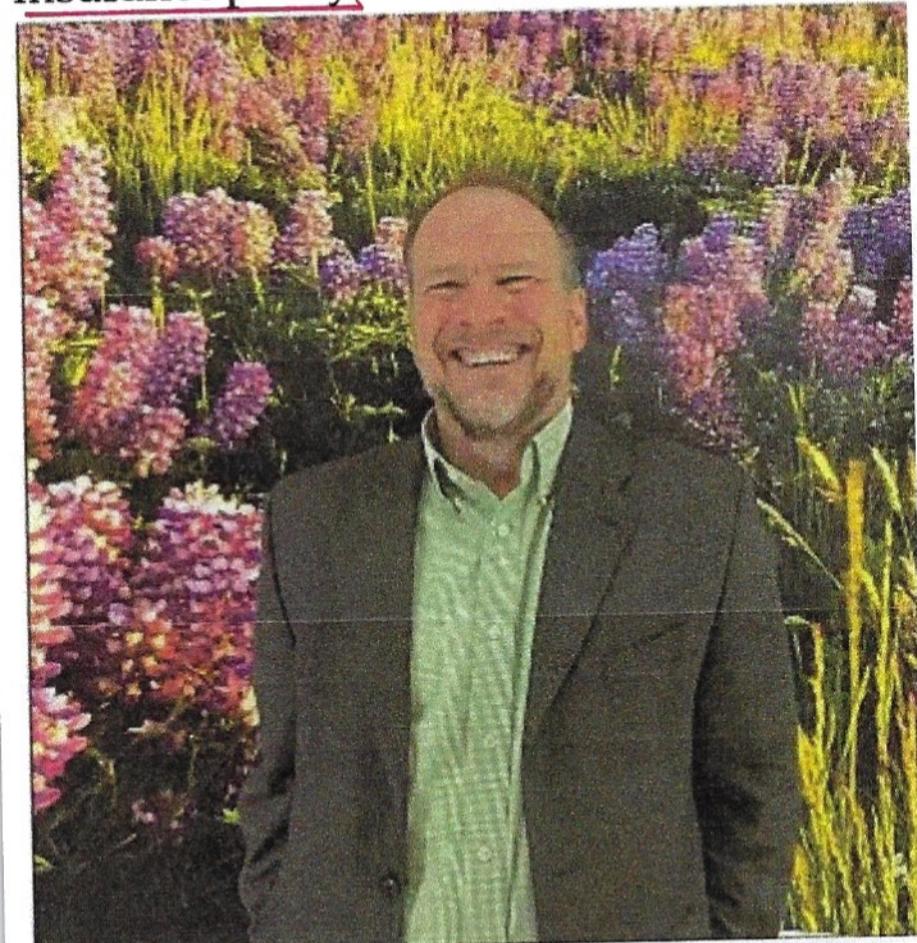


Court to hear cases on insurance coverage for COVID MICHAEL KARLIK

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The Colorado Supreme Court announced on Tuesday that it will decide the degree to which a virus or other hazard must affect a commercial property before it can trigger loss-or-damage coverage under an insurance policy.



At least three of the court's seven members must agree to hear a case on appeal. Currently, there is one vacancy on the court that will be filled in February.

The justices will also consider whether a trial judge properly admitted evidence of a defendant's past abuse of a witness, to illustrate why jurors should believe the witness's shifting account of what happened.

Insurance coverage for COVID 'damage'

In 1968, more than 50 years before the COVID-19 pandemic, the state Supreme Court decided Western Fire Insurance Company v. First Presbyterian Church. A fire department closed a church building after gasoline seeped into the soil around it. The leak contaminated the interior of the church, "making the use of the building dangerous."

At the time, the Supreme Court acknowledged that the inability to use the church might not qualify as a "direct physical loss" on its own. However, the saturation of gasoline in the church rendered the building uninhabitable, entitling it to insurance coverage.

Fast-forwarding half a century, Spectrum Retirement Communities, LLC paid Continental Casualty Company for a policy covering direct physical loss or damage to its properties. It detailed how public health orders during the COVID-19 pandemic forced it to close, limit access to or alter certain physical

spaces within its senior living facilities at a financial loss to the company. Continental denied coverage for those alleged losses..

A trial judge originally allowed the case to proceed based on the Western Fire precedent. However, as federal appellate judges and the state Supreme Court began issuing decisions rejecting commercial property owners' COVID-19 related theories, the case ultimately resolved in Continental's favor. Note A divided three-judge Court of Appeals panel cautioned that it might be possible for COVID-19 to cause a direct physical loss, but Spectrum had not alleged that to be the case for its properties. Note "Rather, a direct physical loss may result from the existence of airborne materials that accumulate to such a degree that they render a property completely uninhabitable," wrote Judge Timothy J. Schutz for himself and Judge W. Eric Kuhn. "Here, Spectrum did not allege that there was a buildup of COVID-19 to such a degree that it rendered Spectrum's properties 'uninhabitable.' Indeed, it could not have made such an allegation in good faith because it is undisputed that Spectrum's facilities remained open." Note "I acknowledge that this is a close case that poses serious difficulties in drawing clear lines," wrote Judge Craig R. Welling in dissent. Still, he believed Spectrum "adequately alleged that sufficient portions of its facilities were rendered 'uninhabitable and highly dangerous' by COVID-19."

Spectrum appealed to the Supreme Court, arguing its Western Fire decision does not require a property to be "completely uninhabitable" for insurance coverage to kick in. The non-profit group United Policyholders also weighed in on Spectrum's behalf, asking the Supreme Court to walk back the appellate panel's decision.

"If a policyholder suffers a fire, damage from a fallen tree, or loss of use from a gas leak that affects only part of the insured property or its functionality, it has suffered physical loss of or damage to that part and rightly expects corresponding coverage, even if other parts remain undamaged and fully usable," wrote the group.

The Supreme Court will review the Court of Appeals' analysis.

The case is Spectrum Retirement Communities, LLC et al. v. Continental Casualty Company.

Witness credibility

Pueblo County jurors heard that Romando Marquis Jones was carrying 14-month-old Aiden Seeley by the ankles and bouncing him while the child was whimpering. Minutes later, the child's foster mother, Dacey Spinuzzi, saw Aiden gasping for air and appearing limp. Jones told her he "just tossed him down" and had "done it before."

As Spinuzzi called 911, Jones warned her to "f---ing fix this" and to not disclose that he was present. Jones left the house and Spinuzzi told a dispatcher Aiden had fallen. Aiden later died of his injuries. Both adults changed their stories over the course of the investigation, with Jones admitting to being at the house and Spinuzzi taking a plea deal that required her to testify truthfully against Jones for murder.

At trial, in response to the prosecution's questioning, Spinuzzi admitted to having repeatedly lied to law enforcement. The prosecution then asked District Court Judge Thomas Flesher to permit the jury to hear evidence of Jones' prior acts of abuse toward Spinuzzi to illustrate how Spinuzzi had learned to "make things up."

Flesher granted the prosecution's request, telling jurors they were only to use the evidence to assess Spinuzzi's credibility as a witness. The jury convicted Jones of murder.

A Court of Appeals panel ruled that the evidence of Jones' prior conduct was properly aimed at helping the jury decide whether to believe the version of events Spinuzzi recounted on the witness stand. Spinuzzi's "credibility was crucial in this case. She was the prosecution's primary witness at trial, and discussions of her inconsistent testimony dominated opening statements and closing arguments," wrote Judge Jerry N. Jones, who is not related to Romando Jones.

Note

To the Supreme Court, Romando Jones argued the decision "encourages gamesmanship" by allowing the prosecution to probe the credibility issues of its own witness, then introduce inflammatory evidence of other misconduct to explain away those issues.

The justices will decide if the evidence was properly admitted.

The case is Jones v. People.

