COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Motorists Mutual Ins. Co., **Plaintiffs,** **v.** **John and Susan Klosterman,** **Defendants.**	**Case No.: A1901883** **Judge Elizabeth Callan**

THE UNITED STATES OF AMERICA'S STATEMENT OF INTEREST REGARDING PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517 and respectfully requests that the Court deny Motorist Mutual Insurance Company's ("Motorists Mutual's" or "Plaintiff's") Motion for Declaratory Judgment.

I. Interest of the United States

The United States has an interest in this lawsuit because the declaratory relief sought relates to the United States' claims in its pending federal lawsuit ("United States' Lawsuit") against Defendants John and Susan Klosterman alleging violations of the Fair Housing Act ("Act"), 42 U.S.C. §§ 3601 *et seq*. *United States of America v. Klosterman*, Case No. 1:18-cv-194 (S.D. Ohio) (Barrett, J.). In that lawsuit, the United States alleges that the Defendants, through the actions of Defendant John Klosterman, sexually harassed residents at various rental properties. Pl. Ex. A ¶¶ 6, 8, 11, and seeks, among other things, monetary damages for persons harmed by Defendants' conduct. *Id*. at 6. Whether the claims in the

United States' Lawsuit are covered by John and Susan Klosterman's insurance policies, therefore, has a direct impact on the type and amount of recovery the victims of discrimination may receive for their injuries.

28 U.S.C. § 517 provides that "any officer of the Department of Justice may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States or in a court of a State * * *." This statute gives the United States "broad discretion to attend to the interests of the United States", including the right to file a statement of interest setting forth its views on selected issues in cases to which it is not a party. *See Gil v. Winn Dixie Stores, Inc.*, 242 F. Supp. 3d 1315, 1317 (S.D. Fl. 2017) (quoting *Ferrand v. Schedler*, No. 11-9267, 2012 WL 1247215, at *1-2 (E.D. La. April 13, 2012). The United States therefore respectfully submits this Statement of Interest to assist the Court in resolving the questions of law presented here.

II. Facts

A. The Insurance Policies

Starting on or before May 17, 2004 and continuing through at least May 27, 2018, John and Susan Klosterman received insurance coverage through homeowner's insurance policies ("Policies") provided by Motorists Mutual.[1] The Policies list John and Susan Klosterman's residence as the "insured residence

[1] Motorist Mutual attached only one Policy to its Motion. The other Policies have been provided through discovery in the United States' Lawsuit. Motorist Mutual has access to its own Policies, as well as that discovery. Because a protective order is in place in that litigation, the United States is not attaching such discovery materials to this brief.

premises." *See, e.g.,* Pl. Ex. D. 000002. The Policies also contain riders, entitled "Additional Residence Rented to Others," that extend insurance coverage to a number of John and Susan Klosterman's rental properties, and incorporate additional terms into the Policies. *See, e.g.*, Pl. Ex. D 000043.

The Policies obligate Motorist Mutual to pay damages and provide a defense for any claim or suit against the Klostermans for "damages because of 'bodily injury' or 'property damage' caused by an 'occurrence'" covered by the Policies. *Id.* at 000015-16. The Preferred Homeowners Endorsement in the Policies define "bodily injury" to include any "personal injury" that arises out of: "false arrest, detention, or imprisonment, or malicious prosecution"; "libel, slander, or defamation of character"; or "invasion of privacy, wrongful eviction, or wrongful entry." *Id.* at 000040.

The Policies define "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results [in bodily injury] during the policy period." *Id.* at 000004. Furthermore, in establishing liability limits for any "one 'occurrence,'" the Policies explain that "[a]ll bodily injury and property damage resulting from any one accident **or** from continuous or related exposure to substantially the same general harmful conditions shall be considered to be the result of one 'occurrence.'" *Id.* at 000019 (emphasis added).

The basic homeowner's policy, without the riders incorporated into the Policies purchased by the Klostermans, excludes coverage for bodily injury "[a]rising

out of or in connection with a 'business'" and, as a separate and distinct provision, excludes coverage for bodily injury "[a]rising out of the rental or holding for rental of any premise." *Id.* at 000016. The Policies define "business" as "trade, profession or occupation." *Id.* at 000004. The riders included in the Klostermans' Policies explicitly state that the rental property exclusion does not apply to rental properties enumerated in the riders. *Id.* at 000043-45.

B. The United States' Lawsuit

On March 21, 2018, the United States filed a complaint in the United States Federal District Court for the Southern District of Ohio alleging that John and Susan Klosterman discriminated on the basis of sex in violation of the Fair Housing Act. *See* Pl. Ex. A. The United States' Lawsuit alleges that John and Susan Klosterman own or have an ownership interest in at least fifty-five rental properties in or around Cincinnati, Ohio, *id.* ¶¶ 6, 8, and that since at least 2013 to the present, John Klosterman discriminated on the basis of sex by subjecting female tenants to severe, pervasive, and unwelcome sexual harassment, on multiple occasions.[2] *Id.* ¶ 11. The United States alleges that John Klosterman's conduct has included "making unwelcome sexual comments [and] advances," "touching female tenants . . . without their consent," "offering . . . housing benefits . . . in exchange for sex," "[t]aking adverse housing actions, such as eviction . . . against female tenants who objected to and/or refused sexual advances," "expressing a preference for

[2] Through discovery, the United States has learned that John Klosterman engaged in this conduct since before 2004, the date of the first applicable Motorists Mutual Policy of which the United States is aware.

renting to single female tenants," and "[e]ntering the homes of female tenants without their consent and otherwise monitoring their daily activities with cameras . . . ." *Id.* The United States alleges that Defendant John Klosterman's conduct "was intentional, willful and/or taken in reckless disregard of the rights of the others." *Id.* ¶ 17,

The complaint further alleges that Defendant Susan Klosterman has an ownership interest in the various rental properties, and is vicariously liable for the actions of Defendant John Klosterman. *Id.* ¶ 13. The complaint alleges that "Defendant Susan Klosterman knew or should have known of Johns Klosterman's discriminatory housing practices, had the authority to take preventive and corrective action, and failed to take reasonable or corrective measures to prevent or redress John Klosterman's conduct." *Id.*

At some point after the United States filed its complaint, the Klostermans submitted a claim under their Policies. Motorist Mutual began providing a defense on May 25, 2018. Motorist Mutual has access to the written discovery and depositions in the United States' Lawsuit. Through discovery, the United States has identified approximately 30 women who it alleges were harmed by Defendants' sexual harassment, including approximately 15 who were harassed while they resided in a property covered by one of Motorist Mutual's Policies at the time that the Policy was in effect. Discovery closes on February 28, 2020, and trial is scheduled for May 2020.

C. This Declaratory Judgment Action

On April 16, 2019, Motorists Mutual filed a complaint in the instant action against the Klostermans. On July 2, 2019, the Court stayed this case pending the outcome of the United States' Lawsuit. On July 8, 2019, the Klostermans, proceeding pro se, filed an answer. Although the stay is still in effect, on December 9, 2019, Motorists Mutual filed this Motion for Declaratory Judgment asking this Court to declare, as a matter of law, that it has no duty to defend or indemnify the Klostermans with respect to the claims in the United States' lawsuit.[3] Motion at 9.

III. Argument

Motorists Mutual bears the burden of showing that there is no dispute of material fact regarding the Policies' coverage. *Hamlin v. McAlpin Co.*, 175 Ohio St. 517, 519-20 (1964); *see also Carnahan v. Morton Bldgs. Inc.*, 41 N.E.3d 239, 241 (Ohio App. 3 Dist. 2015) (citing *Hamlin*). Motorists Mutual must show "(1) that there is no genuine issue as to any material fact; (2) that [it] is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion," after "construe[ing] [the evidence] most strongly in [Defendants'] favor." *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978); *see also Home City Fed. Savs. Bank v. Becraft & Sons Gen. Contrs., Ltd.,* 2013-Ohio-4945, 2013 WL 5974223, at *1 (Ohio App. 2 Dist. Nov. 8, 2013) (citing *Harless*). Where the allegations of an underlying action, such as the United States' lawsuit, "state a

[3] Although Motorist Mutual's Motion purports to seek a judgment that it has no duty under any of its Policies with the Klosterman's, Motion at 9, it has only attached one Policy, covering May 27, 2017 through May 27, 2018. To the extent Motorist Mutual is seeking relief beyond that Policy, it would need to supplement its motion to include all of the Policies on which it is seeking a judgment.

claim which is potentially or arguably within the policy coverage, or there is some doubt as to whether a theory of recovery within the policy coverage has been pleaded, the insurer must accept the defense." *City of Willoughby Hills v. Cincinnati Ins. Co.*, 9 Ohio St.3d 177, 180 (1984); *see also Ferro Corp. v. Cookson Group*, 561 F.Supp.2d 888, 899 (N.D. Ohio 2008) (citing *Willoughby Hills*). Furthermore, the insurer has a duty defend the insured where at least some, if not all, claims are covered by the Policies. *Ohio Govt. Risk Mgt. Plan v. Harrison*, 115 Ohio St.3d 241, 242 (2007).

In evaluating the Policies, "clear and unambiguous language is to be understood in its ordinary, usual or popular sense." *State Farm Fire & Cas. Co. v. Hiermer*, 720 F. Supp. 1310, 1314 (S.D. Ohio 1988), *aff'd,* 884 F.2d 580 (6th Cir. 1989) (*citing Randolf v. Grange Mutual Casualty Co.*, 57 Ohio St.2d 25 (1979)). "However, if the language of a policy is unclear or ambiguous, it should be strictly construed against the insurance company that drafted the contract." *Id.* (citing *American Financial Corp. v. Fireman's Fund Ins. Co.*, 15 Ohio St.2d 171 (1968); *Ohio Farmers Ins. Co. v. Wright*, 17 Ohio St.2d 73 (1969)). "[C]ourts must [] examine the policy as a whole when determining whether a word of phrase of the policy is ambiguous." *Sauer v. Crews*, 140 Ohio St.3d 314, 318 (2014). Finally, courts avoid interpretations that would render policy coverage illusory. *Will Repair, Inc. v. Grange Ins. Co.*, 15 N.E. 3d 386, 392-93 (Ohio App. 8 Dist. 2014) (collecting cases).

Motorist Mutual acknowledges that its Policies provide coverage for any claim or suit for damages because of "bodily injury" caused by an "occurrence" which

is not otherwise excluded. Motion at 4. Motorist Mutual argues that it is entitled to a declaratory judgment because as a matter of law: (1) the United States' Lawsuit does not allege an "occurrence" within the meaning of the lawsuit; and (2) even assuming there is an alleged occurrence, the business exclusion applies and excludes coverage for all possible claims.[4] Motion at 7-9. As explained below, neither argument has merit.

A. Motorist Mutual Has Not Established That None of the United States' Claims May Constitute an "Occurrence" Within the Meaning of the Policies.

1. The Policies Do Not Limit Coverage to Damages Resulting from An Accident

Contrary to Motorist Mutual's argument, Motion at 7, the Policies do not unambiguously limit coverage to damages resulting from an accident.[5] The Policies explain the meaning of "occurrence" in two locations: in the "Definitions" section, Pl. Ex. D 000004, and in "Section II-Conditions," Pl. Ex. D 000019. The Definitions section provides that: "'[o]ccurrence' means an accident, including continuous or

[4] Although Motorist Mutual also claims that it is "not certain" that the United States has alleged "bodily injury" within the meaning of the Policy, it wisely does not seek judgment on this ground. Motion at 7. In fact, the United States' lawsuit makes numerous allegations of "bodily injury," as defined by the Policies, caused by John Klosterman's conduct. The Policies define "bodily injury' to include "personal injury" that arises out of "invasion of privacy, wrongful eviction, or wrongful entry." Ex. D 000040. Based on the plain language of the Policies, the actions described in the United States' complaint clearly constitute "invasion of privacy," "wrongful eviction," and/or "wrongful entry." *See Winters v. Transamerica Ins. Co.,* 194 F.3d 1321 (10th Cir. 1999) (holding that allegations that a landlord "harassed, coerced, intimidated and threatened" tenants in violation of the Fair Housing Act triggered insurer's duty to defend claim under policy providing coverage for injuries arising from the "wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy" of a dwelling.). Further, the United States' Lawsuit alleges that John Klosterman's actions caused injury to his female tenants, who suffered harm as a result of his actions. Pl. Ex. A ¶ 16.

[5] Motorist Mutual cites one case in support of this argument, *Nationwide Mutual Ins. Co. v. Taco Bell Corp.*, 1998 Ohio App. LEXIS 4080 (Ohio App. 6 Dist. Sept. 4, 1998). As noted below, however, this case actually supports the contrary position.

repeated exposure to substantially the same general harmful conditions." Pl. Ex. D 00004. The Section II-Conditions portion of the Policies establish liability limits for any "one 'occurrence.'" *Id.* at 000019. This section further clarifies that an "occurrence" is: "[a]ll bodily injury and property damage resulting from any one accident **or** from continuous or related exposure to substantially the same general harmful conditions shall be considered to be the result of one occurrence." *Id.* at 000019 (emphasis added). Read together, these two provisions at minimum create an ambiguity as to the scope of conduct that can constitute an "occurrence." The latter provision's use of the word "or" suggests that the term "occurrence" includes "continuous or related exposure to substantially the same general harmful conditions," even if that exposure would not otherwise qualify as an "accident." Any ambiguity created by the difference in wording between the two provisions of the policy must be construed against the insurer. *Hiermer*, 720 F. Supp. at 1314.

An additional ambiguity arises from the fact that through the Preferred Homeowners Endorsement incorporated into the Policies, the Klostermans purchased coverage for personal injury resulting from intentional acts. Specifically, the Policies cover among other things, "false arrest, detention, or imprisonment, or malicious prosecution," "libel, slander, or defamation of character"; and "invasion of privacy." *Id.* at 000040. Such actions are "inherently intentional." *North Bank v. Cincinnati Ins. Companies*, 125 F.3d 983, 986 (6th Cir. 1997). In *North Bank*, the Sixth Circuit concluded that inclusion of such acts in the definition of "personal injury" created an ambiguity that precluded a narrow interpretation of

"occurrences" that would limit coverage to unintentional torts. *Id.* at 986 ("'[T]he definition of personal injury which includes intentional torts and the definition of 'occurrence' which excludes intentional torts' are inconsistent and create an ambiguity[]" that must be resolved in favor of the insured) (quoting *Hurst-Rosche Eng'rs, Inc. v. Commercial Union Ins.*, 51 F.3d 1336, 1345 (7th Cir. 1995)).

Here, like in *North Bank*, the Policies' plain language clearly extends to cover injuries resulting from intentional acts. The United States' Lawsuit alleges that John Klosterman, in addition to other conduct, entered tenants' homes without consent and used cameras to monitor their activities. Pl. Ex. A ¶ 11. These allegations clearly fall within the scope of "invasion of privacy" as set forth in the Policies. If the Policies are read to exclude coverage for all intentional conduct, it would improperly render the coverage in the Policies for these "inherently intentional" acts illusory. *See North Bank*, 125 F.3d at 986.

Reading the policy as a whole, and construing any ambiguities against the insurer and in favor of the insured, as required by Ohio law, the two provisions related to the meaning of "occurrence" discussed above should be interpreted to provide coverage for personal injury resulting not only from an accident, but also from "continuous or related exposure" to "harmful conditions." In an analogous employment discrimination case, an Ohio appeals court found that similar language was sufficiently ambiguous such that it could include sexual harassment. *Nationwide Mutual Ins. Co. v. Taco Bell Corp.*, 1998 Ohio App. LEXIS 4080, at *6 (Ohio App. 6 Dist. Sept. 4, 1998) ("[t]he policy definition of an 'occurrence' includes

not only an 'accident,' but 'repeated exposure' to a 'condition.' What constitutes this 'exposure' is not clearly defined, nor is the 'condition.' . . . As to what constitutes an 'occurrence,' this language then is ambiguous. Consequently, we can not [sic], as a matter of law, say that this language excludes coverage [of the sexual harassment claim]."). The United States alleges that John Klosterman, on multiple occasions and over the course of many years, engaged in severe, pervasive, and unwelcome sexual harassment. Pl. Ex. A ¶ 11. If proven at trial, John Klosterman's alleged continuous and repeated unwelcome sexual comments, nonconsensual touching, offers of housing benefits in exchange for sex, evictions of tenants who refused sexual advances, expression of preferences for female tenants, and unauthorized entry and surveillance of tenants' homes, *see id.*, clearly constitute "continuous or repeated exposure to substantially the same general harmful conditions."

2. The United States' Claims Are Not Limited to "Intentional" Conduct

Even if the Policies could be construed to require that personal injury resulted from an accident, the United States' Lawsuit contains sufficient allegations of conduct that can be characterized as "unintentional" or "accident[al]" as those terms have been construed in the context of insurance policies. First, the United States alleges that "John Klosterman's conduct was intentional, willful, **and/or taken in reckless disregard of the rights of others**." Pl. Ex. A ¶ 17 (emphasis added). In *United States v. Security Management Company, Inc.*, 96 F.3d 260, 268 (7th Cir. 1996), the Seventh Circuit found that similar allegations were sufficient to bring the United States' claims within the scope of the policy that defined

"occurrence" as "an event, including continuous and repeated exposure to substantially the same general harmful conditions neither expected nor intended from the standpoint of the insured." The court noted that, although the United States' suit "[was] largely concerned with the allegations of willful and intentional conduct," under the applicable state law "only a single covered claim need to be alleged to trigger the duty to defend." *Id*. Applying that principle[6], the court concluded that the operative question "was whether *any* allegations of unintentional misconduct may be uncovered within the four corners of the complaint." *Id*. The court held that the United States' allegation that the defendants took actions "in disregard of the rights of others" alleged unintentional misconduct within the scope of the policy:

> The complaints allege that Security Management's conduct "was intentional, willful, and taken in disregard of the civil rights of others." The district court interpreted the "taken in disregard language as reaching acts of unintentional discrimination. We agree; the generally understood meaning of "disregard" is to take no notice of or overlook. Thus, this language does not allege that Security Management's misdeed were exclusively intentional.

Id. at 268-69.

For similar reasons, the United States' allegations that John Klosterman acted "in reckless disregard of the rights of others" includes allegations of conduct that could be characterized at least in part as "accident[al]" or "unintentional" for insurance purposes. For example, although the United States alleges that John Klosterman engaged in conduct such as entering the homes of persons without their

[6] The court applied Wisconsin law, but the same principle applies in Ohio. *See Ohio Govt. Risk Mgt. Plan v. Harrison*, 115 Ohio St.3d 241, 242 (2007).

consent, touching them without their consent, and making unwelcome sexual comments and advances, such conduct may be sufficiently severe and pervasive to violate the Fair Housing Act even if Klosterman did not subjectively intend to violate the law or did not intend to cause the harm that resulted from his conduct. *See* e. g., *Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 725 F.3d 571, 577 (6th Cir. 2013) ("Subjective intent to discriminate is not required to establish a violation" of the Fair Housing Act"); *Physicians Ins. Co. v. Swanson*, 58 Ohio St.3d 189 (1991) (holding that conduct in which tortfeasor intentionally shot a BB gun at an overhead sign in order to scare the victims but alleged that he did not intend to hit them was an "accident" within the meaning of a policy that defined "accident" as "an event * * * that unexpectedly, unintentionally and suddenly causes personal injury.").

Second, the United States' Lawsuit includes not only claims against John Klosterman, but also claims against Susan Klosterman. The complaint alleges that Defendant Susan Klosterman is vicariously liable for the actions of Defendant John Klosterman because of her ownership interests in the various rental properties. Pl. Ex. A ¶ 13. The complaint further alleges that "[d]efendant Susan Klosterman knew or should have known of John Klosterman's discriminatory housing practices, had the authority to take preventive and corrective action, and failed to take reasonable or corrective measures to prevent or redress John Klosterman's conduct." *Id*.

Here, both John *and* Susan Klosterman are Motorists Mutual policyholders. Even assuming that the Policies only provide coverage for unintentional acts,

"liability coverage hinges on whether the act is intentional from the perspective of the person seeking coverage." *Safeco Ins. Co. v. White*, 122 Ohio St.3d 562, 568 (2009); *see also Havel v. Chapek*, 2006-Ohio-7014, 2006 WL 3833871 (Ohio App. 11 Dist. Dec. 29, 2006) (intentional murder committed by policyholders' son did not preclude coverage for negligence claim against policyholders, where policy defined "occurrence" as an "accident"). In *White*, the court considered whether an insurance policy, which insured a mother, father, and son, covered injuries resulting from the son's conviction for battery, an intentional tort. 122 Ohio St.3d at 564-66. Finding that the son's act "from the perspective of his parents, [] was accidental," the court held that "when a liability insurance policy defines an 'occurrence' as an 'accident,' a negligent act committed by an insured that is predicated on the commission of an intentional tort by another person . . . qualifies as an 'occurrence.'" *Id.* at 567-69.

Courts have employed similar reasoning in finding insurance coverage for Fair Housing Act claims based on vicarious liability, even if the alleged injuries would have been excluded had they been caused by the direct acts of the insured policyholder at issue. In *Insurance Co. of the State of Pennsylvania v. City of Long Beach*, 342 Fed. App'x 274 (9th Cir. 2009), the court found that an insurance policy that covered "an accident or event * * * which results in personal injury * * * neither expected nor intended from the standpoint of the insured" covered the city's vicarious liability for intentional housing discrimination carried out by city officials. Although the lower court found that the individual defendants had intentionally harmed the plaintiffs, because "the City was only vicariously, not directly, liable for

the harm caused to the [] plaintiffs," "the harm for which the City was required to pay was 'neither expected nor intended from the standpoint of the insured'," and therefore was covered by the policy. *Id.* at 277. Similarly, in *Brown v. Menszer*, No. Civ.A 99-0790, 2000 WL 1210824, at *3-5 (E.D. La. Aug. 24, 2000), the court concluded that an exclusion for intentional acts did not apply to claims based on the company's vicarious liability for intentional discrimination carried out by its officer and employee. For similar reasons, Motorist Mutual cannot show as a matter of law that its policy excludes claims based on Susan Klosterman's vicarious liability for the sexual harassment carried out by John Klosterman.[7]

B. Motorist Mutual Has Not Established that the Business Exclusion Precludes Coverage for the United States' Claims as a Matter of Law

Motorists Mutual also argues that the policy exclusion for personal injury or property damage "[a]rising out of or in connection with a 'business'" precludes coverage for any of the United States' claims. Motion at 7. The Policy defines "business" as a "trade, profession or occupation." Pl. Ex. D 000004. Motorist Mutual's position thus appears to be that because the John Klosterman sexually harassed his tenants, that conduct necessarily arises out the Klostermans' "trade, profession [and] occupation" as landlords. This argument lacks merit for two reasons.

[7] The decision in *American National General Insurance Company v. L.T. Jackson*, 203 F. Supp. 2d 674 (S.D. Miss. 2001), *aff'd,* 37 Fed. App'x 714 (5th Cir. 2002), is distinguishable from this case. The insurance policy in that case had different operative language than the Policies in this case, and vicarious liability was not at issue.

First, this argument essentially renders other coverages of the Policies that the Klostermans purchased a nullity. As noted previously, coverage for the Klostermans' rental properties is provided through riders and endorsements the Klostermans purchased that specifically extend the coverage otherwise provided by the Policies for personal injuries—including injuries arising out of "invasion of privacy, wrongful eviction, or wrongful entry"—to "additional residence[s] rented to others." Pl. Ex. D 000040, 000043-45. While the basic homeowner's portion of the Policies that applies only to the Klostermans' residence excludes coverage for injuries "arising out of the rental or holding for rental of any premises," the riders specify that this exclusion does not apply to the rental properties added to the Policies through these riders. *Id.* In other words, the Klostermans specifically contracted for additional coverage that would cover their rental properties, eliminating any exclusion for liability that arise out of the rental of such properties. Such coverage would be rendered null if the mere renting of such property could be treated as a "trade, profession or occupation" sufficient to trigger the business exclusion. Indeed, construing the Policies in this way would mean that the additional coverage the Klostermans purchased through the riders was illusory, a result that the Court should avoid. *See Will Repair*, 15 N.E. 3d at 392-93.

Second, the United States alleges that John Klosterman's sexual harassment of his tenants included "making unwelcome sexual comments [and] advances," and "touching female tenants . . . without their consent." Pl. Ex. A ¶ 11. Such conduct "is motivated solely by individual desires" and does not advance the Klosterman's

commercial interests as landlords. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 794 (1998). In *Taco Bell*, the insurer argued that a policy exclusion for injuries "arising out of business pursuits of [the] insured" excluded coverage for a lawsuit alleging sexual harassment of employees. 1998 Ohio App. Lexis 4080, at *6-7. That provision, like the provision at issue here, defined business as "trade, profession, or occupation." *Id*. at *4. The court rejected the insurer's argument, concluding that "activities like sexual harassment . . . would not commonly be considered part of doing 'business,'" and that therefore the policy did not "unambiguously exclude[]" sexual harassment. 1998 Ohio App. Lexis 4080, at *7. Here, like in *Taco Bell*, because John Klosterman's sexual harassment are not a part of his business interests as a landlord, Motorist Mutual has not shown that the business exclusion unambiguously excludes coverage for all claims in the United States' Lawsuit.

IV. Conclusion

For the foregoing reasons, the United States respectfully requests that the Court deny Motorists Mutual's Motion for Declaratory Judgment.

(Signatures on following page)

Dated: December 23, 2019

Respectfully Submitted,

s/Matthew J. Horwitz
MATTHEW J. HORWITZ (0082381)
Assistant U.S. Attorney
United States Attorney's Office
Southern District of Ohio
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45205
Tel: (513) 684-3711
Matthew.Horwitz@usdoj.gov

s/ Katharine F. Towt
TIMOTHY MORAN
Deputy Chief
KATHARINE F. TOWT (MA 690461)
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Northwest Building, 7th Floor
Washington, DC 20530
Phone: (202) 305-8196
Fax: (202) 514-1116
E-mail: Katie.Towt@usdoj.gov

Attorneys for Plaintiff
United States of America

CERTIFICATE OF SERVICE

I certify that on December 23, 2019 I served a copy of the foregoing Statement of Interest on the following via the Court's electronic filing system and by ordinary U.S. Mail:

Jennifer K. Nordstrom
David W. Zahniser
Garvey Shearer Nordstrom, PSC
2400 Chamber Center Dr., Ste.210
Ft. Mitchell KY 41017

John C. Klosterman
5615 Sidney Rd.
Cincinnati OH 45238-1857

Susan Klosterman
5615 Sidney Rd.
Cincinnati OH 45238-1857

s/ Matthew J. Horwitz
MATTHEW J. HORWITZ (0082381)
Assistant United States Attorney