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District Court, City and County of Denver, Colorado Honorable Kandace C. Gerdes Case No. 2023CV32933	**▲ COURT USE ONLY ▲**
Petitioner: ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY v. **Respondent:** REESA BOHANAN	Case Number: 2026SC158
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BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND COLORADO CHAMBER OF COMMERCE IN SUPPORT OF PETITIONER ESURANCE PROPERTY & CASUALTY COMPANY

CERTIFICATE OF COMPLIANCE

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

> The amicus brief complies with the word limit set forth in C.A.R. 29(d). It contains 3,630 words (does not exceed 4,750 words).
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> The brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that this brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

s/ Kendra N. Beckwith

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STATEMENT OF IDENTITY AND INTEREST

The **Chamber of Commerce of the United States of America** ("Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The **Colorado Chamber of Commerce** ("Colorado Chamber") is a private, non-profit, member-funded organization. Its mission is to champion a healthy business climate in Colorado. The four key objectives of that mission include: (1) maintaining and improving the cost of doing business; (2) advocating for a pro-business state government; (3) increasing the quantity of educated, skilled workers; and (4) strengthening Colorado's critical infrastructure (roads, water, telecommunications, and energy). The Colorado Chamber is the only business association that works to improve the business climate for all sizes of business from a state-wide, multi-industry perspective.

Amici's members write commercial and personal automobile liability coverage, and they buy it. They depend on liability rules calibrated to harm caused. The majority's interpretation imposes an uncapped per-diem penalty untethered to any covered benefit or actual injury. That cost passes through to Colorado policyholders and businesses, increasing the cost of doing business and living in Colorado. Businesses—especially those that operate across state lines—need predictable, uniform pre-suit disclosure rules, and the decision below makes Colorado an outlier among the states that impose them.

The Court should enforce the disclosure requirements as written: An insurer must disclose policies that are or may be relevant to the claim and owes no penalty for withholding a policy that is not.

ARGUMENT

Section 10-3-1117 is part of a larger statutory scheme intended to "regulate trade practices in the business of insurance." § 10-3-1101(1), C.R.S. The scheme's legislative declaration ties the disclosure obligation in section 10-3-1117 to three goals: (1) "encouraging settlement and preventing unnecessary litigation"; (2) helping claimants "fully understand the total amount of insurance coverage available to them"; and (3) providing "accurate and reliable information about the

amount of legal liability coverage available for a claim" so that Colorado residents may evaluate whether their uninsured or underinsured motorist ("UM/UIM") coverage will be triggered and UM/UIM insurers have "more time to evaluate and place reserves on claims." § 10-3-1101(2)(a)–(b).

The majority's decision below does not serve these stated goals. Penalizing an insurer for not producing a policy that provides no coverage for a claimant's injuries does nothing to educate a claimant on the coverage "available to them." § 10-3-1101(2). To the contrary, it encourages protracted disputes and unnecessary litigation, incentivized by the availability of per diem penalties and fees and costs "incurred by a claimant in enforcing the penalty." § 10-3-1117(3), C.R.S. As Judge Jones recognizes in his dissent, the majority's interpretation has no limiting principle. It "imposes virtually boundless obligations" on insurers, backed by uncapped penalties. Op. ¶ 53. This invites high-volume requests and satellite litigation, like this case, unconnected to any harm to a claimant.

Penalizing an insurer in these circumstances also disregards the General Assembly's intentional decision to include the statute's relevance clause—the phrase in section 10-3-1117(2)(a) limiting an insurer's disclosure obligation to a claimant to information regarding an insurance policy "that is or may be relevant to

the claim." Relevance cannot, as the majority holds, be measured by an insurer's uncertainty about the facts.

The resulting burden on insurers of the majority's rule is simply too great. The majority punishes diligent investigation and encourages over-production of private information the statute itself recognizes should be protected. § 10-3-1117(4) (restricting recipient from disclosing to others). Colorado's automobile-insurance market already faces an affordability crisis, and the majority's decision will only deepen it. The goal for everyone, which the decision below directly undermines, is safe roads and affordable insurance premiums.

For these reasons, and those described below, Amici urge this Court to reverse the majority and hold that a policy "may be relevant" under section 10-3-1117(2)(a) only when, on the policy's terms and the facts of the loss, the policy could provide coverage for the claim.

I. The majority's interpretation has no limiting principle.

Three features of the statute, as the majority reads it, leave its reach unbounded: Colorado imposes no threshold before the duty attaches, so the relevance clause is the only limit; the penalty accrues without regard to harm; and the resulting economics reward volume over merit.

A. Other states screen requests at the front end, whereas Colorado relies on relevance alone.

Section 10-3-1117(2)(a) imposes a duty on an insurer to provide to a claimant (or their attorney) certain "information with regard to each known policy of insurance of the named insured . . . that is or may be relevant to the claim."

The statute defines "claimant" as "a person that has provided notice to an insurer of a potential claim." § 10-3-1117(5). The definition does not require an injury or that the claimant ever actually pursue a claim. Anyone who sends a letter to a registered agent can expose the insurer to the uncapped, $100-per-day penalty.

Other states screen requests before the duty to provide information attaches. For example, Virginia conditions disclosure under a similar statute on the requester's supplying the accident date, the accident report, the claim number, and the injured person's medical records, bills, and wage-loss documentation. Va. Code Ann. § 8.01-417(C). Absent an enumerated criminal charge, the duty of disclosure applies only when the claimant has submitted $12,500 in medical bills or claimed wage losses. *Id.* New York requires "sufficient identifying information" and gives the insurer forty-five days to ask for more. N.Y. Ins. Law § 3420(d)(1)(C). And Maryland, North Carolina, and Delaware impose comparable front-end requirements. Md. Code Ann., Cts. & Jud. Proc. § 10-1103(b) (conditioning

disclosure on the claimant's supplying the date of the alleged tort, the alleged tortfeasor's name and address, any official accident report, the claim number, and a Maryland attorney's letter certifying a reasonable investigation and a good-faith belief that the claim is not frivolous); N.C. Gen. Stat. § 58-3-33(a)–(b) (requiring disclosure only after the claimant consents to release of three years of pre-accident medical records and all records of the claimed injury and submits the accident report and a description of the events detailed enough for the insurer to assess its insured's potential liability); Del. Code Ann. tit. 21, § 2907(b)–(d) (requiring the accident date, the police report, the claim number, and the injured person's medical records, bills, and wage-loss documentation, and imposing the disclosure duty only when submitted losses reach $12,500).

The General Assembly did not enact a front-end screen like these. The phrase "may be relevant" is the only filter. If a policy "may be relevant" whenever the insurer has not yet disproved relevance—which is the result of the majority decision—a request directed at a named insured puts every policy the insurer has written for that insured, every household member's policy, and every adjacent policy period at issue. The claimant need not identify any particular policy; the

insurer must unearth each one on its own. This means the only safe response is to produce everything.

This creates, as Judge Jones observed, "virtually boundless obligations" to disclose policies with "no conceivable possibility of providing coverage." Op. ¶ 53. The compliance cost of this alone is self-evident. But the majority also overlooks the invasion of privacy this works on Coloradans: Under the statute, insurers must make the required disclosures to anyone who says they have a potential claim, § 10-3-1117(2) and (5), which means virtually anyone can request insurance policies covering virtually any Coloradan the requester wishes. A "boundless" obligation to disclose policies means more policies like the one at issue here—that provide no coverage—will be disclosed.

This is the boundless disclosure duty that Florida enacted, under a different penalty scheme, and, that as explained below in Section II, the General Assembly *declined* to adopt. *Compare* Fla. Stat. § 627.4137(1) (no qualifier), *with* § 10-3-1117(2)(a) (limited to "is or may be relevant").

B. The majority's interpretation severs the penalty from any harm.

Colorado already has a number of statutes that address insurer misconduct. *See* §§ 10-3-1101–1118, C.R.S. The General Assembly's general approach is to tie

the penalties to the harm the misconduct causes. For example, sections 10-3-1115 ("Improper Denial of Claims") and -1116 ("Remedies for Unreasonable Delay or Denial of Benefits") permit a claimant to recover twice the covered benefit plus fees, on top of the benefit itself. *Am. Family Mut. Ins. Co. v. Barriga*, 2018 CO 42, ¶ 7. Claimants also have common-law bad-faith remedies, the Division of Insurance enforces its regulations, and section 10-3-1117 itself penalizes withholding policies that may bear on the claim.

As the majority construed it, however, section 10-3-1117 ties the penalty to nothing, which is inconsistent with the General Assembly's general approach. The penalty—which has no cap—accrues at $100 per day regardless of any injury to the claimant. § 10-3-1117(3). And it "applies even if the claimant is subsequently found to be entitled to no damages in the underlying automobile accident." *Reynolds v. Great N. Ins. Co.*, 2023 COA 77, ¶ 13 (quoted at Op. ¶ 31). Here, the result was a $35,600 penalty, plus fees, for withholding a policy under which Plaintiff could never have been entitled to a single dollar. Op. ¶¶ 6, 44.

There was no harm from the lack of disclosure here because producing the policy would not have revealed when it was purchased, which was the fact that made it irrelevant. Specifically, the Division of Insurance regulation detailing how

insurers should respond to requests under the statute direct the insurer to exclude the declarations page and application from the copy disclosed. 3 Colo. Code Regs. § 702-5:5-2-03, § 5(C). The purchase time appears nowhere in the policy itself. CF, pp.209–210. Even if disclosed, the policy could not have done the work the majority assigned it: helping the claimant "make an informed assessment of the coverage issue." Op. ¶ 41.

No other state appears to impose a penalty like this one. Where nondisclosure penalties exist, they are fixed and modest. Mass. Gen. Laws ch. 175, § 112C ($500 plus reasonable attorneys' fees and expenses); Me. Stat. tit. 24-A, § 2164-E ($500 plus reasonable attorney's fees and expenses); W. Va. Code § 33-6F-2(f) (flat $500 plus fees, stated to be the "sole and exclusive remedy").

Indeed, Amici have found no other jurisdiction that pairs a statutory pre-suit disclosure duty with an uncapped daily penalty. Colorado's per diem was an outlier even before the majority expanded what triggers it. And now that it has, the harm to Colorado's business community is even more real. In the absence of clear evidence the General Assembly intended the contrary, the Court should not adopt an interpretation that imposes significant statutory penalties on acts or omissions that did not cause any harm. Rather, the Court should make clear that "may be

relevant" means disclosure is required only when, on the policy's terms and the facts of the loss, the policy could provide coverage for the claim prevents that result.

C. The majority's interpretation frustrates a key purpose of the statute.

The majority's interpretation defeats a key purpose of the statute: preventing unnecessary litigation. In fact, the majority's approach creates economic incentives that do just the opposite. A written request for information under section 10-3-1117(2)(a) costs almost nothing to send, meaning that sending requests at scale is trivial. At the same time, claimants (and their attorneys) stand to gain enormous windfalls because even a single missed request carries uncapped, fee-shifted exposure, even without a showing of harm. Instead of preventing unnecessary litigation, the statute will be used to manufacture it. Op. ¶ 54 (Jones, J., dissenting) (discussing "satellite litigation divorced from any real world harm").

A state's litigation environment is likely to affect major decisions, such as where to locate or do business. U.S. Chamber Institute for Legal Reform, Nuclear Verdicts: An Update on Trends, Causes, and Solutions, at 52 (May 2024 ed.), available here (last accessed Oct. 26, 2026) (reporting "a survey of senior corporate lawyers and executives revealed that 89% of respondents agreed that a state's

litigation environment is likely to impact important business decisions, including where to locate or to do business"). Colorado's bad-faith insurance statutes already burden insurers in Colorado with liability. Adopting the majority's interpretation of section 10-3-1117(2)(a) will serve only to create further instability and unpredictability in this already-saturated litigation environment, making Colorado less friendly to business than its sister states.

II. Section 10-3-1117's drafting history and comparable statutes in other states support the dissent's interpretation of "may be relevant."

In his dissent, Judge Jones interprets "may be relevant" by giving plain meaning and emphasis to the word "may." Op. ¶ 48. In this "grammatical and substantive context," the word means "in some degree likely." *Id.* (quoting Webster's Third New International Dictionary 1396 (2002)). The legislative history and comparable statutes nationwide demonstrate Judge Jones is correct.

A. The Colorado General Assembly departed from its statutory model in ways that make the relevance clause a real limit.

The General Assembly enacted H.B. 19-1283 in 2019, which became section 10-3-1117 effective January 1, 2020. H.B. 19-1283, ch. 250, sec. 2, 2019 Colo. Sess. Laws 2427 ("H.B. 19-1283"). As introduced, H.B. 19-1283 tracked Florida's disclosure statute nearly word for word, though the legislative history does not

appear to acknowledge the borrowing. *Compare* H.B. 19-1283, § 2 (introduced Mar. 28, 2019), *with* Fla. Stat. § 627.4137(1)(a)–(e).

Colorado's drafters added a limit that Florida's statute lacks. Florida's disclosure obligation includes "each known policy of insurance." Fla. Stat. § 627.4137(1). Colorado's obligation is less extensive—it extends only to a policy "that is or may be relevant to the claim." § 10-3-1117(2)(a). Yet by requiring disclosure of policies other than those that, on their terms and the facts of the loss, could provide coverage for the claim, the majority's interpretation incorrectly reads Colorado's relevance clause out of the statute.

That conclusion is underscored by additional legislative history. The Florida statute addresses policies of doubtful coverage by requiring an insurer to provide at the time of disclosure a coverage-defense statement, *i.e.*, "[a] statement of any policy or coverage defense which such insurer reasonably believes is available." Fla. Stat. § 627.4137(1)(d). The initial version of the Colorado Bill contained the same requirement. H.B. 19-1283, § 2. On April 9, 2019, however, the House Judiciary Committee struck that requirement. H. Judiciary Comm. Rep. on H.B. 19-1283 (Apr. 9, 2019), *reprinted in* H. Journal, 72d Gen. Assemb., 1st Reg. Sess., at 1104 (Apr. 10, 2019). That makes sense. Requiring insurers to provide a coverage-

defense statement was unnecessary in Colorado precisely because the relevance clause acts to filter out policies that cannot apply to the claim. In other words, the Florida and Colorado bills took two different approaches to filtering out inapplicable policies: In Florida, insurers have to disclose all policies for the insured, but the disclosures can be accompanied by a statement about why a policy may not cover a claim. By contrast, the changes to the language adopted by the General Assembly in Colorado eliminate the need for a statement about applicability because, by definition, the insurers are only disclosing policies that have some chance of being relevant.

The Judiciary Committee's deletion survived the rest of the legislative process. The House adopted the committee report on second reading April 18 and passed the bill April 19. H. Journal (Apr. 18–19, 2019). The Senate passed it unamended April 30. S. Journal (Apr. 27, 30, 2019). The Governor signed it May 22, 2019. The statute that emerged requires disclosure only of policies that are or may be relevant to the claim, not every known policy as in Florida.

That history also answers the majority's concern that a relevance limit would let insurers withhold policies at will. The majority worried that insurers could refuse production "any time the insurer concludes that no coverage exists." Op.

¶ 28. But relevance does not turn on what the insurer concludes. A policy "is or may be relevant" unless its own terms and facts not reasonably in dispute rule out coverage—*e.g.*, where, as here, the policy was not in force when the loss occurred. See Op. ¶ 53 (Jones, J., dissenting). If coverage depends on a contested reading of the policy or a contested fact, the insurer must disclose the policy, whatever it has concluded about coverage. And a claimant who disputes a denial has the remedies the law already provides: suit against the tortfeasor with disclosure under C.R.C.P. 26(a)(1) and a complaint to the Division of Insurance. But the statute imposes no per-diem penalty for withholding a policy that could not have paid.

B. The language necessary to support the majority's interpretation is missing, as other states' statutes demonstrate.

When a legislature wants disclosure regardless of the insurer's coverage position, it says so. *See* Va. Code Ann. § 8.01-417(C) (insurer must disclose limits "regardless of whether the insurer contests the applicability of the policy to the injured person's claim"); Md. Code Ann., Cts. & Jud. Proc. § 10-1105(a) ("An insurer shall provide in writing the documentation . . . within 30 days after the date of a request . . . , regardless of whether the insurer contests the applicability of coverage to a claim . . . ."); Del. Code Ann. tit. 21, § 2907(d) (requiring disclosure

"regardless of whether the insurer contests the applicability of the policy to the injured person's claim").

These clauses are different from the front-end screens discussed in Section I.A because they operate differently. The screens decide whether the duty to disclose attaches at all. These "regardless" clauses govern what happens after it does: an insurer may not withhold a policy that *may* cover the loss just because it intends to contest coverage.

The General Assembly here enacted no comparable clause, suggesting that it did not intend to reach the circumstances of this case. And the language it did use already prevents the concern on which the majority's interpretation seems to rest (that insurers may withhold policies based on coverage decisions). Op. ¶¶ 29-31. By extending the disclosure duty to every policy that "is or may be relevant to the claim," Colorado's statute already reaches policies where coverage may be disputed. An insurer cannot withhold a policy that may cover the claim merely because it intends to contest coverage. Such a policy "may" be relevant only where reasonable minds could disagree on whether it provides coverage. "May be relevant," however, is not equivalent to "any policy of the named insured." The

statute still requires a threshold connection between the policy and the claim, which the majority's interpretation eliminates.

Indeed, none of the out-of-state statutes cited above, which aggressively override an insurer's coverage position and compel disclosure in any event, reach a policy that was not in force when the loss occurred. *See* Del. Code Ann. tit. 21, § 2907(d) (restricting disclosure of limits to those in effect "at the time of the accident"); Va. Code Ann. § 8.01-417(C)–(D) (requiring disclosure of "the limits of liability at the time of the accident of all such policies" that "may be applicable to the claim"); Md. Code Ann., Cts. & Jud. Proc. § 10-1102 (reaching only a policy "under which the insurer may be liable to . . . [s]atisfy all or part of the claim").

III. Colorado already faces an automobile insurance affordability problem, which the majority's interpretation stands to exacerbate.

Colorado's current automobile insurance market conditions demonstrate the stakes at issue here.

The average cost of insurance increased by more than 40% between June of 2022 and June of 2024. Gov. Jared Polis, *Roadmap to Reduce Auto Ins. Premiums*, at 5 (Oct. 2025), available here (last accessed Oct. 26, 2026). Colorado is the fifth highest premium state in the country. *Id.* According to Colorado's Insurance Commissioner, Michael Conway, "Coloradans are struggling with the cost of auto

insurance, and high costs contribute to our uninsured motorist rate." *Id.* at 6. Colorado ranks as the ninth worst in the nation for uninsured motorists—17.5% of Coloradans are uninsured, "an unfortunate distinction insurance experts attribute to the climbing price of insurance statewide." Allison Sherry, *Colorado ranks in the top 10 nationally with number of uninsured drivers*, CPR News, Dec. 26, 2024, available here (last accessed Oct. 26, 2026). The national average is approximately 14%. *Id.* (noting that Wyoming's rate is only 5.9%).

This creates a "cause and effect" relationship. *Id.* The more uninsured drivers there are, "the more the claims rise because uninsured drivers statistically drive worse and have more severe accidents. That then causes insurance rates to increase for everyone." *Id.* And all this occurs at a time when people must make "choices between groceries and eggs and then taking their chances with driving illegally without insurance." *Id.* (quoting Carole Walker, Rocky Mountain Insurance Association).

Penalties untied to any real harm will get priced into premiums. Increased premiums push more drivers to go uninsured—in a state where premiums are already among the highest in the nation. And this, in turn, hurts the very claimants the statute seeks to protect, making Colorado's roads less safe.

CONCLUSION

Amici respectfully urge the Court to reverse the majority and to hold, as the dissent would have, that an insurance policy "is or may be relevant" under section 10-3-1117(2)(a) only when, on the policy's terms and the facts of the loss, the policy could provide coverage for the claim.

October 26, 2026

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CERTIFICATE OF SERVICE

I certify that on October 26, 2026, I caused a copy of the foregoing document to be filed using the Colorado Courts E-Filing System and served on all counsel of record.

s/ Kendra N. Beckwith