

IN THE SUPREME COURT OF FLORIDA

DOCKET NO. SC2026-0899

PUBLIX SUPER MARKETS, INC.,

Appellant,

v.

ACE PROPERTY AND CASUALTY INSURANCE COMPANY, ET AL.,

Appellees.

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

On Certification from the June 11, 2026 Opinion of the Court of the United States Court of Appeals for the Eleventh Circuit, Docket No. 25-11185

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September 8, 2026

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Pursuant to Fla. R. App. P. 9.370(a), United Policyholders (“UP”), through undersigned counsel, respectfully submits this motion for leave to file the attached *amicus curiae* brief for this Court’s consideration in the above-captioned matter. UP stated the following in support:

STATEMENT OF MOVANT’S INTEREST OF AMICUS CURIAE

United Policyholders (“UP”) is a non-profit 501(c)(3) organization founded in 1991 whose mission is to serve as a trustworthy and useful information resource and advocate for insurance policyholders in Florida and throughout the United States. Because UP routinely assists individual and commercial policyholders regarding every type of insurance product and the insurance claim process generally, the organization has a significant interest in the orderly and balanced development of Florida’s insurance law.

State insurance regulators, public officials, and journalists throughout the U.S. routinely seek UP’s input on insurance coverage, claim handling and litigation matters. UP’s Executive Director, Amy Bach, has served as an official consumer representative to the National Association of Insurance Commissioners since 2009, and is an appointed member of the Federal Advisory Committee on Insurance to the U.S. Treasury and the American Bar Association’s Standing Committee on Disaster Preparedness and

Response. UP regularly coordinates with the Florida Office of Insurance Regulation on matters impacting state residents and businesses.

UP seeks to assist courts as *amicus curiae* in appellate proceedings throughout the United States, including in the Florida Supreme Court, particularly in cases involving insurance principles that affect large segments of the public. The organization's reputation as a reliable friend of the court was enhanced when its *amicus curiae* brief was cited in the United States Supreme Court's unanimous opinion in *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999). A complete list of cases in which UP has appeared as *amicus curiae* can be found in our online Amicus Project library at www.uphelp.org/amicus.

UP has been serving Florida residents since 1992 when it helped promote fair claim settlements in the aftermath of Hurricane Andrew. The organizations activities have included long-term disaster recovery assistance; consumer advocacy related to homeowners' insurance rates and availability; promoting preparedness and mitigation; and educating and assisting consumers navigating the complicated insurance claims process under wind, flood, and liability policies. State insurance regulators, including the Florida Office of Insurance Regulation, academics, and journalists

throughout the country routinely engage with United Policyholders on issues impacting policyholders.

The attached brief has been prepared *pro bono publico*. No person or entity other than UP, its members, or its counsel authored any part of this brief.

**THE PARTICULAR ISSUE TO BE ADDRESSED AND HOW THE
MOVANT CAN ASSIST THE COURT IN THE DISPOSITION OF THE
CASE**

UP has appeared as an *amicus curiae* in a number of Florida Supreme Court cases. See *Citizens Prop. Ins. Corp. v. Manor House, LLC*, 313 So.2d 579 (Fla. 2021); *Washington Nat'l Ins. Corp. v. Ruderman*, 117 So.3d 943 (Fla. 2013); *QBE Ins. Corp. v. Chalfonte Condominium Apartment Ass'n*, 94 So. 3d 541 (Fla. 2012); *Penzer v. Transp. Ins. Co.*, 29 So. 3d 1000 (Fla. 2010); *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528 (Fla. 2005). The issue presented in this case is of great importance to policyholders nationwide. Insurance industry *amicus* parties are common, and it is important for policyholders (insurance consumers) to have a countervailing voice in important cases like this.

**WHETHER THE PARTIES CONSENT TO THE FILING OF THE AMICUS
BRIEF**

On September 3, 2026, United Policyholders wrote to each of the parties asking if it could represent that each party consent to this motion, and

United Policyholders received no responses. Accordingly, United Policyholders cannot represent that all parties consent to this motion.

WHEREFORE, United Policyholders respectfully requests that its motion for leave to file the attached *amicus curiae* brief be granted.

Date: September 8, 2026

/s/ Hugh Lumpkin

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STATEMENT OF INTEREST OF AMICUS CURIAE

United Policyholders (“UP”) is a non-profit 501(c)(3) organization founded in 1991 whose mission is to serve as a trustworthy and useful information resource and advocate for insurance policyholders in Florida and throughout the United States. The Motion for Leave to File more fully describes United Policyholders and its interest in the case.

SUMMARY OF ARGUMENT

United Policyholders supports Publix’s position that this Court should answer the certified question in the affirmative, holding that the underlying Opioid Lawsuits against Publix seek to recover damages because of bodily injury. The plain text of the policy requires only a causal relationship between the bodily injuries alleged in the Opioid Lawsuits and the damages sought in those actions. If there is any ambiguity, the language must be construed in favor of the policyholder, Publix, and there is some evidence of ambiguity based on the divergent judicial opinions nationally. The allegations of the Opioid Lawsuits tie, causally, Publix’s breach of duty and carelessness in filling opioid prescriptions to the bodily injuries suffered by individuals and to the damages sought by the plaintiff government entities and healthcare providers.

LEGAL ARGUMENT

I. The Opioid Lawsuits Allege Damages Because of Bodily Injury.

In certifying the question to this Court, the Court of Appeals for the Eleventh Circuit explained that the coverage determinative question is “whether the underlying opioid lawsuits against . . . Publix seek to recover ‘damages because of bodily injury.’” *Allied Prop. & Cas. Ins. Co. v. Bloodworth Wholesale Drugs Inc.*, 2026 WL 3890, at *2 (11th Cir. June 11, 2026). As noted by the Eleventh Circuit, “[n]one of the parties dispute[s] that the underlying opioid lawsuits seek ‘damages’ or that opioid addiction and overdose qualify as ‘bodily injuries.’” *Id.*

A. The Opioid Lawsuits Allege Damages.

It is undisputed that the Opioid Lawsuits seek damages. The underlying complaints allege that the local governments and healthcare providers are seeking monetary damages to compensate them for amounts they have paid due to the opioid epidemic that was allegedly caused, in part, by Publix. Among other things, the damages sought include uncompensated medical expenses and addiction treatment expenses, which are clearly compensatory in nature. The term “damages” is a broad term as used in an insurance policy. *See United States v. Pepper’s Steel & Alloys, Inc.*, 823 F. Supp. 1574, 1582 (S.D. Fla. 1993), *aff’d in part, rev’d in part*, 87 F.3d 1329

(11th Cir. 1996) (“The court finds that, under the plain meaning of the term, “damages” should include the environmental costs at issue in this matter, “because the term ‘damages,’ in common thought, does not distinguish between equitable and nonequitable relief.”)

B. The Opioid Lawsuits Allege Bodily Injuries.

It is also undisputed that the Opioid Lawsuits allege bodily injuries, such as opioid addiction and overdose. As noted in the Initial Brief of Appellant Publix, the underlying Complaints allege that very substantial injuries were suffered by those who used and abused opioids; they suffered addiction, overdoses, death, mental health disorders, and injury to fetuses in the womb. Those are unquestionably bodily injuries.

C. The Damages Sought in the Opioid Lawsuits Are “Because Of” the Bodily Injuries Alleged.

There is a clear causal connection between the damages sought in the Opioid Lawsuits and the bodily injuries suffered by individuals that are alleged in those suits. The words “because of” are interpreted under Florida law to mean “caused by.” *Garcia v. Fed. Ins. Co.*, 969 So. 2d 288, 293 (Fla. 2007) (“the presence of the words ‘because of’ in Federal’s policy requires that an additional insured’s liability be ‘caused by’ the acts or omissions of the named insured”).

Under Florida law, “the terms used in an insurance policy should be

read in the light of the skill and experience of ordinary people.” *Pepper’s Steel & Alloys, Inc.*, 823 F. Supp. at 1580-81 (citing cases). Accordingly, Florida courts often turn to dictionaries for the plain meaning of undefined insurance policy terms. *Garcia*, 969 So. 2d at 292 (“The phrase ‘because of’ is defined as ‘by reason of.’”) (citing *Merriam Webster’s Collegiate Dictionary* 101 (10th ed.1993)). In ordinary speech, the word “because” is a conjunction, the purpose of which is to state causation. A is “because of” B if B was a cause of A. Thus, if the damages alleged in the Opioid Lawsuits are alleged to have been caused by the bodily injuries that are alleged to have been suffered by individuals, then those damages are “because of” bodily injury. It is that simple.

The Opioid Lawsuits allege that the breach of tort and statutory duties by opioid manufacturers, distributors, pharmacies, and medical professionals all combined to cause bodily injuries to individuals. The plaintiff governmental and healthcare entities allege that they suffered damages as a result of those injuries—damages for which those opioid manufacturers, distributors, pharmacies, and medical professionals should be legally compelled to pay. In considering coverage for a pharmaceutical distributor defendant in the opioid litigation, the United States Court of Appeals for the Fourth Circuit succinctly explained the chain of causation

between the damages sought by West Virginia and the bodily injuries suffered by its citizens: “the defendants distributed drugs to pharmacies, which then filled physicians’ prescriptions for patients, some of whom were or became abusers, resulting in harm to the abusers and, as a result, to the state.” See *Liberty Mut. Fire Ins. Co. v. J M Smith Corp.*, 602 Fed. Appx. 115, 121 (4th Cir. 2015). The filling of prescriptions, without due care, is the key allegation against pharmaceutical defendants like Publix. Finding the potential for coverage for a distributor defendant, the Fourth Circuit ruled “it is at least possible that the state court will find that the defendants did not take sufficient care to catch suspicious activity and therefore accidentally caused harm to prescription drug abusers and the state of West Virginia.” *Id.* at 122.

In *Cincinnati Insurance Company v. H.D. Smith, L.L.C.*, the Seventh Circuit ruled that an insurance policy covering suits seeking damages “*because of* bodily injury” provides broader coverage than one that covers damages “*for* bodily injury.” 829 F.3d 771, 774 (7th Cir. 2016). Although the state was not directly seeking damages for its own bodily injury (obviously), the state nevertheless suffered damages “because of” the bodily injury suffered by others. *Id.* at 774–775. In response to the insurance company’s argument that the government of West Virginia sought its own damages, not

damages on behalf of its citizens, the Seventh Circuit asked exactly the right question: “But so what?” *Id.* at 774. The distinction is “untethered to any language in the policy.” *Id.* The Seventh Circuit reversed the district court and found a duty to defend. *Id.* at 775.

Because the damages sought in the Opioid Lawsuits are “because of” the bodily injuries alleged, this Court should answer the certified question in the affirmative based on the plain meaning of the insurance policy language. “When an insurance company fails to define a term in an insurance policy, it cannot take the position that there should be a narrow, restrictive interpretation of the coverage provided.” *State Farm Fire & Cas. Co. v. CTC Dev. Corp.*, 720 So. 2d 1072, 1076 (Fla. 1998) (quoting *State Comprehensive Health Ass’n v. Carmichael*, 706 So.2d 319, 320 (Fla. 4th DCA 1997) (internal quotations omitted)). It is not surprising that “because of” is undefined; it has a well-known meaning simply meaning “caused by,” *Garcia*, 969 So. 2d at 293, not proximately caused by, directly caused by, solely caused by, or some other more restrictive interpretation.

II. This Court Has Repeatedly Declined to Stray From the Plain Meaning of Insurance Policy Language That Provides Coverage.

Two precedents of this Court provide a roadmap for deciding this case; both involved national splits of authority that were easily resolved by this

Court's laser focus on the relevant policy language. See *Penzer v. Transp. Ins. Co.*, 29 So. 3d 1000 (Fla. 2010); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871 (Fla. 2007). Under Florida law, insurance policies are “construed according to their plain meaning, with any ambiguities construed against the insurance company and in favor of coverage.” *Penzer*, 29 So. 3d at 1005 (quoting *J.S.U.B.*, 979 So. 2d at 877).

In *Penzer*, this Court noted that the general liability insurance policy language at issue had been “widely litigated” nationwide with “courts applying diverse reasoning . . . com[ing] down on both sides of the ledger.” *Penzer*, 29 So. 3d at 1004 n. 5. While some other courts had limited their interpretation of “right of privacy” in the personal injury coverage of the standard-form general liability policy to only the right of secrecy, rather than the right of seclusion, this Court rejected the invitation to infer limitations on coverage that were not plainly stated. *Id.* at 1007–08. The right of privacy was the whole right of privacy, including both seclusion and secrecy, and “the oral or written publication of material that violates a right of privacy” could implicate *either* of those privacy rights and be covered. *Id.* at 1007.

In *J.S.U.B.*, courts nationally had struggled with whether property damage occurring in the construction defect context was caused by an “occurrence” within the meaning of the standard-form general liability

insurance policy. This Court explained that “[t]he question of whether faulty workmanship can constitute an ‘occurrence’ is a matter governed by the actual terms of the policy and Florida law interpreting insurance contracts.” *J.S.U.B.*, 979 So. 2d at 883. This Court rejected *seriatim* the insurance industry’s invitation to limit the meaning of “occurrence” based on what property was damaged, or whether the breach of duty was based on contract or tort, or whether allowing coverage “converts the policies into performance bonds,” because those limitations would need to be inferred or superimposed onto policy language that simply did not so limit the coverage. *Id.* at 883–88. This Court further observed that “[e]ven if there was an ambiguity in the policies as to whether a subcontractor’s faulty workmanship can constitute an ‘occurrence,’ we would interpret the ambiguity against the insurer and in favor of coverage.” *Id.* at 886.

In both *Penzer* and *J.S.U.B.*, this Court analyzed widely divergent judicial interpretations of the national standard-form, general liability insurance policy and resolved the issue with a straightforward, disciplined interpretation of the policy language. This case presents the same opportunity. The question of whether the damages alleged in the Opioid Lawsuits are “because of” bodily injury to individuals is painfully obvious. The Opioid Lawsuits explicitly allege that there were very substantial injuries

to many individuals that caused the plaintiffs very substantial damages. There is a clear causal link explicitly alleged between the damages sought (e.g., uncompensated medical and addiction treatment expenses) and the bodily injuries suffered by individuals (e.g., opioid abuse, addiction, overdose, death, depression, anxiety, fetal injury, etc.).

And if that were not plain enough, the standard-form policy language goes further, making clear that damages because of bodily injury *include* (without limitation) “damages claimed by any person or organization for care, loss of services or death resulting at any time from bodily injury.” The plaintiffs seek their damages for the care of those suffering from opioid addiction. The limitations superimposed onto the insurance policy language by some courts in other states should be rejected. The policy language is clear and unambiguous, and it is only by straying from the plain language that courts have reached contrary conclusions.

III. Divergent Judicial Opinions Relating to Coverage For Opioid Lawsuits Demonstrates, At Most, Ambiguity That Must Be Construed in Favor of Coverage.

“If the relevant policy language is susceptible to more than one reasonable interpretation, one providing coverage and another limiting coverage, the insurance policy is considered ambiguous.” *Penzer*, 29 So. 3d at 1005 (quoting *Garcia*, 969 So. 2d at 291); see also *Auto-Owners Ins.*

Co. v. Anderson, 756 So.2d 29, 34 (Fla. 2000) (using nearly identical language). The existence of divergent court opinions on the interpretation of insurance policy language is evidence of ambiguity. *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 537 (Fla. 2005) (surveying and acknowledging a split among Florida and out-of-state courts on the meaning of “arising out of” in insurance policies as some indication of insurance policy ambiguity); *Penzer*, 29 So. 3d at 1009 (Pariente, J., concurring in result only) (“in evaluating the ambiguity of the phrase, we cannot ignore the body of national case law addressing the same or similar policy language and falling on both sides of this interpretive ledger”); *Sec. Ins. Co. v. Inv’rs Diversified*, 407 So. 2d 314, 316 (Fla. Dist. Ct. App. 1981) (noting the opposite conclusions of the Supreme Court of California and the Fifth Circuit as some proof of ambiguity in the insurance policy language).

Presumably, judges are reasonable and skilled at the interpretation of contracts, including insurance policies. It naturally follows that if judges reach divergent rulings in their interpretation of the same language, as applied to the same or similar facts, then that language is not clear and free from doubt; rather, it can reasonably be read in more than one way. When insurance policy language is subject to multiple reasonable interpretations, it is ambiguous and must be construed liberally in favor of coverage.

Anderson, 756 So.2d at 34. Courts across the country have reached divergent opinions about the application of the “damages because of bodily injury” language in the context of the opioid litigation at issue here. Even when courts have found no coverage, those majority opinions are typically accompanied by persuasive dissenting opinions, further demonstrating that the policy language can be reasonably interpreted in more than one way.

The Sixth Circuit in *Quest Pharmaceuticals* reached the opposite conclusion from the Seventh Circuit in *H.D. Smith*, creating a circuit split. See *Westfield Nat’l Ins. Co. v. Quest Pharms., Inc.*, 57 F.4th 558 (6th Cir. 2023) (“*Quest*”) (applying Kentucky law). Two state high courts (in Ohio and Delaware) reached a finding of no insurance coverage in 2022, but those decisions were accompanied by vigorous and well-reasoned dissents. *Acuity v. Masters Pharmaceutical, Inc.*, 205 N.E.3d 460 (Ohio 2022); *ACE Am. Ins. Co. v. Rite Aid Corp.*, 270 A.3d 239 (Del. 2022). In reaching its decision in *Acuity*, the Ohio Supreme Court explained that there is “a growing and diverging body of case law on the issue before us: whether an insurance policy that provides coverage for ‘damages because of bodily injury’ covers claims brought by governmental entities to recover economic costs they incurred as a result of the opioid epidemic.” *Acuity*, 205 N.E.3d at 465.

Distinguishing a “tenuous” from a “sufficient” connection (language that

is nowhere in the insurance policies), the Ohio Supreme Court in *Acuity* explained that a “sufficient” connection will likely be found when the damages are for losses asserted by the person injured, a person recovering on behalf of the injured person, or “a person or organization that directly suffered harm because of another person’s injury—in which case, the existence and cause of the injury must be proved.” *Id.* at 473. The dissent in *Acuity* methodically points out many obvious flaws in the reasoning of the majority, including that the majority fails to apply the duty to defend standard: “This court made clear—decades ago—that ‘where the insurer’s duty to defend is not apparent from the pleadings in the case against the insured, but the allegations do state a claim which is potentially or arguably within the policy coverage, or there is some doubt as to whether a theory of recovery within the policy coverage has been pleaded, the insurer must accept the defense of the claim.’” *Id.* at 474. The same standard exists in Florida. *See Jones v. Fla. Ins. Guar. Ass’n*, 908 So. 2d 435, 443 (Fla. 2005) (the duty to defend is “of greater breadth” than the duty to indemnify and applies when the complaint alleges facts that fairly and potentially bring the suit within policy coverage; “[a]ny doubts regarding the duty to defend must be resolved in favor of the insured”).

The dissent also pointed out that medical expenses and treatment

costs (including emergency medical treatment, ambulatory services, detoxification and addiction treatment, and inpatient hospital services) are at least *arguably* because of bodily injury. *Acuity*, 205 N.E.3d at 475–76. Indeed, what else would they be for? The dissent recognized that the majority opinion was divorced from the policy language: “Nothing in the policy language requires that the claimant bringing the suit seek to recover the costs of the claimant’s own bodily injury” and there is likewise no exclusion for losses claimed by governmental entities or for bodily injuries suffered by others. *Id.* at 476. The restriction of coverage to three categories of claims or claimants is “untethered to any policy language” and “[b]y adding these words to the policies, the majority opinion is not construing the language strictly against *Acuity*, which it is required to do.” *Id.* at 478.

The Delaware Supreme Court reversed a ruling in favor of defense coverage for the policyholder in *Rite Aid*. See *Rite Aid Corp.*, 270 A.3d at 239. Without basis in the policy language, the court ruled that only three classes of plaintiffs are within the scope of the bodily injury coverage (1) the person injured; (2) those recovering on behalf of the person injured; and (3) people or organizations that directly cared for or treated the person injured. *Id.* The standard-form insurance policy does not limit coverage to three classes of plaintiffs. The dissent in *Rite Aid* explains that the bodily injury is

opioid addiction and the claims asserted against Rite Aid seek “damages because of personal injury from opioid addiction.” *Id.* at 254. The dissent’s reasoning is persuasive:

It appears plain to me that the Counties intend to prove that Rite Aid, along with other drug distributors and others, caused the personal injury; that is, the alleged opioid-addiction epidemic, that is at the heart of their claims, it also seems plain that the Counties intend to seek damages for costs incurred by them for the care, loss of services or death resulting from opioid addiction.

Id. at 256. In response to the majority’s statements that only injuries to three categories of plaintiffs trigger coverage, the dissent notes correctly: “The policy does not contain such language”:

I disagree with the Majority’s view that the policy covers only personal injury claims asserted by the person injured, a person recovering on behalf of the person injured, or people or organizations that treated the person injured or deceased, who demonstrate the existence and cause of the injuries. The policy does not contain such language. The policy covers damages claimed by any organization for the care of a person injured by Rite Aid. I think the policy language is broader than the Majority’s rule.

*Id.*¹ The dissents in *Acuity* and *Rite Aid* are more consistent with Florida law because they interpret the actual policy language instead of creating

¹ The *Rite Aid* dissent cited the Seventh Circuit’s decision in *H.D. Smith* case favorably, noting that it distinguished *Medmarc*, another Seventh Circuit decision that was much less relevant but that was cited in the majority opinion in *Rite Aid*. In other words, the majority in *Rite Aid* relied on a Seventh Circuit decision that the Seventh Circuit itself did

limitations and constrictions that exist nowhere in the insurance policy. The divergent judicial opinions show that the policy language is susceptible to more than one reasonable interpretation, so the insurance policy may be considered ambiguous and construed in favor of coverage for Publix.

IV. This Court Should Reject Any Invitation to Limit the Insurance Policy Language Based on Inapplicable Tort Principles.

Standard form general liability insurance policies typically contain two causation links in the Coverage A insuring agreement. The insurance company agrees to pay sums that the insured becomes legally obligated to pay as damages *because of* bodily injury or property damage to which this insurance applies, and this insurance applies to bodily injury or property damage that is *caused by* an occurrence that takes place in the coverage territory. While this Court has not been called upon to interpret “because of bodily injury,” it has rendered several decisions relating to the “caused by an occurrence” language. One theme that emerged was an effort by insurance companies to import tort concepts to constrict the scope of the insurance policy, much in the way the insurance industry is attempting to limit “because of bodily injury” based on tort concepts like proximate cause. “Florida has

not consider binding or persuasive when it considered the same issue in *H.D. Smith. Id.* at 257-258.

long followed the general rule that tort law principles do not control judicial interpretation of insurance contracts.” *CTC Dev. Corp.*, 720 So. 2d at 1074 (quoting *Prudential Prop. & Cas. Ins. Co. v. Swindal*, 622 So. 2d 467, 470 (Fla. 1993)).

In *CTC Development*, this court receded from a prior decision in *Gerrits*² to hold that the undefined term “accident” includes not only accidental events but also damages or injuries that are neither expected nor intended from the standpoint of the insured. By focusing on whether the damages were the “natural and probable consequences” of the policyholder’s deliberate act of building a house on the adjoining property rather than on whether the policyholder intended to cause property damage, the Court in *Gerrits* had inappropriately incorporated tort law principles into the interpretation of the term “accident” in the insurance policy. *CTC Development*, 720 So. 2d at 1074. In the interpretation of insurance policies, if the resulting damages are unintended, then the damages are accidental even if the acts were intentional. *Id.* at 1075. There were multiple reasonable interpretations of the word “accident,” and “when an insurer fails to define a term in a policy, . . . the insurer cannot take the position that there

² *Hardware Mut. Cas. Co. v. Gerrits*, 65 So. 2d 69 (Fla. 1953) (“*Gerrits*”).

should be a narrow, restrictive interpretation of the coverage provided.” *Id.* at 1076 (quoting *Carmichael*, 706 So.2d at 320). “[W]here policy language is subject to differing interpretations, the term should be construed liberally in favor of the insured and strictly against the insurer.” *Id.* at 1076. *See also Travelers Indemnity Company. v. PCR Incorporated*, 889 So. 2d 779, 790 (Fla. 2004) (“*Gerrits* erred, we held, in importing the tort law principle of ‘natural and probable consequences’ into the context of insurance policy interpretation.”).

Similarly, in *Koikos v. Travelers Insurance Company*, this Court applied *CTC Development* in analyzing coverage arising from a shooting where the policyholder was accused of being negligent in providing security. 849 So. 2d 263 (Fla. 2003). The insurance policy defined “occurrence” as an “accident” but left that term undefined. *Id.* at 266. The term “accident” was susceptible to “varying interpretations”; the focus of an occurrence-based policy is on the “cause” of the damage, but there were “two possible causes that resulted in injury in this case: (1) the underlying tortious omission of the insured—Koiko’s failure to provide security and failure to warn; or (2) the intervening intentional acts of the third party—the intruder’s gunshots.” *Id.* at 267. The court stressed that even if the insurance company’s construction of the insurance policy was reasonable, that would create an ambiguity and

would be “interpreted liberally in favor of the insured.” *Id.* at 271. When interpreting the policy requirement that bodily injury or property damage be caused by an occurrence in *CTC Development*, *PCR*, and *Koikos*, this Court refused to import tort or Workers Compensation principles to constrain the meaning of “caused by” accident.

V. Courts Interpreting “Damages Because of Bodily Injury” in Analogous Factual Contexts Have Interpreted that Language Broadly.

Courts from other jurisdictions have considered the “because of bodily injury” language in a number of factual contexts.³ See, e.g., *McDonald’s Corp. v. Austin Mutual Insurance Co.*, 526 F. Supp. 3d 346, 349-50 (N.D. Ill. 2021) (finding costs incurred to comply with a mandatory injunction due to COVID-19 and the Virus constitute ‘damages’ ‘because of’ ‘bodily injury’” noting “[t]he Policies do not say ‘proximately because of’—they merely say

³ This Court considered a case where municipalities brought actions against a gun manufacturer “seeking compensation for expenses incurred as a result of gun violence in their communities” such as “police protection, hospital costs, emergency medical services, and prosecution of violent crimes involving the use of handguns.” *Taurus*, 913 So. 2d at 530. Those insurance policies covered lawsuits seeking damages for bodily injury, like the Publix policies do. The insurance companies denied not on the question of whether the damages alleged were because of bodily injury but instead alleged that a products exclusion applied. *Id.* at 531. The question presented was whether the bodily injury was “arising out of” *Taurus*’s product, with the fundamental assumption being that the damages claimed by the municipalities were because of those injuries.

‘because of,’ so simple ‘but for’ causation is enough.”);⁴ *NAACP v. Accusport Corp.*, 253 F. Supp. 2d 459, 462 (E.D.N.Y. 2003) (finding coverage for the negligent marketing and public nuisance by gun manufacturers who allegedly knowingly and intentionally targeted sales of unsafe handguns to inappropriate purchasers); *Certain Underwriters at Lloyd’s, London v. NL Indus., Inc.*, 164 N.Y.S.3d 607, 608–09 (N.Y. App. Div. 2022) (finding that “nuisance liability is based on the widespread bodily injury/property damage that the hazard of lead paint in homes caused and continues to cause.”); *S/G Arms, Inc. v. Employers Ins. of Wausau*, 122 F. Supp. 2d 255 (D.N.H. 2000) (finding coverage for the costs of providing care for shooting victims and for the loss of their services.”)

VI. The Public Policy of Florida Supports Enforcement of Insurance Policies.

The Florida Supreme Court has long recognized that insurance is a business affected with the public interest. *Feller v. Equitable Life Assurance Soc.*, 57 So. 2d 581, 586 (Fla. 1952) (“The business of insurance is affected with a public interest as much as any other business conducted in the United States.”); *State ex rel. Kennedy v. Knott*, 166 So. 835, 837 (Fla. 1936) (“It

⁴ The court cited positively to the seminal decision in *H.D. Smith* regarding opioid-related coverage. See *Cincinnati Ins. Co. v. H.D. Smith, L.L.C.*, 829 F.3d 771, 774 (7th Cir. 2016).

would be difficult to find a business that more vitally affects the public interest than the insurance business”); see also *Portrait Homes-S.C., LLC v. Pa. Nat’l Mut. Cas. Ins. Co.*, 900 S.E.2d 245, 276 (S.C. 2023) (“insurance is a business affected with the public interest” and “it is vitally essential that the courts do not ignore the fact that the primary object of all insurance is to insure, and...such contracts must be liberally construed in favor of the insured.”). The availability of insurance to defend, settle, and/or satisfy judgments for the claims of healthcare and governmental entities that incur damages as a result of the various types of bodily injuries and deaths caused by the opioid epidemic serves the public interest.

CONCLUSION

United Policyholders respectfully requests that the certified question be answered in the affirmative, finding coverage for Publix because the damages claimed in the Opioid Lawsuits are “because of” bodily injury.

Dated: September 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing *Brief of Amicus Curiae* was filed using the Florida Courts E-Filing Portal and that a notice of such filing will be sent to all counsel of record via the Florida Courts E-Filing Portal.

Dated: September 8, 2026

By: /s/Hugh Lumpkin
Hugh Lumpkin

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the page limit of Fla. R. App. P. 9.370(a)(2)(B) because it contains 20 pages, excluding the parts of the brief exempted by Fla. R. App. P. 9.210(a)(2)(E).

Dated: September 8, 2026

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