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DISTRICT COURT, CITY AND COUNTY OF DENVER STATE OF COLORADO Case No. 16CV33608 The Hon. J. Eric Elliff, District Court Judge 1437 Bannock Street, Denver, CO 80202	Case No. 2019SC664
***Plaintiff-Appellant*:** AUTO-OWNERS INSURANCE COMPANY, v. ***Defendant-Appellee*:** BOLT FACTORY LOFTS OWNERS ASSOCIATION INC., A COLORADO NONPROFIT CORPORATION.	
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BRIEF OF *AMICUS CURIAE* UNITED POLICYHOLDERS IN SUPPORT OF APPELLEE

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I. CERTIFICATE OF COMPLIANCE

Pursuant to Colorado Appellate Rule 32(a)(3), the undersigned certifies that the Brief of Amicus Curiae United Policyholders contains 4,286 words, excluding this certificate of compliance, the table of contents, the table of authorities, certification of service, and the appendices. To the best of the undersigned's knowledge, this brief also complies with C.A.R. 29.

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II. INTEREST OF AMICUS CURIAE

United Policyholders ("UP") is a non-profit 501(c)(3) organization founded in 1991 as a voice and an information resource for insurance consumers in Colorado and throughout the United States. The organization assists and informs disaster victims and individual and commercial policyholders with regard to every type of insurance product. UP's work is supported by donations, grants, and volunteer labor. UP does not sell insurance or accept funding from insurance companies. UP publishes free-of-charge material providing practical guidance to insurance consumers in print and online at www.uphelp.org.

In Colorado, UP has been engaged with public officials in El Paso, Boulder, and Larimer counties, and the Colorado Insurance Commissioner's office, since 2010, when UP began providing local recovery support services to residents and businesses after a series of wildfires and floods. Loss adjustment, construction, and financing delays during the recovery process led UP to help draft and support the Colorado Homeowners Insurance Act of 2013 (House Bill 12-1225, signed on May 10, 2013 by Governor John Hickenlooper).

In addition to general advocacy, UP advances policyholders' interests in courts across the United States by filing *amicus curiae* briefs in cases involving important insurance principles. UP has filed *amicus curiae* briefs on behalf of policyholders in more than 400 cases throughout the United States, including

numerous cases before the United States Supreme Court, the U.S. Circuit Courts of Appeals, and the courts of Colorado. UP has appeared as *amicus curiae* in two recent Colorado Supreme Court cases: *Thompson v. Catlin. Insurance Co. (UK) Ltd.* (2016SC916, 2018) and *Rooftop Restoration, Inc. v. American Family Mutual Insurance Co.* (2017SA31, 2018). A complete listing of cases UP has participated in can be found in our online Amicus Project library.

III. STATEMENT OF THE ISSUE

Whether an insurer is entitled to intervene under C.R.C.P. 24(a)(2) to exercise its "absolute right" to control the defense of its insured under a reservation of rights, where the defendant-insured entered into an agreement prior to trial assigning its rights to any future bad faith claims against the insurer to the third-party plaintiff.

IV. STATEMENT OF THE CASE

Bolt Factory Lofts Owners Association (the "Association") brought this action against contractors involved in the construction of a Denver condominium. The original defendant contractors asserted third-party claims against several subcontractors, including Sierra Glass Co., Inc. ("Sierra Glass"). Sierra Glass held third-party liability insurance issued by Auto-Owners Insurance Company ("AOIC"), which agreed to defend Sierra Glass in the lawsuit subject to a reservation of rights to deny coverage:

> We are reserving our rights to disclaim at a later date any obligation of Auto-Owners Insurance Company under your policy to assert the defense of noncoverage. Therefore, you may wish to retain your own counsel (at your expense) to protect your interests, in light of a possible verdict on a claim or element of damage that is not covered by the [sic] your policy. While you are not required to retain your attorney, we are bringing the matter to you attention as it merits serious consideration.

(Ex. B, at 7).[1]

The Association resolved its claims against all entities except Sierra Glass. Aug. 1, 2019 Court of Appeals Order ("Aug. Order"), ¶ 2. AOIC refused to agree to a within policy limits settlement of $1.9 million. *Id.* ¶ 3. Shortly before a scheduled fifteen-day jury trial, Sierra Glass entered into an agreement with the Association to protect itself against potential liability to the Association, as permitted under *Nunn v. Mid-Century Insurance Co.*, 244 P.3d 116 (Colo. 2010).[2]

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[1] UP requests, pursuant to Colorado Rule of Evidence 201, that the Court take judicial notice of the attached documents filed in *Auto-Owners Insurance Co. v. Bolt Factory Lofts Owners Associations, Inc.*, docket numbers 18-cv-1725 (D. Colo.) and 19-1233; 19-1310 (10th Cir.). AOIC's complaint is attached as Exhibit A. The reservation of rights letter, which AOIC filed with its complaint, is attached as Exhibit B. UP obtained these documents from the publically available docket.

[2] As this Court described in *Nunn*:

> [W]hen it appears that the insurer — who has exclusive control over the defense and settlement of claims pursuant to the insurance contract — has acted unreasonably by refusing to defend its insured or refusing a settlement offer that would avoid any possibility of excess liability for its insured, the insured may take steps to protect itself from potential exposure to such liability. One way for an insured to protect itself is through the use of an agreement whereby the insured assigns its bad

Continued on following page

When AOIC learned of this agreement, it filed a motion to intervene, continue the trial, and contest the agreement. The trial court denied AOIC's motion, determining that AOIC's claim was contingent and that the agreement was valid. Aug. Order ¶ 4.

Following a bench trial, the court entered a judgment against Sierra Glass for $2,489,021.91. *Id.* ¶ 5. AOIC appealed the trial court's order denying its motion to intervene. The Court of Appeals affirmed denial of the motion to intervene: "Because the insurer's interest here was contingent, the division concludes that the trial court properly denied the motion to intervene as a matter of right." *Id.*, at 1.

On July 6, 2018, AOIC filed a declaratory judgment action against Sierra Glass and the Association alleging, among other things, that Sierra Glass breached the terms of its insurance policy by entering into a settlement agreement without AOIC's consent. (Ex. A ¶ 99). This action remains pending in the United States District Court for the District of Colorado.

In an Order dated August 20, 2020, the United States Court of Appeals for the Tenth Circuit ruled that the district court erred as a matter of law in dismissing

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> faith claims to the third party, and in exchange the third party agrees to pursue the insurer directly for payment of the excess judgment rather than the insured.

244 P.3d at 119 (internal citations omitted).

the declaratory judgment action for lack of subject-matter jurisdiction and that the insurance coverage issues are ripe for determination, thereby supporting the central thesis of this brief that the federal declaratory judgment action (not this action) is the proper forum for judicial resolution of any issues concerning insurance coverage. *See Auto-Owners Ins. Co. v. Bolt Factory Lofts Owners Ass'n*, No. 19-1233, 2020 U.S. App. LEXIS 26478, at *5 (10th Cir. Aug. 20, 2020).

V. SUMMARY OF ARGUMENT

In exercising its right and duty to defend its policyholder, an insurance company must conduct the defense *in the best interest of the policyholder*. By reserving its right to deny coverage, AOIC explicitly raised the specter that it would seek to avoid coverage for any judgment, and its failure to settle the matter put Sierra Glass in peril. Denying intervention drew a clear and appropriate separation between the defense of the underlying action (where the insurance company must act for the benefit of its policyholder) and an insurance coverage action (where the insurance company may assert its rights under the insurance policy for its own benefit). Accordingly, UP respectfully requests that this Court affirm the decision of the Court of Appeals.

VI. ARGUMENT

A. Colorado's Liability Insurance Framework Protects the Policyholder's Right to Receive the Benefit of the Insurance It Purchased.

Although commercial liability insurance policies are contracts, they are not ordinary contracts. *See Nunn*, 244 P.3d at 119. Businesses and individuals purchase insurance "for the financial security obtained by protecting themselves from unforeseen calamities and for peace of mind . . . ." *Id.* (quoting *Goodson v. Am. Standard Ins. Co.*, 89 P.3d 409, 414 (Colo. 2004)). As a consequence, Colorado courts "have assumed a 'heightened responsibility' to scrutinize insurance policies for provisions that unduly compromise the insured's interests" in light of public policy considerations and principles of fairness. *Peterman v. State Farm Mut. Auto. Ins. Co.*, 961 P.2d 487, 492 (Colo. 1998) (citations omitted).

A liability insurance company assumes two distinct obligations to its policyholder. The insurance company has a "duty to defend" potentially covered claims and a "duty to indemnify" covered settlements and judgments. *See, e.g.*, *Hecla Min. Co. v. N.H. Ins. Co.*, 811 P.2d 1083, 1089 (Colo. 1991). The insurance company must meet its obligations in good faith, and the policyholder must cooperate in the defense of the claims.

1. **The Duty to Indemnify Is The Duty to Pay Covered Settlements and Judgments.**

A liability insurance company's obligation to pay any covered settlements or judgment on behalf of its policyholder is the duty to indemnify. *See Cyprus Amax Minerals Co. v. Lexington Ins. Co.*, 74 P.3d 294, 299 (Colo. 2003). "The duty to indemnify arises only when the policy actually covers the harm and typically cannot be determined until the resolution of the underlying claims." *Id.* at 301. The determination of whether coverage is ultimately required is a question of fact. *See id.* (citing *Hecla*, 811 P.2d at 1089). Thus, "indemnity flows from the nature of the ultimate verdict, judgment or settlement." *Id.*

2. **The Duty to Defend Is a Fiduciary-Like Duty for the Insurance Company to Defend Its Policyholder Against Potentially Covered Claims.**

The insurance company's duty to defend is the duty "to affirmatively defend its insured against pending claims." *Constitution Assocs. v. N.H. Ins. Co.*, 930 P.2d 556, 563 (Colo. 1996). The duty to defend is typically provided in a standard policy term: "We will have the right and duty to defend the insured against any 'suit' seeking [covered] damages. We may at our discretion investigate any claim or 'occurrence' and settle any claim or 'suit' that may result." 20-129 Appleman on Insurance Law & Practice Archive § 129.2 (2nd 2011). The right and duty to defend comes with a responsibility: to defend the action in good faith and in the best interest of the policyholder.

In Colorado, as is true across the United States, the duty to defend is broader than the duty to indemnity and encompasses any action in which the alleged facts even potentially trigger coverage. *See Hecla*, 811 P.2d at 1089.[3] The duty to defend generally includes the right to control the defense and settlement of claims. *See Farmers Grp., Inc. v. Trimble*, 691 P.2d 1138, 1141 (Colo. 1984); *see, e.g.*, *Babcock & Wilcox Co. v. Am. Nuclear Insurers*, 131 A.3d 445, 456 (Pa. 2015). An insurance company breaches this obligation when it improvidently refuses to defend an action. *See Hecla*, 811 P.2d at 1089. In breaching its duty to defend, an insurance company may subject itself to penalties for bad faith denial of the benefits of the policy. *See, e.g.*, *Melssen v. Auto-Owners Ins. Co.*, 285 P.3d 328, 339 (Colo. App. 2012) (awarding costs and attorneys fees for breach of duty to defend). On the other hand, if an insurance company undertakes a defense without reserving any rights to later deny coverage, it thereby elects to treat the claim as covered and waives the ability to contest coverage. *See U.S. Fidelity & Guar. Co. v. Budget Rent-A-Car Sys., Inc.*, 842 P.2d 208, 210 n.3 (Colo. 1992). Instead of fully accepting or rejecting coverage, an insurance company has a third option: to

[3] *See generally* Restatement Liability Insurance § 13 (2020) ("An insurer that has issued an insurance policy that includes a duty to defend must defend any legal action brought against an insured that is based in whole or in part on any allegations that, if proved, would be covered by the policy, without regard to the merits of those allegations.").

defend the litigation under a reservation of rights clearly setting forth the grounds on which the carrier believes coverage ultimately may be denied. *See Hecla*, 811 P.2d at 1089. By undertaking a defense under a reservation of rights, the insurance company benefits both by participating in the defense and by guarding against a bad faith claim arising from a refusal to defend. *See id.; see also Babcock*, 131 A.3d at 456.

3. **An Insurance Company Has a Heightened Duty of Good Faith and Fair Dealing to Protect the Interests of Its Policyholder.**

While every contract in Colorado contains an implied duty of good faith and fair dealing, "[d]ue to the 'special nature of the insurance contract and the relationship which exists between the insurer and the insured,'" liability insurance companies carry specific obligations to act fairly with respect to payment and settlement of third-party claims. *See Goodson*, 89 P.3d at 414 (citing *Cary v. United of Omaha Life Ins. Co*., 68 P.3d 462, 466 (Colo. 2003)). "Particularly when handling claims of third persons that are brought against the insured, ***an insurance company stands in a position similar to that of a fiduciary***." *See Trimble*, 691 P.2d at 1141 (emphasis added).

The insurance company's duty of good faith encompasses all of the dealings between the parties, including conduct occurring before, during, and after trial. *See Dale v. Guar. Nat'l Ins. Co.,* 948 P.2d 545, 552 (Colo. 1997). When an insurance company hires counsel to defend its policyholder, the ***policyholder*** is the

client; there is no attorney-client relationship between an insurance company and the attorney it hires to represent the policyholder. *See Essex Ins. Co. v. Tyler*, 309 F. Supp. 2d 1270, 1272 (D. Colo. 2004) (citing Colo. Bar Ass'n Ethics Comm., Formal Op. 91 (1993)).[4]

Thus, the insurance company must act in the best interest of its policyholder when defending a liability action, and the appointed defense counsel owes a duty of loyalty to the policyholder, not to the insurance company who hired counsel.

4. **A Policyholder Has the Duty to Cooperate in the Defense.**

The policy creates an obligation for the policyholder to cooperate in the defense. *See Farmers Auto Inter-Ins. Exchange v. Konugres*, 202 P.2d 959 (Colo. 1949). "The purpose of a cooperation clause is to protect the insurer in its defense of claims by obligating the insured not to take any action intentionally and

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[4] Colorado Rules of Professional Conduct provide in relevant part:

> A lawyer shall not accept compensation for representing a client from one other than the client unless . . . there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship.

Colo. R. P. C. 1.8(f)

> A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Colo. R. P. C. 5.4(c); *see also* Colo. Bar Ass'n Ethics Comm., Formal Op. 91 (Addendum Issued 2013) ("It is well recognized that as a part of the attorney-client relationship, the attorney must represent the insured with undivided loyalty.").

deliberately that would have a substantial, adverse effect on the insurer's defense, settlement, or other handling of the claim." *State Farm Mut. Auto. Ins. Co. v. Secrist*, 33 P.3d 1272, 1275 (Colo. App. 2001) (citation omitted). A policyholder breaches its duty of cooperation when it fails to cooperate with the insurance company in some "material and substantial respect." *See Konugres*, 202 P.2d at 963. A policyholder's breach of the cooperation clause may excuse a liability insurance company from its indemnity obligation only if material and substantial disadvantage to the insurance company is proved. *See, e.g.*, *Secrist*, 33 P.3d at 1274.

B. The Court of Appeals Correctly Balanced the Rights and Duties of the Parties.

A liability insurance company's right and duty to defend is subject to its fiduciary-like duty to act in the best interest of the policyholder. Denying intervention here protected Sierra Glass's right to an uncompromised defense, and to protect itself when AOIC failed to do so, while preserving AOIC's ability to assert its contractual rights in a separate insurance coverage declaratory judgment action.

1. An Insurance Company That Reserves the Right to Deny Coverage Has Interests that Are Not Aligned with Its Policyholder.

An insurance company's reservation of rights creates a divergence between the interests of the insurance company and its policyholder, and the reservation of

rights letter alerts the policyholder to that conflict. When defending under a reservation of rights, the insurance company may have an incentive to underinvest in the defense, to avoid strategies that would minimize the policyholder's liability, or more troublingly, to conduct the defense in a manner designed to avoid coverage. *See* Restatement Liability Insurance § 16 cmt. B (2020).

AOIC recognized the divergence of interests between it and the policyholder in its reservation of rights letter, which advised Sierra Glass "to retain your own counsel (at your expense) to protect *your* interests." (Ex. B, at 7 (emphasis added)). Given this statement, AOIC cannot complain that Sierra Glass retained its own counsel to resolve the matter. Indeed, in this situation, the most prudent course of action is for the insurance company to advise the policyholder that it may appoint its own independent legal counsel to defend the litigation at the *insurance company's* expense. *See* Restatement Liability Insurance § 16 (2020); *see also San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc.*, 208 Cal. Rptr. 494, 506 (Cal. Ct. App. 1984) (establishing right to independent counsel paid for by the insurance company whenever "there are divergent interests of the insured and the insurer brought about by the insurer's reservation of rights based on possible noncoverage under the insurance policy"). Independent counsel (who are engaged by the policyholder but paid by the insurance company) can more easily act independently of the insurance company where the insurance company and

policyholder have differing interests. *See Templeton v. Catlin Specialty Ins. Co.*, 612 Fed. Appx. 940, 961 (10th Cir. 2015) (applying New York law). Appointing independent counsel allows the insurance company to fulfill both its duty to defend and its duty to act in the best interest of the policyholder, while avoiding a conflict of interest for the attorney representing the policyholder. *See* Colorado Rules Professional Conduct, Rule 1.8(f).

2. **A Policyholder Is Placed in a Difficult Position When the Insurance Company Reserves Rights but Refuses an Offer of Settlement.**

A policyholder in Sierra Glass's position faces a dilemma when its insurance company refuses to settle an action. On the one hand, the policyholder is bound to cooperate with the insurance company. However, the policyholder cannot rely on the insurance company to ultimately pay a judgment because the insurance company explicitly has reserved its rights not to pay. The policyholder "risk[s] financial catastrophe if [he is] held liable, while the insurer may save itself by litigating both issues — the insured's liability and the coverage defense — and winning either." *See United Servs. Automobile Ass'n v. Morris*, 741 P.2d 246, 251 (Ariz. 1987).

Colorado law allows a reprieve for policyholders in this situation. Sierra Glass, represented by personal counsel that *AOIC advised it to hire*, entered into a *Nunn* agreement. The *Nunn* agreement protects the policyholder from a judgment in excess of policy limits "when it appears that the insurer — who has exclusive

control over the defense and settlement of claims pursuant to the insurance contract — has acted unreasonably" by refusing to accept a within policy limits settlement offer. *Nunn*, 244 P.3d at 119. It is even more necessary for the policyholder to protect itself where the insurance company has reserved the right to deny coverage entirely because the policyholder is at risk for liability for the whole judgment, not just amounts in excess of policy limits.[5]

A policyholder that enters into a *Nunn* agreement does not breach its obligation pursuant to the cooperation clause if the insurance company's conduct was unreasonable and fell below the normal standard of care of an insurance company. *See Nunn*, 244 P.3d at 119; *see also Goldstein v. Fire Ins. Exch.*, No. 14CV30885, 2015 Colo. Dist. LEXIS 2175, at *8-9 (D. Colo. Sept. 10, 2015). Thus, if AOIC acted unreasonably in refusing to accept an offer of settlement, Sierra Glass has fulfilled its *duty of cooperation*. But that is not an issue to be resolved in the action that an insurance company is defending, the action in which the insurance company owes its policyholder a fiduciary-like duty to act in its policyholder's best interest. If AOIC disputes that Sierra Glass has cooperated, AOIC may litigate this issue in its separate federal declaratory judgment action

[5] In *Nunn*, unlike here, the insurer acknowledged that its policy provided coverage. 244 P.3d at 118. Thus the policyholder was at risk only with respect to a judgment in excess of policy limits when the insurer failed to accept a settlement offer within policy limits.

where AOIC seeks to establish "that Sierra Glass forfeited its coverage by failing to cooperate with [AOIC] pursuant to the Policy's cooperation clause." (Ex. A at 17).

3. Denying Intervention Correctly Separates the Action in Which the Insurance Company Must Defend Its Policyholder from the Action in Which the Insurance Company Asserts Its Own Contractual Rights.

Both liability insurance policies themselves and Colorado law draw a clear distinction between (1) lawsuits in which the insurance company is obligated to defend its policyholder and (2) insurance coverage lawsuits in which a policyholder and its insurance company may dispute the existence and extent of coverage.

Liability insurance policies typically contain a "no action" or "Legal Action against Us" provision:

> **No person or organization has a right under this Coverage Part:**
>
> a. **To join us as a party or otherwise bring us into a "suit" asking for damages from an insured**; or
>
> b. To sue us on this Coverage Part unless all of its terms have been fully complied with.
>
> A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

20-129 Appleman on Insurance Law & Practice Archive § 129.2 (2nd 2011) (emphasis added).

Thus, while standard liability policies do not specifically address the insurance company's right to intervene in the action, they disclaim any right of any other person or organization to make it a party. AOIC seeks to create a one-way street in which it can intervene as a party, but neither its policyholder nor the underlying plaintiff can make AOIC a party. *See, e.g.*, *Auto Owners Ins. Co. v. Sapp*, No. 15-CV-90, 2017 U.S. Dist. LEXIS 34201 (M.D. Ga. Mar. 10, 2017) (asserting "no action" clause).

The "no action" clause should be viewed as a recognition in the insurance policy itself that issues of coverage should be litigated separately from the lawsuit that the insurance company is defending. "The purposes of the no action clause are to prevent nuisance suits against the insurance company and to prevent an injured party or an insured from bringing the insurance company into the underlying litigation with possible resultant prejudice." *Paul Holt Drilling, Inc. v. Liberty Mut. Ins. Co.*, 664 F.2d 252, 254 (10th Cir. 1981) (applying Oklahoma law); *see also Crowley v. Hardman Bros.*, 223 P.2d 1045, 1050 (Colo. 1950). The "no action" clause avoids adversarial conflict between the insurance company and the policyholder during the defense of the underlying action. *See generally* 16 Couch

on Insurance 3d § 105:7. The same adversarial conflict arises if the insurance company intervenes to protect its own interests at the expense of the interests of its policyholder.

Moreover, Colorado Rule of Evidence 411 generally precludes "[e]vidence that a person was or was not insured against liability" in tort actions. The purpose of this rule is to prevent a jury from deciding liability on improper grounds to the prejudice of the insured party. *See Prudential Prop. & Cas. Ins. Co. v. District Court of Seventeenth Judicial Dist*., 617 P.2d 556, 560 (Colo. 1980). Like the "no action" clause, the Colorado Rules of Evidence keep separate the insurance coverage issues from the underlying action being defended. The insurance company has no place asserting a position *adverse* to its policyholder in the very action in which the insurance company is supposed to be *protecting* its policyholder as a fiduciary.

AOIC may assert (indeed, already has asserted) coverage defenses in its separate federal declaratory judgment action. If, as AOIC claims, Sierra Glass and the Association engineered a "setup" judgment on liability, AOIC can argue that the trial judgment should be treated as a stipulated judgment. *See Phoenix Ins. Co. v. Trinity Universal Ins. Co.*, No. 12-cv-01553, 2013 U.S. Dist. LEXIS 135672, at *28-35 (D. Colo. Aug. 29, 2013). The only prejudice asserted by AOIC is that the underlying judgment will be treated differently than a stipulated judgment for

purposes of the burden of proof, which is an issue that can be resolved in the separate federal action. Indeed, AOIC specifically stated in its briefs in the United States Court of Appeals for the Tenth Circuit that this issue would be litigated in the declaratory judgment action: "In a DJA, the Appellees will – as they should – be forced to prove the merits of the Association's claims for liability and damages against Sierra Glass, along with the seminal questions surrounding the Agreement and whether it is permitted under *Nunn*, constitutes a breach of the Policy, etc." (Ex. C., at 25).[6]

VII. CONCLUSION

Denial of intervention allowed AOIC to fulfill its *duty to defend* and its *duty to conduct the defense in the best interest* of Sierra Glass while preserving its right to contest its *duty to indemnify* in a separate proceeding. For the foregoing reasons, UP respectfully requests that this Court affirm the Court of Appeals.

[6] AOIC's reply brief filed January 17, 2020 in *Auto-Owners Insurance Co. v. Bolt Factory Lofts Owners Associations, Inc.*, 19-1233; 19-1310 (10th Cir.) is attached as Exhibit C. UP obtained this document from the publically available docket and requests that the Court take judicial notice thereof.

AMICUS CURIAE
UNITED POLICYHOLDERS

Dated: September 17, 2020

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CERTIFICATION OF SERVICE

I hereby certify that on the 17th day of September, 2020, a true and correct copy of the foregoing Brief of *Amicus Curiae* United Policyholders in Support of Appellee was filed using the Honorable Court's electronic filing system:

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