

FILED
SUPREME COURT
STATE OF WASHINGTON
5/13/2022 1:45 PM
BY ERIN L. LENNON
CLERK

Case No. 100168-1

SUPREME COURT OF THE STATE OF WASHINGTON

SEATTLE TUNNEL PARTNERS,

Plaintiff-Petitioner,

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION,

Plaintiff-Petitioner,

HITACHI ZOSEN U.S.A. LTD.,

Intervenor-Plaintiff,

vs.

GREAT LAKES REINSURANCE (UK) PLC, et al.,

Defendants-Respondents.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
OF UNITED POLICYHOLDERS

Gabriel E. Verdugo,
WSBA #44154
KELLER ROHRBACK LLP
1201 Third Avenue
Suite 3200
SEATTLE, WA 98101-3052
(206) 623-1900
gverdugo@kellerrohrback.com

Joseph D. Jean
Janine M. Stanisz
Benjamin D. Tievsky
Maria T. Galeno
Scott D. Greenspan
PILLSBURY WINTHROP
SHAW PITTMAN LLP
31 West 52nd Street
New York, NY 10019
(212) 858-1000
joseph.jean@pillsburylaw.com
janine.stanis�@pillsburylaw.com
benjamin.tievsky@pillsburylaw.com
maria.galeno@pillsburylaw.com
scott.greenspan@pillsburylaw.com

Attorneys for Amicus Curiae United Policyholders

I. IDENTITY AND INTEREST OF MOVING PARTY

United Policyholders (UP) seeks leave to file an *amicus curiae* brief. Founded in 1991, UP is a non-profit organization that serves as a voice and information resource for insurance consumers in all 50 states. UP is a tax-exempt § 501(c)(3) entity sustained by individual and corporate donations and grants from foundations. Volunteers across the country donate thousands of hours each year to support the organization's work. Through its *Roadmap to Recovery*TM program, UP promotes insurance and financial literacy, and helps individuals navigate the insurance claim process and recover fair and timely settlements. UP provided long term recovery and insurance problems-solving assistance to victims of the Carlton Complex Fire in Pateros, Washington, and is currently providing similar assistance to households impacted by the 2020 Labor Day Complex fires in Okanogan and Douglas Counties. Additionally, through its *Advocacy and Action* program, UP solves claims and related coverage problems by

working with public officials, other non-profit and faith-based organizations, and a diverse range of other entities, including insurers and producers.

UP Executive Director Amy Bach has served as an official, appointed consumer representative to the National Association of Insurance Commissioners (NAIC) since 2009 and works closely with Insurance Commissioner Mike Kreidler and the Washington Office of the Insurance Commissioner on issues affecting insurance Washington residents. Former Insurance Commissioner Deborah Senn completed a term of service on the U.P. Board of Directors.

UP regularly submits informed *amicus curiae* briefs in cases involving insurance principles that are likely to impact large segments of the public and business community. UP has filed *amicus curiae* briefs in numerous cases nationwide and its arguments have been adopted by state and federal appellate and supreme courts. Notably, UP's *amicus curiae* brief was cited in the U.S. Supreme Court's opinion in *Humana Inc. v. Forsyth*,

525 U.S. 299, 314 (1999). In Washington, UP submitted *amicus* briefs in important cases such as *Preferred Contractors Ins. Co. v. Baker and Son Construction, et al.* (Case No. 1000466-4); *McLaughlin v. Travelers Commercial Ins. Co.*, 196 Wn.2d 631, 476 P.3d 1032 (2020); *Thornell v. Seattle Serv. Bureau, Inc.*, 184 Wn.2d 793, 363 P.2d 587 (2015); *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 45 P.3d 1068 (2002); *Kent Farms, Inc. v. Zurich Ins. Co.*, 140 Wn.2d 396, 998 P.2d 292 (2000); and *Mathis v. State Farm Mut. Auto. Ins. Co.*, 230 F.3d 1376 (9th Cir. 2000) (unpublished).

II. RELIEF SOUGHT

UP seeks leave to file an *amicus curiae* brief which is filed contemporaneously with this motion.

III. RECORD RELEVANT TO MOTION

Undersigned counsel are authorized by UP to file the *amicus curiae* brief on its behalf. Counsel have read the briefs, reviewed the record on appeal, and researched relevant authority.

IV. ARGUMENT FOR GRANTING MOTION

UP has an interest in this case because this Court's interpretation of the "direct physical loss" or "damage" coverage trigger language in the first-party commercial property insurance policy at issue in this case and in many other insurance coverage cases pending in Washington state courts is of immense importance to and affects many Washington policyholders. UP's amicus brief seeks to provide the Court perspective on the genesis and historical interpretation of the trigger language. As such, UP 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., Inc. v. Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). Because this case could affect insurance consumers across Washington, UP is particularly well-suited to provide necessary background and authority as an *amicus curiae*. See RAP 10.6(b).

V. CONCLUSION

UP respectfully asks the Court to grant leave to file the *amicus curiae* brief.

RESPECTFULLY SUBMITTED this 13th day of May,
2022.

I hereby certify that this document contains 629 words in
accordance with RAP 18.17.

By /s/ Gabriel E. Verdugo
Gabriel E. Verdugo,
WSBA #44154
KELLER ROHRBACK LLP
1201 Third Avenue
Suite 3200
SEATTLE, WA 98101-3052
(206) 623-1900
gverdugo@kellerrohrback.com

Joseph D. Jean
Janine M. Stanisz
Benjamin D. Tievsky
Maria T. Galeno
Scott D. Greenspan
PILLSBURY WINTHROP
SHAW PITTMAN LLP
31 West 52nd Street
New York, NY 10019
(212) 858-1000
joseph.jean@pillsburylaw.com
janine.stanisz@pillsburylaw.com
benjamin.tievsky@pillsburylaw.com
maria.galeno@pillsburylaw.com
scott.greenspan@pillsburylaw.com

Attorneys for Amicus Curiae United Policyholders

CERTIFICATE OF SERVICE

I, Jeffrey S. McClimans, certify that on the date below, I caused a copy of the foregoing document to be served, via the Supreme Court File Upload Manager, on the individuals identified below:

Robert W. Ferguson
ATTORNEY GENERAL
STATE OF WASHINGTON
Guy W. Bowman
Transportation and Public
Construction Division
7141 Cleanwater Drive SW
Olympia, WA 98504-0113

Richard O. Prentke
V. L. Woolston
Nicholas P. Gellert
Lester O. Brown
Vivek Chopra
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099

Leonard J. Feldman
PETERSON | WAMPOLD |
ROSATO | FELDMAN | LUNA
1001 Fourth Avenue
Suite 4131
Seattle, WA 98154

David R. Goodnight,
Karl F. Oles
Rachel Groshong
Jill D. Bowman
STOEL RIVES LLP
600 University Street
Suite 3600
Seattle, WA 98101

Joseph L. Luciana
DINGESS, FOSTER,
LUCIANA, DAVIDSON &
CHLEBOSKI, LLP
20 Stanwix Street, 3rd Floor
Pittsburgh, PA 15222

Dale Kingman
John D. Cadagan
GORDON TILDEN
THOMAS & CORDELL LLP
600 University Street
2915
Seattle, WA 98101

Philip A. Talmadge
TALMADGE / FITZPATRICK
2775 Harbor Avenue SW,
Third Floor, Suite C
Seattle, WA 98126

Matthew L. Gonzalez
Daniel Millea
ZELLE LLP
45 Broadway, Suite 920
New York, NY 10006

SIGNED this 13th day of May, 2022, at Seattle, Washington.

/s/ Jeffrey S. McClimans
Legal Assistant/Paralegal

KELLER ROHRBACK L.L.P.

May 13, 2022 - 1:45 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,168-1
Appellate Court Case Title: Seattle Tunnel Partners, et ano. v. Great Lakes Reinsurance (UK) PLC, et al.

The following documents have been uploaded:

- 1001681_Motion_Plus_20220513133918SC402861_1408.pdf

This File Contains:

Certificate of Service

Motion 1 - Amicus Curiae Brief

The Original File Name was Motion for Leave to File Brief of Amicus United Policyholders - Seattle Tunnel.pdf

A copy of the uploaded files will be sent to:

- Guy.Bowman@atg.wa.gov
- bart.reed@stoel.com
- benjamin.tievsky@pillsburylaw.com
- cbone@perkinscoie.com
- cgraham@gordontilden.com
- chudson@gordontilden.com
- david.goodnight@stoel.com
- dggalvin@hotmail.com
- dkingman@gordontilden.com
- dmillea@zelle.com
- eevans@gordontilden.com
- feldman@pwrfl-law.com
- gbogusz@gordontilden.com
- gpendleton@gordontilden.com
- gverdugo@kellerrohrback.com
- hkrug@kmclaw.com
- janine.stanisiz@pillsburylaw.com
- jay.dealy@pillsburylaw.com
- jcadagan@gordontilden.com
- jenniferb@vulcan.com
- jessica.sparks@stoel.com
- jessicar@vulcan.com
- jill.bowman@stoel.com
- jluciana@dflegal.com
- jmclimans@kellerrohrback.com
- joseph.jean@pillsburylaw.com
- karl.oles@stoel.com
- lbrown@perkinscoie.com
- malaika.thompson@stoel.com
- maria.galeno@pillsburylaw.com
- matt@tal-fitzlaw.com
- mbludorn@gordontilden.com

- mgonzalez@zelle.com
- michael.mccormack@bullivant.com
- mpierce@gordontilden.com
- nancy.masterson@stoel.com
- ngellert@perkinscoie.com
- phil@tal-fitzlaw.com
- rachel.groshong@stoel.com
- rprentke@perkinscoie.com
- scott.greenspan@pillsburylaw.com
- tpcef@atg.wa.gov
- vchopra@perkinscoie.com
- vwoolston@perkinscoie.com

Comments:

Sender Name: Jeffrey McClimans - Email: jmclimans@kellerrohrback.com

Filing on Behalf of: Gabriel Ernest Verdugo - Email: gverdugo@kellerrohrback.com (Alternate Email:)

Address:

1201 3rd Ave

Ste 3200

Seattle, WA, 98101

Phone: (206) 623-1900

Note: The Filing Id is 20220513133918SC402861