

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203</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>Petitioners: SPECTRUM RETIREMENT COMMUNITIES, LLC, et al.,</p> <p>v.</p> <p>Respondent: CONTINENTAL CASUALTY COMPANY</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2025SC433</p>		
<p>ATTORNEYS FOR <i>AMICUS CURIAE</i> UNITED POLICYHOLDER</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 & BURLING LLP One CityCenter 850 Tenth Street, NW Washington, DC 20001-4956 Telephone: (202) 662-5458 abmoore@cov.com jkhazem@cov.com</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 sbs@os.law garth@os.law</p> </td> </tr> </table>	<p>Allan B. Moore (<i>Of Counsel</i>) Jad H. 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 jkhazem@cov.com</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 sbs@os.law garth@os.law</p>	
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<p>UNITED POLICYHOLDERS' MOTION FOR LEAVE TO APPEAR AS <i>AMICUS CURIAE</i> AND FILE A BRIEF OF IN SUPPORT OF PETITIONERS</p>			

Pursuant to C.A.R. 29, United Policyholders (“UP”) respectfully requests leave to file the accompanying brief as *amicus curiae* in support of 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. For more than 30 years, UP has provided a counterweight where it perceives unsound or overly aggressive legal arguments being advanced by the well-financed insurance industry, in order 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 a dozen

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).¹ 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.).

This Court previously granted UP leave to file an *amicus* brief in this case at the *certiorari* phase of this appeal. *See Spectrum Retirement Communities, LLC v. Continental Casualty Co.*, Case No. 2025-SC-433 (September 15, 2025 Order). The Division likewise granted UP leave to file an *amicus* brief in support of Petitioners in their appeal below. *See Spectrum Retirement Communities, LLC v. Continental Casualty Co.*, Case No. 2024-CA-34 (July 19, 2024 Order). Now that this Court has granted *certiorari*, UP respectfully requests

¹ *See also* United Policyholders Amicus Library, <https://uphelp.org/amicus-briefs/>.

that the Court grant this motion for the same reasons it previously accepted UP's *amicus* submission at the petition stage.

UP has a significant interest in the current appeal because of the far-reaching and adverse effects that the Division's split decision below is likely to have on Colorado policyholders, if not reversed by this Court. By reading the coverage grant of a standard-form, "all risk" commercial property insurance policy in a manner that does not provide coverage for *partial* loss of or damage to insured property, the majority's decision below threatens to impose a substantial limitation on insurance recoveries that, in UP's assessment, runs contrary to the policy language, settled Colorado property-insurance law, and the longstanding expectations of Colorado policyholders. By declining to overturn a trial court's premature factual findings and second-guessing of the coverage-supporting allegations of the underlying complaint, the Division's decision also sanctioned a significant departure of long-settled pleading standards to the detriment of Colorado policyholders.

UP and the policy-owning public whose interests UP seeks to protect have a strong interest in ensuring that this Court overturns

these coverage-defeating interpretations and inversion of the pleading rules.

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 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 or damage to 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: April 7, 2026

Respectfully submitted,

By: /s/ Garth A. Gersten

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CERTIFICATE OF SERVICE

I certify that, on April 7, 2026, 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.