

Colorado Court of Appeals 2 East 4th Avenue Denver, CO 80203	DATE FILED: June 20, 2024 3:22 PM FILING ID: 11805B2FFBB40 CASE NUMBER: 2024CA34		
Denver District Court 2021CV30695			
<p>Plaintiffs-Appellants: SPECTRUM RETIREMENT COMMUNITIES, LLC, et al.,</p> <p>v.</p> <p>Defendant-Appellee: CONTINENTAL CASUALTY COMPANY</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2024CA34</p>		
<p>ATTORNEYS FOR <i>AMICUS CURIAE</i> UNITED POLICYHOLDERS</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Allan B. Moore (<i>Of Counsel</i>) Justin T. Howell (<i>Of Counsel</i>) Jad Khazem (<i>Of Counsel</i>) COVINGTON & BURLING, LLP One CityCenter 850 Tenth Street, NW Washington, DC 20001-4956 Telephone: (202) 662-5458 abmoore@cov.com jhowell@cov.com jkhazem@cov.com </td> <td style="width: 50%; vertical-align: top;"> Stephen B. Shapiro, No. 13464 Garth A. Gersten, No. 51855 OTTESON SHAPIRO LLP 7979 E. Tufts Avenue, Suite 1600 Denver, Colorado 80237 Telephone: (720) 488-0220 Facsimile: (720) 488-7711 sbs@os.law garth@os.law </td> </tr> </table>		Allan B. Moore (<i>Of Counsel</i>) Justin T. Howell (<i>Of Counsel</i>) Jad Khazem (<i>Of Counsel</i>) COVINGTON & BURLING, LLP One CityCenter 850 Tenth Street, NW Washington, DC 20001-4956 Telephone: (202) 662-5458 abmoore@cov.com jhowell@cov.com jkhazem@cov.com	Stephen B. Shapiro, No. 13464 Garth A. Gersten, No. 51855 OTTESON SHAPIRO LLP 7979 E. Tufts Avenue, Suite 1600 Denver, Colorado 80237 Telephone: (720) 488-0220 Facsimile: (720) 488-7711 sbs@os.law garth@os.law
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<p>MOTION FOR LEAVE TO SUBMIT BRIEF OF <i>AMICUS CURIAE</i> UNITED POLICYHOLDERS IN SUPPORT OF PLAINTIFFS-APPELLANTS</p>			

Pursuant to Rule 29 of the Colorado Rules of Appellate Procedure, United Policyholders (“UP”) respectfully requests leave to file the accompanying brief as *amicus curiae* in support of Plaintiffs-Appellants in this matter. In support, UP states as follows:

STATEMENT OF INTEREST OF *AMICUS CURIAE*

UP is a tax-exempt, non-profit organization whose mission is to serve as a resource and advocate for insurance consumers across the country. For more than 30 years, UP has provided a counterweight to resources and legal arguments advanced by the well-financed insurance industry to ensure a more fully informed and evenhanded development of the nation’s insurance laws. UP is funded by donations and grants and does not sell insurance or accept money from insurance companies.

In this case, UP seeks to assist the Court—by identifying arguments and authorities that have escaped, or been misunderstood by, the court below and the federal courts in Colorado—on an issue of immense public importance: the existence of, and basis for, property and business interruption insurance coverage under insurance-industry-standard language in commercial property insurance policies and governing Colorado law, for losses caused by COVID-19.

I. UNITED POLICYHOLDERS IS A NATIONALLY RECOGNIZED LEADER IN THE PROTECTION OF POLICYHOLDER RIGHTS.

Since 1991, UP has operated as a dedicated information resource for insurance consumers throughout the United States. Public officials, state regulators, academics, and journalists routinely seek UP's input on insurance and related legal matters. A representative of UP serves on the Federal Advisory Committee on Insurance, which briefs the Federal Insurance Office and, in turn, the U.S. Treasury Department, and UP's Executive Director has been an official consumer representative to the National Association of Insurance Commissioners for the past 15 years. In these roles, UP assists regulators in monitoring policy language and claim practices and in the development of model laws and regulations.

In Colorado, UP has been engaged with public officials in El Paso, Boulder, and Larimer counties, and the Colorado Insurance Commissioner's office, since 2010, when UP began providing local recovery support services to residents and businesses after a series of wildfires and flooding events. Loss adjustment, construction, and financing delays during the recovery process led UP to help draft and support the Colorado Homeowners Insurance Act of 2013.

In addition to general advocacy, UP has filed *amicus curiae* briefs in federal and state appellate courts in cases, like this one, of exceptional importance to

insurance consumers, including, on at least nine prior occasions, before this Court or the Colorado Supreme Court. *See, e.g., Rumnock v. Anschutz*, 384 P.3d 1262, 1263, 1265-66 (Colo. 2016); *MarkWest Energy Partners, L.P. v. Zurich Am. Ins. Co.*, 411 P.3d 1080, 1080 (Colo. App. 2016). Various appellate courts, including the U.S. Supreme Court, also have favorably cited UP *amicus curiae* briefs in their opinions. *See, e.g., Humana Inc. v. Forsyth*, 525 U.S. 299, 314 (1999); *Allstate Prop. & Cas. Ins. Co. v. Wolfe*, 105 A.3d 1181, 1185-86 (Pa. 2014).

II. UNITED POLICYHOLDERS' BRIEF WILL ASSIST THE COURT.

The brief that UP has prepared in this matter is highly likely to assist the Court on an important issue to many Colorado policyholders—i.e., the availability of insurance coverage under the plain language of standard commercial property insurance policies and governing Colorado law for COVID-19-related property and business income losses. UP's brief will provide this assistance by drawing the Court's attention to controlling case law that the court below and federal courts in Colorado have either ignored or misunderstood. Also, UP's brief will supplement the parties' submissions by providing a broader perspective in regard to how courts and commentators nationwide have analyzed and understood the relevant Colorado precedents and the broad protections they afford to policyholders under commercial property insurance policies. This is a quintessential role for an *amicus*

curiae. See *Funbus Sys., Inc. v. CPUC*, 801 F.2d 1120, 1125 (9th Cir. 1986) (describing “the classic role of *amicus curiae* [as] assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that might otherwise escape consideration”) (citation omitted).

In this connection, it bears emphasis that, while insurance companies like Defendant-Appellee here are “repeat players” in coverage disputes who can harness massive resources to support their positions, most policyholders, like Plaintiffs-Appellees, are not and may have little experience with the insurance policy language, doctrines, and principles at issue. See *Owners Ins. Co. v. Dakota Station II Condo. Ass’n, Inc.*, 443 P.3d 47, 56 (Colo. 2019) (Samour, J., concurring in part and dissenting in part) (discussing the “imbalance of power” between policyholders and insurers in the appraisal process); see also *Travelers Ins. Co. v. Budget Rent-A-Car Sys., Inc.*, 901 F.2d 765, 771 (9th Cir. 1990) (describing insurance companies as “institutional litigants”). Allowing UP to submit is brief, as a policyholder advocate steeped in insurance law, may be one small step to ensure a modicum of balance in this regard.

Accordingly, UP respectfully requests leave to file the attached *amicus curiae* brief, which has been prepared by undersigned counsel on a pro bono basis, in support of Plaintiffs-Appellants.

Dated: June 20, 2024

Respectfully submitted,

By: /s/ Garth A. Gersten

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CERTIFICATE OF SERVICE

I certify that, on June 20, 2024, a true and correct copy of the foregoing was filed and served via the Colorado Courts E-Filing system on all counsel of record.

/s/ Shannon Salcedo
PARALEGAL