USAA, State Farm win as court narrows cooperation statute scope

Insurance Business

The Colorado Supreme Court just gave insurers a new playbook for defending claims – and it could reshape how cooperation disputes play out statewide.

In a 6-1 decision issued on April 27, 2026, the court ruled that Colorado's failure-to-cooperate statute does not apply when an insurer's defense is based on a policyholder's failure to meet specifically enumerated conditions precedent in a policy. The court also established that exhaustion clauses in excess underinsured-motorist policies are enforceable, but only when triggered by a policyholder's undisputed damages – not by whether the primary insurer has actually cut a check.

The case traces back to a 2017 rear-end collision involving Anthony Wenzell, who had already been through a more serious crash in 2014 that required back surgery. After the second accident, Wenzell filed claims under three policies: the at-fault driver's liability coverage, his own State Farm UIM policy, and a USAA policy held by his brother that extended coverage to family members. The USAA policy included an "other insurance" clause making it excess over any collectible insurance, placing it behind State Farm in the coverage stack.

Both insurers asked Wenzell on several occasions to sign medical release authorizations so they could sort out which injuries came from the 2017 accident and which were tied to his earlier crash. According to the dissenting opinion, the authorizations were broad – they would have given the insurers access to virtually all of Wenzell's medical, psychological, psychiatric, and dental records. Wenzell pushed back, arguing much of that information had nothing to do with the 2017 accident. He provided some records over time but never signed the blanket authorizations.

By 2021, with the statute of limitations closing in, Wenzell sued both insurers for breach of contract and bad-faith delay or denial of benefits. The trial court sided with the insurers on every motion, concluding

that Wenzell had failed to satisfy the conditions precedent in his policies by not providing the requested medical releases. It also found that Wenzell's bad-faith claim against USAA failed because he had not yet exhausted his primary coverage with State Farm. All of Wenzell's claims were dismissed.

The Colorado Court of Appeals reversed in a published 2024 opinion, taking a much broader view of the state's failure-to-cooperate statute, section 10-3-1118, which was enacted in 2020. That statute requires insurers to give policyholders written notice and sixty days to cure before raising a failure-to-cooperate defense. The appeals court found those procedural requirements applied to all defenses based on a policyholder's failure to comply with any policy provision, not just those rooted in a general cooperation clause. It also declared that exhaustion clauses conditioning excess coverage on the primary insurer making a policy-limits payment were void as against public policy.

The Supreme Court agreed in part and disagreed in part. On the cooperation question, the majority found that Colorado common law has long drawn a line between a policyholder's general duty to cooperate and the specific duties laid out as conditions precedent in a policy. A general cooperation clause is the broad language requiring a policyholder to assist with investigations and provide evidence. Conditions precedent are the specific, enumerated actions a policyholder must take – like signing a medical release – before coverage kicks in. To win on a general cooperation defense, an insurer must show actual prejudice. A conditions-precedent defense carries no such burden.

The court acknowledged that the statute's use of the word "cooperate" was ambiguous, since it could mean either the everyday sense of working together or the narrower, contract-specific meaning familiar in insurance law. Turning to legislative history, the court examined testimony from the 2020 House Judiciary Committee hearing on the bill. Legislators appeared divided on the question. The bill's sponsor described cooperation as broadly undefined and subject to insurer discretion, suggesting the statute was meant to rein in that discretion. Another committee member, however, implied that policies would continue to define cooperation on their own terms. Without a clear signal that the legislature intended to override the common-law distinction, the court declined to read one into the statute.

The practical result: when USAA and State Farm argued that Wenzell failed to provide adequate medical releases, they were relying on specific conditions precedent in the policies, not the general cooperation clause. Section 1118's notice-and-cure requirements did not apply, and the insurers were free to assert those defenses without having followed the statute's procedures.

The majority did add a notable caveat. The ruling, the court said, should not be read as an invitation for insurers to create novel or unduly onerous conditions precedent to sidestep the statute. Insurers who do so could still face statutory bad-faith claims.

On the exhaustion question, the court sided with a federal district court's reasoning in Ligotti v. Allstate Fire & Casualty Insurance Co. (2023) and adopted what is known as the undisputed-damages approach. Under this framework, an excess UIM insurer's obligation to investigate, adjust, and pay a claim is triggered when a policyholder demonstrates undisputed damages that exceed the combined limits of all underlying policies. It does not depend on whether the primary insurer has actually paid out its limits.

The court offered three reasons. First, conditioning excess coverage on a primary insurer's payment would impermissibly limit statutorily mandated coverage under existing Colorado precedent. Second, the approach keeps the statutory UIM scheme consistent by ensuring that neither primary nor excess UIM insurers can use setoffs tied to underlying payments to reduce their own obligations. Third, the court was not persuaded that the standard would invite inflated claims, since policyholders must still prove their undisputed damages clear the underlying limits before an excess policy is triggered.

Wenzell had claimed at least $2.7 million in medical costs from the 2017 accident, which, if accurate, would far exceed the underlying coverage. But the insurers disputed whether those costs were actually tied to the 2017 crash or to his 2014 injuries. Without a medical release, that question remained unresolved, and the court found material issues of fact still in play.

The practical outcome for Wenzell was not good. On remand, the court directed the trial court to grant summary judgment to both insurers on the conditions-precedent issue, which also required dismissal of his bad-faith claims. The exhaustion clause was upheld as valid, though the court clarified it must be measured by undisputed damages rather than payment from the primary insurer.

The lone dissenter, Justice Berkenkotter, agreed with the majority on the exhaustion issue but sharply criticized its reading of the cooperation statute. The dissent argued that the statute's plain language makes no distinction between general and specific duties to cooperate and that the legislative history overwhelmingly showed lawmakers intended the statute to cover exactly the kind of dispute at issue – insurers requesting blanket medical authorizations and then seeking dismissal when policyholders resist. The dissent warned that the majority's approach would allow insurers to effectively choose whether section 1118 applies by simply labeling their defense as a conditions-precedent claim rather than a

cooperation claim, incentivizing ever-more-detailed policy language designed to avoid the statute's protections.

The case drew significant attention from the insurance industry. The National Association of Mutual Insurance Companies, the American Property Casualty Insurance Association, the Colorado Defense Lawyers Association and Colorado Civil Justice League, the Colorado Trial Lawyers Association, the Rocky Mountain Association of Public Insurance Adjusters, and United Policyholders all filed amicus briefs.

For insurers operating in Colorado, the decision offers a degree of certainty on two fronts. Policy language requiring specific actions as conditions precedent – such as signing medical authorizations – can be enforced without following section 1118's procedures, at least as long as those conditions are not designed in bad faith. And excess UIM carriers now have a clear standard for when their coverage obligations begin: when a policyholder's undisputed damages cross the underlying limits, not when the primary carrier pays up.