURANCE COMPANY

DANIEL F. POLSENBERG, SBN 2376
JOEL D. HENRIOD, SBN 8492
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy. Suite 600
Las Vegas, NV 89169
(702) 474-2681

LAURA A. FOGGAN
pro hac vice pending
CROWELL AND MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2774

Attorneys for Complex Insurance Claims Litigation Association, American Insurance Association and Property Casualty Insurers Association of America

NRAP 26.1 DISCLOSURE

The undersigned counsel certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. The Complex Insurance Claims Litigation Association ("CICLA") is a trade association incorporated in Delaware.

2. The American Insurance Association ("AIA") is a trade association incorporated in Delaware.

3. The Property Casualty Insurers Association of America ("PCI") is a trade association incorporated in Illinois.

4. CICLA, AIA, and PCI are represented by Laura A. Foggan of Crowell & Moring LLP and Daniel F. Polsenberg and Joel D. Henriod of Lewis Roca Rothgerber Christie LLP.

5. No publicly traded company has a material interest in this appeal.

These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated this 13th day of January, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By */s/ Daniel F. Polsenberg*
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2681

LAURA A. FOGGAN, *pro hac vice pending*
CROWELL AND MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2774

Attorneys for Complex Insurance Claims Litigation Association, American Insurance Association and Property Casualty Insurers Association of America

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. STATEMENT OF INTEREST

The Complex Insurance Claims Litigation Association ("CICLA"), the American Insurance Association ("AIA"), and the Property Casualty Insurers Association of America ("PCI") are trade associations of major property and casualty insurance companies. Together, CICLA, AIA, and PCI (hereafter, "Amici") represent over a thousand insurers across the United States, which issue policies to customers all over the world.

Amici have a significant interest in the issue certified to this Court from the United States Ninth Circuit Court of Appeals. This Court is asked to decide:

> Whether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred, or is the insurer liable for all losses consequential to the insurer's breach?

In this case, the district court correctly limited the insurer's liability to: (1) attorneys' fees and other costs incurred in defending the underlying action, and (2) the stated limits in the insurance policy.

Specifically, the district court found that the insurer, United Automobile Insurance Company ("UAIC") did not act in bad faith because it had a reasonable basis to dispute coverage. However, the court found UAIC breached its duty to defend the insured, Gary Lewis, but awarded no damages to Mr. Lewis "because [Mr. Lewis] did not incur any fees or costs in defending the underlying action" as he took a default judgment. The court ordered UAIC "to pay [the claimant]

Cheyanne Nalder the policy limits on Gary Lewis's implied insurance policy at the time of the accident." *Nalder v. United Auto. Ins. Co.*, No. 2:09-cv-1348, 2013 WL 5882472, at *7 (D. Nev. Oct. 30, 2013).

Amici will demonstrate that the district court followed the well-settled rule and correct approach. This Court should affirm that Nevada is not an outlier, but follows the established law providing that, in the absence of bad faith, the liability of an insurer that reasonably but erroneously breaches its duty to defend should be capped at: (1) necessary costs incurred by its insured for defense, and (2) indemnity for a judgment or reasonable settlement, up to the policy limit.

This issue is of substantial importance, and this Court's ruling will impact interests well beyond those of the parties here. If Nevada were to impose extra-limits liability for an ordinary breach of the duty to defend -- without any finding of bad faith -- it would improperly penalize insurers for reasonably disputing coverage and inject undesirable uncertainty into the insurance bargain. Amici have substantial expertise in legal issues related to property and casualty insurance, and seek to provide valuable insight to assist this Court in deciding the issue presented.

II. Summary Of Argument

The district court properly applied settled law finding that, in the absence of bad faith, the liability of an insurer that breaches its duty to defend is not increased beyond the policy limits. Rather, an insurer that reasonably but erroneously fails to

defend is liable only for actual damages that were foreseeable by the parties in entering the contract, and not limitless, extra-contractual damages. This is the majority rule: an insurer that simply breaches the duty to defend is liable for the amount that would put the policyholder in the position he or she would have been in had the insurer agreed to defend the underlying claim. The insurer's liability to the insured is therefore capped at the policy limits, plus the reasonable and necessary costs incurred to defend the underlying claim.

Appellants, however, seek a new rule that would automatically hold an insurer responsible for the entire judgment against the policyholder, including any amounts in excess of the insurance policy's stated limits, even if that insurer acted reasonably and without bad faith. Such a rule would override the policy limit, which is fundamental to the contract and reflects the amount the insurer agreed to pay for a judgment or settlement against the insured. Appellants seek to impose this extraordinary liability on the insurer not due to willful or malicious bad faith but where, as here, a court has determined the insurer had a reasonable basis for its actions. Automatically imposing extra-limits exposure in this setting would ignore the demarcation between actual damages that are foreseeable from a simple breach of contract, and excess liability that may attach due to bad faith. If an insurer that was simply mistaken in failing to defend were held liable automatically for any judgment or settlement in excess of its policy limits, it would transform an

ordinary breach of contract into a bad faith claim, but without the necessary predicate of malice or ill will, by permitting broader (and potentially unlimited) recovery – a result never contemplated when the parties entered the agreement.

The correct rule is one which respects the parties' contractual agreement. When an insurer *does* defend its policyholder in a covered claim, it must pay the costs of that defense and indemnity capped at the stated policy limits. That is what the policyholder is entitled to under the contract, and that is the proper measure of damages when an insurer mistakenly refuses to defend in breach of the insurance policy. This rule provides important certainty in the insurance system, which depends on the ability to forecast an insurer's exposure in accepting risk as the basis for rational underwriting. This rule is also supported by strong prudential considerations, including the insurer's right to dispute coverage in good faith and the use of extra-contractual damages as a deterrent for bad faith conduct.

III. ARGUMENT

A. Under Long-Standing Legal Precedent, an Insurer is Not Liable for Unforeseen Extra-Contractual Damages When it Breaches the Duty to Defend But Does Not Act in Bad Faith.

Courts have long recognized that contract law seeks to enforce the intentions of the parties to the agreement. Typically, an insurer has a duty to indemnify its policyholder for payment of a judgment based on a covered liability claim *up to the stated limits of the policy*. The insurer may also have a duty to defend the policyholder against a covered (or potentially covered) liability claim. The source

of both of these duties is the insurance contract. Thus, the insurer's failure to fulfill either of these duties is a breach of contract, and any resulting action is governed by contract law principles. *See Arceneaux v. Amstar Corp*., 66 So. 3d 438, 452 (La. 2011) ("The duty to defend is provided in the insurance contract; therefore, its breach is determined by ordinary contract law principles"); *Mesmer v. Maryland Auto. Ins. Fund*, 353 Md. 241, 251-52 (1999) (breach of the duty to defend "sound[s] exclusively in contract rather than tort").

When Gary Lewis purchased an automobile insurance policy from UAIC, he entered into a contract. Pursuant to that contract, UAIC agreed to defend Mr. Lewis against covered and potentially covered claims. When Mr. Lewis was in an automobile accident involving a pedestrian, Cheyanne Nalder, the pedestrian's father, James Nalder, filed suit against him. UAIC refused to defend Mr. Lewis in the underlying action on the grounds that Mr. Lewis had allowed his coverage to lapse without timely payment and, therefore, there was no insurance policy in effect. The district court found that while UAIC had a duty to defend Mr. Lewis, it had a reasonable basis for disputing coverage. As such, the court found that UAIC breached its contract with Mr. Lewis, but did not act in bad faith.[1]

[1]The district court found that UAIC did not act in bad faith because it had a reasonable basis to deny coverage. Based on its erroneous but reasonable decision to deny a defense, the court refused to hold UAIC liable for extra-contractual

For decades, the weight of authority has held that where there is no bad faith, but an insurer erroneously refuses to defend its policyholder, the recoverable damages are: (1) the costs of defending the underlying action,[2] and (2) the amount of a judgment entered against the policyholder, up to the stated policy limits.[3] *See Mesmer*, 353 Md. at 252; *Willcox v. Am. Home Assur. Co.*, 900 F. Supp. 850, 856

---

damages, which were amounts in excess of the policy limits that were not in the parties' contemplation when they entered the insurance agreement.

[2] A reasonable but erroneous refusal to defend leads to liability for the "amount which will compensate the insured for the harm or loss caused by the breach of the duty to defend, i.e., the cost incurred in defense of the underlying suit." *Amato v. Mercury Cas. Co.*, 18 Cal. App. 4th 1784, 1794, 23 Cal. Rptr. 2d 73 (1993); *see also Arceneaux*, 66 So. 3d at 452; *Marie Y. v. Gen. Star Indem. Co.*, 110 Cal. App. 4th 928, 960–61, 2 Cal. Rptr. 3d 135 (2003); *Emerald Bay Comty. Ass'n v. Golden Eagle Ins. Corp.*, 130 Cal. App. 4th 1078, 1088–89, 31 Cal. Rptr. 3d 43 (2005); *United States Fid. & Guar. Co. v. Copfer*, 48 N.Y.2d 871, 873, 400 N.E.2d 298 (1979).

[3] Before recovering damages in excess of policy limits for breach of the duty to defend, courts have required the policyholder to demonstrate that the insurer acted in bad faith. *See Nationwide Life Ins. Co. v. Commonwealth Land Title Ins. Co.*, No. 05-281, 2011 WL 611802, at *27 (E.D. Pa. Feb. 17, 2011), *aff'd*, 687 F.3d 620 (3d Cir. 2012) (holding the policyholder must first establish that the insurer acted in bad faith before extra-contractual damages would be available in a breach of the duty to defend); *Hillman v. Nationwide Mut. Fire Ins. Co.*, 855 P.2d 1321 (Alaska 1993) (refusing to award extra-contractual damages against the insurance company because the insured did not succeed in proving that the insurer had acted in bad faith); *Beck v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 429 F.2d 813, 819 (5th Cir. 1970) ("'Bad faith, and bad faith alone, was the requisite to render the defendant liable' for an amount in excess of the policy limits."); *Myers v. Farm Bureau Mut. Ins. Co. of Mich.*, 14 Mich. App. 277, 278 (1968) (imposing burden on insured to show bad faith on the part of the insurer and holding that, with a record showing no bad faith, the insured was not entitled to recover excess of judgment over policy limits).

(S.D. Tex. 1995) ("The damages recoverable on a contract claim for breach of the duty to defend do not include damages in excess of the policy limits"); *Copfer*, 48 N.Y.2d at 873 (an insurer that breaches its contractual duty to defend may be held liable for "the expenses the insured incurred in providing his own defense" and "the insurer may be required to reimburse the insured, up to the coverage limits in the insurance policy, for any judgment the insured is in turn required to pay"); *Assoc. Indem. Co. v. Ins. Co. of N. Am.*, 68 Ill. App. 3d 807, 822 n.8, 386 N.E.2d 529 (1979) ("A liability insurer, which breaches its duty to defend is generally required to indemnify the insured up to the limits of its insurance policy"); *Beck*, 429 F.2d at 818-19 (an insurer that breaches its contractual duty to defend may be held liable for "the expenses the insured incurred in providing his own defense" and "the insurer may be required to reimburse the insured, up to the coverage limits in the insurance policy, for any judgment the insured is in turn required to pay"); *Schurgast v. Schumann*, 156 Conn. 471, 491, 242 A.2d 695 (1968) (insurer has duty to pay judgment against policyholder "up to the limit of liability fixed by its policy").

Just last month, the Supreme Court of Missouri, sitting en banc, reaffirmed this rule. Explicitly distinguishing bad faith from a simple breach of the duty to defend, in *Allen v. Bryers*, No. SC 95358, 2016 WL 7378560, at *14 (Mo. Dec. 20, 2016), the Missouri high court held that '"an insurance company is liable to the

limits of its policy plus attorney fees, expenses and other damages [incurred in conducting the defense] where it refuses to defend an insured who is in fact covered.'" (citing *Landie v. Century Indem. Co.*, 390 S.W.2d 558, 562 (Mo. App. K.C. Dist. 1965)). These damages are specifically related to the rights and duties set forth in the insurance contract. They are reasonably foreseeable, and were within the contemplation of the parties at the time the contract was entered. Further, this measure of damages puts the policyholder in "as good a position as he would have been had the contract not been breached." *Greer v. Northwestern Nat'l Ins. Co.*, 109 Wash. 2d 191, 202, 743 P.2d 1244 (1987). This is fully consistent with established Nevada law. *See, e.g., Hornwood v. Smith's Food King No.1*, 107 Nev. 80, 807 P.2d 208, 211 (1991).

Thus, under well-settled principles and the weight of authority, courts hold that absent bad faith,[4] the insurer's liability does not extend to the amount of a judgment or settlement in excess of the policy limit. These decisions, including cases criticized by Appellants such as *State Farm Mutual Automobile Insurance*

---

[4] In deciding that an insurer's liability for a simple breach of contract is capped at the stated policy limits, courts have distinguished cases in which the insurer's breach was in bad faith. *See, e.g., Fulton v. Mississippi Farm Bureau*, 105 So. 3d 284, 288 (Miss. 2012) ("mere negligence, without bad faith, 'is not such an independent tort that would support extracontractual damages'"); *Associated Indemnity*, 68 Ill. App. 3d at 822 n.8 (although an insurer in breach of its duty to defend is generally only liable up to the policy limits, "[i]n certain situations . . . if an insurance carrier acts in bad faith in refusing to conduct the insured's defense, the carrier may be required to satisfy the entire judgment or settlement, irrespective of its policy limits").

Company v. Paynter, 122 Ariz. 198, 593 P.2d 948 (Ct. App. 1979) and *Waite v. Aetna Casualty and Surety Company*, 77 Wash. 2d 850, 467 P.2d 847 (1970), are consistent with the recovery of foreseeable contract damages. When the contract was made, the insurer agreed to defend and pay a covered claim up to the policy limit. The foreseeable consequential damages for a breach of the duty to defend were the costs of defense and payment for a judgment or settlement up to the policy limit. As the *Paynter* court explained, "[t]he general rule, however, is that such a refusal to defend in and of itself does not expose the insurance carrier to greater liability than that contractually provided in the policy." 593 P.2d at 954.

A leading treatise puts it succinctly: "[t]he liability of an insurer is ordinarily not increased beyond the policy limits because it wrongfully refuses to defend the insured." Allan D. Windt, 1 Insurance Claims and Disputes § 4.36 (6th ed. 2013). This is because, in most circumstances, there is no reason to conclude that a judgment rendered against a policyholder would not have been entered, or would have been for a lesser amount, had the insurer provided a defense. Thus, any additional damage to the policyholder from a judgment that exceeds the policy limits was not foreseeable.

This is also the case when a default judgment is entered against the policyholder. A default judgment in excess of policy limits is not a direct, consequential result of a simple failure to defend. Put another way:

> If [the insurer's] failure to defend was unjustified, it will have breached its duty to defend, but not its duty of fair dealing. Under those circumstances, therefore, it should not be responsible for the default judgment, the judgment no longer being directly attributable to the insurer's breach of contract. The amount of the judgment in excess of the policy limit would constitute an unforeseeable consequential damage, and . . . unless the insurer's actions are tortious, the insured is bound by the contract rule limiting damages to those that arise naturally from the breach or that may be reasonably supposed to have been in the contemplation of the parties at the time the contract was made.

Id.

Here, had UAIC defended Mr. Lewis, it would have incurred costs to defend him in Mr. Nalder's lawsuit. When UAIC breached the contract, Mr. Lewis could have hired his own counsel to defend the action or settled the case with Mr. Nalder and entered into a consent judgment.[5] Thus, the foreseeable damages that resulted directly from UAIC's breach are any defense costs that Mr. Lewis incurred in the underlying action, together with any indemnity up to the policy limit. In order to restore Mr. Lewis to the position he would have been in had the insurance contract not been breached, UAIC must be held responsible for any necessary defense costs incurred by Mr. Lewis, and indemnity provided for under the policy. In this case, there are no defense costs because Mr. Lewis elected not to mount a defense, but

[5] Indeed, it seems that a settlement between Mr. Lewis and Mr. Nalder should have been possible. As Mr. Lewis himself testified at his deposition and in his interrogatory responses, Mr. Nalder and Mr. Lewis were friends.

there is indemnity payable up to the foreseeable amount, the policy limit.[6]

The federal district court in this case properly followed this settled rule. Appellants, however, rely heavily on another district court's decision in *Andrew v. Century Surety Company*, to urge that Nevada should adopt a minority view and automatically impose essentially limitless, extra-contractual exposure on an insurer that fails to defend.[7] Although Appellants purport to clothe their argument in Nevada law governing consequential damages, they actually advocate that this extraordinary liability be imposed automatically, whenever any insurer even mistakenly fails to defend.

Appellants' statements about the duty to defend cannot remove the

---

[6] When Mr. Lewis entered into the insurance contract with UAIC, he paid a certain amount of premium. In exchange, UAIC agreed to defend Mr. Lewis and to indemnify him for up to $15,000 for a covered liability claim. Had UAIC defended Mr. Lewis in the underlying action, UAIC could have only been held liable for $15,000, the stated policy limits, regardless of the amount of the resulting judgment. Because UAIC failed to defend him, the damages must place him in the same position, by allowing recovery of the costs of defense, plus indemnity up to the $15,000 policy limit. Any additional recovery would constitute a windfall, contrary to the law of Nevada and that of other jurisdictions.

[7] In *Andrew*, the court tossed aside long-standing common law when it suggested that the insurer that failed to defend was automatically bound by the default judgment's damage amount as a measure of consequential damages, unless it could show that the default judgment amount was unreasonable or that it was procured through fraud or collusion. 134 F. Supp. 3d 1249, 1259 (D. Nev. 2015). In doing so, the court also failed to recognize the important policy considerations implicated by such a decision, namely the impact on the insurer's right to dispute coverage in good faith, and the use of extra-contractual damages as a deterrent for bad faith behavior.

traditional limit of damages to liability for harm directly and proximately caused by the breach, and should not dislodge well-established law. Instead, this Court should adhere to the longstanding rule that the liability of an insurer that erroneously fails to defend is ordinarily capped at: (1) the reasonable and necessary costs incurred by its insured for defense, and (2) indemnity for a judgment or reasonable settlement up to the insurance policy limits. This is consistent with existing Nevada law, which makes clear that (1) tort liability is premised on bad faith (*Nevada VTN v. Gen. Ins. Co. of Am.*, 834 F.2d 770, 777 (9th Cir. 1987) (applying Nevada law)) and (2) an injured party to a contract "[i]s not entitled to be placed in a better position because of the breach than he would have enjoyed had the contract been performed." *Cheyenne Constr., Inc. v. Hozz*, 102 Nev. 308, 313, 720 P.2d 1224 (1986).

Policy limits plus any defense costs incurred are the amounts that Mr. Lewis would have been entitled to had UAIC not breached its duty to defend. This is the amount that will put Mr. Lewis in the position he would have been in had UAIC not breached the contract. It represents the damages that were directly caused by the breach, and foreseen by the parties when the insurance contract was formed. Accordingly, this Court should affirm the approach adopted by the district court and find as a matter of Nevada law that UAIC's liability is limited to: (1) the costs of Mr. Lewis's defense, and (2) the policy limits of $15,000.

B. Prudential As Well As Contractual Expectations Overwhelmingly Support the Conclusion That Where An Insurer Acts Reasonably, But Erroneously, In Denying A Defense, It Should Be Liable Only For Attorneys' Fees and Costs Incurred by the Insured in Defending Himself.

Public policy considerations, and the realities of the insurance system, overwhelmingly support the conclusion that an insurer's liability should be capped at the policy limit plus any costs incurred for defense in situations where an insurer reasonably but erroneously denies a defense. This approach is important to the predictability and certainty of insurance contracts. In the insurance context, it is particularly important to have a simple and certain measure of damages. This allows for more precise underwriting and encourages the issuance of insurance. Indeed, the premiums paid by policyholders are carefully calculated based on the risk insured. This careful calculation would be upset if an insurer could be held liable, in the absence of bad faith, for damages that were not specifically contemplated by the parties at the time of contracting, are in excess of the policy limit and indeed potentially limitless in amount.

This Court should make clear that the liability of an insurer that acted reasonably but erroneously in declining to defend, and indisputably has not acted in bad faith, is capped at the policy limit plus any costs incurred. Doing so will protect the reasonable expectations of both parties to the insurance agreement. Under the contract, the policyholder and the insurer agreed that the insurer would

have a duty: (1) to defend the policyholder against any claim or potentially covered claim, and (2) to indemnify the policyholder up to the stated policy limits if the claim is covered.

The parties' insurance agreement sets monetary limits on an insurer's liability, and it also defines the scope of coverage. Both the policyholder and the insurer are entitled to dispute coverage where there is a reasonable basis for doing so. An even-handed application of this principle is important to the insurance system. As one court explained:

> [E]ven if consequential damages are recoverable as a matter of contract law, they might well be precluded on a public policy analysis: ". . . the insurer is permitted to dispute its liability in good faith because of the prohibitive social costs of a rule which would make claims nondisputable. Insurance companies burdened with such liability would either close their doors or increase premium rates to the point where only the rich could afford insurance.

Burleson v. Illinois Farmers Ins. Co., 725 F. Supp. 1489, 1497 (S.D. Ind. 1989) (quoting *Vernon Fire & Cas. Ins. Co. v. Sharp*, 264 Ind. 599, 349 N.E.2d 173 (1976)). Imposing potentially limitless extra-contractual liability on an insurer that reasonably, albeit erroneously, disputes its duty to defend would have the undesirable effect of chilling reasonable disputes concerning insurer liability under the insurance agreement. The *Burleson* court found this would have a cascading effect on the insurance system, making claims against insurers nondisputable, imposing liability on insurers for uncovered claims, and ultimately adversely

affecting the availability and affordability of coverage. *Id*. at 1497. For reasons of equity and good public policy, an insurer should not be penalized with unforeseen, extra-limits exposure for disputing coverage in good faith.

There is a critical line between an insurer that reasonably but erroneously breaches its contract, and an insurer that acts in bad faith. Holding an insurer that reasonably disputes coverage liable for unforeseen excess liability would effectively preclude honest insurers from questioning coverage even where there are reasonable grounds for such a dispute. In the long run, imposing such extraordinary liability would harm not just insurers, but policyholders and the public, as well.

IV. CONCLUSION

For the foregoing reasons, Amici respectfully urge this Court to hold that, under Nevada law, when an insurer breaches its duty to defend but does not act in bad faith, its liability is limited to: (1) the costs of defending the underlying action, and (2) a judgment or reasonable settlement, up to the insurance policy limits.

DATED this 13th day of January, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By */s/ Daniel F. Polsenberg*

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2681

LAURA A. FOGGAN, *pro hac vice pending*
CROWELL AND MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2774

Attorneys for Complex Insurance Claims Litigation Association, American Insurance Association and Property Casualty Insurers Association of America

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 with 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3,305 words.

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 13th day of January, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By */s/ Joel D. Henriod*
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 474-2681

LAURA A. FOGGAN, *pro hac vice pending*
CROWELL AND MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2774

Attorneys for Complex Insurance Claims Litigation Association, American Insurance Association and Property Casualty Insurers Association of America

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2017, I submitted the foregoing "Amici Curiae Brief of Complex Insurance Claims Litigation Association, American Insurance Association, and Property Casualty Insurers Association of America In Support of United Automobile Insurance Company" for filing *via* the court's eFlex electronic filing system. Electronic notification will be sent to the following:

Dennis M. Prince, Esq.
Robert T. Eglet, Esq.
Eglet Prince
400 South 7th Street, 4th Floor
Las Vegas, NV 89101

Richard Christensen, Esq.
Thomas Christensen, Esq.
Christensen Law Offices
1000 South Valley View Blvd.
Las Vegas, NV 89107

Matthew J. Douglas, Esq.
Atkin, Winner & Sherrod
1117 South Rancho Drive
Las Vegas, NV 89102

David T. Pursiano, Esq.
Pursiano Barry Bruce Lavelle, LLP
8551 South Rampart Blvd., Ste. 260
Las Vegas, Nevada 89145

Matthew L. Sharp, Esq.
Matthew L. Sharp, Ltd.
432 Ridge Street
Reno, Nevada 89501

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Thomas Winner, Esq.
Susan Sherrod, Esq.
Atkin, Winner & Sherrod
1117 South Rancho Drive
Las Vegas, NV 89102

Scott A. Cole, Esq.
Thomas E. Scott, Jr., Esq.
Cole, Scott & Kissane
9150 South Dadeland Blvd., Ste. 1400
Las Vegas, NV 89101

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP