SUPREME COURT

OF THE

STATE OF CONNECTICUT

JUDICIAL DISTRICT OF MILFORD/ANSONIA

S.C. 20451

Karl Klass

Plaintiff-Appellee

v.

Liberty Mutual Insurance Company

Defendant-Appellant

BRIEF OF *AMICUS CURIAE* UNITED POLICYHOLDERS IN SUPPORT OF PLAINTIFF-APPELLEE

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Amy M. Coughenour, Appraisal and the Property Insurance Appraisal Clause--A Critical Analysis: Guidance and Recommendations for Arizona, 41 Ariz. St. L.J. 403, 406 (2009) 8-9

Ennis, Effective Amicus Briefs, 33 Cath. U.L. Rev. 603, 608 (1984) viii

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Jeffrey W. Stempel, Stempel on Insurance Contracts, §1.02 (2006). 4

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STATEMENT OF ISSUE OF THE *AMICUS CURIAE*

Whether the lower court correctly determined that appraisal should proceed when the parties dispute the proper scope of repairs, when public policy favors appraisal of disputed claims to conserve judicial resources and provide a simple, speedy and inexpensive process contracted for in the policy.

STATEMENT OF INTEREST OF THE *AMICUS CURIAE*[1]

Amicus curiae United Policyholders ("UP") submits this brief to support the position of Plaintiff-Appellee, Karl Klass ("Plaintiff" or "Klass"), who is insured under a property insurance policy issued by Defendant-Appellant Liberty Mutual Insurance Company ("Defendant" or "Liberty Mutual"). UP is uniquely suited to provide context to the insurance appraisal process. In the instant case, UP is concerned about preserving the aspects of the appraisal process that are useful to Connecticut consumers and ameliorating the aspects that are harmful. Appraisal can be an expeditious and inexpensive way of resolving loss valuation disputes, but when conducted without appropriate safeguards, it compounds delays and expense and gives insurers (repeat users of the appraisal process) an unfair advantage. This is an area of the law in which United Policyholders and the undersigned attorneys submit it will be useful to the Court to fully consider insurance policyholders' perspectives.

Effectuating the purpose of insurance and interpreting insurance contracts requires special judicial handling. United Policyholders ("UP") respectfully seeks to assist this Court in fulfilling this important role. UP is a unique non-profit, tax-exempt, charitable organization founded in 1991 that provides valuable information and assistance to the public concerning insurers' duties and policyholders' rights. UP monitors legal developments in the insurance marketplace and serves as a voice for policyholders in legislative and regulatory forums. UP helps preserve the integrity of the insurance system by educating consumers and

[1] Pursuant to Practice Book § 67-7, UP represents that this brief was written entirely by its counsel. No party to the appeal wrote the brief in whole or in part, nor contributed any costs for the preparation of this brief.

advocating for fairness in policy sales and claim handling. Grants, donations and volunteers support the organization's work. UP does not accept funding from insurance companies.

UP assists Connecticut residents and businesses through three programs: *Roadmap to Recovery*™ (disaster recovery and claim help), *Roadmap to Preparedness* (disaster preparedness through insurance education), and *Advocacy and Action* (judicial, regulatory and legislative engagements to uphold the reasonable expectations of insureds). UP hosts a library of informational publications and videos related to personal and commercial insurance products, coverage, and the claims process at www.uphelp.org. UP has provided resource libraries and educational programs for Connecticut policyholders following local disasters and was heavily involved in Superstorm Sandy recovery efforts.[2] These efforts included not only print and electronic resources, but also in-person workshops to guide policyholders throughout the recovery process.

UP communicates with the Connecticut Insurance Department on a regular basis at the tri-annual meetings of the National Association of Insurance Commissioners where UP's Executive Director Amy Bach, Esq. serves as an official consumer representative.

In furtherance of its mission, UP cautiously chooses cases and regularly appears as *amicus curiae* in courts nationwide to advance the policyholder's perspective on insurance cases likely to have widespread impact. Information and arguments in United Policyholders' briefs have been cited by the US Supreme Court as well as by numerous state and federal appellate courts.[3] United Policyholders has also weighed in on important insurance issues

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[2] https://www.uphelp.org/blog/superstorm-sandy-claim-help

[3] See, e.g. Humana, Inc. v. Forsyth, No. 97-303, 525 U.S. 299, 119 S.Ct. 710, 142 L.Ed.2d 753 (1999).

affecting residential and commercial policyholders in matters adjudicated before this Court and the Connecticut Appellate Court.[4]

UP seeks to fulfill the, "classic role of *amicus curiae* by assisting in a case of the general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." Miller-Wohl Co., Inc. v. Commissioner of Labor & Indus., 694 F.2d 203, 204 (9th Cir. 1982). As commentators have stressed, an *amicus curiae* is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." R. Stern, E. Greggman & S. Shapiro, Supreme Court Practice, 570-71 (1986) (quoting Ennis, Effective Amicus Briefs, 33 Cath. U.L. Rev. 603, 608 (1984)). UP has been engaged for decades in educating consumers about the appraisal process as has been previously noted in an *amicus curiae* letter that when conducted fairly and efficiently and in the right claim scenario, appraisals can save time and money.[5] But because the appraisal process is well understood by insurers and often little understood by insureds, it can be used by insurers to compound claim problems and result in costly delays for policyholders. Appraisal is intended to serve as a process to resolve issues outside of the courtroom and increase efficiency in claim resolution while unclogging

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[4] See Karas v. Liberty Ins. Corp., 335 Conn. 62 (2019); Jemiola v. Hartford Cas. Ins. Co., 335 Conn. 117, (2018); Recall Total Information Management, Inc. v. Federal Insurance Company, 317 Conn. 46 (2015); Fireman's Fund Insurance Co. v. TD Banknorth Ins. Agency, Inc., 309 Conn. 449 (2013); Security Insurance Co. of Hartford v. Lumbermens Mut. Cas. Co., 264 Conn. 688 (2003); Buell Industries, Inc. v. Greater N.Y. Mut. Ins. Co., 259 Conn. 527 (2002); R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indem. Co., 171 Conn. App. 61 (2017); Capel v. Plymouth Rock Assur. Corp., 141 Conn. App. 699 (2013).

[5] See Policyholders Can Win in Appraisal, https://www.uphelp.org/library/resource/policyholders-can-win-appraisal (last visited November 19, 2020); See Insurance Appraisal Simplified, https://www.uphelp.org/library/resource/insurance-appraisal-simplified (last visited November 19, 2020).

the court's dockets. UP seeks to assist this Court in helping preserve policyholders' rights and more appropriately level the playing field beyond just this case. Counsel for UP is retained *pro bono*, and will accept no money for their legal work in this case.

NATURE OF THE PROCEEDINGS AND STATEMENT OF FACTS

The parties are addressing the particular facts of this case, so UP will not repeat them here.

INTRODUCTION

Technical disputes over dollar values of property damage and construction and repair costs are well suited to being resolved in insurance appraisals. The appraisal process offers the advantage of a speedy and efficient determination of the value of a loss. The appraisal process can fulfill the insurance policy objective of prompt payment by providing an alternative to costly and time-consuming litigation. In this case, and those generally involving appraisal, courts should endeavor to mandate proceedings that will truly value losses expeditiously and fairly, and defeat efforts by insurers to impose conditions and limitations that render an appraisal a waste of time and money.

ARGUMENT

I. The Business of Insurance Affects the Public Trust.

Insurance is a product that transfers risk and gives people access to resources they would otherwise be unable to afford. Simply stated, insurance is a method of hedging life's perils; for the price of the premium, the insurer assumes the financial risk of a potential loss. Insurers sell policies to large numbers of similarly situated insureds and pool their premiums. When an insured suffers a covered loss, the insurer pays the loss from the pool of premiums, which have been invested by the insurer until the time of payment. Even before the first loss, insurers actuarially determine the amount of premium based on anticipated losses, overhead, fees, taxes, return on investment and even expected profit. In return, large numbers of policyholders obtain peace of mind that the risk and cost of loss is

transferred to the insurer.

In most cases, individuals and businesses would not be able to afford the loss insured against, so insurance is essential to preserve wealth. At each step of an economic transaction, from funding an endeavor to buying a house, serving dinner, or driving a car, insurance provides a safety net and degree of financial support. When the risk of loss is assumed by a third-party, banks lend money, products are manufactured and exchanged, and asset values tend to increase. As a result, individuals and businesses achieve more affluence and purchase more insurance to protect from financial ruin or unaffordable loss. In short, as a society's affluence increases, so does reliance on insurance. Today, insurance is a necessity, not a luxury. Jeffrey W. Stempel, The Insurance Policy as Social Instrument and Social Institution, 51 Wm. & Mary L. Rev. 1489, 1495 (2010) (explaining insurance as a socioeconomic institution).

Insurance differs from other business contracts, based on its high degree of interaction with a vulnerable consuming public. As explained in an insurance industry treatise, The Legal Environment of Insurance, in its chapters on Insurance Contract Law:

> The insurance contract has the same basic requisites as other contracts. There is a need for an agreement, competent parties, consideration, and a legal purpose. However, the insurance contract also has other distinctive features. Insurance contracts cover fortuitous events, are contracts of adhesion and indemnity, must have the public interest in mind, require the utmost good faith, are executory and conditional, and must honor reasonable expectations.
>
> . . .
>
> Insurance contracts are different from other commercial contracts because insurance is more a necessity than a matter of choice. Therefore, insurance is a business affected with a public interest, as reflected in legislative and judicial decisions.

James J. Lorimer, et al, The Legal Environment of Insurance 176, 180 (American Institute for Charter Property Casualty Underwriter, 4th ed. 1993).

Professor Henderson of the University of Arizona College of Law further explained:

> [T]he insurance industry plays a very important institutional role by providing the level of predictability requisite for the planning and execution that leads to further development. Without effective planning and execution, a society cannot progress.
>
> ....
>
> Insurance is purchased routinely and has become pervasive in our society. It protects against losses that otherwise would disrupt our lives, individually and collectively. The public interest, as well as the individual interests of millions of insureds, is at stake. This is the foundation for the general judicial conclusion that the business of insurance is cloaked with a public purpose or interest.

Roger C. Henderson, The Tort of Bad Faith in First-Party Insurance Transaction: Refining the Standard of Culpability and Reformulating the Remedies By Statute, 26 U. of Mich. J. L. Ref. 1, 9-11 (Fall 1992) (footnotes omitted).

Moreover, scholars, policymakers, and judges have long recognized that consumer insurance arrangements raise significant concerns about improper claims handling:

> . . . Unlike many contracts, insurance policies are sequential and contingent: whereas the policyholder performs routinely by paying premiums, the insurer performs by paying a claim if, and only if, a loss occurs. Vulnerable parties in sequential and contingent contracts can usually protect themselves by specifying clearly the conditions upon which an obligor's performance is due. But such protection is difficult, if not impossible, in the insurance context. Because insurance policies concern an entire universe of potential risks, they necessarily incorporate abstract language that leaves insurers with significant contractual discretion. These structural features of insurance contracts create an inevitable temptation for insurers to adopt overly aggressive claims handling practices: every dollar that an insurer avoids paying in claims adds to its bottom line.

Daniel Schwarcz, Redesigning Consumer Dispute Resolution: A Case Study of the British and American Approaches to Insurance Claims Conflict, 83 Tul. L. Rev. 735, 742–46

(2009) (footnotes omitted).

The current insurance system of regulation and state common law rules benefit insurers, policyholders, and the general public. Jeffrey W. Stempel, Stempel on Insurance Contracts, §1.02 (2006). Insurance companies know their products are subject to and involved with the public trust.

Courts throughout the country and state departments of insurance recognize this public importance of insurance contracts, as well as the vulnerability of consumers in dealing with insurance companies and the policies those companies sell. The regulatory scheme surrounding insurance has a long history and its effect and importance are widely accepted.

> ... [R]egulation of the insurance industry is necessary. As the United States Supreme Court has long recognized, insurance is a business coupled with a public interest. Consumers invest substantial sums in insurance coverage in advance, but the value of the insurance lies in the future performance of the various contingent obligations. Because the interests protected are so important – including an individual's future ability ... to replace damaged or destroyed property – regulation of the industry furthers public welfare. Related reasons for insurance regulation center on the complexity of insurance and consumers' inability to obtain and understand information about insurance. Consumers are ill-equipped to assess a company's future solvency, to compare the coverage of various policies, or to evaluate a company's claim service. Theoretically, government regulation of insurance eliminates these problems. Regulation can ensure solvency and the insurer's ability to pay claims in the future, standardize policy coverage, require minimum coverage, and require fair claims processing.

Susan Randall, Insurance Regulation in the United States: Regulatory Federalism and the National Association of Insurance Commissioners, 26 Fla. St. U. L. Rev. 625, 627 (1999) (footnotes omitted).

The federal government recognizes that states must regulate the insurance industry. According to the McCarran-Ferguson Act, the business of insurance will be subject to state law:

> ...Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

15 U.S.C. § 1011 (2006).

Because of this unique nature of insurance, courts and legislators have promulgated a specialized field of common law and numerous safeguards, rules, statutes, and regulations to provide protection to the consumers of insurance. Policyholders need protection so insurance benefits are available, paid promptly and with as little cost to the policyholder as possible.

II. Public Policy Favors Appraisal

Appraisal provides the policyholder a speedy and inexpensive method of dispute resolution after a loss. It spares both insurer and insured from the burden and cost of legal fees and litigation costs and streamlines the court's dockets. Not surprisingly, public policy in Connecticut and throughout the United States strongly favors appraisal of disputed property insurance claims as an alternative dispute resolution process.

Standard property insurance policies provide for an appraisal process designed to efficiently and cost effectively resolve disagreements as to value without resort to formal legal process and delay. Johnny C. Parker, Understanding the Insurance Policy Appraisal Clause: A Four-Step Program, 37 U. Tol. L. Rev. 931, 931 (2006). Although the language of an appraisal provision varies, a typical one states:

> If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.
>
> Each party will:
>
> a. Pay its chosen appraiser; and
> b. Bear the other expenses of the appraisal and umpire equally. If there is an appraisal, we still retain our right to deny the claim.

Timothy Gray, G. Brian Odom, Shannon M. O'Malley, Benefits, Pitfalls, and Trends in Property Insurance Appraisal, Brief, Spring 2015, at 20, 22, fn 1. "This provision is intended to provide a mode of settlement rather than litigate the matter." Wesley A. Sturges & William W. Sturges, Appraisals of Loss and Damage under Insurance Policies, 11 Miami L.Q. 1-2 (1956). "Over the last 15 years, the resolution of claims through the contractual appraisal provision has grown exponentially and appraisal has become one of the most common methods of first-party claim resolution." Jonathan Wilkofsky, The Law and Procedure of Insurance Appraisal, iv (3rd ed. 2015).

As a matter of public policy, courts generally seek to encourage appraisal as a means of conserving judicial resources. See, e.g., Meineke v. Twin City Fire Ins. Co., 892 P.2d 1365, 1370 (Ariz. Ct. App. 1994). According to the Connecticut Supreme Court:

> It is important as a matter of policy to have a device that allows one party to an insurance contract to compel compliance with the policy's appraisal procedure when the other party is reluctant to proceed .... [To hold otherwise] would unfairly allow [the other party] unilaterally to refuse to proceed with the appraisal process, thus effectively limiting [the party] to an expensive and time-consuming suit on the policy for the amount of the loss.

Covenant Ins. Co. v. Banks, 413 A.2d 862, 866 (Conn. 1979).

Connecticut's pro-appraisal public policy is consistent with the policy of other states. As articulated by Minnesota's highest court, appraisals are favored "as a means to provide the plain, speedy, inexpensive and just determination of the extent of the loss." Quade v. Secura Ins., 814 N.W.2d 703, 707 (Minn. 2012) (applying Minnesota law; internal quotes omitted); see also, Cigna Ins. Co. v. Didimoi Prop. Holdings, N.V., 110 F.Supp.2d 259, 269 (D. Del. 2000) (applying Delaware law, and stating that, "as a general matter, public policy favors alternate resolution procedures like the appraisal process," the purpose of which is to "minimize the need for judicial intervention"); Travelers Indem. Co. of America v. BonBeck Parker, LLC, 223 F.Supp.3d 1155, 1160 (D. Colo. 2016) (under Colorado law, "a purpose of appraisal provisions is to avoid litigation and encourage settlement"); Harvey Property Management Co., Inc. v. Travelers Indem. Co., 2012 WL 5488898 *3 (D. Ariz., Nov. 6, 2012) (Arizona law favors appraisal).

The appraisal provision is the sole contractual method of resolving disputed claims. Public policy, and the judicial system itself, favor resolution of disputes in appraisal:

> The amount of money that stokes the fire insurance industry on an annual basis highlights the public policy reasons that favor alternative dispute resolution over litigation to reduce costs. Due to the nature of insurance policies, appraisals are preferable to arbitration because of the imbalance of resources available to large insurance companies and the less powerful consumers.

Nadja Baer, Contracts: Setting A Conditional Precedent: Appraisal As A Condition Precedent to Litigation -Quade v. Secura Insurance, 40 Wm. Mitchell L. Rev. 282, 288 (2013)(footnote omitted).

The purpose of the appraisal provision is to "afford a simply, speedy, inexpensive

and fair method of determining the loss or damage resulting from the happening of a contingency insured against." Fire Ass'n of Philadelphia v. Ballard, 112 S.W.2d 532, 534 (Tex. App. – Waco 1939). Appraisal is usually faster and cheaper than litigation. When insurance companies refuse to provide coverage, policyholders have limited options. Under property policies, they can demand appraisal or bring a lawsuit. Under the right circumstances, appraisals have two advantages over lawsuits. First, prosecuting an appraisal is typically much less expensive than litigating a lawsuit. Second, a policyholder typically can secure an appraisal award much more quickly than it can secure a jury verdict or a settlement of a lawsuit.

Appraisal is intended to be efficient, inexpensive, fair, and limited in scope to the amount of an insured loss. See Amy M. Coughenour, Appraisal and the Property Insurance Appraisal Clause--A Critical Analysis: Guidance and Recommendations for Arizona, 41 Ariz. St. L.J. 403, 406 (2009). Speed and a quick resolution of the matter is of particular interest to the insured, who is likely to be dealing with displacement or other inconveniences beyond simply a pecuniary loss. Id. at 406. Expense is another chief factor in the appraisal process. Litigation, and to a lesser extent arbitration, are costlier means of resolving a dispute. Appraisal minimizes the expense associated with determining the separate issue of the amount of a loss. Id. The legal fees and expenses associated with the appraisal process are likely to be significantly less than those associated with litigation on the issue of damages alone. Wilkofsky, supra at 58. Appraisal also provides the policyholder and the insurer an equitable means of resolving dollar value disputes by submitting the parties' disagreement to industry professionals with more expert knowledge

about loss valuation than an arbitrator, judge, or jury might possess. Coughenour, supra at 406.

Appraisal provides a contractual method of resolving at least part of the dispute between an insurer and a policyholder, thus allowing the parties to avoid the delay and expense of litigation. See Lon A. Berk, Christopher Poverman, Erik M. Figlio, Before or After: The Interplay of Litigation and Appraisal, Brief, Winter 2004, at 59, 60. Further, "[a]ppraisal grew from the recognition among property insurers and their insureds that not every insurance dispute necessitated the expense of a full-blown lawsuit." Gray, Benefits, Pitfalls, and Trends in Property Insurance Appraisal, supra at 20, 22.

On an everyday basis, insurance appraisers and adjusters deal with scope of damage issues such as matching, actual cash value, wear and tear, deprecation and other mundane adjustment issues, which could just as easily be argued constitute "coverage" disputes, thereby rendering the appraisal process unnecessary. In this case, a common and relatively simple disagreement about whether portions of damaged property can be matched is used to prevent swift and less costly resolution through the insurance appraisal process. This cannot be in the public interest and certainly not in a policyholder's interest.

From a practical standpoint, appraisal could only proceed under Liberty Mutual's position if there were total agreement over the extent of damages. As multiple courts have noted, such as Texas, this interpretation "would render appraisal clauses largely inoperable" and would not be in keeping with the intent of the provision itself because a party could always avoid appraisal by labeling the issue a coverage dispute. See State Farm Lloyds v. Johnson, 290 S.W.3d 886, 892, 893 (Tex. 2009); see also Johnson v. Nationwide Mut. Ins. Co. 828 So. 2d 1021 (Fla. 2002) (explaining when the insurer admits

that there is a covered loss even in part, but there is a disagreement on the amount of loss, it is for the appraisers to arrive at the amount to be paid.)

CONCLUSION

UP recognizes and appreciates the extremely important role insurance plays in modern society. Profitable and financially stable insurance companies promote a healthy society, allowing risks of loss to be spread widely and fairly. When insurance works, prompt and proper payment goes to those who suffer life-altering catastrophes affecting their persons and property. The intent of the appraisal process is to be fair, efficient and inexpensive, and avoid the burdens of litigation. When an insurance carrier precludes its policyholder from using the appraisal process as a cost and time-efficient claim dispute resolution process, the system fails. UP respectfully requests that this Honorable Court (1) Affirm the Trial Court's decision granting Plaintiff's Motion to Reargue / Reconsider; (2) Affirm the Trial Court's decision granting Plaintiff's Application to Compel Appraisal; and (3) Hold that interpretation of § 38a-316e is not required prior to appraisal of Plaintiff's loss.

Dated: November 24, 2020

Respectfully submitted,

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