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Elizabeth A. Brown
Clerk of Supreme Court

Figure 1. The effect of the number of trials on the mean accuracy of the responses ($n = 10$) as a function of the number of items ($n = 8$). Error bars represent standard error.

1. $\frac{1}{2}$ 2. $\frac{1}{3}$ 3. $\frac{1}{4}$ 4. $\frac{1}{5}$ 5. $\frac{1}{6}$

within the state of Nevada and across the country through insurance policies similar or identical to the one at issue in this case.

The question certified to this Court by the United States Court of Appeals for the Ninth Circuit could have a far-reaching effect on insurers and the insurance system. This Court has been asked to decide whether an insurer is entitled to reimbursement of costs already expended in defense of its insured, where a determination has been made that the insurer owed no duty to defend and the insurer expressly reserved its right to seek reimbursement in writing after the defense has been tendered but where the insurance policy contains no reservation of rights.

As trade associations whose membership collectively comprises most of the country's major property and casualty insurers, CICLA and APCIA will provide a unique and broader perspective about the impact of this Court's decision on the insurance system. As amici curiae, CICLA and APCIA will demonstrate that, consistent with the approach of the majority of courts across many jurisdictions, an insurer is entitled to recoup from its policyholder amounts that the insurer has paid for defense costs under an explicit reservation of the right to reimbursement, where it subsequently is determined that the insurer owed no duty to defend the underlying claims. CICLA and APCIA will show that this rule is consistent with well-established unjust enrichment principles, the weight of authority, and the

interests of both Nevada policyholders and insurers. CICLA and APCIA will further argue that recognizing a right to recoupment would serve the worthwhile purpose of encouraging insurers to accept the defense of their policyholders in situations involving disputes as to coverage, while a rule prohibiting recoupment would have the undesirable effect of discouraging insurers from defending claims where coverage is disputed.

Courts throughout the country, including this Court and the United States Supreme Court, have granted the proposed amici leave to file amicus briefs in insurance coverage cases. *See, e.g., Nalder v. United Automobile Ins. Co.*, 2019 WL 5260073 (Nev. Sept. 20, 2019); *Century Sur. Co. v. Andrew*, 134 Nev. Adv. Op. 100, 432 P.3d 180 (2018); *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395, 329 P.3d 614 (2014). Indeed, courts have cited their contributions as amicus curiae approvingly in their decisions. *See, e.g., Federated Mut. Ins. Co. v. Abston Petroleum, Inc.*, 967 So. 2d 705, 711 (Ala. 2007) (citing with approval to CICLA’s arguments as amicus regarding a pollution exclusion); *ACMAT Corp. v. Greater N.Y. Mut. Ins. Co.*, 923 A.2d 697, 708 n.14 (2007) (“Indeed, we find more persuasive the argument of the amicus curiae [CICLA] that [the policyholder’s] position assumes too much and sweeps too far.”); *Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 861 N.E.2d 121, 125 n.1 (2006) (“The court

acknowledges with appreciation the briefs provided by amici curiae . . . the Complex Insurance Claims Litigation Association.”).

Because of their members’ extensive experience, CICLA and APCIA respectfully submit that their participation as amici curiae may assist this Court in deciding the issue before it.

CONCLUSION

For these reasons, CICLA and APCIA respectfully request that this Court should grant this joint motion for leave to file an *Amici Curiae* brief in the above captioned case.

DATED this 27 day of November, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2019, I submitted the foregoing “Joint Motion for Leave to File *Amici Curiae* Brief” for filing *via* the court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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