

Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

NAUTILUS INSURANCE COMPANY,  
  
Appellant,  
  
vs.  
  
ACCESS MEDICAL, LLC; FLOURNOY  
MANAGEMENT LLC; AND  
ROBERT CLARK WOOD, II  
  
Respondents.

## MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Amicus Curiae Complex Insurance Claims Litigation Association (“CICLA”) and American Property Casualty Insurance Association (“APCIA”) (collectively “Amici”) respectfully submit this motion under NRAP 29(h) for leave to participate in oral argument. Amici specifically request four minutes of argument be added to each party’s allotted time. If permitted, Laura A. Foggan, admitted *pro hac vice*, will argue on behalf of Amici. Amici and Appellant Nautilus Insurance Company (“Nautilus”) have agreed to share the time allotted to Nautilus for oral argument, so neither the Court nor any party will be prejudiced by allowing CICLA and APCIA to participate in oral argument. The issue before the

Court is of such import as to satisfy the requirement that there be “extraordinary reasons.” The Court’s ruling will have an extraordinary and outsized effect on many insurers, not just on the insurer party.

As stated more fully in Amici’s motion for leave to file a brief, Document 2019-48488, CICLA and APCIA are trade associations of major property and casualty insurance companies, which collectively represent over a thousand insurers across the country. Amici are interested in this case because their members provide a substantial percentage of the commercial liability coverage within the state of Nevada and across the country through insurance policies similar or identical to the one here. The insurance industry is central to Nevada’s economy. U.S. Department of Commerce data, collated by the Insurance Information Institute, show that the insurance industry provided 21, 391 jobs, and \$1.4 billion in compensation to workers in 2018. Insurance Information Institute, *Nevada Firm Foundation* (2020) <https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/state-fact-sheets/nevada-firm-foundation>. The insurance industry accounted for 2.12 percent of Nevada’s gross state product in 2017. *Id.* Insurance companies paid an estimated \$424.1 million in premium taxes in 2019. *Id.*

The question before the Court could have a significant impact on insurers and the insurance system. The United States Court of Appeals for the Ninth

Circuit has asked this Court to decide whether an insurer is entitled to reimbursement of costs expended in defense of its insured, where it has been adjudicated that the insurer owed no duty to defend and the insurer expressly reserved its right to seek reimbursement in writing after the defense had been tendered, but where the policy contains no explicit provision reserving such a right.

As trade associations whose membership collectively comprises most of the country's major property and casualty insurers, CICLA and APCIA's argument will provide a broader perspective about the effect of the Court's decision. The participation of Amici in oral argument will help address questions concerning insurers' rights to recoup costs advanced to defend uncovered claims under the insurance contract, under Nevada principles of unjust enrichment, and in law and equity. Through participation in oral argument, Amici will further distill the issues and bring into focus the key legal points that bear on the defense cost reimbursement question presented here. It will permit counsel for Amici to answer this Court's questions about the rights and obligations of insurers who have defended an uncovered claim. CICLA and APCIA will show in oral argument that, consistent with a plurality of courts across many jurisdictions, allowing an insurer to seek reimbursement in such a scenario follows Nevada's well-established principles of unjust enrichment, and advances the interests of both Nevada policyholders and insurers.

Amici respectfully request that this Court grant CICLA and APCIA's motion for leave to participate in oral argument for the same reasons raised in CICLA and APCIA's joint motion for leave to file an *Amicus Curiae* brief—because the extensive experience of CICLA's and APCIA's members may assist this Court in deciding the issue before it. Because the question before this Court will have such a large effect on casualty insurers, there are extraordinary reasons to allow Amici to participate in oral arguments. Moreover, there will be no prejudice to any party or the Court because Appellant Nautilus has agreed to allow Amici to use part of Nautilus's allotted time

### **CONCLUSION**

For these reasons, CICLA and APCIA respectfully request that this Court should grant this joint motion for leave to participate in oral argument in the above captioned case.

DATED this 25th day of September, 2020

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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2020, I submitted the foregoing “MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT” for filing via the court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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