Case No. 17-4125

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WALID JAMMAL, *et al.*,

***Plaintiffs-Appellees*,**

v.

AMERICAN FAMILY INSURANCE COMPANY, *et al.*,

***Defendants-Appellants*,**

On Appeal from the United States District Court for the Northern District of Ohio, No. 1:13-cv-00437-DCN

BRIEF AS *AMICI CURIAE* OF THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, AND THE AMERICAN INSURANCE ASSOCIATION IN SUPPORT OF AMERICAN FAMILY INSURANCE COMPANY AND REVERSAL OF THE DISTRICT COURT'S CERTIFIED OPINION

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No.

Dated: January 18, 2018

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No.

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STATEMENT OF PARTY CONSENT

All parties have consented to the filing of this brief on behalf of *amici curiae.*

STATEMENT OF INTEREST

The Property Casualty Insurers Association of America ("PCI") is a non-profit, national trade association that promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers.[1] PCI has nearly 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write more than $202 billion in annual premiums and write a substantial proportion of the nation's commercial and personal insurance policies: 35% of the nation's property casualty insurance; 42% of the automobile insurance market; 27% of the homeowners' market; 33% of the commercial property and liability market; and 34% of the private workers' compensation market. PCI's members do business in all fifty states and the District of Columbia.

The National Association of Mutual Insurance Companies ("NAMIC") is a non-profit, national trade association representing mutual property/casualty

[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission.

insurance companies. NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies, representing 39% of the total market. NAMIC member companies serve more than 170 million policyholders and write more than $230 billion in annual premiums. NAMIC's members account for 54% of homeowners, 43% of automobile, and 32% of the business insurance markets. NAMIC supports local, regional, and some of the country's largest mutual insurance companies.

The American Insurance Association ("AIA"), founded in 1866 as the National Board of Fire Underwriters, is a leading national trade association representing more than 320 major property and casualty insurance companies. AIA members collectively underwrite more than $125 billion in direct property and casualty premiums nationwide and range in size from small companies to the largest insurers with global operations. These companies underwrite virtually all lines of property and casualty insurance. AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums nationwide. AIA also files *amicus curiae* briefs in significant cases before federal and state courts, including this Court, on issues of importance to the insurance industry and marketplace.

As this Court recognized by "find[ing] that the amici have a substantial interest in this matter" and in considering their brief in support of American

Family's petition for interlocutory review pursuant to 28 U.S.C. § 1292(b), *amici* have a substantial interest in this case. Because *amici*'s members have direct, first-hand experience with issues relating to the classification of agents under ERISA and other statutes, *amici* respectfully submit that their views on the implications of the district court's ruling shed light on the broader legal and policy questions presented as this Court considers American Family's appeal.

STANDARD OF REVIEW

This Court reviews de novo a district court's analysis of whether insurance agents are independent contractors within the meaning of a federal statute. *See, e.g.*, *Weary v. Cochran*, 377 F.3d 522, 524 (6th Cir. 2004).[2]

ARGUMENT

By holding that the agents of American Family Insurance Company are employees, not independent contractors, for purposes of the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"), the district court's decision marks a sharp turn from a quarter century of settled law. In contrast, courts nationwide have nearly unanimously classified insurance agents as independent contractors under ERISA, as well as in other contexts. *Amici*'s members have structured their relationships with their agents in accordance with this consistent interpretation of the law. Consequently, the decision below

[2] *Amici* adopt the Statement of the Case set forth in American Family's Brief.

threatens to undermine the business model of *amici*'s members that accounts for a substantial percentage of insurance sold in Ohio and this Circuit and to open the door to a flood of litigation as agents seek to determine their status as employees or independent contractors in class litigation against different insurance companies and in a variety of different legal contexts.

I. The District Court's Certified Ruling Fails to Recognize the Structure of the Insurance Market.

Ohio, like most if not all States, heavily regulates the business of insurance. *See, e.g.*, *Upperman v. Grange Indem. Ins. Co.*, 842 N.E.2d 132, 136 (Ohio Ct. Com. Pl. 2005) ("The insurance industry has been heavily regulated in Ohio for decades."). As this Court has recognized, Title 39 of the Ohio Revised Code "sets forth a comprehensive scheme for regulating practically all aspects of the business of insurance." *Ohio AFL-CIO v. Insurance Rating Bd.*, 451 F.2d 1178, 1182 (6th Cir. 1971). This comprehensive regulation extends to insurance agents and, accordingly, the relationship between an insurer and its agents. *Id.* ("The statutes provide for . . . the regulation of insurance agents."); *see, e.g.*, Ohio Admin. Code 3901-5-01 (2016); Ohio Admin. Code 3901-5-09 (2014).

For their part, the laws and regulations of the other States within this Circuit also heavily regulate the business of insurance in distinct ways, including the relationship between an insurer and its agents. *See, e.g.*, *Harts v. Farmers Ins. Exch.*, 597 N.W.2d 47, 51 (Mich. 1999) (noting that the Michigan legislature has,

for over 120 years, regulated those who offer insurance products); *In re Medical Care Mgmt. Co.*, 361 B.R. 863, 876-79 (Bankr. M.D. Tenn. 2003) (finding that Tennessee has enacted "a comprehensive regulatory scheme to establish a coherent scheme of insurance regulation" that reverse-preempted the Bankruptcy Code); *Stephens v. State Farm Mut. Auto Ins. Co.*, 894 S.W.2d 624, 625 (Ky. 1995) ("The insurance industry is a highly regulated one and operates within the framework of Kentucky's comprehensive, regulatory insurance code.").

In this highly regulated environment, companies engage in the business of insurance using a variety of different models. Some sell directly to consumers; others do so through an agent or broker. "Brokers [or agents] may be either 'captive' or 'independent.' A captive broker [or agent] offers products only from a particular insurance company. By contrast, an independent broker [or agent] . . . offers its clients a choice of policies from multiple insurance companies." *State v. Acordia, Inc.*, 73 A.3d 711, 718 (Conn. 2013). Further, insurance agents "are of various kinds and classes such as general, special, local, resident, soliciting, recording, issuing, collecting, and adjusting." 3 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* 3d § 44:38 (2005).

These different business models result in different relationships between insurers and agents:

> Many insurers deal with consumers through sales representatives who are employees of the insurance company. Sales representatives may

> also be employees of separate companies that are wholly or partially owned by insurers. And a very substantial portion of the insurance coverage in the United States is sold by entrepreneurs and their employees who are generally known as independent insurance agents or insurance brokers. Some independent entrepreneurs are sales representatives for only one company, while others represent multiple insurers.

Robert B. Keeton, Alan L. Widiss & James M. Fischer, *Insurance Law, A Guide to Fundamental Principles, Legal Doctrines and Commercial Practices* § 2.5(a), at 67 (2d ed. 2017). Agents working in the business of insurance may choose among these different models. For those who prefer to work as employees or selling multiple product lines for different insurers, the market offers such options.

Against this backdrop in which insurers operate, the federal courts recognize that "the continuous oversight of insurance agents is compatible with independent contractor status given the heavily regulated nature of the insurance industry." *Lockett v. Allstate Ins. Co.*, 364 F. Supp. 2d 1368, 1379 (M.D. Ga. 2005) (citing *Strange v. Nationwide Mut. Ins. Co.*, No. Civ. A. 93-6585, 1997 U.S. Dist. LEXIS 13034, at *21, 1997 WL 550016, at *5, 7 (E.D. Pa. Aug. 21, 1997)). This Court agrees, recognizing that insurers must assert some level of control over agents to ensure compliance with legal, ethical, and corporate policies. *See Weary*, 377 F.3d at 526.

A. American Family Is Similarly Situated to Many Insurers.

This brief background on the business of insurance underscores important facts omitted from the district court's ruling. For example, the district court does not discuss the different kinds of agents who work in the business of insurance generally or for American Family in particular, or even identify the product lines the agents in this case sell. (*See generally* Doc. 320, Memorandum Opinion at 7-31, PageID #20949-73.) Such information matters. Certain types of agents sell some specialized product lines according to practices that have grown up historically or in response to specific regulations.

The record below establishes that American Family is similarly situated to those members of *amici* who also sell insurance through exclusive agents who are classified as independent contractors. (*See* Doc. 309, Tr. at 1240; Doc. 311, Tr. at 1944.) In fact, such agents account for nearly 40% of all auto, homeowners, and life insurance policies written and approximately 15% of all commercial insurance lines. Experience has shown that *amici*'s members who use agents in ways similar to American Family do so because it supports and encourages agents' entrepreneurial activity in a way that ensures compliance with state regulation and effectuates the explicitly expressed desires of both agents and insurers.

In context, then, the district court's ruling amounts to an unwarranted and harmful effort to legislate changes to a mainstream business model used

throughout the insurance industry, including by *amici*'s members. Exclusive agents who are independent contractors sell a substantial percentage of insurance policies and comprise a correspondingly significant number of agents involved in the business of insurance in Ohio and this Circuit. Accordingly, the district court's decision threatens to disrupt a well-established business model, which has been in place for decades and closely resembles that which other insurers use to sell a substantial volume of different lines of insurance. Consequently, affirming the district court's ruling will have a broadly negative impact and cause disruption throughout the insurance industry.

B. American Family Exercises "Control," Like Other Insurers, to Comply with and Facilitate the Execution of State Insurance Laws.

Rather than confront the sweeping consequences of its ruling, the district court simply dismissed them without explanation. Acknowledging that this Court has held that insurance agents are independent contractors "for the purposes of federal employment law," the district court attempted to distinguish this Court's controlling authorities by maintaining that "none of the factual scenarios presented in any of the cited cases show retention of the same level and breadth of control by the Company that was evidenced in this case." (Doc. 320, Memorandum Opinion at 42, ¶ 113, PageID #20984.) However, the district court offered no explanation to support this claim. This Court's precedents and the weight of authority show

that the type of control on which the district court based its ruling is no different than the control typically exercised by *amici*'s members in the highly regulated business of insurance.

Only by disregarding this Court's authorities and misapplying the law regarding the "control" factor of the analysis established over a quarter century ago in *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992), was the district court able to rely on this factor to support its conclusion that American Family's agents are employees. Under this Court's decision in *Weary*, this factor contemplates "the hiring party's right to control the manner and means by which" the services are accomplished. *Weary*, 377 F.3d at 525-26 (quoting *Darden*, 503 U.S. at 323). "Supervision of the 'means and manner' of the worker's performance renders him an employee, while steps taken to 'monitor, evaluate, and improve the results' of his work, without supervision over the means by and manner in which he does his work, indicates that the worker is an independent contractor." *C.C. Eastern, Inc. v. NLRB*, 60 F.3d 855, 858 (D.C. Cir. 1995) (internal citations omitted).

But the control the district court discussed is not the type of control indicative of employee status under *Darden* and its progeny: control over the manner and means of providing services requires proof that the hiring party had the right to control the details of daily performance. For example, this Court has held

that insurance agents are independent contractors where the insurance company's "actual influence over *how* [the agent] did business was *minimal*" despite requirements that the agent hire through the agency specified by the insurer, keep office hours, and comply with various insurer guidelines. *Ware v. United States*, 67 F.3d 574, 576, 579 (6th Cir. 1995) (emphasis added). Similarly, this Court has held that "control of the priority of [the agent's] tasks, i.e., setting deadlines and formatting requirements, does not amount to the level of control regarding the 'means and manner' of her work product to warrant a finding of employee status." *Janette v. American Fid. Grp., Ltd*., 298 F. App'x 467, 473 (6th Cir. 2008). In short, "the extent of control the hiring party exercises over the details of *the product* is not dispositive." *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 752 (1989) (emphasis added).

Rather than focusing on control in this sense, the district court concluded that American Family's agents were employees because:

- The agents' managers were "involved in goal setting, creating the agents[']s business plans, encouraging and directing agents, and enforcing compliance with these goals and plans" (Doc. 320, Memorandum Opinion at 31, ¶ 10, PageID #20972-73);

- "[M]anagers have final say over agents' business plan, including productivity goals and means of achieving them" (*id*. at 35, ¶ 44, PageID #20977);
- Managers could reprimand agents for failing to meet American Family standards and directives (*id*. at 40, ¶ 92, PageID #20982,); and
- American Family's training manuals referred to the agents as "employees" (*id*. at 41, ¶ 106, PageID #20983).

All of these observations, however, reflect American Family's control over its agents' end product and goals—*not* daily supervision over the manner and means of their production. Many insurers require such practices to ensure agents meet productivity goals—not to control the manner and means of their work. Requiring an agent to comport with certain company guidelines and meet expectations and goals, while maintaining autonomy over how to meet those goals, is the hallmark of an independent contractor relationship—"not the type of control that establishes an employer/employee relationship." *Weary*, 377 F.3d at 526 (finding that a defendant's requirement that an agent comply with applicable legal and ethical rules and administrative guidelines set out in the company manual did not render the agent an employee).

Tellingly, the district court did not explain why these facts differ from this Court's precedents in *Ware* and *Janette*, where such evidence of "control" did not

have the effect of classifying agents as employees. (*See* Doc. 320, Memorandum Opinion at 42, ¶ 113, PageID #20984.) Indeed, the district court found the fact that American Family agents must keep offices open during regular business hours "slightly favored" employee status. (*Id*. at 35, ¶ 46, PageID #20977.) But this Court has specifically held that such a fact showed only "minimal" control, consistent with independent contractor status. *Ware*, 67 F.3d at 576, 579.

At bottom, the district court's control analysis fails to account for the highly regulated environment in which *amici*'s members operate. In such an environment, this Court has held that the "limited authority" of an insurance company to "require [agents] to comply with applicable legal and ethical rules and certain administrative guidelines set out in a [company] manual" is "not *the type of control* that establishes an employer/employee relationship." *Weary*, 377 F.3d at 526 (emphasis added).

Finally, by basing its efforts to distinguish this case on American Family's control of agents, the district court disregarded this Court's admonition that "*control and supervision is less important in an ERISA context*, where a court is determining whether an employer has assumed responsibility for a person's pension status." *Ware*, 67 F.3d at 578 (emphasis added). In fact, this Court recognizes that, in a dispute over benefits (as in this case), "[a] court might properly emphasize how an employer treated a party with respect to other pension

and fringe benefits" over other factors. *Id.* Here, there is no dispute that American Family treated the agents at issue as independent contractors for benefit purposes. In this respect, the record shows that many other members of *amici* who also sell insurance through exclusive agents classify their agents as independent contractors. (*See* Doc. 309, Tr. at 1240; Doc. 311, Tr. at 1944.) Within the context of the highly regulated business of insurance, the law of this Circuit recognizes that insurance agents—even exclusive agents like those of American Family—are independent contractors for ERISA (and other) purposes.

C. Contrary to the District Court's Belief, the Skill Required to Be an Insurance Agent Favors Independent Contractor Status, as This Court's Precedent Holds.

Under *Darden*, courts determine "whether the skill [required of an agent] is an independent discipline (or profession) that is separate from the business and could be (or was) learned elsewhere." *Janette*, 298 F. App'x at 474 (citing *Weary*, 377 F.3d at 532). Because American Family "almost always hired untrained, and often unlicensed, agents," the district court wrongly viewed this *Darden* inquiry as "weigh[ing] slightly in favor of employee status." (Doc. 320, Memorandum Opinion at 31, ¶¶ 11-14, PageID #20973.) The district court's analysis overlooks the fact that Ohio, like other States, has a rigorous agent credentialing process and requirements for continuing professional education to maintain one's license. *See,*

Ohio Admin. Code 3901-5-01 (2016) (continuing education requirements); Ohio Admin. Code 3901-5-09 (2014) (pre-licensing requirements).

Moreover, the district court broke from this Court's controlling precedent of *Weary*, which concluded that the skill required for the job of an insurance agent "weighs in favor of independent contractor status." *Weary*, 377 F.3d at 527. Under the law of this Circuit, and within the business of insurance, it does not matter whether an agent acquires the specialized skills for the position after beginning its relationship with a particular insurance company (as the district court believes) or before (as the plaintiffs did in this case). What matters is that the business of insurance requires skilled professionals—a factor under *Darden* and *Weary* consistent with independent contractor status. Not even the dissent in *Weary* was willing to go as far as the district court here, concluding that "on balance, because the skill of selling insurance is a general one, the majority may be correct in its conclusion that this factor favors independent contractor status." *Id*. at 532 (Clay, J., dissenting).

D. Independent Contractor Status Provides Many Advantages, Which Plaintiffs Received.

The district court's analysis overlooks another fundamental aspect of the way *amici*'s members sell insurance: independent contractor status carries significant benefits for agents. *See, e.g.*, *Jaeger v. Matrix Essentials, Inc.*, 236 F. Supp. 2d 815, 826 n.6 (N.D. Ohio 2002) (recognizing that an individual may

choose classification as an independent contractor to take advantage of tax benefits not available to employees); Tracy Snow, *Balancing the ERISA Seesaw: A Targeted Approach to Balancing the Worker Misclassification Problem in the Employee Benefits Context*, 79 GEO. WASH. L. REV. 1237, 1242, 1256-57 (June 2011) (noting that "many independent contractors relish the advantages afforded by their status . . . compared to employees, they can more easily deduct work-related expenses and make tax-deductible contributions to many self-established pension plans," among other benefits). Of course, independent contractor status also comes with the entrepreneurial opportunity to increase one's income.

Plaintiffs here, in fact, received the benefits of independent contractor status. American Family paid the agents on commission, aligning their compensation with the rewards of successful entrepreneurial activity. (*See* Doc. 320, Memorandum Opinion at 10, PageID #20952.) The agents claimed deductions on their tax returns for business expenses, which would otherwise be limited or unavailable. (*Id.* at 11, PageID #20953.) Further, American Family made significant investments in the resources available to its agents to increase their own income, for example, by providing marketing materials, computers and online tools, and other infrastructure, including the support of a customer service call center. (*Id.* at 17, PageID #20959.)

These and other benefits lead many agents in the insurance industry to choose and prefer independent contractor status. To the extent an insurance agent prefers another arrangement, there are sufficient opportunities throughout the industry to work as an employee, independent agent, or in any other capacity available in the marketplace. *Amici*'s members engage in the business of insurance through a range of different business arrangements that provide many options for those who wish to sell insurance, but do not necessarily want to work as an independent contractor.

II. By Failing to Consider the Express Agreement of the Parties, the District Court Reached a Result Contrary to the "Nearly Unanimous" Weight of Authority.

Lest there be any doubt about American Family's ability to control the manner and means by which its agents market and sell insurance, the parties here also agreed that any conflict, ambiguity, or doubt over any American Family rule or policy would be resolved in favor of independent contractor status. (Doc. 320, Memorandum Opinion at 10, PageID #20952.) The parties' agreement expressly provides that agents have "full control of [their] activities and the right to exercise independent judgment as to time, place and manner of soliciting insurance, servicing policy holders and otherwise carrying out" their responsibilities. (*Id.*)

Under the law of this Circuit, the "best evidence" of the parties' intent to create an independent contractor or employer-employee relationship is an express

agreement. *Weary*, 377 F.3d at 527. Here, the Agent Agreement between the parties, which is similar to the contracts that many of *amici*'s members use to define their relationships with agents, goes on to provide that "[i]t is the intent of the parties hereto that you are not an employee of the Company for any purpose, but are an independent contractor for all purposes." (Doc. 320, Memorandum Opinion at 10, PageID #20952.) Although the district court acknowledged that this Court considers this express agreement the best evidence of the parties' intent (*id.* at 6, PageID #20948), the court scarcely mentioned it in its analysis. Indeed, in its findings of fact and conclusions of law, the district court briefly mentions, but does not quote, the parties' agreement (*id.* at 30, ¶ 4, PageID #20972), then goes on at length to explain why other factors "slightly" favor employee status (*id.* at 31, ¶ 14, PageID #20973; *id.* at 34, ¶ 36, PageID #20976; *id.* at 35, ¶ 46, PageID #20977)—all without explaining why the parties' express agreement should not control.

In relying on *Darden* and its nearly consistent application and interpretation by courts around the country, insurance companies typically define their agents as independent contractors by express agreement (like American Family), pay them on commission (like American Family), and allow them to report independently to taxing authorities (like American Family). In fact, the parties' express agreement here not only defined agents as independent contractors, it also made clear that agents, as independent contractors, "are responsible for [their own] self-

employment taxes." (*Id.* at 10, PageID # 20952.) With respect to the subject matter of Plaintiffs' ERISA claims in particular, the parties' agreement also provides that agents, as independent contractors, "are not eligible for various employee benefits." (*Id.*)

The parties' agreement here follows the overwhelming weight of authority that has, until now, been well settled for a quarter century. This Court and the other circuits have "repeatedly held that insurance agents are independent contractors, rather than employees, in a variety of contexts"—including under ERISA. *Weary*, 377 F.3d at 524; *Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 440 (6th Cir. 2006) (ERISA); *Murray v. Principal Fin. Grp., Inc.*, 613 F.3d 943, 944-45 (9th Cir. 2010) ("We, along with virtually every other Circuit to consider similar issues, have held that insurance agents are independent contractors and not employees for purposes of various federal employment statutes, including [ERISA.]"); *see also Ware*, 67 F.3d at 574 (tax).

An important part of this analysis—the "best evidence" of the parties' intent—is the agreement between the parties. "In general, [the Sixth Circuit] look[s] to any express agreement between the parties as to their status, as it is the best evidence of their intent." *Janette*, 298 F. App'x at 471 (citing *Weary*, 377 F.3d at 525); *see also Simpson v. Ernst & Young*, 100 F.3d 436, 442 (6th Cir. 1996); *Eyerman v. Mary Kay Cosmetics, Inc.*, 967 F.2d 213, 218 (6th Cir. 1992).

While not dispositive, the decision of the parties to structure their relationship as independent contractors is given considerable weight in determining a party's status. *See Weary*, 377 F.3d at 525.

Contrary to this basic principle, the district court gave next to no weight to the parties' agreement, barely mentioning it once in passing in its findings of fact and conclusions of law. (Doc. 320, Memorandum Opinion at 30, ¶ 4, PageID #20972.) Beyond this brief mention, the district court overlooked this best evidence of the parties' intent, focusing instead on other factors, which even the district court acknowledged only "slightly" favored employee status. In doing so, the district court reached a conclusion that it acknowledges is contrary to the "nearly unanimous" weight of authority "finding that insurance agents are to be classified as independent contractors." (*Id.* at 43, PageID #20985.) Only by disregarding the parties' intent, as clearly expressed in the agreement, which is similar to the contracts that many of *amici*'s members use to define their relationships with agents, was the district court able to break with the weight of authority. The district court's decision will have potentially far-reaching effects across the insurance industry, disrupting the business of insurers and insurance agents, and causing other unforeseen and unintended consequences.

CONCLUSION

For all the foregoing reasons, as well as those set forth in American Family's brief, the Property Casualty Insurers Association of America ("PCI"), the National Association of Mutual Insurance Companies ("NAMIC"), and the American Insurance Association ("AIA") as *amici curiae* respectfully request that this Court reverse the judgment of the district court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure and 6 Cir. R. 32, I hereby certify that the foregoing Brief of the Property Casualty Insurers Association of America, the National Association of Mutual Insurance Companies, and the American Insurance Association as *Amici Curiae* in Support of Defendant-Appellant American Family Insurance Company and Reversal of the District Court's Certified Opinion contains 4,344 words, including headings, footnotes, quotations, and citations, as counted by the word processing system for Microsoft Word 2010, and therefore is within the word limit set by this Court. The brief complies with the typeface requirements of Rule 32(a)(5) and (6) of the Federal Rules of Appellate Procedure because it was prepared using the Microsoft Word 2010 word processing program in 14-point Times New Roman font.

/s/ J. Philip Calabrese
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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2018, the foregoing was electronically filed with the Clerk of this Court via this Court's electronic filing system. Counsel for Defendants-Appellants and Plaintiffs-Appellees will be served by the electronic filing system.

/s/ J. Philip Calabrese
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