

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED September 4, 2025 11:02 AM FILING ID: 208EA93F543A8 CASE NUMBER: 2025SC433</p>			
<p>CERTIORARI TO THE COLORADO COURT OF APPEALS Case No. 24CA34 Opinion for the Court by Judge Schutz (Kuhn, J., concurring) Opinion concurring in part and dissenting in part by Judge Welling</p>				
<p>CITY AND COUNTY OF DENVER DISTRICT COURT Case No. 2021CV30695 Honorable Martin F. Egelhoff, Judge Honorable Jon J. Olafson, Judge</p>				
<p><b>Petitioners:</b> SPECTRUM RETIREMENT COMMUNITIES, LLC, et al.,</p> <p>v.</p> <p><b>Respondent:</b> CONTINENTAL CASUALTY COMPANY</p>		<p>▲ COURT USE ONLY ▲</p> <p>Case Number: 2025SC433</p>		
<p><b>ATTORNEYS FOR <i>AMICUS CURIAE</i></b> <b>UNITED POLICYHOLDER</b></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Allan B. Moore (<i>Of Counsel</i>) Jad H. Khazem (<i>Of Counsel</i>) COVINGTON &amp; BURLING, LLP One CityCenter 850 Tenth Street, NW Washington, DC 20001-4956 Telephone: (202) 662-5458 <a href="mailto:abmoore@cov.com">abmoore@cov.com</a> <a href="mailto:jkhazem@cov.com">jkhazem@cov.com</a></p> </td> <td style="width: 50%; vertical-align: top;"> <p>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 <a href="mailto:sbs@os.law">sbs@os.law</a> <a href="mailto:garth@os.law">garth@os.law</a></p> </td> </tr> </table>		<p>Allan B. Moore (<i>Of Counsel</i>) Jad H. Khazem (<i>Of Counsel</i>) COVINGTON &amp; BURLING, LLP One CityCenter 850 Tenth Street, NW Washington, DC 20001-4956 Telephone: (202) 662-5458 <a href="mailto:abmoore@cov.com">abmoore@cov.com</a> <a href="mailto:jkhazem@cov.com">jkhazem@cov.com</a></p>	<p>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 <a href="mailto:sbs@os.law">sbs@os.law</a> <a href="mailto:garth@os.law">garth@os.law</a></p>	
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<p><b>UNITED POLICYHOLDERS' MOTION FOR LEAVE TO APPEAR AS <i>AMICUS CURIAE</i> AND FILE A BRIEF OF IN SUPPORT OF PETITIONERS</b></p>				

Pursuant to C.A.R 53(g), United Policyholders (“UP”) respectfully requests leave to file the accompanying brief as *amicus curiae* in support of the Petitioners in this matter. In support, UP states as follows:

**I. STATEMENT OF INTEREST OF *AMICUS CURIAE***

UP is a nationally recognized insurance law expert and non-profit advocacy group for policyholder rights across the country. For more than 30 years, UP has provided a counterweight to what it has considered unsound or overly aggressive legal arguments advanced by the well-financed insurance industry to ensure a more fully informed and evenhanded development of the nation’s insurance laws and related jurisprudence. Public officials, state regulators, academics, and journalists routinely seek, consider, and rely upon UP’s input on insurance and related legal matters. Donations, foundation grants, and volunteer labor support the organization’s work; UP does not accept funding from insurance companies.

UP has been granted leave to file *amicus curiae* briefs in state and federal appellate courts nationwide in cases, like this one, of exceptional

importance to insurance consumers—including, on at least eleven prior occasions, before this Court or the Colorado Court of Appeals. *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).<sup>1</sup> In fact, UP moved below and was granted leave to file a brief as *amicus curiae* in support of Petitioners in the appellate proceedings in this case. *See Spectrum Retirement Communities, LLC v. Continental Casualty Co.*, Case No. 2024CA34 (July 19, 2024 Order). Numerous appellate courts, including the U.S. Supreme Court, 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); *see also Rumnock v. Anschutz*, 384 P.3d 1262, 1265-66 (Colo. 2016) (Coats, J., dissenting, joined by Eid, J.).

UP has a significant interest in the current appeal because of the far-reaching and adverse effects that the Division’s split decision below

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<sup>1</sup> *See generally* United Policyholders Amicus Library, <https://uphelp.org/amicus-briefs/> (accessed September 4, 2025).

is likely to have on Colorado policyholders, if not considered and reversed by this Court. By reading the coverage grant of a standard-form, “all-risks” commercial property insurance policy in a manner that does not provide coverage for *partial* loss of use or function of insured property, the majority’s decision below imposed a substantial limitation on insurance recoveries that, in UP’s assessment, runs contrary to the policy language, settled Colorado law, and the longstanding expectations of purchasers of commercial property insurance. UP and the policy-owning public whose interests UP seeks to protect have a strong interest in ensuring that this Court reviews this coverage-defeating decision and interpretation.

## **II. UNITED POLICYHOLDERS’ BRIEF WILL ASSIST THE COURT.**

As a seasoned advocate for policyholder rights with longstanding experience in judicial advocacy and detailed knowledge of the specific issues presented in this appeal, UP is well-equipped to assist the Court in deciding whether to take up this important insurance coverage appeal.

First, UP’s brief will assist the Court by calling attention to authorities in Colorado and nationwide that have interpreted the standard-form commercial property insurance coverage grant at issue, which promises coverage for “direct physical loss of or damage to” property, to encompass partial loss of use or function of property. *See, e.g., Logan Irrigation Dist. v. Holt*, 133 P.2d 530, 534 (Colo. 1943) (“Amici curiae, in the briefs presented, have called attention to authorities from other jurisdictions, which have been helpful in shedding light upon this subject.”); *Funbus Sys., Inc. v. CPUC*, 801 F.2d 1120, 1125 (9th Cir. 1986) (describing “the classic role of amicus curiae” as “drawing the court’s attention to law that might otherwise escape consideration”) (citation omitted).

Second, UP’s provision of expertise in insurance law can help “even the playing field” in the resolution of this high-stakes appeal. While insurance companies like Respondent are “repeat players” in coverage disputes, who can harness massive resources and industry support to advance their positions, most policyholders, like Petitioners, are not and may have little experience with the insurance policy

language, precedents, and principles at issue. *See, e.g., Owners Ins. Co. v. Dakota Station II Condo. Ass'n, Inc.*, 2019 CO 65, ¶59 (Samour, J., concurring in part and dissenting in part) (discussing the “imbalance of power” between policyholders and insurers in the appraisal process); *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 its *amicus* brief, as a policyholder advocate steeped in insurance law with capacity to offer a nationwide perspective, would be a step toward providing some modicum of balance in this regard.

Third, particularly in an appeal of this importance, the equities support granting the courtesy of leave to file to a nonprofit *amicus* organization, like UP, that seeks to assist the Court *pro bono* by donating its time and subject-matter expertise. This Court has long “welcomed the appearance and argument of amici curiae,” especially on a *pro bono* basis, recognizing that “[i]t speaks well for the profession when learned and distinguished members of it ... are willing, without fee or reward,” to contribute their insights “in cases of grave

consequence.” *Mitchell v. People*, 232 P. 685, 687 (Colo. 1924); *see also* *People v. Max*, 198 P. 150, 151 (Colo. 1921) (“We desire here to express our very great appreciation of the aid given us by the able and exhaustive briefs filed in these cases by amici curiae.”).

Accordingly, UP respectfully requests leave to appear as *amicus curiae* and to file the attached *amicus curiae* brief in support of Petitioners.

Dated: September 4, 2025

Respectfully submitted,

By: /s/ Garth A. Gersten

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***Attorneys for Amicus Curiae  
United Policyholders***

**CERTIFICATE OF SERVICE**

I certify that, on September 4, 2025, 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/ Garth A. Gersten  
Garth A. Gersten, Esq.