No. A21-0240

STATE OF MINNESOTA
IN SUPREME COURT

St. Matthews Church of God and Christ,

Appellant,

vs.

State Farm Fire and Casualty Insurance Company,

Respondent.

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

United Policyholders respectfully submits this brief as *amicus curiae* in support of Appellant St. Matthews Church of God and Christ ("St. Matthews") to assist the Court in interpreting the minimum coverage requirements of Minn. Stat. § 65A.10.[1]

United Policyholders is a non-profit 501(c)(3) organization founded in California in 1991 and is a voice and information resource for insurance consumers and policyholders in all fifty states, whether businesses or individuals. United Policyholders is dedicated to educating individuals and businesses about insurance issues and consumer rights. One of the ways that United Policyholders protects the interests of policyholders and advocates on their behalf is through participation as *amicus curiae* in insurance claim and coverage cases throughout the country. Donations, foundation grants, and volunteer labor support United Policyholders' work; it does not accept any funding whatsoever from insurance companies.

Information and arguments from United Policyholders' briefs have been cited by the United States Supreme Court, as well as state and federal appellate courts. *See, e.g.*, *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999). In the instant matter, United Policyholders seeks to fulfill the "classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). As commentators have stressed, an *amicus curia* are often in a superior

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[1] This brief was authored by Smith Jadin Johnson, PLLC in its capacity as attorneys for Amici. Neither Appellant St. Matthews nor its counsel participated in the drafting of this brief in any way, in whole or in part. Appellant made no monetary contribution toward the preparation or submission of this brief. No person or entity other than *amicus curiae* United Policy Holders, its members, or its counsel made a monetary contribution intended to fund its preparation, contents, or submission.

position to "focus the court's attention on the broad implications of various possible rulings." Robert L. Stern et al., *Supreme Court Practice*, 570-71 (6th ed. 1986) (quoting Bruce J. Ennis, *Effective Amicus Briefs*, 33 CATH U. L. REV. 603, 608 (1984)).

INTRODUCTION

Amicus curiae United Policyholders submit this brief in order to assist the Court in interpreting and applying the minimum coverage requirements afforded by Minn. Stat. § 65A.10. Specifically, this Court has been asked to determine whether Minn. Stat. § 65A.10 requires that a replacement cost insurance policy include coverage for repairs that are mandatory to comply with the building code after a covered loss. As discussed more fully below, the statute unambiguously requires such coverage, and the clear legislative intent supports such an interpretation. Additionally, public policy requires that insurance policies cover repairs that are necessary due to applicable codes and ordinances. Thus, the Court should adopt a clear test that requires building code coverage where, but for the covered peril, the repair would not have been required.

ANALYSIS

I. THE COURT OF APPEALS INCORRECTLY INTERPRETED AND APPLIED MINN. STAT. § 65A.10.

A. The language of Minn. Stat. § 65A.10 is unambiguous.

A statute is ambiguous when "the language is subject to more than one reasonable interpretation." *Hansen v. Robert Half Intern., Inc.*, 813 N.W.2d 906, 915 (Minn. 2012), *quoting Hans Hagen Homes v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007). "When the Legislature's intent is not clearly discernible from the explicit words of the

statute, [the Court] advance[s] to other steps to ascertain the intent of the Legislature." *Id.* Alternatively, when the words of a statute are clear and free from all ambiguity, a court looks only to its plain language, and need not engage in any further construction or interpretation. *See Olmanson v. LeSueur County*, 693 N.W.2d 876 (Minn. 2005); *State v. Townsend*, 941 N.W.2d 108 (Minn. 2020).

Here, the plain language of the statute is clear. The relevant provision states:

> …the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities…

Minn. Stat. § 65A.10, subd. 1(i). There is no reasonable way to interpret this language except that in addition to covering the cost of replacing, rebuilding, or repairing the property, the policy must *also* cover any costs related to adhering to minimum code requirements related to that work. This requirement need not be expanded to correct all code incompliances at the property but must cover the code-required repairs associated with the property damaged by the covered peril. *Id.*; *see also Grill v. N. Star. Mut. Ins. Co.*, No. A13-1012, 2014 WL 274089 (Minn. Ct. App., Jan. 27, 2014), *rev. denied*.

B. The legislative intent of the 1987 amendment to § 65A.10 is clear from the plain language of the statute.

The Statute at issue was enacted in 1967. The relevant provision at issue was added to the Statute in 1987 in a clear effort by the legislature to clarify its intent. Prior to the 1987 Amendment, the Statute simply read:

> Nothing contained in sections 65A.08 and 65A.09 shall be construed to preclude insurance against the cost, in excess of actual cash value at the time any loss or damage occurs, of actually repairing, rebuilding or replacing the insured property.

Minn. Stat. § 65A.10 (1967). Then, twenty years after the statute had first been passed, in 1987, the legislature added the following provision:

> Subject to any applicable policy limits, where an insurer offers replacement cost insurance: (i) **the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities**; and (ii) the insurance coverage may not be conditioned on replacing or rebuilding the damaged property at its original location on the owner's property if the structure must be relocated because of zoning or land use regulations of state or local government. In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property.

Minn. Stat. § 65A.10 (1987) (emphasis added). "A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000), *internal quotations omitted; see Amaral v. St. Cloud Hospital*, 598 N.W.2d 379, 384 (Minn. 1999). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." *Amaral*, 597 N.W.2d at 384.

Here, the intent of the legislature is clear from the plain language of the statute. The 1987 Amendment adds language that was previously lacking to clarify what an insurance policy must cover when replacement cost benefits are provided. Minn. Stat. § 65A.10 (1987). That explanation states, in plain and unambiguous language, that insurance must cover the cost of repairs *in accordance with the minimum code*. *Id.* There is no other reasonable way to interpret that provision except as a requirement that the policy cover the cost of building-code triggered repairs directly related to the covered loss.

Even if the Court accepts State Farm's position that the Statute could be read so restrictively as to only apply to a single discrete material that was already damaged, the "that **portion** of the property" language of the Statute is also susceptible to the broader reading advanced by St. Matthews. The Court must presume the legislature did not intend an absurd or unreasonable result, and that the statute was intended to favor the citizens of Minnesota over the private interests of insurance companies seeking to reduce costs. Minn. Stat. § 645.17(1) and (5) (2021). Weighing these considerations, the Court should conclude the legislature intended full indemnity for a covered loss, including any portions of the loss triggered by the applicable building code.

C. Minn. Stat. § 65A.10 requires that replacement cost insurance policies cover more than direct physical loss.

The Court of Appeals' ruling in this matter incorrectly interpreted and applied the relevant statutory provision. In doing so, the court concluded that unless a covered loss directly damages a discrete building component, then the additional building code coverage does not apply—even if the but-for cause of the code-required repairs was the covered loss and even when the covered repairs cannot be completed without making the building code-required repair.

Replacement cost insurance policies already, by definition, provide coverage for repairs resulting from direct physical loss due to a covered peril. Section 65A.10 would be superfluous if it only applied when a discrete building component is damaged—the policy's primary coverage already covers that. The Statute contemplates coverage for additional costs arising from the repair of that direct physical loss. This is likely why the

legislature used the word "portion" of the property rather than limiting coverage only to "the discrete building component that was damaged." Naturally, Minn. Stat. § 65A.10 requires coverage for costs arising from building code issues *in addition* to the primary coverage which policy already provides. Said another way, when the "but-for" cause of the building code-required repair is a covered loss, Minn. Stat. 65A.10 guarantees the insured will have coverage for those additional costs.

In Minnesota, the building code changes every 6 years, meaning that every home six years or older is susceptible to code-required repairs after a covered loss. *See* https://www.dli.mn.gov/business/codes-and-laws/overview-minnesota-state-building-code. Building codes are in place for a reason: "The purpose of this code is to establish minimum requirements to safeguard the public health, safety, and general welfare." Minn. Admin. R. 1300.0030. The legislature found this directive so compelling that it revised Minn. Stat. § 65A.10 to ensure that in the event of a covered loss, Minnesota citizens would be guaranteed replacement cost coverage that met the applicable codes.

By way of example, an exterior wall in a residential home consists of many layers including a frame foundation, a plywood layer, insulation, a water resistant barrier, and siding. When a covered loss occurs requiring replacement of siding, if any of these parts are out of code compliance, the other parts are less likely to perform their overall function, which is to resist the elements and keep the occupants safe. Accordingly, when replacing the siding, the other layers must be brought up to code to allow the newly-installed siding to perform its function. These components are parts of the same "**portion** of the property," the wall. *See* Minn. Stat. § 65A.10. Accordingly, the entire wall must be covered as "the

damaged portion of the property" to be repaired in accordance with code requirements. *Id.*

In order to effectuate the plain language of the statute and the clear intent of the legislature in the 1987 Amendment, insurance coverage must extend to the overall **portion** of the property that was damaged, rather than just the materials that suffered a direct physical loss. The meaning of "the damaged portion of the property" must include more than the directly physically damaged material. When code requires the damaged material be installed pursuant to a specific standard or in a particular manner, insurance must provide coverage for the full code-compliant repair.

If the Court of Appeals' interpretation is to be followed, homeowners in Minnesota would suffer. For example, a homeowner whose roof is damaged by a falling tree would only be entitled to coverage for the shingles and would not receive any coverage for the updates to the decking that must be completed in order to pass inspection. Taken to an absurd extreme, coverage would not even be required to cover the nails that affix the shingles or siding to the rest of the wall or roof structure. The only reason shingles are nailed to the roof is to comply with the Minnesota State Building Code. Without the obligation to pay for <u>all</u> "cost[s] of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities," insurers could just pay someone to lay the shingles on the roof affixed with Scotch tape without regard to the code or safety and welfare of the property owner.

Those outcomes are contrary to the basic purposes of indemnity and are certainly contrary to the obvious intent of Minn. Stat. § 65A.10. If the Court of Appeals' decision stands, it will have a dramatic and dire effect for thousands of policyholders who cannot

afford additional home repairs which would not otherwise have been necessary absent a covered loss. The Court should establish a bright line rule that building code coverage is triggered when the but-for cause of a building code repair is a covered loss.

II. PUBLIC POLICY DEMANDS THAT INSURANCE POLICIES COVER CODE-REQUIRED REPAIRS.

Insurance is a system designed to provide security and minimize the impact of significant damage by spreading the risk of an individual loss among a large number of policyholders. As explained by Couch on Insurance, "[i]t is characteristic of insurance that a number of risks are accepted, some of which will involve losses, and that such losses are spread over all the risks in a way that enables the insurer to accept each risk at a slight fraction of the possible liability upon it." § 1:9. Nature of agreement as determining insurance character—Transfer of risk, 1 Couch on Ins. § 1:9. Accordingly, every mortgage company in Minnesota requires homeowners to purchase property insurance, both as protection for the homeowner and to protect the bank's collateral on the mortgage. The homeowners pay their set premiums and applicable deductibles to the insurance company, and in return they are to be made whole after a loss. Many insureds will never suffer a significant loss, and yet they contribute to the insurance pool so that when any insured suffers damage, it is not a catastrophic event to that individual.

If insurance policies are not required to cover code-required repairs, insureds will suffer an individualized catastrophic loss even after paying their insurance premiums and deductibles, and the insurance policy would not serve it purpose. In countless claims, insureds' roofs or walls are damaged by storms, fire, or other causes. The shingles and the

siding are often the part of these structures that take the brunt of the damage. Upon removing the shingles or the siding, the underlying component parts of the roof or wall may require repair or replacement to meet current code requirements. Specifically, the code requirements for installation of the new shingles or siding may require repairs to the underlying surface so they can be properly affixed and positioned.

If this repair to underlying roof or wall structure is not covered by insurance, homeowners will be forced to pay a significant amount of money to make repairs that were only necessary because they experienced a covered loss. A homeowner is not required to inspect their home and bring every component up to code when the code changes every six years. However, when damage occurs and repairs are required, they must be completed in accordance with the code applicable at the time of the repairs.

A. Insureds reasonably expect insurance will cover code-required repairs.

Insureds expect that when they have a loss, they will pay their predetermined deductible and their home will be restored to the condition it is prior to the loss. If insurance does not cover the repairs required to make those repairs to the building code standards, insureds will be left with a significant and unexpected cost that most cannot afford and none of them expected. To come out of pocket for repairs that are only required because of a covered event affecting a portion of the property defies all logical expectation of any insured.

An even more egregious scenario arises when an insured does not discover the underlying code deficiency until after removing the outer components. Insureds often discover that the internal portions of a wall or roof do not meet code only after they remove

the external portions of the wall or roof. This leaves them with an exposed portion of the property that is not weatherproof, and repairs cannot continue until someone pays to restore the internal components to code. This can lead to further damage while the insured finds a way to obtain additional funds, or the property remains in disrepair because the insured cannot afford uninsured repairs.

Insureds do not anticipate incurring large out of pocket costs beyond their deductible when they experience a covered peril. Most property owners in Minnesota cannot afford an unexpected bill for thousands of dollars to repair a problem they only had due to a covered loss that they believed they had purchased insurance to guard against. The Minnesota legislature saw fit to require code coverage for all code-required repairs necessary to restore the damaged property, beyond just the material that is directly physically damaged. Otherwise, the legislature would have written Minn. Stat. § 65A.10 to provide code coverage only "to that material that is damaged" instead of "that **portion** of the property."

B. Insureds must be allowed to recover the replacement cost benefits of the policy.

Basic property insurance provides for payment of the actual cash value ("ACV") of the lost or damaged property. However, nearly all policies for residential and commercial buildings in Minnesota provide for replacement cost value ("RCV") coverage. Insurance companies charge an additional premium to provide RCV coverage to policyholders, and this insurance is required by virtually all mortgage companies with a security interest in real property.

After a claim is made, the insurer will pay the ACV amount of the coverage. The insurer will only issue payment of the RCV portion upon a showing that the insured actually incurred that cost and made the subject repair. Repairs must be completed within a specified timeframe, otherwise the RCV amount will not be recoverable. Many policies require repairs be completed within two-years of the date of loss, while some provide only 6 months to make repairs. *See e.g. Colby Lake Fourth Ass'n. v. Hiscox Ins. Co., Inc.* 2021 WL 3611276 at *3 (Minn. Ct. App. Aug. 10, 2021) (referencing a requirement that repairs be made within 200 days of the loss in order to receive RCV benefits).

If insurers are not required to pay to bring the other component parts up to code, then the policyholder must pay this additional unexpected expense out of their own pocket in order to make any repairs. If an insured cannot pay these extra costs, they will not be able to make repairs to the directly damaged property, as building inspectors will not allow non-compliant work to continue. Accordingly, the insured will not have a way to recover the RCV potion of the insurance coverage. The insurance company will substantially benefit because repairs will be impossible and the RCV payment will not become due. This will almost certainly also constitute a breach of any applicable mortgage contract, which includes provisions requiring that the homeowner make necessary repairs following a loss. *See, e.g.,* Minnesota Uniform Conveyancing Blanks, Form 20.1.1 (2011), Mortgage by Individual(s). Policyholders who have already suffered a significant loss that they are unable to fully repair will also face foreclosure for breaching their mortgage agreement.

The end result will be that most insureds will not be able to afford to bring the underlying components up to code to collect the RCV benefit that they paid for, leaving

many properties with damaged exteriors that are never repaired. In turn, home values will decrease, homeowners will face foreclosure, and sellers will have incentive to conceal damage when selling the property. The Court must guard against and protect the insureds' ability to claim their replacement cost coverage.

III. THE COURT SHOULD ADOPT A BUT-FOR TEST.

The only way to provide meaning to Minn. Stat. § 65A.10 is to create a clear test that requires building code coverage where, but for the covered peril, the repair would not have been necessary. Such a test would provide necessary coverage when the code-required work is necessary to fully repair the covered peril but would also protect against snowballing into overly expansive coverage.

For example, in order to install drywall, the wall support must meet code or there is nothing to install the drywall on. A roof must have stable decking to properly affix the shingles, and must have proper water barrier, seams, and transitions or it cannot serve its purpose of keeping water out of the structure. When an insured is required to make repairs to their property that they would not have been required to make prior to the covered loss, it must be covered.

If the covered peril is the but-for cause of code required work to the property, then the plain language and clear legislative intent of Minn. Stat. § 65A.10 require that it be covered under a replacement cost value policy.

CONCLUSION

For the foregoing reasons, *amicus curiae* United Policyholders respectfully requests that this Court reverse the judgment of the court of appeals and adopt a clear test that

requires building code coverage where, but for the covered peril, the repair would not have been required.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for *amicus curiae* United Policyholders certifies that this brief complies with the requirements of Minn. R. Civ. App. P. 132.01 in that it is printed in 13-point proportionally spaced typeface, and the length of this brief is 3518 words. This document was prepared using Microsoft Word 360.

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