

# Colo. High Court Limits Reach of Insurer Cooperation Law

By **Zach Dupont**

Law360 (April 27, 2026, 9:00 PM EDT) -- The Colorado Supreme Court ruled Monday that a portion of Colorado law addressing procedural requirements for insurers asserting failure-to-cooperate defenses against policyholders applies only to a policyholder's general duty to cooperate, not their duty to satisfy specific contract requirements.

In a 6-1 **decision** that reversed the state Court of Appeals, the justices dismissed the claims of Anthony Wenzell against his insurers, United Services Automobile Association and State Farm Mutual Automobile Insurance Co. The justices found that the notice requirement under Colorado Revised Statute Section 10-3-1118, or Section 1118, didn't apply to Wenzell's case because his failure to provide a full release of medical records constituted a specific contractual breach not covered by the policy's general cooperation clause.

"USAA and State Farm asserted that Wenzell had failed to provide a suitable medical release, which if true, is a breach of the enumerated conditions precedent in the policies, not the policies' general cooperation clauses," Justice William W. Hood III wrote on behalf of the majority.

The majority reviewed the legislative hearings that led to the creation of Section 1118, and found that the term "cooperate" in the statute was ambiguous and required interpretation from the justices. The majority opinion wrote that the bill's sponsor said "cooperate" was intended to "provide a standard meaning for cooperation" while another member of the General Assembly "implied that the terms of an insurance contract would continue to control what constitutes cooperation in a particular instance."

"Without a clear expression of the General Assembly's specific intent to modify the common-law duty to cooperate, we conclude that Section 1118 didn't abrogate the common law," the majority wrote. "Thus, the failure-to-cooperate defense remains distinct from condition-precedent defenses, and only the former is subject to Section 1118's procedure."

The majority said that Wenzell's failure to provide a full medical release to his insurers — including records from the 2017 car accident that led to the litigation and an earlier 2014 accident — constituted a breach of the enumerated conditions precedent and would not be covered by the majority's interpretation of Section 1118. Thus, Wenzell's claims must be dismissed, and the Court of Appeals panel **ruling in his favor** overturned, the justices said.

In a footnote, the majority wrote that the interpretation of Section 1118 "should not be understood as an invitation to insurers to try to circumvent Section 1118 by establishing novel or unduly onerous conditions precedent."

In a strongly worded partial dissent, Justice Maria E. Berkenkotter said the majority opinion will render Section 1118 "meaningless" and will lead to more gamesmanship from insurers, which Section 1118 sought to reduce.

"The majority's analysis turns the legislature's intent on its head. The absurd consequence of its opinion is that how an insurer chooses to label an insured's allegedly noncooperative conduct after the insurer is sued gives the insurer the power to determine whether Section 1118 applies," Justice Berkenkotter wrote. "That makes no sense."

Justice Berkenkotter said the majority's analysis "falls short" for two reasons. First, Justice Berkenkotter said the majority ruling ignored the "plain, unambiguous language of the statute." Second, she wrote that a review of Section 1118's legislative history shows the General Assembly's intent was for the phrase "failure-to-cooperate to apply broadly to prevent an insurer from unfairly using the defense against its insureds in first-party insurance litigation."

"Alleged gamesmanship by insurers concerning requests for blanket medical release authorizations — the type of noncooperation at issue here — was specifically mentioned by proponents of Section 1118 no fewer than ten times during the hearing in the House," Justice Berkenkotter wrote.

The partial dissenting opinion went on to say the findings from the majority create an incentive for insurers to make "an ever-more-granular list of specific duties of cooperation to maximize their ability to assert a failure-to-cooperate defense without having to comply with Section 1118."

"This would allow insurers to totally circumvent the statute's notice and cure requirements," Justice Berkenkotter wrote.

The justices were unanimous in a second portion of the ruling regarding when coverage in an excess insurance policy is triggered. In Wenzell's case, he held a policy considered to be excess coverage with USAA, and USAA argued it owed nothing to Wenzell until payments had been made by his primary insurer, State Farm.

The justices disagreed with USAA's interpretation of excess coverage, opting to adopt an undisputed-damages approach where exhaustion occurs when a policyholder undisputedly shows their damages exceed the limits of their primary policy, not when the primary insurer pays the claim.

"The undisputed-damages approach harmonizes the entire statutory [underinsured motorist] scheme by ensuring that primary and excess [underinsured motorist] insurers are equally prevented from using setoffs tied to payments from underlying coverage to artificially reduce their own coverage," the justices wrote.

Using the undisputed-damages approach, the justices affirmed the Court of Appeals ruling that USAA had a duty to evaluate Wenzell's claims, but reversed the panel's decision finding that exhaustion clauses violate Colorado law. The justices found that Wenzell's claims must be dismissed because of his failure to show his injuries undisputedly resulted from the 2017 accident, not the prior accident, and USAA has no obligation to investigate, adjust or pay.

In a statement to Law360, Wenzell's counsel, Scott Anderson of Robert J Anderson PC, said they were "disappointed in the ruling." Anderson's statement said that the General Assembly debated "this exact situation when it enacted" Section 1118 and the justices' decision to overturn the Colorado Court of Appeals panel's ruling "strips away any guardrails" protecting policyholders.

"The practical effect of this decision is that insureds may now be forced to give up fundamental legal rights simply to preserve coverage," Anderson's statement said. "That is not what Colorado consumers reasonably expect when they purchase insurance, and it is an outcome that benefits insurance companies, not policyholders."

Counsel for USAA declined to comment. Counsel for State Farm did not immediately respond to a request for comment Monday.

USAA is represented by Evan Stephenson and Jeremy Moseley of Spencer Fane LLP.

State Farm is represented by Katherine C. Yarger of Lehotsky Keller Cohn LLP and by Franklin Patterson and Karl Chambers of Patterson Ripplinger PC.

Wenzell is represented by Scott F. Anderson, Robert J. Anderson and Timothy G. Buxton of Robert J. Anderson PC and by L. Dan Rector of Patrick Collins Esq. LLC.

The case is United Services Automobile Association et al. v. Wenzell, case number 2024SC372, in the Colorado Supreme Court.