Supreme Court Case No. S26C1196

Court of Appeals Case Nos. A25A1664, A25A1665, A25A1666, A25A1668

In the Supreme Court State of Georgia

MARK EUBANKS, Individually and on behalf of the General Public of the State of Georgia, et al.,

Petitioners,

v.

PHILADELPHIA INDEMNITY INSURANCE CO., CONTINENTAL CASUALTY COMPANY, THE NORTH RIVER INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY,

Respondents.

MOTION OF UNITED POLICYHOLDERS FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONERS

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Pursuant to Rule 23 of the Rules of the Supreme Court of Georgia, *amicus* United Policyholders ("UP") by and through undersigned counsel, respectfully moves this Court for leave to file the attached *amicus curiae* brief and states as follows:

1. UP is a non-profit organization based in California that serves as a voice and information resource for insurance consumers across the country.

2. This amicus brief is submitted on behalf of Petitioners, in support of their Petition for Writ of Certiorari.

3. The deadline for filing amicus curiae briefs without leave of the Court has passed. Accordingly, UP seeks leave of the Court to file the attached *amicus curiae* brief.

4. The proposed brief addresses the first issue presented in the Petition for Writ of Certiorari: whether, under policies defining "bodily injury" to include mental anguish, coverage requires the underlying abuse or other injury-causing conduct to have occurred during the policy period when the resulting mental anguish indisputably occurred during that period. The brief may assist the Court in its consideration of this issue and whether certiorari should be granted.

5. UP has a substantial interest in ensuring that insurance policies are interpreted according to their terms so that policyholders receive the coverage for which they paid, and its extensive experience with insurance coverage disputes and occurrence-based liability policies will assist the Court in resolving the first question presented. In particular, the proposed brief examines the broader implications of the Court of Appeals' interpretation for occurrence-based coverage and analyzes in detail the out-of-state authorities relied upon by the Court of Appeals.

6. A copy of the proposed *amicus curiae* brief is attached to this Motion as **Exhibit 1**.

WHEREFORE, United Policyholders respectfully requests that the Court grant this Motion and permit the filing of the attached *amicus curiae* brief.

Respectfully submitted this 18th day of August, 2026.

This submission does not exceed the word-count limit imposed by Rule 20.

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Exhibit 1

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BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

BRIEF OF AMICUS CURIAE

Amicus Curiae, United Policyholders ("UP"), files this amicus curiae brief in support of Petitioners, urging the Court to grant the Petition for Writ of Certiorari ("Petition") and reverse the judgment of the Court of Appeals.[1]

STATEMENT OF INTEREST OF AMICUS CURIAE

UP is a non-profit organization based in California that serves as a voice and information resource for insurance consumers across the country. The organization is tax-exempt under Internal Revenue Code § 501(c)(3). UP is funded by donations and grants and does not sell insurance or accept money from insurance companies. UP's work is divided into three program areas: *Roadmap to Recovery*™ (disaster recovery and claim help for victims of wildfires, floods, and other disasters); *Roadmap to Preparedness* (insurance and financial literacy and disaster preparedness); and *Advocacy and Action* (advancing pro-

[1] No party or counsel for any party authored any portion of the brief. No party or counsel for any party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than the amicus curiae, its members, and its counsel made a monetary contribution intended to fund the preparation or submission of the brief. The undersigned represents UP on a *pro bono* basis.

consumer laws and public policy). UP hosts a library of tips, sample forms, and articles on commercial and personal lines insurance products, coverage, and the claims process at www.uphelp.org.

UP regularly assists courts by submitting amicus curiae briefs in cases involving important questions of insurance law and has participated as amicus curiae in hundreds of cases throughout the United States.

UP believes its experience will make its proposed brief of assistance to this Court. UP has a strong interest in ensuring that insurance policies are interpreted according to their text so that policyholders receive the coverage for which they paid.

INTRODUCTION

This amicus curiae brief addresses only the first question presented: whether, under policies defining "bodily injury" to include mental anguish, coverage requires the underlying abuse or other injury-causing conduct to have occurred during the policy period when the resulting mental anguish indisputably occurred during that period.

This Court should grant review because the question presented is one of gravity, concern, and importance to the public under Georgia

Supreme Court Rule 40. First, the Court of Appeals adopted a generalized interpretation of when continuing mental injury "occurs" and carried that interpretation across several occurrence-based liability policies, making the question significant beyond the facts of this case. Second, the Court's interpretation departs from the policies' text and settled principles governing occurrence-based liability insurance by effectively requiring the injury-causing conduct, rather than the covered bodily injury, to occur during the policy period absent policy language imposing that limitation.

ARGUMENT

I. The Court of Appeals' Interpretation of "Occur" Will Affect Occurrence-Based Liability Policies Beyond This Case

The question presented extends beyond the interpretation of the particular policy provisions at issue. By adopting a generalized interpretation of when continuing mental injury "occurs," the Court of Appeals effectively established a trigger rule governing occurrence-based liability policies involving latent or continuing psychological injuries. The trigger of coverage under an occurrence-based liability policy is "an important matter of a state's public policy." *Boardman Petroleum, Inc. v.*

Federated Mut. Ins. Co., 119 F.3d 883, 886 (11th Cir. 1997), *certified question answered*, 269 Ga. 326 (1998) (quotation omitted).

A trigger is easily applied when the event giving rise to the claim is a sudden accident causing an immediate injury. However, an injury that is latent, progressive, or continuing poses a hard question of contract interpretation. *See, e.g., S.C. Ins. Co. v. Coody*, 813 F. Supp. 1570, 1574–76 (M.D. Ga. 1993) (recognizing the courts had to develop various trigger theories to determine when continuing injury occurs when the policy requires injury to occur during its period); *Ass'n of Apartment Owners of Imperial Plaza v. Fireman's Fund Ins. Co.*, 939 F. Supp. 2d 1059, 1069 (D. Haw. 2013) ("For some types of injury, the date when the [] damage occurs is often difficult or impossible to pinpoint.").

Mental injury resulting from childhood sexual abuse presents precisely that problem. Unlike most bodily injuries, the resulting psychological harm often develops gradually and may not be discovered, diagnosed, or fully manifest until years after the underlying abuse. Georgia law recognizes this reality. *See* O.C.G.A. § 9-3-33.1 (providing a discovery-based limitations period for certain childhood sexual abuse claims). Determining when such continuing mental injury "occurs" for

purposes of occurrence-based liability coverage therefore presents an important and recurring question of Georgia insurance law.

Although this case involves several liability policies, the Court mainly analyzed the meaning of "occur" in the context of Philadelphia Indemnity Insurance Company's ("PIIC") policy, and specifically the policy's "sexual or physical abuse or molestation vicarious liability" ("SPAM") endorsement. Over the course of nine pages, the Court developed its interpretation of the term "occur," concluding that continuing mental anguish "occurs" only when it first comes into existence. Op. 15–23. As explained below, such an interpretation was not supported by the plain language of the endorsement.

The Court then carried that generalized interpretation into the PIIC umbrella policies and Zurich American Insurance Company ("Zurich") Commercial General Liability ("CGL") policy without undertaking the same textual analysis. It disposed of the PIIC umbrella policies in a single sentence, explaining that the claims failed "for the same reason discussed with respect to the SPAM coverage" because none of the injuries "occurred, as that word is *generally defined*, during the policy periods." Op. 24 (emphasis added). Then, in addressing the Zurich

CGL policy, the Court again concluded that "[a]s discussed, the fact that the mental anguish from the abuse continued into those years does not result in bodily injury *occurring* during the policy period," without separately analyzing the policy's trigger language. Op. 34 (emphasis added). The Court's application of its interpretation to the Zurich CGL policy is particularly significant because that policy contains standard CGL trigger language.[2]

The decision therefore does more than interpret one endorsement. It adopts a generalized definition of "occur" and applies that definition across different occurrence-based liability policies. Whether Georgia law permits courts to establish a coverage trigger in that manner, rather than by interpreting the language of each individual policy, is an important question warranting this Court's review.

II. The Court of Appeals Misinterpreted the Policy Language

A. The label "occurrence based" does not determine coverage

[2] "This insurance applies to 'bodily injury'. . . only if: (1) [t]he 'bodily injury' . . . is caused by an 'occurrence' that takes place in the 'coverage territory'; (2) [t]he 'bodily injury' . . . occurs during the policy period[.]" V15-177. *See Taylor Morrison Svcs., Inc. v. HDI–Gerling Am. Ins. Co.*, 293 Ga. 456, 457 (2013) (discussing a standard CGL policy).

The Court of Appeals began its analysis from the wrong premise. Rather than examining the coverage-trigger language chosen by the parties, the Court first assumed that "occurrence based" policies require the underlying wrongful conduct to occur during the policy period. Op. 13, 34. That assumption drove the Court's analysis throughout its opinion.[3]

The Court cited two cases to support that general rule—*Serrmi Prods. v. Ins. Co. of Pa.*, 201 Ga. App. 414 (1991) and *Hanover Ins. Co. v. House Call Physicians of Ill.*, No. 15 C 3684, 2016 WL 1588507, at *4 (N.D. Ill. Apr. 19, 2016). Op. 13, 19–20, 34. But neither decision relieves a court of its obligation to determine coverage by examining the language of the policy at issue.

[3] *See*, *e.g.*, Op. 17–18 ("[W]hen we focus on *Darlington's* conduct, none of it 'occurred' during the PIIC SPAM coverage periods."); Op. 19 ("Although the mental anguish continued into the policy period, the negligent employment and supervision, which is the abusive conduct under the policy definitions, did not."); Op. 20 ("[T]here is no coverage for bodily injury and mental anguish due to Darlington's conduct that pre-dated the policy period."); Op. 21 ("We cannot agree that any mental anguish resulting from this letter would be covered because it does not arise from the negligent employment and supervision *during the policy period*."); Op. 34 ("None of the alleged abuse, Darlington's false statements, Stifflemire's employment, the former student's suicide, or the 2017 letter occurred during the policy periods.").

Serrmi involved a claims-made policy and merely observed that claims-made and occurrence policies operate differently. *Serrmi*, 201 Ga. App. at 414. The court did not address the question whether an occurrence policy, which is triggered by bodily injury, always requires the underlying wrongful conduct to occur during the policy period as well. *Id.*

Unlike *Serrmi*, *Hanover* addressed the trigger question directly. But its analysis began from the same mistaken premise adopted by the Court of Appeals here—that occurrence-based policies necessarily require the underlying conduct to occur during the policy period. *Hanover*, 2016 WL 1588507, at *4. The court reached that conclusion by relying on *National Union Fire Ins. Co. of Pittsburgh v. Baker & McKenzie*, 997 F.2d 305, 306 (7th Cir. 1993), a case that involved a "claims made" policy and generally discussed how it is different from "occurrence" policies. *Id.*

In Georgia, insurance coverage is a matter of contract. *Federated Mut. Ins. Co. v. Ownbey Enters., Inc.*, 278 Ga. App. 1, 5 (2006). The parties are therefore free to define the coverage trigger by reference to an occurrence, the injury, or some combination of both. And if the language is unambiguous, the court must enforce it. *Id.* Yet the Court of Appeals

treated *Hanover*'s approach as dispositive, without recognizing the substantial authority reaching a different conclusion.

Numerous courts have recognized that occurrence-based policies are not governed by a single coverage trigger. Rather, the operative inquiry is the language selected by the parties. *See, e.g., Coody*, 813 F. Supp. at 1574 ("[A] reading of *this* policy shows that it unambiguously requires that only the 'injury' must occur within the policy period." (emphasis in the original)); *Commercial Union Ins. Co. v. Sepco Corp.*, 765 F.2d 1543, 1545 (11th Cir. 1985) ("The language of each policy at issue in this case clearly provides that an 'injury,' and not the 'occurrence' that causes the injury, must fall within a policy period for it to be covered by the policy." (quoting *Keene Corp. v. Ins. Co. of N. Am.*, 667 F.2d 1034, 1040 (D.C. Cir. 1981)); *Am. States Ins. Co. v. Martin*, 662 So. 2d 245, 250 (Ala. 1995) ("The language of the [] policies at issue in this case clearly provide that an injury, and not an occurrence that causes injury, must fall within the policy period for it to be covered."); *Imperial Plaza*, 939 F. Supp. 2d at 1069 ("In an occurrence policy like the one before the Court, 'the event that triggers potential coverage is the sustaining of actual damage by the complaining party and not the date of the act or omission

that caused the damage.'" (quotation omitted)); *First Newton Nat. Bank v. Gen. Cas. Co. of Wis.*, 426 N.W.2d 618, 623 (Iowa 1988) ("Most jurisdictions that have considered 'occurrence' policies have concluded that the time of the 'occurrence' is when the claimant sustains actual damage and not when the act or omission that caused such damage was committed." (collecting cases)).

Accordingly, the Court of Appeals' analysis should have begun—and ended—with the language chosen by the parties. However, the Court's general understanding of the nature of occurrence-based policies significantly informed its interpretation of "occur" and its resulting coverage analysis.

B. Policy language does not conclusively establish that "occur" only means "come into existence" for the first time

The Court of Appeals correctly identified the governing principles of Georgia contract interpretation. Op. 7–8. Yet those interpretive tools do not resolve the ambiguity presented here. Even after applying the ordinary meaning of "occur," reading the policy as a whole, and giving effect to all policy language, several reasonable interpretations of the term remain. Under Georgia law, that unresolved ambiguity must be

construed in favor of coverage. *Kovacs v. Cornerstone Nat. Ins. Co.*, 318 Ga. App. 99, 101 (2012) ("Where a term of a policy of insurance is susceptible to two or more reasonable constructions, and the resulting ambiguity cannot be resolved, the term will be strictly construed against the insurer as the drafter and in favor of the insured.").

1) The ordinary meaning of "occur" does not contain a temporal limitation

The Court of Appeals' analysis of the word "occur" misses a critical conceptual step. The Court began by correctly identifying three dictionary meanings of the term: "appear," "happen," and "come into existence." Op. 16. But none of those definitions imposes the temporal limitation that the Court assumed—that an injury can occur only once, "at a single point in time." *Id.* Even the phrase "come into existence" does not necessarily describe an instantaneous event; it may also describe a gradual process. For example, if someone builds a house, at what precise moment does it "come into existence" as a house? The dictionary provides no answer.

That uncertainty matters here. The timing of physical injury is fairly easy to establish. This is because it ordinarily occurs in close temporal proximity to the event that causes it. In cases of child sexual

abuse, injury to the body undisputedly occurs at the time of the offensive touching. *See Servants of Paraclete, Inc. v. Great Am. Ins. Co.*, 857 F. Supp. 822, 834 (D.N.M.). But the resulting mental anguish is different. It often develops gradually, may not be recognized until years later, and can continue throughout a victim's life. *Id.* Thus, the exact moment when mental anguish "occurs" is open to reasonable debate: it can be at the time of the abuse, when the psychological injury first manifests itself, while the anguish continues to exist, or at some other point in time. The dictionary definitions cited by the Court leave room for either interpretation.

2) Other policy terms do not clarify the meaning of "occur"

The Court of Appeals next turned to other policy terms to confirm its limited interpretation of "occur." Op. 18. To that end, the Court relied on the definition of "abusive conduct" and the molestation exclusion. Op. 18–19. Although the Court correctly cited the principle that a policy must be read as a whole, neither provision resolves the ambiguity surrounding the word "occur." Moreover, other policy provisions affirmatively undercut the Court's interpretation.

a. Definition of abusive conduct

The policy's definition of "abusive conduct" does not clarify when mental anguish "occurs." By its terms, the provision merely provides that multiple acts of abuse are considered one "abusive conduct" and that such abusive conduct is deemed to take place at the time of the first act. Op.18–19. Importantly, however, abusive conduct as defined does not encompass mental anguish, only "*acts* of physical abuse, sexual abuse, sexual molestation or sexual misconduct." *Id.* at 18 (emphasis added). Accordingly, the plain language of the provision does not support the Court's conclusion that "the mental anguish stemming from the physical abuse and Darlington's failure to supervise is deemed to have occurred when the sexual abuse and molestation occurred." Op. 19.

Moreover, this definition of abusive conduct serves a specific function. The policy declarations page contains a $1,000,000 limit for *each abusive conduct*. V10-4440. The provision therefore addresses the aggregation of abusive acts for the purpose of ascertaining the coverage limit—it does not address when mental anguish occurs for the purpose of triggering coverage. *See TIG Ins. Co. v. Smart Sch.*, 401 F. Supp. 2d 1334, 1347 (S.D. Fla. 2005) ("[T]he deemer clauses address when a claim 'occurred' for the purpose of determining whether it falls within any

particular coverage period, whereas the *definition* of 'sexual abuse occurrence' addresses whether separately covered claims will be treated as one or more occurrences for the purpose of determining the extent of [insurer]'s exposure under the applicable policy." (emphasis added)).

That distinction matters where coverage depends on the timing of the occurrence itself. For example, in *TIG*, the coverage section of the policy reads as follows: "This Insurance applies to a 'sexual abuse occurrence' only if it . . . [t]akes place in 'the coverage territory'; and . . . [d]uring the policy period." 401 F. Supp. 2d at 1339. A deemer clause followed immediately after that:

> If the "sexual abuse occurrence" consists of a series of related acts of sexual abuse or molestation, the "sexual abuse occurrence" shall be deemed to have taken place on the date of the first of such series of acts. No coverage is afforded under this policy if the first act of "sexual abuse occurrence" took place outside the policy period.

Id. The court held that this clause determined which policy period, if any, afforded coverage. *Id.* at 1347. At the same time, the court recognized that the deemer clause served a different function from the policy's definition of "sexual abuse occurrence," which merely determined whether multiple acts constituted one occurrence or several. *Id.* (collecting cases).

Here, the coverage section of the SPAM endorsement contains no comparable first-act coverage requirement. It only requires that bodily injury occur during the policy period**.** V10-814. Thus, even if all acts of abuse are treated as a single "abusive conduct," that definition does not answer the separate question presented here—when the resulting mental anguish occurred. The Court of Appeals nevertheless relied on the abusive-conduct definition to impose a first-act coverage trigger that the parties never adopted. Op. 19, 22.

b. Molestation exclusion

The molestation exclusion likewise does not resolve the meaning of "occur." Exclusions must be construed narrowly and cannot expand or rewrite the scope of the coverage grant. *Auto-Owners Ins. Co. v. Neisler*, 334 Ga. App. 284, 287 (2015) ("[E]xceptions and exclusions to coverage must be 'narrowly and strictly construed against the insurer and [forgivingly] construed in favor of the insured to afford coverage.'" (quotation omitted)).

By its terms, the molestation exclusion applies only to "molestation" by "the named insured" that "predates . . . and continues into the policy period." V10-815. The Court of Appeals, nevertheless, concluded that this

exclusion bars "all claims" for molestation, abuse, and resulting mental distress that predated the policy period. Op. 19. Such interpretation extends the provision beyond its plain terms.

First, molestation is only one category of abusive conduct as defined in the SPAM endorsement. *See* V10-817–18. Accordingly, this exclusion cannot bar "all claims" in this case.

Second, the exclusion raises the separate interpretive question whether the alleged conduct was committed "by the named insured." *See* Petition at 12–13.

Lastly, molestation must predate and continue into the policy period. The conjunction "and" means both conditions must be met. *See Rockdale Cnty. v. U.S. Enters.*, Inc., 312 Ga. 752, 765 (2021). Here, the alleged sexual abuse ended decades before the policy period; only the resulting mental anguish continued. Op. 12, 15. And no one argues that the term molestation encompasses resulting mental anguish.

By contrast, this exclusion does reinforce the position that the policy was not intended to require the underlying abusive conduct to occur during the policy period. Otherwise, there would have been no need for a separate exclusion addressing pre-policy molestation. *See Milliken*

& Co. v. Ga. Power Co., 354 Ga. App. 98, 100 (2020) ("[I]t is a cardinal rule of contract construction that a court should, if possible, construe a contract so as not to render any of its provisions meaningless and in a manner that gives effect to all of the contractual terms." (quotation omitted)).

Therefore, neither the definition of abusive conduct nor the molestation exclusion resolves the central ambiguity in this case: whether mental anguish must coincide with the timing of the underlying abusive conduct to trigger coverage.

3) The policy's definition of "occurrence" contradicts the Court's interpretation

Finally, the Court of Appeals' interpretation of occur cannot be reconciled with the policy's own definition of "occurrence," on which the Court itself relied several times throughout its opinion. Op. 24–25, 33–34. An insurance contract "shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application made a part of the policy." *Reeves v. Allstate Ins. Co.*, 371 Ga. App. 474, 477 (2024) (quoting O.C.G.A. § 33-24-16).

Although the SPAM endorsement does not define either "occur" or "occurrence," another provision of the same insurance policy defines an "occurrence" as "an accident, including *continuous or repeated exposure* to substantially the same general harmful conditions." Op. 24–25 (emphasis added). Because the endorsement is part of the same insurance contract, related terms should be interpreted consistently throughout the policy.

This definition of "occurrence" reflects the parties' decision to extend coverage beyond a single instantaneous event by expressly including "continuous or repeated exposure." *Id.* Courts have likewise recognized that this language broadens, rather than restricts, the coverage. *See Arrow Exterminators, Inc. v. Zurich Am. Ins. Co.*, 136 F. Supp. 2d 1340, 1349 (N.D. Ga. 2001) ("[W]here a contract defines an 'occurrence' as including 'continuous or repeated exposure,' . . . the appropriate trigger is a continuous one."); *Koikos v. Travelers Ins. Co.*, 849 So. 2d 263, 268 (Fla. 2003) ("'[C]ontinuous or repeated exposure' language does not restrict the definition of 'occurrence' but rather expands it by including ongoing and slowly developing injuries[.]").

The Court of Appeals nevertheless interpreted "occur" to mean only "come into existence at a single point in time"—a construction that cannot be squared with a policy that elsewhere expressly contemplates continuous and repeated harm.

In sum, none of the Court of Appeals' textual arguments support the conclusion that the only reasonable interpretation of "occur" is to come into existence for the first time. This outcome was guided by the Court's general understanding of the word "occur," rather than the parties' intent as reflected in the language of the insurance contract. *See* Op. 24.

C. The authorities relied upon by the Court of Appeals do not support its interpretation of "occur"

The Court of Appeals relied on multiple out-of-state decisions to conclude that continuing mental anguish can "occur" only once, at the time of the underlying abuse. Op. 16–18. A closer examination of those authorities, however, reveals that none addressed the question presented here. Instead, each case turned on materially different policy language or resolved a different coverage issue. Far from supporting the Court's interpretation, these decisions illustrate that the timing of psychological injury depends on the specific policy language at issue.

1) Servants of Paraclete, 857 F. Supp. 822

This case involved plaintiffs who were sexually abused outside the policy period but became aware of their psychological injuries during the policy period. *Servants of Paraclete*, 857 F. Supp at 831. The relevant policy covered bodily injury during the policy period caused by the occurrence. *Id.*[4] Bodily injury was defined as "bodily injury, sickness or disease." *Id.* The question before the court was whether plaintiffs' "realization" of injury during the policy period constituted a covered bodily injury. *Id.* While the court answered this question in the negative, when properly understood, *Servants of Paraclete* undermines rather than supports the Court of Appeals' reasoning.

First, the court from the outset held that it was not "a clear-cut matter" whether the realization of injury constituted a covered "bodily injury." *Id.* at 832. And this raised "a legal question to be decided by a court of law, not unilaterally by the insurer." *Id.* Accordingly, the insurer had to seek a court determination of non-coverage. *Id.* By not doing it, the insurer breached its duty to defend. *Id.*

[4] The case involved several insurers and policies, but we focus on Catholic Mutual's CGL because the Court of Appeals cited only that part of the opinion. *See* Op. 17.

Second, the court expressly recognized that child sexual abuse has severe long-term effects. *Id.* at 834. Particularly, "[a]dult survivors commonly exhibit signs of depression, anxiety, poor self-esteem and may engage in self-destructive behavior." *Id.* (*citing* Rebecca L. Thomas, *Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action,* 26 Wake Forest L.Rev. 1245 (1991)). The court further noted that "[s]uch psychological and emotional injuries *may be* 'sickness' as defined by the policy." *Id.* (emphasis added).

Lastly, while the court found no duty to indemnify, it did so only because the plaintiffs alleged the realization of psychological injury, rather than continuing mental anguish. *Id.* Because realization of the injury did not constitute sickness or disease under the policy, it was not covered. *Id.* Accordingly, *Servants of Paraclete* never decided when mental injury occurs for the purpose of coverage.

Here, no one disputes that plaintiffs suffered mental anguish that continued into different policy periods. Op. 16, 19, 23, 34. Indeed, one former student committed suicide in 2016 due to the abuse. Op. 3 n.5. Had the Court of Appeals followed *Servants of Paraclete*'s analysis, it

would have focused on the nature of the alleged injuries rather than treating the abuse itself as the dispositive trigger of coverage.

2) *Bishop of Charleston v. Century Indem. Co.*, 225 F. Supp. 3d 554 (D.S.C. 2016)

The case involved allegations of clergy sexual abuse of minors that happened prior to any covered policy period. *Bishop of Charleston*, 225 F. Supp. 3d at 558. Critically, the policy at issue applied only to occurrences or accidents which happen during the policy period.[5] The question before the court was whether the "continuous trigger" theory can be applied to move the date of *occurrence* into a later policy period, even though the abuse itself happened prior to that. *Id.* at 565.

The court emphasized that the term "occurrence" is "ambiguous where damages result from an exposure over time rather than a single discrete event." *Id.* And the continuous trigger theory was developed to resolve this ambiguity. *Id.* In particular, South Carolina has adopted a modified version of the continuous trigger theory, which provides that

[5] The court opinion does not quote the policy language, but the relevant parts can be found in defendants' motion for summary judgment. *See* Defendant's Mem. in Supp. of Mot. for Partial Summ. J., *Bishop of Charleston v. Century Indem. Co.*, 2016 WL 8938544 (D.S.C. July 25, 2016).

occurrence takes place "when damage first occurs, rather than at the time of the injury-causing event." *Id.* Applying this theory to sexual abuse cases, the court held that "occurrence" took place at the time of the sexual abuse. *Id.* Therefore, even though the victims suffered lifelong injury, such ongoing harm did not prolong the date of occurrence because the abuse had happened before the policy took effect. *See id.* at 566.

By contrast, the policies here require only that bodily injury—including mental anguish—occur during the policy period, even if the underlying causal event occurred earlier. *See* V10-2772 (PIIC's CGL); V10-814 (PIIC's SPAM); V10-1803 (PIIC's umbrella policy); V15-177 (Zurich CGL). Thus, there is no need to extend the date of the occurrence through a continuous-trigger theory. The relevant question is when ongoing mental anguish occurs as an injury. And *Bishop of Charleston* does not answer that question.

3) *Cath. Bishop of N. Alaska v. Cont'l Ins. Co.,* No. 4:08-CV-0038-RRB, 2010 WL 10095655 (D. Alaska July 30, 2010)

The case similarly involved allegations of sexual abuse outside the insured period, which resulted in continuous psychological injuries during the insured period. *Cath. Bishop*, 2010 WL 10095655, at *9. The policy at issue provided indemnification for "all sums" that the insured

might be obligated to pay on account of "personal injuries caused by an occurrence." *Id.* at *13 (citation and punctuation omitted). The policy required only personal injury to occur during the certificate period. *Id.* But, the "occurrence" was defined as "accident . . ., which results, *during* the certificate period, in personal injury." *Id.* (emphasis added).

Because of this definition of "occurrence," the court held that the proper triggering event under this policy was the initial injury caused by sexual abuse, and not its later manifestation. *Id.* Because the triggering injury did not occur during the policy period, the later manifestation of mental anguish did not retroactively make the occurrence one that "results, during the certificate period, in personal injury." *Id.*

The court also heavily relied on an objective reasonable-insured perspective. Because the policy covered "all sums" on account of personal injuries, the court reasoned that an objectively reasonable insured would not expect the certificates to cover *only a slice* of a single loss (the later mental-anguish consequences) while excluding the rest (because the initiating abuse/injury occurred before inception). *Id.* Accordingly, the court held post-abuse injuries were not covered under this particular policy language.

Unlike the policy in *Catholic Bishop*, the SPAM endorsement contains neither of the policy provisions that drove that court's analysis. It does not define "abusive conduct" to require that an abuse result in bodily injury during the policy period. V10-817–18. Instead, it separately requires only that bodily injury occur during the policy period. V10-814.

Nor does it contain the broad "all sums" insuring agreement on which the Alaska court relied. Rather, it obligates the insurer to pay only "those sums" the insured becomes legally obligated to pay because of bodily injury. V10-814. Because the SPAM endorsement provides coverage only for injury that occurs during the policy period, that language can reasonably contemplate coverage for the portion of a continuing injury occurring during the covered period. Accordingly, *Catholic Bishop*'s assumption that an insured could not reasonably expect coverage for only a "slice" of one loss does not translate to this policy.

Therefore, *Catholic Bishop* sheds no light on what the parties could reasonably have intended under the materially different policy language at issue here.

4) *State Farm Fire & Cas. Co. v. Estes*, 133 F. Supp. 3d 893 (W.D. Ky. 2015)

The Court of Appeals quoted *Estes* for the proposition that there is "no bridge" between pre-policy abuse and post-policy emotional injuries where no physical injury occurred during the policy period. Op. 16 (quoting *Estes*, 133 F. Supp. 3d at 898). That conclusion, however, rested on materially different policy language.

The policy in *Estes* covered bodily injury "caused by an occurrence" and defined an "occurrence" as "an accident, including exposure to conditions, which results in: . . . bodily injury . . . during the policy period." *Id.* at 896. Thus, unlike the policies here, the temporal limitation was incorporated directly into the definition of "occurrence."

Moreover, the policy there expressly excluded "emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury *unless it arises out of actual physical injury to some person.*" *Id.* at 897 (emphasis in the original). The SPAM endorsement contains no comparable limitation. To the contrary, it expressly defines "abusive conduct" to include "threatened" acts, which by definition may cause psychological injury without any accompanying physical injury. Op. 18. Accordingly, *Estes* construed materially different policy language

and does not support the Court of Appeals' interpretation of the policies before this Court.

The remaining authorities cited by the Court of Appeals likewise do not resolve the meaning of occur here. *See* Petition at 25–27.

In sum, what these out-of-state authorities demonstrate is that courts enforce the policy language before them. None holds that continuing psychological injury necessarily "occurs" only once, at the time of the underlying abuse, regardless of the policy's wording. Each decision turned on materially different contractual language or resolved a different coverage question. They therefore do not support the Court of Appeals' conclusion that "occur" unambiguously means "come into existence at a single point in time."

D. The Court of Appeals' public policy concerns cannot override the policy language

Finally, the Court of Appeals departed from the policy text and relied on public policy considerations to support its interpretation of "occur." Specifically, the Court reasoned that Petitioners' interpretation is "overly broad" because it would expose any future insurer to liability for risks not reflected in insurance premiums. Op. 20, 22–23 (quoting *Bishop of Charleston*, 225 F. Supp. 3d at 566; and *Servants of Paraclete*,

857 F. Supp. at 834). That reasoning is unpersuasive for four independent reasons.

First, as discussed above, the quoted language from *Bishop of Charleston* and *Servants of Paraclete* was tied to materially different policy terms and cannot be divorced from that context. Those courts did not announce a general rule limiting occurrence-based coverage.

Second, the Court's concern about "decades of potential liability" describes an inherent feature of occurrence-based insurance. Unlike claims-made policies, which limit coverage to claims first made during the policy period, occurrence-based policies insure injuries occurring during the policy period regardless of when claims are asserted. *See Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 269 Ga. 326, 335 (1998) (Carley, J., dissenting). Insurers developed claims-made policies precisely to avoid an unpredictable and potentially lengthy "tail" of liability associated with occurrence-based coverage. *Worthington Fed. Bank v. Everest Nat. Ins. Co.*, 110 F. Supp. 3d 1211, 1222 (N.D. Ala. 2015). Because claims-made policies allow insurers to predict their exposure more accurately, they carry lower premiums. By contrast, occurrence-based policies carry higher premiums to "offset the increased exposure."

Boardman, 269 Ga. at 335 (quoting *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645, 689 (1995)). The exposure to liability is further increased where, as here, the policy language requires only bodily injury (including mental anguish) to occur during the policy period, and not the event giving rise to such injury. Accordingly, if an insurer wishes to limit the scope of its liability, it may issue a claims-made policy.

Third, even within an occurrence-based policy, insurers remain free to define coverage more narrowly. They may expressly require both the injury-causing conduct and the resulting injury to occur during the policy period, or otherwise limit the coverage trigger. In doing so, insurers must use precise language that "unequivocally captures the parties' mutual understanding of the trigger." *Arrow Exterminators*, 136 F. Supp. 2d at 1350 ("Insurance companies cannot use the vagaries of language they drafted to escape contractual obligations." (quotation omitted)).

This principle is well-illustrated in *Columbia Cas. Co. v. Plantation Pipe Line Co.*, 338 Ga. App. 556 (2016) (physical precedent only). The case involved environmental contamination that was on-going for over 30 years. *Id.* at 557. The contamination was caused by a fuel leak in 1976 but was not discovered until 2007. *Id.* The question before the court was

whether a ten-month excess policy, which was in effect at the time of the leak, covered continuous and progressive property damage that took place over three decades. *Id.* at 559–61. The court answered affirmatively. *Id.* at 562. It refused to adopt any of the trigger theories but instead focused on the policy language. *Id.* Because the policy by its plain terms required only the underlying event to take place during the covered period, and not the resulting injury, all damage resulting from the leak was covered. *Id.* 562–63.

Finally, the Court's concern that Petitioners' interpretation would trigger "any future insurance policy in perpetuity" overstates the issue. Coverage would arise only under policies whose terms insure bodily injury occurring during the policy period, regardless of when the underlying conduct occurred. Policies that instead require both the injury-causing conduct and the injury itself to take place during the policy period would not be triggered. The question therefore is not whether liability continues indefinitely, but what the parties agreed to insure in the policy before the Court.

CONCLUSION

Amicus Curiae respectfully requests that this Court grant the Petition for Writ of Certiorari and reverse the judgment of the Court of Appeals. This Court should clarify whether, under the insurance policies at issue, mental anguish resulting from childhood sexual abuse "occurs" only at the moment of abuse or continues to "occur" throughout the period of psychological injury.

This submission does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted, this ___ day of August, 2026.

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