

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203 (720) 625-5150</p>	
<p>COLORADO COURT OF APPEALS Case No. 2015CA964 DISTRICT COURT, DENVER COUNTY Case No. 2009CV7321</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/>
<p>Petitioners: ROSALIN ROGERS AND MARK L. THOMPSON,</p> <p>v.</p> <p>Respondent: CATLIN INSURANCE COMPANY (UK) LTD.</p>	<p>Case No.: 2016SC916</p>
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<p style="text-align: center;">UNITED POLICYHOLDERS' <i>AMICUS CURIAE</i> BRIEF IN SUPPORT OF PETITIONERS ROSALIN ROGERS AND MARK L. THOMPSON</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28, 29 and 32, including all formatting requirements set forth in those rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 29(d) and 28(g).

Choose one:

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I acknowledge that this brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or C.A.R. 32.

/s/ Damian J. Arguello

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TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCEi

I. CERTIFIED QUESTION ADDRESSED BY AMICUS CURIAE1

II. STATEMENT OF THE CASE AND RELEVANT FACTS1

III. SUMMARY OF ARGUMENT4

IV. ARGUMENT5

 A. C.R.C.P. 103 Specifically Contemplates An Award Of Prejudgment
 Interest To Expedite The Payment Of Debts.5

 B. C.R.S § 5-12-102 In Its Own Right Contemplates Being Used In C.R.C.P.
 103 Garnishment Proceedings.12

V. CONCLUSION18

CERTIFICATE OF SERVICE19

TABLE OF AUTHORITIES

<i>All Around Transp., Inc. v. Cont’l Western Ins. Co.</i> , 931 P.2d 552 (Colo. App. 1996).....	7
<i>and Hoang v. Assur. Co. of Am.</i> , 149 P.3d 798 (Colo. 2007).....	8, 10
<i>Buysse v. Baumann-Furrie & Co.</i> , 498 N.W.2d 289 (Minn. Ct. App. 1993).....	16, 17
<i>C.f., James River Ins. Co. v. Rapid Funding, LLC</i> , 2010 U.S. Dist. LEXIS 36443, 2010 WL 965523 (D. Colo. March 16, 2010), <i>rev’d in part on other grounds</i> , 648 F.3d 1134 (10th Cir. 2011)	9, 15
<i>Carpenter v. Am. Family Mut. Ins. Co.</i> , 2015 U.S. Dist. LEXIS 166952 (D. Colo. Dec. 11, 2015)	11, 15
<i>Commercial Claims, Ltd. V. First Nat’l Bank</i> , 649 P.2d 736 (Colo. App. 1982).....	15
<i>FDIC v. Gray</i> , 1991 U.S. Dist. LEXIS 21851 (W.D. Okla. Jan. 8, 1991).....	7, 8
<i>Goodyear Tire & Rubber Co. v. Holmes</i> , 193 P.3d 821 (Colo. 2008).....	13
<i>Kyle W. Larson Enters. V. Allstate Ins. Co.</i> , 305 P.3d 409 COA 160M (Colo. App. 2012).....	17
<i>McDonald v. Ins. Co. of Pa.</i> , 460 S.W.3d 58 (Missouri Ct. App. 2015).....	18
<i>Mendoza v. Rivera-Chavez</i> , 2003 Wash. App. LEXIS 287 (Wash. Ct. App. Feb. 25, 2003)	18
<i>Old Republic Ins. Co. v. Ross</i> , 180 P.3d 427 (Colo. 2008).....	8, 10, 11

<i>Ortiz v. Valdez</i> , 971 P.2d 1076 (Colo. App. 1998).....	6, 15
<i>Prof'l Solutions Ins. Co. v. Mohrlang</i> , 2009 U.S. Dist. LEXIS 50733, 2009 WL 1537970 (D. Colo. May 29, 2009)	9, 13, 15
<i>Stamey v. Nat'l Gen. Ins. Co.</i> , 2016 U.S. Dist. LEXIS 189151, 2016 WL 8540310 (D. Colo. Sept. 22, 2016)	17
<i>Struble v. Am. Fam. Ins. Co.</i> , 172 P.3d 950 (Colo. App. 2007).....	7
<i>In re Tri Systems Consulting & Design, Inc.</i> , 115 B.R. 279 (Bankr. D. Colo. 1990).....	15, 16
<i>Universal Fire Ins. Co. v. Tabor</i> , 27 P. 890 (Colo. 1891).....	7
<i>USAA v. Parker</i> , 200 P.3d 350 (Colo. 2009).....	11
Statutes	
C.R.S. § 5-12-102	<i>passim</i>
C.R.S. § 5-12-102(1)(a)	12
C.R.S. § 5-12-102(1)(b)	12, 13
C.R.S. §§ 10-3-1115 and 10-3-1116.....	16
C.R.S. § 13-21-101	11
Colorado Insurance Law	1, 19
Other Authorities	
<i>C.A.R. 30(f)</i>	19
C.R.C.P. 103	<i>passim</i>

C.R.C.P. 103 and C.....4, 5
Colorado Division of Insurance Regulation § 5-1-14.....16, 17

COMES NOW, United Policyholders (“UP”), by and through its counsel, Damian J. Arguello of Colorado Insurance Law Center, and submits an *amicus curiae* brief as follows:

I. CERTIFIED QUESTION ADDRESSED BY AMICUS CURIAE

Whether a prevailing garnishor is entitled to pre-judgment interest.

II. STATEMENT OF THE CASE AND RELEVANT FACTS

UP adopts the Statement of Facts provided by Petitioners, but includes a summary of the relevant facts for purposes of this brief.

This is a garnishment proceeding under C.R.C.P. 103 in which Petitioners, Rosalin Rogers and Mark L. Thompson, in their capacity as garnishors and judgment creditors, seek to recover from Respondent, Catlin Insurance Company (UK) Ltd. (“Catlin”) that which Catlin owes under a professional liability insurance policy (“Policy”) issued to United Securities Alliance, Inc. (“United”), on a judgment previously entered against United and in favor of Petitioners (“Judgment”). The Judgment, entered by the District Court below on September 22, 2009, confirmed an arbitration award in favor of Petitioners against United for the economic losses Petitioners suffered on an investment for which United acted as their broker-dealer. (October 18, 2010 District Court Order (“October 2010 Order”) at 2 and 9.)

Rather than pay the Judgment on behalf of United, Catlin filed an Answer to Petitioners' Writs of Garnishment, asserting that the Policy did not cover the Judgment and, therefore, Catlin owed Petitioners nothing. After Petitioners filed a Traverse challenging Catlin's denial of coverage and the matter had been fully briefed and argued, the District Court ruled, among other things, that the Policy covered the Judgment. (October 2010 Order at 52.)

The Court of Appeals affirmed the October 2010 Order concerning coverage for the Judgment under the Policy, (February 2, 2012 Court of Appeals Order ("February 2012 Order") at 7), and, as of April 22, 2015, Catlin has paid the Petitioners \$451,605.17 toward Catlin's indebtedness to United on the Judgment. (April 22, 2015 District Court Order ("April 2015 Order") at 5 n.6.) The remaining amount Catlin owes United under the Policy on the Judgment remains in dispute.

Petitioners, as prevailing parties concerning the existence of coverage, demanded that Catlin pay them statutory interest under C.R.S. § 5-12-102, on the insurance proceeds Catlin has paid them pursuant to the Garnishment Order, plus any additional interest that has accrued and continues to accrue on the additional amounts Petitioners claim Catlin owes on the Judgment. Catlin refused, and the District Court agreed with Catlin that it does not owe Petitioners any prejudgment interest. (April 2015 Order at 18.) The District Court acknowledged that § 5-12-

102 is designed to “recognize[] the time value of money,” and “make innocent parties whole” by compensating them for the “loss” they “suffer . . . when property to which they are entitled is wrongfully withheld from them,” and that “on its face and standing alone, [C.R.S. § 5-12-102] appears to mandate an award of interest in virtually all circumstances where a financial obligation is owing and is paid over time or where payment is wrongfully withheld.” (April 2015 Order at 16-17.) Nevertheless, the District Court ruled that, “[b]ecause there is no express Colorado precedent affirming an award of prejudgment interest under C.R.S. § 5-12-102 in a garnishment action, and because garnishment actions are ancillary proceedings – not actions for money damages, the Court finds that C.R.S. § 5-12-102 does not apply in this case.” (*Id.* at 18.) On September 8, 2016, the Court of Appeals, among other things, affirmed the District Court’s decision to deny Petitioners pre-judgment interest. (September 8, 2016 Court of Appeals Order (“September 2016 Order”) at 13.)

UP submits that the Courts below erred in refusing to award the Petitioners, as prevailing garnishors, prejudgment interest in this garnishment proceeding. If the denial of prejudgment interest is upheld, it will incentivize insurers to delay or deny payment of monies owed to judgment garnishors on behalf of their insureds without any additional recourse available to insureds or garnishors. Insurers should not be

permitted to “play the float” during litigation. Instead, they should be incentivized to promptly pay benefits owed. That is, after all, the intent of statutes such as § 5-12-102, and statutes and regulations governing insurance company behavior.

III. SUMMARY OF ARGUMENT

Awarding prejudgment interest to prevailing garnishors is mandated by the wording and intent of C.R.C.P. 103 and C.R.S. § 5-12-102, to the extent the proceeding does not involve personal injuries, as is the case here. Like in any other adjudicatory proceeding involving an obligation to pay, C.R.C.P. 103 and C.R.S. § 5-12-102 specifically contemplate the use of prejudgment interest to ensure prevailing garnishors receive the full amount or value of the money or property to which they are entitled. Like in any other adjudicatory proceeding involving an obligation to pay, C.R.C.P. 103 contemplates the use of C.R.S. § 5-12-102 interest to encourage garnishees to pay their debts promptly.

The appropriateness of and need for prejudgment interest in garnishment proceedings involving economic losses is best illustrated when insurance is involved, such as here. If the garnishee/liability insurer chooses not to pay promptly on its debt on behalf its policyholder, and is not required to pay accrued interest on those withheld funds, the injured party/garnishor (who is ultimately entitled to the insurance proceeds) is forever deprived of the full value of the insurance ultimately

paid over. On the other hand, the insurer, in delaying payment of the insurance proceeds due, profits from not paying because it earns and keeps interest on those funds. The threat of an award of prejudgment interest in garnishment proceedings therefore encourages insurers to pay their debts promptly and puts insurance into the hands of those most in need of it as soon as possible.

Here, Petitioners seek to recover insurance under the Policy for the Judgment entered in Petitioners' favor for the economic losses they suffered because of United's deficient services. Catlin, as insurer/garnishee, withheld payment pending a judicial determination concerning coverage for the Judgment under the Policy. Catlin has since paid a portion of the insurance proceeds at issue but continues to dispute the extent of its indebtedness on the Judgment. On these facts, C.R.C.P. 103 and C.R.S. § 5-12-102 authorize an award of prejudgment interest on the monies withheld and later paid out to the Petitioners. Such an award is also necessary to further Colorado's public policy of holding insurance companies accountable for the prompt payment of benefits to or on behalf of policyholders.

IV. ARGUMENT

A. C.R.C.P. 103 Specifically Contemplates An Award Of Prejudgment Interest To Expedite The Payment Of Debts.

C.R.C.P. 103 governs garnishment proceedings in Colorado and is designed to provide a judgment creditor with "an expedited and efficient mechanism for"

collecting on an existing judgment entered in its favor. *Ortiz v. Valdez*, 971 P.2d 1076, 1079 (Colo. App. 1998).

When a garnishment proceeding involves a judgment debtor that is not a natural person and “the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor,” C.R.C.P. 103 directs the presiding court to “enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer.” C.R.C.P. 103(4)(f)(1). C.R.C.P. 103 further directs that, “[i]n no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.” *Id.*

Thus, if a garnishee files an answer to the writ of garnishment and chooses not to pay some of or all the monies demanded, the garnishee’s ultimate exposure to the garnishor encompasses its indebtedness to the judgment debtor as of the date upon which the garnishment court ultimately determines the validity and extent of that indebtedness, as demonstrated in the answer.¹ In a garnishment proceeding, a garnishor stands in the shoes of the judgment debtor and is entitled to recover the extent to which the judgment debtor could have recovered against the

¹ *See* October 2010 Order at 2 (“In a garnishment proceeding, the garnishee’s Answer and the garnishor’s Traverse frame the issues to be decided by the Court.”)

garnishee had it sued the garnishee directly. *See Universal Fire Ins. Co. v. Tabor*, 27 P. 890, 891 (Colo. 1891) (a garnishee “cannot, by virtue of garnishment proceedings, be placed in a worse position than he would occupy if [the judgment debtor]’s claim against [the garnishee] were enforced by [the judgment debtor] himself.”); *see also FDIC v. Gray*, 1991 U.S. Dist. LEXIS 21851 (W.D. Okla. Jan. 8, 1991) (“In a garnishment proceeding the judgment creditor stands in the shoes of the judgment debtor to enforce a liability owed to the latter by a third-party—the garnishee. The former may claim no greater rights against the garnishee than the latter himself possesses.”) (citing *Culie v. Arnett*, 765 P.2d 1203, 1205-06 (Okla. 1988)).²

The wording of C.R.C.P. 103, therefore, explicitly contemplates and does not preclude the garnishee having to pay more (*e.g.*, prejudgment interest on the monies withheld) to a prevailing garnishor than the amounts initially owed on the judgment at issue. Had the judgment debtor been entitled to such additional sums

² *See also* October 2010 Order at 6 (“In a garnishment proceeding, the garnishee is treated in the same manner is [sic] if the garnishee had been sued directly on the debt by the judgment debtor. *Struble v. Am. Fam. Ins. Co.*, 172 P.3d 950, 955 (Colo. App. 2007). When an insurance policy is garnished, the judgment creditor asserts the rights of the insured. *All Around Transp., Inc. v. Cont’l Western Ins. Co.*, 931 P.2d 552, 557 (Colo. App. 1996).”)

if it successfully sued the garnishor directly on the obligation to pay, a prevailing garnishor is also entitled to them.

C.R.C.P. 103, applied in the context of insurance, is illustrative. An action under C.R.C.P. 103 can operate like a declaratory judgment action or an action for breach of contract to determine the existence and extent of insurance for a loss or accident. *See, e.g., Old Republic Ins. Co. v. Ross*, 180 P.3d 427 (Colo. 2008) (garnishment proceeding on behalf of victims of plane crash to enforce judgment against insurer of airplane charter company in separate declaratory insurance coverage action); and *Hoang v. Assur. Co. of Am.*, 149 P.3d 798 (Colo. 2007) (garnishment proceeding on behalf of owners of poorly constructed homes to force home builder's insurer to turn over insurance proceeds of home builder's CGL insurance policy); *see also Gray*, 1991 U.S. Dist. LEXIS 21851, at *10 (explaining how insurer's coverage defenses in garnishment proceeding are "the same defenses" insurer would assert in declaratory judgment action concerning its obligations under policy).

It thus makes sense that, when coverage is determined to exist in a garnishment proceeding, as is the case in declaratory judgment and breach of contract actions, the garnishment order entered against the insurer-garnishee may reflect the additional liability the insurer would owe its policyholder for the length

of time it took to resolve the coverage issue. *C.f.*, *James River Ins. Co. v. Rapid Funding , LLC*, 2010 U.S. Dist. LEXIS 36443, *18, 2010 WL 965523 (D. Colo. March 16, 2010) (awarding prejudgment interest under § 5-12-102 to prevailing policyholder in breach of contract action against property insurer for refusal to pay for damage to policyholder’s apartment complex), *rev’d in part on other grounds*, 648 F.3d 1134 (10th Cir. 2011); *Prof’l Solutions Ins. Co. v. Mohrlang*, 2009 U.S. Dist. LEXIS 50733, **4-8, 2009 WL 1537970 (D. Colo. May 29, 2009) (recognizing assignees’ right to prejudgment interest under § 5-12-102 in action to resolve coverage for non-personal injury attorney malpractice claim but holding that assignees had waived right to prejudgment interest when they agreed to allow insurer to withhold funds pending litigation).

In refusing to award Petitioners prejudgment interest on Catlin’s untimely payments toward its debt to United, as a court might have done had United sued Catlin directly and won, the Courts below focused on what they perceived to be the “ancillary” and limited nature of garnishment proceedings. (April 2015 Order at 18; September 2016 Order at 16.) Nothing in the text of C.R.C.P. 103 proscribes or limits the ability of a garnishment court to determine the existence and scope of the garnishee’s indebtedness to the judgment debtor. Indeed, in the context of insurance, as the District Court did here, Colorado’s garnishment courts have

exercised full authority to resolve the merits of what otherwise could be described as a policyholder/judgment debtor's contractual claim(s) against the garnishee/insurer for its refusal to pay, regardless of the relationship between the garnishment proceeding and other proceedings involving the same parties. *See, e.g., Ross*, 180 P.3d at 430 (Colo. 2008); *Hoang*, 149 P.3d at 801 (Colo. 2007); *see also* October 2010 Order at 3 (“Garnishment is an appropriate and approved procedure for determining whether an insurance policy covers a judgment.”) (*citing Bohrer v. Church Mut. Ins. Co.*, 965 P.2d 1258, 1266 (Colo. 1998)). Having exercised that same broad, C.R.C.P. 103 authority to hold Catlin liable in contract to United for the Judgment, the District Court's decision not to exercise that same authority to hold Catlin accountable for its refusal to pay is illogical and finds no support in the law.

This Court has already recognized the appropriateness of prejudgment interest in certain garnishment proceedings to compensate for an insurer's wrongful decision to delay payment. In *Ross*, the Court of Appeals, among other things, *sua sponte* awarded the prevailing garnishors prejudgment interest under § 5-12-102 on the portion of the insurance proceeds due that the insurer chose not to pay pending a resolution of coverage. *Ross*, 180 P.3d at 430. In reversing that decision, this Court refrained from ruling, categorically, that prejudgment interest

is never available in garnishment proceedings. *See id.* at 435-437. Rather, the Court held that, because that particular garnishment proceeding involved the recovery of insurance for personal injuries and not economic losses, C.R.S. § 13-21-101, not § 5-12-102, governed the issue and prejudgment interest was not available. *Id.* at 436. *Ross* does not bar an award of prejudgment interest under § 5-12-102 in a garnishment proceeding involving the loss of or damage to property, as is the case here.

The narrow holding in *Ross* is consistent with a court's authority under C.R.C.P. 103 to make a prevailing garnishor whole by compensating him or her for the time value of money he or she would have enjoyed but for the garnishee's decision not to pay. *See Carpenter v. Am. Family Mut. Ins. Co.*, 2015 U.S. Dist. LEXIS 166952, **4-5 (D. Colo. Dec. 11, 2015) (holding that “insurer-caused damages – i.e., damages caused not by the [insured person] . . . but by [the insurer]’s wrongful refusal to pay [on the claim] under the [insurance] contract” are not subject to *USAA v. Parker*, 200 P.3d 350 (Colo. 2009), and justify the award of prejudgment interest in excess of policy limits).

B. C.R.S § 5-12-102 In Its Own Right Contemplates Being Used In C.R.C.P. 103 Garnishment Proceedings.

The insurer's intent in withholding payment due is irrelevant in determining whether prejudgment interest is due to a garnishor for wrongfully withheld funds; thus, bad faith or unreasonable conduct is not a consideration. C.R.S. § 5-12-102 provides, in pertinent part, that, a creditor "shall receive interest" in the absence of an agreement creating such right, to the extent "money or property has been wrongfully withheld." C.R.S. § 5-12-102(1)(a). In these circumstances, the creditor is entitled to statutory interest in "an amount which fully recognizes the gain or benefit realized by the person withholding such money or property from the date of wrongful withholding to the date of payment or to the date judgment is entered, whichever first occurs. . . ." *Id.* In the alternative, the creditor can elect to receive statutory interest at a rate of "eight percent per annum." C.R.S. § 5-12-102(1)(b).

As this Court observed:

In order to recover damages, the plaintiff's loss or injury is quantified using a measure of damages available to the plaintiff. While the damages would make the plaintiff whole at the time when they are measured, the defendant typically does not pay until later, when the damages are awarded by the court. . . . During the period between the time at which the plaintiff's loss is measured and the judgment, the plaintiff is deprived of the use of the money or property that would constitute the award. . . . In other words, the money or property constituting the award is

“wrongfully withheld” from the plaintiff. As a result, the plaintiff suffers a loss, frequently termed “time value of money.” This lost value is caused by inflation, reducing the value of money over time, and by plaintiff’s inability, due to the withholding of his or her money or property, to earn a return on it. Generally, interest rates compensate for the time value of money. While market interest rates are a function of several components, the purpose of prejudgment interest is to reimburse the plaintiff for inflation and lost return.

Goodyear Tire & Rubber Co. v. Holmes, 193 P.3d 821, 826 (Colo. 2008) (citations omitted).

“In effect, section 5-12-102(1)(b) presumes the amount of time value of money the plaintiff loses every year when his money or property is withheld,” *id.* at 828, and the creditor is entitled to statutory interest regardless of the debtor’s motive in withholding the money. *Id.* at 825 (reaffirming that the phrase “wrongfully withheld” as used in § 5-12-102(1) requires nothing more than a “mere breach of contract”); *see also Mohrlang*, 2009 U.S. Dist. LEXIS 50733, at **7-8 (“Although Colorado courts liberally construe the phrase “wrongfully withheld,” the withholding of money or property is only wrongful where a person is otherwise entitled to it.”) (citing *Mesa Sand & Gravel Co. v. Landfill, Inc.*, 776 P.2d 362, 356 (Colo. 1989), and *Peterman v. State Farm Mut. Auto. Ins. Co.*, 8 P.3d 549, 551 (Colo. App. 2000), *overruled on other grounds by Parker*, 200 P.3d at 358 n. 11)).

In a sense, the statute is analogous to the difference between a non-prevailing party paying costs and the proponent of a frivolous argument owing attorney fees. Like the former, the insurer who fails to pay promptly risks owing prejudgment interest to compensate the garnishor for the cost of pursuing recovery; the insurer can be dead wrong in its position without incurring a severe penalty. If the insurer acts unreasonably or in bad faith, there is another penalty for that infraction separate from prejudgment interest—common law or statutory penalties. In other words, if the insurer in good faith denies coverage and is incorrect, it risks owing the time value of the denied benefits. If it denies coverage unreasonably, it risks that penalty *plus* statutory or common law penalties. In other words, it is not unfair to the insurer to require payment of prejudgment interest for its incorrect refusal to pay; bad faith or unreasonable conduct should not be a consideration or prerequisite.

Additionally, just as C.R.C.P. 103, by its own terms, authorizes an award of prejudgment interest, § 5-12-102, by its own terms, authorizes its use in a garnishment proceeding if warranted. A garnishment proceeding under C.R.C.P. 103 revolves around exactly that which triggers § 5-12-102: an obligation to pay in connection with the loss of or damage to property. Once the garnishee chooses to delay payment on any portion of its debt to the judgment debtor, for any reason whatsoever, § 5-12-102 is triggered and interest begins to accrue until the garnishee

pays the debt in full.³ The garnishee may withhold the monies at issue and use the garnishment proceeding to challenge its indebtedness to the judgment debtor; it simply must compensate the garnishor for the time value of the money withheld if and when it loses. Facing the prospect of such an outcome, the garnishee may instead choose not to file an answer and pay the debt immediately.

As previously noted, the symbiotic relationship between § 5-12-201 and C.R.C.P. 103, and their mutual goal of expediting the payment of debts, is laid bare in the insurance context. *See, e.g., Rapid Funding*, 2010 U.S. Dist. LEXIS 36443, *supra*, at *18; *Mohrlang*, 2009 U.S. Dist. LEXIS 50733, *supra*, at **4-6; *Carpenter*, 2015 U.S. Dist. LEXIS 166952, *supra*, at *5; *see also In re Tri Systems Consulting*

³ In refusing to award prejudgment interest in these garnishment proceedings, the Courts below interpreted § 5-12-102 to apply only in actions for money or compensatory “damages.” (See April 2015 Order at 18; September 2016 Order at 14-15.) Even if these garnishment proceedings on Catlin’s obligations to United under a contract of insurance for economic losses do not involve “damages,” which is not entirely clear at all, nothing in the text of or case law concerning § 5-12-102 restricts its application to cases in which “damages” are involved; the statute is triggered whenever a debtor withholds payment on an obligation to pay. Indeed, while a garnishment proceeding is “in aid of execution issued pursuant to an existing judgment,” *see Commercial Claims, Ltd. V. First Nat’l Bank*, 649 P.2d 736 (Colo. App. 1982), its fundamental purpose is to enforce the garnishee’s obligation to pay. *Ortiz*, 971 P.2d at 1079. In other words, a garnishment proceeding such as the instant one is compensatory (as opposed to punitive) in nature and an appropriate forum in which to utilize §5-12-201.

& Design, Inc., 115 B.R. 279, 282 (Bankr. D. Colo. 1990) (“The policy of awarding prejudgment interest promotes an early and expedited settlement of disputes and discourages delay in payment of claims.”). As succinctly stated in *Tri Systems Consulting*, denying a prevailing insured (or garnishor) prejudgment interest “would encourage insurance companies to dispute claims, rather than reach fair and timely resolutions with policyholders.” *Tri Systems Consulting*, 115 B.R. 279, at 283 (awarding § 5-12-102 interest in an insurance coverage adversary proceeding in bankruptcy where the losing insurer “elected” to withhold the insurance proceeds at issue pending a final determination of coverage).⁴

Finally, one need only look to Colorado’s deep-rooted policies promoting the prompt payment of insurance claims to conclude that § 5-12-102 applies in this garnishment proceeding. Colorado law is designed to hold insurers to their bargains with their policyholders. *See* Colorado Division of Insurance Regulation § 5-1-14 (imposing penalties on insurers for the failure to make timely decisions and/or payment on first-party claims); and C.R.S. §§ 10-3-1115 and 10-3-1116 (“creatin[g]

⁴ *See also Buysse v. Baumann-Furrie & Co.*, 498 N.W.2d 289 (Minn. Ct. App. 1993) (“Prejudgment interest essentially serves a dual purpose: (1) to compensate the plaintiff for the loss of use of his money, and, by implication to deprive the defendant of any gain resulting from the use of money rightfully belonging to the plaintiff; and (2) to promote settlement.”).

a statutory duty for insurers to refrain from unreasonable delay or denial of payment of any claim for benefits owed.”); *Kyle W. Larson Enters. V. Allstate Ins. Co.*, 305 P.3d 409, 411, 2016 COA 160M (Colo. App. 2012); *Stamey v. Nat’l Gen. Ins. Co.*, 2016 U.S. Dist. LEXIS 189151, *5, 2016 WL 8540310 (D. Colo. Sept. 22, 2016).

That policy is especially present in a garnishment proceeding such as this one. When C.R.C.P. 103 is read to incorporate the availability of prejudgment interest under § 5-12-102, like Regulation § 5-1-14, and C.R.S. §§ 10-3-1115 and 10-3-1116, C.R.C.P. 103 operates as both a carrot and a stick to make sure that the insurance purchased, once triggered, is put into the hands of those entitled to it as quickly as possible. An insurer-garnishee is induced to promptly pay its debts to or on behalf of its policyholders to avoid paying more in interest, and the injured party receives the full amount of insurance owed.

For these reasons, it is logical and just that appellate courts in other jurisdictions have confirmed the use of prejudgment interest in garnishment proceedings to expedite the payment of debts under contracts of insurance. *See Buysse*, 498 N.W.2d 289, at 294 (affirming award of prejudgment interest to prevailing garnishors where garnishee E&O insurer initially defended judgment debtor in garnishors’ malpractice action against policyholder but later, in answer to garnishment action, denied an indebtedness to garnishors and waited four years to

pay garnishors insurance proceeds owed); *Mendoza v. Rivera-Chavez*, 2003 Wash. App. LEXIS 287, *18 (Wash. Ct. App. Feb. 25, 2003) (affirming award of prejudgment interest to prevailing garnishor on the amount garnishee/insurer owed in coverage); *McDonald v. Ins. Co. of Pa.*, 460 S.W.3d 58, 67-68 (Missouri Ct. App. 2015) (remanding for circuit court to determine, among other things, merits of awarding prejudgment interest in equitable garnishment proceeding involving insurance). This Court should follow suit and award Petitioners prejudgment interest.

V. CONCLUSION

This Court should hold that a prevailing garnishor in a C.R.C.P. 103 garnishment proceeding involving economic losses is entitled to prejudgment interest under C.R.S. § 5-12-102; reverse the September 2016 Order accordingly; and remand this case to the District Court for entry of an award of prejudgment interest in Petitioners' favor on any amount of Catlin's indebtedness to United on the Judgment withheld from Petitioners since entry of the Judgment.

RESPECTFULLY SUBMITTED November 27, 2017.

COLORADO INSURANCE LAW CENTER

By: /s/ Damian J. Arguello

Damian J. Arguello

Attorney for
UNITED POLICYHOLDERS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 27, 2017, a true and correct copy of the foregoing **UNITED POLICYHOLDERS' AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS ROSALIN ROGERS AND MARK L. THOMPSON** was filed with this Court and served on all counsel of record via ICCES:

/s/ Damian J. Arguello

Damian J. Arguello

Pursuant to C.A.R. 30(f), this document with original signatures will be maintained by the filing party and made available for inspection by other parties or the Court upon request.