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Case Number 236,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

META PLATFORMS, INC., and INSTAGRAM, LLC,

Defendants-Below/Appellants,

v.

HARTFORD CASUALTY INSURANCE CO., and SENTINEL INSURANCE CO.,
Plaintiffs-Below/Appellees,
-and-
FEDERAL INSURANCE COMPANY, OLD REPUBLIC INSURANCE COMPANY, STARR INDEMNITY AND LIABILITY COMPANY, and ZURICH AMERICAN INSURANCE COMPANY,
Defendants-Below/Appellees,
-and-
ACE PROPERTY AND CASUALTY INSURANCE COMPANY, et al.,
Third-Party Plaintiffs-Below/Appellees, and Third-Party Defendants-Below/Appellees.
-and-
ASPEN AMERICAN INSURANCE COMPANY, ENDURANCE AMERICAN SPECIALTY, FIREMAN'S FUND INDEMNITY CORPORATION, GEMINI INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, GREAT AMERICAN SPIRIT INSURANCE COMPANY, INTERSTATE FIRE & CASUALTY COMPANY, NATIONAL FIRE & MARINE INSURANCE COMPANY,

No. 236, 2026

Court Below: Superior Court of the State of Delaware

C.A. No. N24C-11-010 SKR CCLD

Filing Date: October 6, 2026

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, STARR SURPLUS LINES INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, and XL INSURANCE AMERICA, INC., Third-Party Defendants-Below/Appellees.

CORRECTED *AMICUS CURIAE* BRIEF OF UNITED POLICYHOLDERS IN SUPPORT OF DEFENDANTS-BELOW/APPELLANTS AND REVERSAL

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

United Policyholders ("UP") is a non-profit 501(c)(3) organization founded in 1991. Its mission is to serve as a trustworthy and useful information resource and an advocate for insurance policyholders 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 insurance law in the State of Delaware and in every jurisdiction whose courts look to decisions such as this one. UP's interest includes the impact of insurance decisions in one state that are decided under the laws of another, such as: California's broad public policy regarding an insurer's duty to defend policyholders across the state.

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 assists courts as *amicus curiae* in appellate proceedings throughout the United States, including this Court, particularly in cases involving insurance issues

that affect large segments of the public. UP has appeared as *amicus curiae* in insurance-coverage appeals in courts across the country, including in the California Supreme Court in *Liberty Surplus Insurance Corp. v. Ledesma & Meyer Construction Co.* and *Hartford Casualty Insurance Co. v. Swift Distribution, Inc.*, both of which bear directly on the question presented here. UP has likewise appeared as *amicus curiae* before the courts of this State, including this Court. Those appearances include *Origis USA LLC v. Great American Insurance Co.*, No. 461-2024 (Del. 2025); *Aearo Technologies LLC v. ACE American Insurance Co.*, No. 381, 2024 (Del. 2024); *Jarden, LLC v. ACE American Insurance Co.*, No. 273, 2021 (Del. 2021); and *In re Solera Insurance Coverage Appeals*, No. 413, 2019 (Del. 2020). A complete listing of all cases in which UP has appeared as *amicus curiae* can be found in UP's online Amicus Project library at https://uphelp.org/amicus-briefs/.

UP's interest in this appeal is concrete and recurring. The decision below holds that allegations that a policyholder deliberately designed a product or service, and knew or should have known of resulting risks, defeat the "occurrence" and "accident" trigger of a standard-form general liability policy and therefore extinguish the duty to defend. That holding is not confined to the parties in this matter. It reaches every individual who buys liability coverage through a homeowners or automobile policy and every business, small or large, that buys a

commercial general liability policy, because virtually all of the conduct for which such policyholders are sued is deliberate in the volitional sense. If a plaintiff's allegation that knowledge of a potential, yet unmanifested, risk can defeat the trigger of coverage at the pleading stage, the defense coverage that policyholders have purchased for decades will disappear precisely when it is needed most.

Pursuant to Delaware Supreme Court Rule 28, UP states that no party's counsel authored this brief in whole or in part, and that no person or entity other than *amicus curiae* and its counsel contributed money intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

A rule under which allegations of a policyholder's knowledge of a potential risk defeat the "occurrence" trigger would have severe adverse effects on consumers, who over decades have built an understanding and expectation of coverage consistent with what insurers have sold them. Consumers here include individuals who purchase liability coverage through their homeowners and automobile policies, and small-business consumers, who purchase commercial general liability policies precisely to defend them against the known risk of injury and property damage claims arising from "deliberate" acts in the operation of their businesses. Upholding the lower court's ruling as it now stands would vitiate the commonly known and understood scope of liability insurance coverage that has existed for decades where liability coverage can only be defeated based on the policyholder's knowledge where the policyholder has specific knowledge that a specific injury will occur. A generalized understanding of a potential risk that might occur sometime in the future has **never** been the basis for precluding liability coverage anywhere in the United States, including in California.

First, the practical consequence of the decision below for consumers as a class is the loss of defense coverage, frequently referred to as "litigation insurance," which is often the primary value of a general liability policy. Under settled California law,

the duty to defend is broader than the duty to indemnify, is triggered by a mere potential for coverage, and is indivisible.

Second, the broad "occurrence" and "accident" trigger was developed to reach injuries caused by product and design defects. It should not be narrowed by judicial construction, especially a construction that reverses well-settled law in a vast majority of jurisdictions and undermines a long-settled reasonable expectation of what liability insurance protects. California has defined "accident" for more than six decades to include unexpected consequences of deliberate conduct, and courts nationwide construing the same standard-form language unanimously agreed until recently.

Third, allegations that a policyholder knew of a potential risk and failed to act do not convert a covered negligence claim into an uncovered claim alleging non-accidental intentional conduct. Knowledge of a risk is not expectation of injury for insurance purposes. Indeed, insurance is purchased for the purposes of protecting against known risks. As Appellants explain, the coverage inquiry asks whether the resulting harm was unexpected, not whether the underlying business conduct was volitional.

Fourth, consumers' exposure to these claims arises in every jurisdiction, and a narrowing of the trigger here will be invoked against policyholders far beyond this forum and this subject matter. This Court should reinstate the well-established and

long-settled interpretation of "occurrence" and "accident," decline to adopt the newly-fabricated rule advanced by the insurance industry and reverse.

ARGUMENT

I. THE DECISION'S PRACTICAL CONSEQUENCE FOR CONSUMERS AS A CLASS IS THE LOSS OF DEFENSE COVERAGE — OFTEN THE PRIMARY VALUE OF A GENERAL LIABILITY POLICY.

Consumers purchase general liability coverage principally to fund the defense of lawsuits. Many courts throughout the United States have often referred to liability insurance as "litigation insurance." For an individual homeowner or a small business, the cost of defending against a single bodily-injury or property-damage suit will frequently exceed any judgment that is ultimately entered and may exceed the policyholder's net worth. The duty to defend protects against the risk that a lawsuit will bankrupt them, even if they were to win on the merits. That is why the defense promise is the practical heart of the bargain. A rule that narrows the occurrence trigger takes this away, and creates coverage disputes at the start of the case that undermines this promise. It shifts the entire cost of defense (and potentially the costs of coverage litigation) onto the policyholder at the pleading stage, before any adjudication of intent, and indeed before any development of the facts that would show what the policyholder actually knew or expected. That is why courts have distilled this point into a single, memorable phrase, describing the defense promise as "litigation insurance." As the New York Court of Appeals has explained: "The duty remains 'even though facts outside the four corners of [the] pleadings indicate

that the claim may be meritless or not covered.'" *Fitzpatrick v. Am. Honda Motor Co., Inc.*, 575 N.E.2d 90 (N.Y. 1991). For this reason, when a policy represents that it will provide the insured with a defense, courts have said that it actually constitutes "litigation insurance" in addition to liability coverage. *See Seaboard Sur. Co. v. Gillette Co.*, 476 N.E.2d 272, 275 (N.Y. 1984) (citing *Intl. Paper Co. v. Cont. Cas. Co.*, 320 N.E.2d 619, 621 (N.Y. 1974)).

California law, which the parties agreed governs and which the Superior Court applied, codifies several core principles that make this consequence plain. It is black letter law that the duty to defend is broader than the duty to indemnify, and, so far as the insured is concerned, it may be as important as the duty to indemnify itself. *Buss v. Superior Court*, 939 P.2d 766, 773 (Cal. 1997). The duty is not divisible in a mixed action. As the California Supreme Court explained in *Buss*: "To defend meaningfully, the insurer must defend immediately. To defend immediately, it must defend entirely." *Id.* at 775. These principles exist because an insurer cannot fairly parse a complaint claim by claim at the outset of litigation, and because a defense that arrives only after the coverage question is resolved is no defense at all.

The trigger for that obligation is correspondingly broad. As the California Supreme Court has explained, the duty to defend arises whenever the underlying action presents a mere *potential* for coverage, and any doubt about whether the complaint alleges a covered risk must be resolved in the insured's favor. *Montrose*

Chem. Corp. v. Superior Court, 861 P.2d 1153, 1157, 1160 (Cal. 1993). An insurer is excused from defending only where the third-party complaint can *by no conceivable theory* raise a single issue that would bring it within the policy's coverage. *Hartford Cas. Ins. Co. v. Swift Distrib., Inc.*, 326 P.3d 253, 258-59 (Cal. 2014). These settled rules of California insurance law are not technicalities. They reflect a considered allocation of risk over time: the insurer, which drafted the policy and priced the premium, bears the burden of uncertainty at the threshold, and the policyholder receives the defense it paid for while the underlying facts are sorted out.

Taken together, these principles mean that the duty to defend does not turn on the plaintiff's characterization of the policyholder's state of mind, on the theory of liability the plaintiff finds most lucrative, or on how aggressively a complaint is drafted. Were the rule otherwise, plaintiffs could wield their own pleadings as a weapon, drafting allegations of knowledge or intent for the very purpose of stripping a defendant of its defense coverage and thereby coercing settlement from a policyholder suddenly forced to fund its own defense. It turns on the very need for which the policyholder purchased coverage: a defense when a plaintiff alleges that a product or service the policyholder made, sold, designed, or used caused injury. The decision below inverts that structure and reverses decades of settled legal principles when there has been no change to policy language that might warrant such

an earth-shifting change. By treating allegations of the deliberateness of the policyholder's underlying business conduct, together with allegations of foreseeability, as dispositive at the trigger stage, it converts the broadest and most easily satisfied element of a liability policy into the narrowest. For consumers as a class, that means the defense obligation evaporates in the ordinary case in which it is needed.

In fact, the Pennsylvania Supreme Court, in a comprehensive unanimous ruling handed down just several weeks ago, expounded in detail on the importance of the duty to defend to policyholders, including reinforcing why the defense promise is so critical to purchasers of liability insurance:

> Insurers purported to offer comprehensive liability coverage without exclusions that would pertain to the underlying conduct in this case, only to later ask the courts to relieve them of their own contractual obligations. Were we to agree with Insurers, where would it end? Anytime there is [intentional] conduct alleged to have occurred, whether by the policyholder or by third parties, the argument could be that public policy…. overrides plain contractual language.

Samsung Fire & Marine Ins. Co. (US Branch), et al. v. RI Settlement Trust, et al., No. 61 EAP 2024, 2026 Pa. LEXIS 1276 at *46-48 (Pa. July 21, 2026) (Wecht, J., concurring) (footnote omitted). Just as that Court condemned and rejected the insurance industry's efforts to rewrite effectively its obligations to policyholders through a public policy argument found nowhere in the policy language itself, United Policyholders urges this Court to rebuff the very similar efforts here by

insurers to relieve themselves of long-recognized defense obligations under the guise of reconstruing one of the policy's core promises. That effort should not only be refused, but denounced as overreaching and contrary to the basic obligations insurers promise to fulfill under the liability insurance policies they sell.

II. THE BROAD "OCCURRENCE"/"ACCIDENT" TRIGGER WAS DEVELOPED TO COVER INJURIES CAUSED BY PRODUCT AND DESIGN DEFECTS AND SHOULD NOT BE NARROWED BY CONSTRUCTION.

The standard-form trigger at issue is not ambiguous, and it is not new. California has construed "accident" for more than six decades to mean "an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause." *Geddes & Smith, Inc. v. St. Paul Mercury Indem. Co.*, 334 P.2d 881, 884 (Cal. 1959). The facts of *Geddes* are the foundational illustration for this appeal. The insured supplier deliberately designed and manufactured aluminum doors. There was nothing inadvertent about the manufacture. Yet when the doors failed unexpectedly after installation, the resulting damage was an "accident," because the failure and its consequences were unexpected, undesigned, and unforeseen from the insured's standpoint. *Id.* at 884. *Geddes* thus establishes what the decision below denies: the trigger reaches unexpected consequences of deliberate product and design conduct.

That understanding is not idiosyncratic to California. Courts across the country construing the same standard-form language have reached the same conclusion, and their reasoning confirms that the trigger was designed to reach exactly this category of claim. The Florida Supreme Court held that faulty workmanship neither intended nor expected from the standpoint of the insured can

constitute an "accident" and therefore an "occurrence." *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 888 (Fla. 2007). The Texas Supreme Court explained that a deliberate act negligently performed is an accident when the damaging effect is not intended or expected, and rejected foreseeability as the coverage boundary, reasoning that insurance is purchased and priced against foreseeable risks in the first place. *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1, 8-10 (Tex. 2007). West Virginia's high court held that defective work causing damage is an occurrence, assessed from the standpoint of the insured, and observed that an insured ordinarily does not expect or desire the defects that give rise to its liability. *Cherrington v. Erie Ins. Prop. & Cas. Co.*, 745 S.E.2d 508, 520-21 (2013). And the Iowa Supreme Court held that "accident" means an unexpected and unintended event, and that intentional conduct can produce an accidental occurrence where the insured did not expect and intend both the act and the resulting damage. *National Sur. Corp. v. Westlake Invest., LLC*, 880 N.W.2d 724, 736-37 (Iowa 2016). This consistent holding, across decades and jurisdictions, is indicative of the anticipated scope of the duty to defend, priced and paid at underwriting.

Legal scholarship reinforces the point that narrowing the trigger by construction rewrites the bargain. As Professor Scheuermann explains, the fortuity requirement embedded in "accident" asks whether the insured had effective control over the coverage-activating event, not whether the insured's antecedent business

conduct was intentional. James E. Scheuermann, *Fortuity, Intent, and Causation in Liability Insurance Law*, 9 Elon L. Rev. 329, 337-45 (2017). Professor Fischer likewise observes that nearly all human conduct is intentional in a broad sense, so that treating volition as dispositive would sweep away the coverage that liability policies exist to provide; the material question is whether the insured intended the injurious consequences. James A. Fischer, *The Exclusion from Insurance Coverage of Losses Caused by the Intentional Acts of the Insured: A Policy in Search of a Justification*, 30 Santa Clara L. Rev. 95, 96-97, 119-20 (1990). Where insurers wish to exclude particular categories of known or elevated risk, they do so through exclusionary language that is separately negotiated and separately priced. They should not obtain the same result by narrowing the meaning of the insurance trigger and taking coverage away from policyholders who are aware of risks, but for whom there is no evidence of intent to cause harm. More important for present purposes, this should not happen on the basis of allegations, the only thing relevant to the duty to defend.

III. ALLEGATIONS THAT A POLICYHOLDER KNEW OF A RISK AND FAILED TO ACT DO NOT CONVERT A COVERED NEGLIGENCE CLAIM INTO UNCOVERED NON-ACCIDENTAL INTENTIONAL CONDUCT.

The governing California rule is that the coverage inquiry asks whether the resulting harm was unexpected, not whether the underlying conduct was volitional. In *Delgado v. Interinsurance Exchange*, 211 P.3d 1083, 1086, 1088, 1091 (Cal. 2009), the California Supreme Court confirmed that "accident" refers to the injury-producing conduct of the insured, and that the analysis proceeds along the causal series of events beginning with the insured's own acts. The California Supreme Court there denied coverage because the insured's assault was purposeful and intended to inflict injury; every act, the manner in which it was done, and the objective accomplished occurred as intended. That is the opposite of a negligent design or failure-to-warn claim, like those faced by policyholders facing claims of defective products.

The controlling application comes from the California Supreme Court's decision in *Liberty Surplus Insurance Corp. v. Ledesma & Meyer Construction Co.*, 418 P.3d 400, 403-04, 406 (Cal. 2018). The California Supreme Court reaffirmed that the term "accident" is "more comprehensive than the term 'negligence' and thus includes negligence," and that even where an insured performs a deliberate act, coverage exists where "an additional, unexpected, independent, and unforeseen

happening" produces the damage. *Id.* The insured's hiring, retention, and supervision of its employee were unquestionably deliberate decisions, made with knowledge of the employee's history. The court nonetheless held that the claim was potentially an accident, because the resulting injury was unexpected from the insured's standpoint. *Ledesma*'s reasoning transfers directly: an insured may legitimately expect coverage for negligence claims notwithstanding a deliberate act in the causal chain. The contrary rule would strip coverage entirely whenever a complaint merely pleads knowledge.

California law also draws a clear distinction between knowledge of a risk and expectation of injury. An injury is "expected," and therefore outside the trigger, only where the insured subjectively knew or believed that the injury was highly likely or practically certain to occur. Allegations that the insured "should have known" of a risk, or that it negligently failed to eliminate a risk of which it was aware, establish negligence, the very thing insured, and not an expected, non-accidental injury. *State of Cal. v. Allstate Ins. Co.*, 201 P.3d 1147, 1160-61, 1167-68 (Cal. 2009). Indeed, in *State of California* the insured had been warned of the risk of discharge and failed to take recommended preventive measures, and the California Supreme Court held that this evidence showed at most negligence, not an expectation that the loss would occur.

This forum's own law reflects the same breadth as California's.[1] Under Delaware law, where there is some doubt as to whether the complaint against the insured alleges a risk insured against, that doubt is resolved in favor of the insured; any ambiguity in the pleadings is resolved against the carrier; and if even one count or theory alleged in the complaint lies within the policy coverage, the duty to defend arises. *Pacific Ins. Co. v. Liberty Mut. Ins. Co.*, 956 A.2d 1246, 1254-55 (Del. 2008). A decision that narrows the occurrence trigger by treating deliberate business conduct and pleaded foreseeability as dispositive would sit uneasily beside those principles and would invite insurers to argue that the same reasoning applies to Delaware policyholders under Delaware law. That risk is magnified by Delaware's prominence as a forum for insurance-coverage litigation. Because so many corporate policyholders are subject to suit in this State by virtue of their Delaware citizenship, this Court's construction of standard-form policy language is unusually consequential, and an unduly narrow reading of the occurrence trigger would reverberate well beyond this appeal.

Professor Scheuermann's analysis in Sections IV through VI of *Fortuity, Intent, and Causation in Liability Insurance Law*, 9 Elon L. Rev. at 351-57, explains precisely why the reasoning of the Superior Court below goes wrong, and it merits

[1] UP assumes for purposes of this brief that California law governs, as the parties agreed and the Superior Court held, and takes no position on choice of law. The point that follows is one of consequence, not of governing law.

the Court's attention. As the article documents, the "Objective Intent Model," under which an intentional act is treated as non-accidental whenever it is the direct and sole cause of the claimed injury, is a minority position nationally because it conflates two distinct questions: whether the insured's conduct caused the injury, and whether the insured exercised the kind of control over the coverage-activating event that defeats fortuity. *Id.* at 355-57.

Professor Scheuermann identifies two general failures of that model. The first is that it improperly limits fortuity to disruption by causes external to the insured. *Id.* at 358-62. The article demonstrates that conduct can "misfire" through causes internal to the act (*i.e.*, improper execution, mistaken or absent belief, and duress or compulsion) with the consequence that an act may be intentional in one respect and accidental in another. The model recognizes only intentional acts with direct-and-sole causation, and intentional acts disrupted by an external force; it omits the common third category of an intentional act over which the actor nonetheless lacked control in some material respect.

The second failure is the manipulability of act descriptions. *Id.* at 362-66. A single event can be truthfully described at many levels of generality, and courts applying the model routinely equivocate, invoking a generic description of the conduct to establish causation while switching to a more specific description when fortuity is at issue. The corrective is the concept of a "coverage-relevant" act

description: one specific enough to permit analysis both of whether the act was fortuitous and of whether that act caused the injury the third party actually pleads.

Most significant for this appeal, the article shows that the model improperly imports negligence-law concepts of objective foreseeability and proximate causation into what is a contract-based fortuity inquiry. *Id.* at 376-78. Those tort concepts may establish whether an act caused harm for purposes of tort responsibility and may be decided in the underlying case for assessment of liability, but they do not answer whether the insured had effective control over the coverage-activating event: the question the insurance policy actually poses.

That analysis maps onto the decision below. A rule that treats allegations of "knowledge," or of deliberate design, as automatically defeating the accident trigger commits exactly the error the article identifies. It substitutes a generic label, "intentional conduct," and an objective foreseeability test for the coverage-relevant question whether the harm that actually occurred was unexpected from the policyholder's standpoint. Other scholarship is in accord. Professor Fischer explains that intentional conduct, wrongful conduct, and tortious conduct are not interchangeable with intended injury, and that "expected" requires awareness of probable consequences materially higher than ordinary foreseeability. 30 Santa Clara L. Rev. at 126-28. Surveying the national case law, Professor French concludes that the majority view requires that the insured subjectively expect or

intend the injury, not merely deliberately undertake the act with knowledge of the risks, and warns that equating "unexpected" with "unforeseeable" would eliminate coverage for ordinary negligence, because foreseeable harm is the basis of negligence liability. Christopher C. French, *Insuring Intentional Torts*, 83 Ohio St. L.J. 1069, 1078-80 (2022). Professor Swisher likewise cautions against importing tort causation wholesale into insurance, where the causal question must be answered by reference to the coverage promise and the parties' reasonable expectations. Peter Nash Swisher, *Insurance Causation Issues: The Legacy of Bird v. St. Paul Fire & Marine Insurance Co.*, 2 Nev. L.J. 351, 362, 381-84 (2002). And Professor Knutsen's work concludes that fortuity turns on whether the insured subjectively intended the particular harm that occurred, not on objective foreseeability. Erik S. Knutsen, *Fortuity Clauses in Liability Insurance*, 37 Queen's L.J. 73, 86-94 (2011).

The practical stakes follow directly. Failure-to-warn and design-defect pleading standards routinely require plaintiffs to allege that the defendant knew or should have known of a risk. If pleaded knowledge defeats the occurrence trigger, then the exception will swallow the coverage that policyholders bought, in the entire category of cases where they most need it.

IV. CONSUMERS' EXPOSURE TO THESE CLAIMS OCCURS IN ALL JURISDICTIONS, AND A NARROWING HERE WILL BE INVOKED AGAINST POLICYHOLDERS NATIONWIDE.

The spillover will not stop at the state line. Standard-form general liability language is materially uniform across the country, and a decision of this Court construing that language will be cited by insurers against policyholders in jurisdictions far beyond this forum, depriving them of coverage they purchased over many years and for which they paid substantial premiums. That risk is heightened by the ordinary dynamics of tort pleading. Plaintiffs in defect and product cases routinely allege intentional or knowing conduct for strategic reasons that have nothing to do with insurance: to support punitive damages, to avoid workers' compensation exclusivity bars, and to inflame the jury. Coverage cannot be permitted to turn on a plaintiff's strategic pleading choices, over which the policyholder has no control. Were the rule otherwise, plaintiffs would have every incentive to plead knowing or intentional conduct for the very purpose of stripping the defendant of its defense, wielding the complaint as leverage to coerce settlement from a policyholder left to fund its own defense. Once insurers may escape the defense obligation through a plaintiff's choice of words, plaintiffs will have every incentive to plead accordingly, using the complaint itself as leverage to extract settlements from policyholders who can no longer look to their insurers for a defense.

The consequences of that shift fall on identifiable people. As Professor Knutsen has documented, liability insurance functions not only as wealth protection for the policyholder but as the practical backbone of the compensation system for injured third parties; when coverage is denied on grounds untethered from genuine fortuity, the cost is not eliminated but shifted, frequently onto injured claimants who have no other realistic source of recovery, and onto policyholders who lack the assets to fund a defense. Erik S. Knutsen, *Fortuity Victims and the Compensation Gap: Re-Envisioning Liability Insurance Coverage for Intentional and Criminal Conduct*, 21 Conn. Ins. L.J. 209, 213-15, 230-31 (2014); *see also* Knutsen, 37 Queen's L.J. at 113-15.

Preserving the traditional breadth of the occurrence trigger does not require insurers to cover intended harm. It requires only that the question be answered by reference to evidence – not allegations – of what the policyholder actually expected or intended, with exclusions doing the work of narrowing the coverage to specifically define the scope of the duty to defend using clear language that everyone can see before a claim is tendered. The decision below also threatens to multiply the very litigation that liability insurance exists to forestall, and to invert the settled relationship between the insurer's two duties. Suppose a complaint alleges purposeful conduct, the insurer refuses to defend on that basis, and the underlying trial then establishes only negligence. On the reasoning below, the policyholder

denied a defense at the outset would emerge with a covered, indemnifiable loss at the end, and could be expected to sue its insurer to recover the defense costs it was wrongly forced to bear. A rule that withholds the defense while preserving the indemnity stands liability insurance on its head, rendering the duty to indemnify broader than the duty to defend, when the duty to defend has always been the broader of the two. Delaware should be reluctant to become known as the jurisdiction that inverted that fundamental principle and manufactured a fresh round of coverage litigation in the process.

CONCLUSION

Amicus curiae United Policyholders respectfully urges the Court, whatever its disposition of the parties' dispute, to decline to adopt a rule under which allegations that an insured knew of a risk and failed to act to protect its customers defeat the "occurrence" trigger, and to reverse the judgment of the Superior Court.

Dated: October 6, 2026

Respectfully submitted,

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IN THE SUPREME COURT OF THE STATE OF DELAWARE

META PLATFORMS, INC., and INSTAGRAM, LLC, Defendants-Below/Appellants, v. HARTFORD CASUALTY INSURANCE CO., and SENTINEL INSURANCE CO., Plaintiffs-Below/Appellees, -and- FEDERAL INSURANCE COMPANY, OLD REPUBLIC INSURANCE COMPANY, STARR INDEMNITY AND LIABILITY COMPANY, and ZURICH AMERICAN INSURANCE COMPANY, Defendants-Below/Appellees, -and- ACE PROPERTY AND CASUALTY INSURANCE COMPANY, et al., Third-Party Plaintiffs-Below/Appellees, and Third-Party Defendants-Below/Appellees. -and- ASPEN AMERICAN INSURANCE COMPANY, ENDURANCE AMERICAN SPECIALTY, FIREMAN'S FUND INDEMNITY CORPORATION, GEMINI INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, GREAT AMERICAN SPIRIT INSURANCE COMPANY, INTERSTATE FIRE & CASUALTY COMPANY, NATIONAL FIRE &	No. 236, 2026 Court Below: Superior Court of the State of Delaware C.A. No. N24C-11-010 SKR CCLD

MARINE INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, STARR SURPLUS LINES INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, and XL INSURANCE AMERICA, INC., Third-Party Defendants-Below/Appellees.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This Brief complies with the typeface requirement of Delaware Supreme Court Rule 13(a) (i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word.

2. This Brief complies with the type-volume limitation of Rule 14 (d)(i) because it contains 4,672 words, which were counted by Microsoft Word.

Dated: October 6, 2026

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