Case No. 73756

IN THE SUPREME COURT OF NEVADA

CENTURY SURETY COMPANY, Appellant, *vs.* DANA ANDREW, AS LEGAL GUARDIAN OF RYAN T. PRETNER; AND RYAN T. PRETNER, Respondents.	Electronically Filed Nov 08 2017 11:26 a.m. Elizabeth A. Brown Clerk of Supreme Court

CERTIFIED QUESTION

From the United States Court District Court for the District of Nevada
United States District Court Case No. 2:12-cv-00978

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

IN SUPPORT OF APPELLANT CENTURY SURETY COMPANY

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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.

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

Dated this 19th day of October, 2017.

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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 District Court for the District of Nevada. 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 by the insured in mounting a defense, or is the insurer liable for all losses consequential to the insurer's breach?

Amici will demonstrate 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 covered 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 significant experience with legal issues related to property and casualty insurance, and seek to provide valuable insight to assist this Court in deciding the issue presented.

STATEMENT OF FACTS

(*Amici* understand the circumstances of this case to be as follows.)

In this case, Michael Vasquez was driving a Ford pick-up truck insured under a personal auto liability insurance policy issued by Progressive Casualty Insurance Company when he struck Ryan Pretner, who was riding his bicycle. Vasquez was also the owner and manager of Blue Streak Auto Detailing, LLC and insured his business vehicle and business operations under a Commercial Liability Garage Coverage policy issued by Century with a $1 million policy limit. Following the accident, plaintiffs Dana Andrews, as guardian of Ryan Pretner, and Ryan Pretner filed suit against Vasquez and Blue Streak, alleging negligence claims against Vasquez and negligent entrustment and *respondeat superior* claims against Blue

Streak. Vasquez's personal auto liability insurer, Progressive, retained counsel to defend him. Because Vasquez admittedly was on a personal errand when the accident took place, Century - which had issued only commercial liability coverage - declined to defend the suit, noting that Progressive apparently had retained counsel for Vasquez.

Plaintiffs and Progressive then agreed to a settlement under which Progressive would pay its $100,000 policy limit, and plaintiffs would proceed to obtain a default judgment against Vasquez and Blue Streak but would provide a covenant not to execute on the resulting judgment in exchange for an assignment by Blue Streak and Vasquez of their rights to proceed against Century under the Garage Policy. Plaintiffs then sought a default judgment based on allegations that, inter alia, Vasquez was acting within the scope of his employment and in furtherance of Blue Streak's business interests at the time of the accident. Notice of the default judgment motion was not provided to the defendants or Century. There was thus no appearance on behalf of the defendants at the hearing, and the court entered a default judgment in the amount of $18,050,185.45.

Plaintiffs, as assignees of Blue Streak and Vasquez, then brought this suit against Century for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair claims practices, seeking to recover the full

amount of the default judgment against Century. The District Court initially ruled that the underlying lawsuit presented a "potential for coverage" under the Century policy, thus triggering a duty to defend, but that Century did not deny a defense in bad faith. It also ruled that Century was not bound by the default judgment entered in the underlying lawsuit and was entitled to dispute whether there was coverage under the commercial garage policy for the underlying accident. If Plaintiffs established coverage under the Century policy, the District Court held that they were "not entitled to recover any damages in excess of the $1 million policy limit" because Century had not acted in bad faith. (Vol. 7, PA 01617.)

The only remaining issue was a determination of what damages plaintiffs might be entitled to for Century's failure to defend. However, the District Court then reversed itself and held that Century's liability was not capped at the $1 million policy limit because the entire default judgment was a "foreseeable consequential damage" caused by the breach of the duty to defend. It also held that, absent proof of fraud or collusion, Century was bound by the default judgment, including the determination that Vasquez was acting within the scope of his employment and in furtherance of Blue Streak's business interests at the time of the accident. The District Court found that a jury trial would be needed to resolve disputed issues of material fact regarding whether the settlement agreement

and default judgment were obtained through fraud and collusion. (Vol. 9, PA 02039.)

Subsequently, the District Court certified, and this Court accepted certification of the question of whether Nevada law follows the rule that 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 by the insured in defense.

SUMMARY OF ARGUMENT

Originally, 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. However, the District Court then reversed itself, holding that Century's liability was not capped at the $1 million policy limits because the entire default judgment allegedly

was a "foreseeable consequential damage" caused by the breach of the duty to defend.

If the decision below were upheld, it would result in 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 in denying a duty to defend. 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. Respondents seek to impose this extraordinary liability on the insurer in the absence of willful or malicious bad faith. Automatically imposing extra-limits exposure in this setting would ignore the demarcation between actual damages that are reasonably 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.

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*, 725 A.2d 1053 (Md. App 1999) (breach of the duty to defend "sound[s] exclusively in contract rather than tort").

When Mr. Vasquez purchased a Commercial Liability Garage Coverage policy from Century, he entered into a contract. Pursuant to that contract, Century agreed to defend Mr. Vasquez against covered and potentially covered claims that related to his business, Blue Streak Auto Detailing. When Mr. Vasquez was in an accident that evidence showed occurred while operating his personal vehicle for personal reasons, Century denied coverage. However, the District Court found that Century breached its duty to defend as a matter of law, because the underlying complaints alleged facts that potentially fell within the policy's coverage – namely, that the driver allegedly was within the scope of his employment at the time of the accident.

With regard to damages for that breach of contract, the district court originally predicted that the Nevada Supreme Court would limit damages to the "reasonable costs of defense in the underlying action plus the damages reasonably

foreseeable at the time of the contract, capped at the policy limit of $1,000,000." Subsequently, the district court reconsidered its ruling, and instead predicted that this Court would rule that "bad faith is not required to impose liability on the insurer in excess of the policy limits."

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;[1] and (2) the amount of a judgment entered against the policyholder, up to the stated policy limits.[2] *See*

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[1] 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.*, 23 Cal. Rptr. 2d 73 (1993); *see also Arceneaux*, 66 So. 3d at 452; *Marie Y. v. Gen. Star Indem. Co.*, 2 Cal. Rptr. 3d 135 (2003); *Emerald Bay Comty. Ass'n v. Golden Eagle Ins. Corp*., 31 Cal. Rptr. 3d 43 (2005); *United States Fid. & Guar. Co. v. Copfer*, 400 N.E.2d 298 (1979).

[2] 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.*

(Continued...)

Mesmer, 353 Md. at 252; *Willcox v. Am. Home Assur. Co.*, 900 F.Supp. 850, 856 (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.*, 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.*

Ins. Co. of Mich., 165 N.W.2d 308 (Mich. App. 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).

Schumann, 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 year, 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.*, 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,[3] the insurer's liability does not extend to the amount of a judgment or settlement in excess of the policy limit. These decisions 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 court in *State Farm Mutual Automobile Insurance Company v. Paynter*, 593 P.2d 948 (Ct. App. 1979) 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. *Accord Waite v. Aetna Casualty and Surety Company*, 467 P.2d 847 (1970).

[3] 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").

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, 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, particularly one entered as a result of an agreed settlement. 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, Century failed to defend, but Mr. Vasquez was provided counsel through Progressive, his personal auto insurer. A settlement was then entered under which it was agreed that Plaintiffs would obtain a default judgment against Vasquez and Blue Streak, but would agree not to execute on the judgment in exchange for an assignment by Vasquez and Blue Streak of the right to proceed against Century. In order to restore Mr. Vasquez to the position he would have been in had the insurance contract not been breached,[4] this Court should hold that Century is responsible for any unpaid defense costs that Mr. Vasquez or Blue Streak incurred in the underlying action, together with any indemnity provided for under the policy. It should not remove the traditional limit of damages to liability for harm directly and proximately caused by the breach, and should decline to 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

[4] When Mr. Vasquez entered into the insurance contract with Century, he paid a certain amount of premium. In exchange, Century agreed to defend Mr. Vasquez and to indemnify him for up to $1,000,000 for a covered liability claim. Had Century defended Mr. Vasquez in the underlying action, Century could have only been held liable for $1,000,000, the stated policy limits, regardless of the amount of the resulting judgment. Because Century failed to defend him, the damages must place him in the same position, by allowing recovery of the costs of defense, plus indemnity for any covered judgment or settlement up to the $1,000,000 policy limit. Any additional recovery would constitute a windfall, contrary to the law of Nevada and that of other jurisdictions.

ordinarily capped at: (1) the reasonable and necessary costs incurred by its insured for defense; and (2) indemnity for a covered 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).

Coverage up to the policy limits plus any defense costs incurred are the amounts that would have been owed had Century not breached its duty to defend. This is the amount that will put the Plaintiff (through the assignment of rights from Vasquez and Blue Streak) in the position he would have been in had Century not breached the contract. These amounts are 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 originally adopted by the district court and find as a matter of Nevada law that Century's liability is limited to: (1) the costs of defense; and (2) the policy limits of $1,000,000.

B. Prudential, Contractual Expectations Overwhelmingly Support the Conclusion that When 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*, 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.

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 19th day of October, 2017.

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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 4,350 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. Nevertheless, as disclosed expressly in the brief, the "Statement of Facts" constitutes the understanding of Amici regarding the circumstances of the

case, which Amici include for the purposes of contextualizing their arguments. 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 19th day of October, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 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 Century Surety Company" for filing *via* the court's eFlex electronic filing system. Electronic notification will be sent to the following:

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