

DISTRICT COURT, BOULDER COUNTY, COLORADO

Court Address:
Boulder County Justice Center
1777 6th Street
P.O. Box 4249
Boulder, Colorado 80302

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ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, ESURANCE INSURANCE COMPANY, ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY, NATIONAL GENERAL ASSURANCE COMPANY, ENCOMPASS INDEMNITY COMPANY, NATIONAL FARMERS UNION PROPERTY AND CASUALTY COMPANY, NATIONAL GENERAL INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CONTINENTAL INSURANCE COMPANY, THE CINCINNATI INSURANCE COMPANY, REGENT INSURANCE COMPANY, PRAETORIAN INSURANCE COMPANY, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, TRAVELERS PERSONAL INSURANCE COMPANY, TRAVELERS INDEMNITY COMPANY OF CONNECTICUT, TRAVELERS COMMERCIAL INSURANCE COMPANY, TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, THE TRAVELERS INDEMNITY COMPANY OF AMERICA, THE TRAVELERS HOME AND MARINE INSURANCE COMPANY, THE STANDARD FIRE INSURANCE COMPANY, THE PHOENIX INSURANCE COMPANY, THE CHARTER OAK FIRE INSURANCE COMPANY, THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, HARTFORD FIRE INSURANCE COMPANY, HARTFORD CASUALTY INSURANCE COMPANY, HARTFORD UNDERWRITERS INSURANCE COMPANY, HARTFORD ACCIDENT & INDEMNITY COMPANY, PROPERTY & CASUALTY INSURANCE COMPANY OF HARTFORD, SENTINEL INSURANCE

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Case Number:

Division:

Courtroom:

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| COMPANY, LTD., TRUMBULL INSURANCE COMPANY, TWIN CITY FIRE INSURANCE COMPANY, AMICA MUTUAL INSURANCE COMPANY, AMERICAN BANKERS INSURANCE COMPANY, CALIFORNIA CASUALTY INDEMNITY EXCHANGE, ECONOMY PREMIER ASSURANCE COMPANY, FARMERS DIRECT PROPERTY AND CASUALTY INSURANCE COMPANY, FARMERS INSURANCE EXCHANGE, FARMERS PROPERTY AND CASUALTY INSURANCE COMPANY, FIRE INSURANCE EXCHANGE, FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, TRUCK INSURANCE EXCHANGE, ALLIED INSURANCE COMPANY OF AMERICA, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, A NATIONWIDE COMPANY, AMCO INSURANCE COMPANY, A NATIONWIDE COMPANY, CRESTBROOK INSURANCE COMPANY, DEPOSITORS INSURANCE COMPANY, A NATIONWIDE COMPANY, NATIONAL CASUALTY COMPANY, NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA, NATIONWIDE GENERAL INSURANCE COMPANY, NATIONWIDE INSURANCE COMPANY OF AMERICA, NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE PROPERTY & CASUALTY INSURANCE COMPANY, PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE, ACUITY, A MUTUAL INSURANCE COMPANY, SHELTER MUTUAL INSURANCE COMPANY, SHELTER GENERAL INSURANCE COMPANY, ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, FIREMAN'S FUND INSURANCE COMPANY, AMERICAN FAMILY INSURANCE COMPANY, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I., AMERICAN FAMILY CONNECT PROPERTY AND CASUALTY INSURANCE COMPANY, HOMESITE INDEMNITY COMPANY, HOMESITE INSURANCE COMPANY, ALLIED WORLD ASSURANCE COMPANY, LTD., ALLIED WORLD ASSURANCE COMPANY (U.S.), INC., BROTHERHOOD MUTUAL INSURANCE COMPANY, COUNTRY MUTUAL INSURANCE COMPANY, EVEREST INDEMNITY INSURANCE COMPANY, UNITRIN SAFEGUARD INSURANCE COMPANY, ATLANTIC SPECIALTY INSURANCE COMPANY, MITSUI SUMITOMO INSURANCE COMPANY OF | |
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AMERICA, STILLWATER INSURANCE COMPANY, STILLWATER PROPERTY AND CASUALTY COMPANY, STARSTONE SPECIALTY INSURANCE COMPANY, STATE AUTOMOBILE MUTUAL INSURANCE COMPANY, STATE AUTO PROPERTY & CASUALTY INSURANCE COMPANY, SWISS RE CORPORATE SOLUTIONS CAPACITY INSURANCE CORPORATION, AMERICAN ZURICH INSURANCE COMPANY, AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, EMPIRE FIRE AND MARINE INSURANCE COMPANY, CRUM & FORSTER SPECIALTY INSURANCE COMPANY, CSAA GENERAL INSURANCE COMPANY, OHIO SECURITY INSURANCE COMPANY, GENERAL INSURANCE COMPANY OF AMERICA, SAFECO INSURANCE COMPANY OF AMERICA, LM GENERAL INSURANCE COMPANY, LM INSURANCE CORPORATION, LIBERTY MUTUAL PERSONAL INSURANCE COMPANY, LIBERTY COUNTY MUTUAL INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY, AMERICAN ECONOMY INSURANCE COMPANY, LIBERTY INSURANCE CORPORATION, LIBERTY MUTUAL INSURANCE COMPANY, EMPLOYERS INSURANCE COMPANY OF WAUSAU, IRONSHORE SPECIALTY INSURANCE COMPANY, CHURCH MUTUAL INSURANCE COMPANY, S.I., AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, AMERICAN MODERN PROPERTY AND CASUALTY INSURANCE COMPANY, AMERICAN MODERN HOME INSURANCE COMPANY, AMERICAN FAMILY HOME INSURANCE COMPANY, ENDURANCE WORLDWIDE INSURANCE LIMITED, ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY, SOMPO AMERICA INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. PRPNA2103068, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: PN2150153, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: W2A7ED210201, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. PRPNA2102032,

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: PTNAM2106762, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON AND INSURERS SUBSCRIBING TO POLICY NO. PRPNA2104626, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. PRPNA2103067, AVIVA INSURANCE LIMITED, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: PTNAM2103437, TOKIO MARINE AMERICA INSURANCE COMPANY, INDIVIDUALLY AND AS ASSIGNEE OF ALLIED WORLD ASSURANCE COMPANY LIMITED, STEADFAST INSURANCE COMPANY, GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA, STARR SURPLUS LINES INSURANCE COMPANY, GUIDEONE NATIONAL INSURANCE COMPANY, HILLTOP SPECIALTY INSURANCE COMPANY, FIDELIS INSURANCE BERMUDA LIMITED, LANDMARK AMERICAN INSURANCE COMPANY, RSUI INDEMNITY COMPANY, HOUSTON SPECIALTY INSURANCE COMPANY, NATIONAL FIRE & MARINE INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. LMPRP21917365, UNITED STATES LIABILITY INSURANCE COMPANY, MOUNT VERNON FIRE INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON AND INSURERS SUBSCRIBING TO POLICY NO.: PN306170P, MARKEL SERVICE, INC. AS ASSIGNEE OF MARKEL BERMUDA LIMITED, SECURA INSURANCE COMPANY, PHILADELPHIA INDEMNITY INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, TRI-STATE INSURANCE COMPANY OF MINNESOTA, STARNET INSURANCE COMPANY, GREAT AMERICAN ASSURANCE COMPANY, BRIT INSURANCE SERVICES USA, LLC D/B/A BRIT GLOBAL SPECIALTY USA, SPINNAKER INSURANCE COMPANY, HORACE MANN PROPERTY AND CASUALTY COMPANY, TEACHERS INSURANCE COMPANY, UNITED SERVICES AUTOMOBILE ASSOCIATION, USAA CASUALTY INSURANCE COMPANY, USAA GENERAL INDEMNITY COMPANY, GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY, FEDERATED SERVICE INSURANCE COMPANY, EVANSTON INSURANCE

COMPANY, MARKEL AMERICAN INSURANCE COMPANY, MARKEL INSURANCE COMPANY, and SENTRY SELECT INSURANCE COMPANY;

Plaintiffs,

vs.

PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY, a Colorado corporation; and DOES 1-50, inclusive,

Defendants.

**ATTORNEYS FOR PLAINTIFFS
(INDIVIDUAL REPRESENTATION IDENTIFIED IN
SIGNATURE BLOCKS BELOW):**

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COMPLAINT AND JURY DEMAND

Subrogation Plaintiffs, ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, ESURANCE INSURANCE COMPANY, ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY, NATIONAL GENERAL ASSURANCE COMPANY, ENCOMPASS INDEMNITY COMPANY, NATIONAL FARMERS UNION PROPERTY AND CASUALTY COMPANY, NATIONAL GENERAL INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CONTINENTAL INSURANCE COMPANY, THE CINCINNATI INSURANCE COMPANY, REGENT INSURANCE COMPANY, PRAETORIAN INSURANCE COMPANY, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, TRAVELERS PERSONAL INSURANCE COMPANY, TRAVELERS INDEMNITY COMPANY OF CONNECTICUT, TRAVELERS COMMERCIAL INSURANCE COMPANY, TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, THE TRAVELERS INDEMNITY COMPANY OF AMERICA, THE TRAVELERS HOME AND MARINE INSURANCE COMPANY, THE STANDARD FIRE INSURANCE COMPANY, THE PHOENIX INSURANCE COMPANY, THE CHARTER OAK FIRE INSURANCE COMPANY, THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, HARTFORD

FIRE INSURANCE COMPANY, HARTFORD CASUALTY INSURANCE COMPANY, HARTFORD UNDERWRITERS INSURANCE COMPANY, HARTFORD ACCIDENT & INDEMNITY COMPANY, PROPERTY & CASUALTY INSURANCE COMPANY OF HARTFORD, SENTINEL INSURANCE COMPANY, LTD., TRUMBULL INSURANCE COMPANY, TWIN CITY FIRE INSURANCE COMPANY, AMICA MUTUAL INSURANCE COMPANY, AMERICAN BANKERS INSURANCE COMPANY, CALIFORNIA CASUALTY INDEMNITY EXCHANGE, ECONOMY PREMIER ASSURANCE COMPANY, FARMERS DIRECT PROPERTY AND CASUALTY INSURANCE COMPANY, FARMERS INSURANCE EXCHANGE, FARMERS PROPERTY AND CASUALTY INSURANCE COMPANY, FIRE INSURANCE EXCHANGE, FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, TRUCK INSURANCE EXCHANGE, ALLIED INSURANCE COMPANY OF AMERICA, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, A NATIONWIDE COMPANY, AMCO INSURANCE COMPANY, A NATIONWIDE COMPANY, CRESTBROOK INSURANCE COMPANY, DEPOSITORS INSURANCE COMPANY, A NATIONWIDE COMPANY, NATIONAL CASUALTY COMPANY, NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA, NATIONWIDE GENERAL INSURANCE COMPANY, NATIONWIDE INSURANCE COMPANY OF AMERICA, NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE PROPERTY & CASUALTY INSURANCE COMPANY, PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE, ACUITY, A MUTUAL INSURANCE COMPANY, SHELTER MUTUAL INSURANCE COMPANY, SHELTER GENERAL INSURANCE COMPANY, ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, FIREMAN'S FUND INSURANCE COMPANY, AMERICAN FAMILY INSURANCE COMPANY, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I., AMERICAN FAMILY CONNECT PROPERTY AND CASUALTY INSURANCE COMPANY, HOMESITE INDEMNITY COMPANY, HOMESITE INSURANCE COMPANY, ALLIED WORLD ASSURANCE COMPANY, LTD., ALLIED WORLD ASSURANCE COMPANY (U.S.), INC., BROTHERHOOD MUTUAL INSURANCE COMPANY, COUNTRY MUTUAL INSURANCE COMPANY, EVEREST INDEMNITY INSURANCE COMPANY, UNITRIN SAFEGUARD INSURANCE COMPANY, ATLANTIC SPECIALTY INSURANCE COMPANY, MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA, STILLWATER INSURANCE COMPANY, STILLWATER PROPERTY AND CASUALTY COMPANY, STARSTONE SPECIALTY INSURANCE COMPANY, STATE AUTOMOBILE MUTUAL INSURANCE COMPANY, STATE AUTO PROPERTY & CASUALTY INSURANCE COMPANY, SWISS RE CORPORATE SOLUTIONS CAPACITY INSURANCE CORPORATION, AMERICAN ZURICH INSURANCE COMPANY, AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, EMPIRE FIRE AND MARINE INSURANCE COMPANY, CRUM & FORSTER SPECIALTY INSURANCE COMPANY, CSAA GENERAL INSURANCE COMPANY, OHIO SECURITY INSURANCE COMPANY, GENERAL INSURANCE COMPANY OF AMERICA, SAFECO INSURANCE COMPANY OF AMERICA, LM GENERAL INSURANCE COMPANY, LM

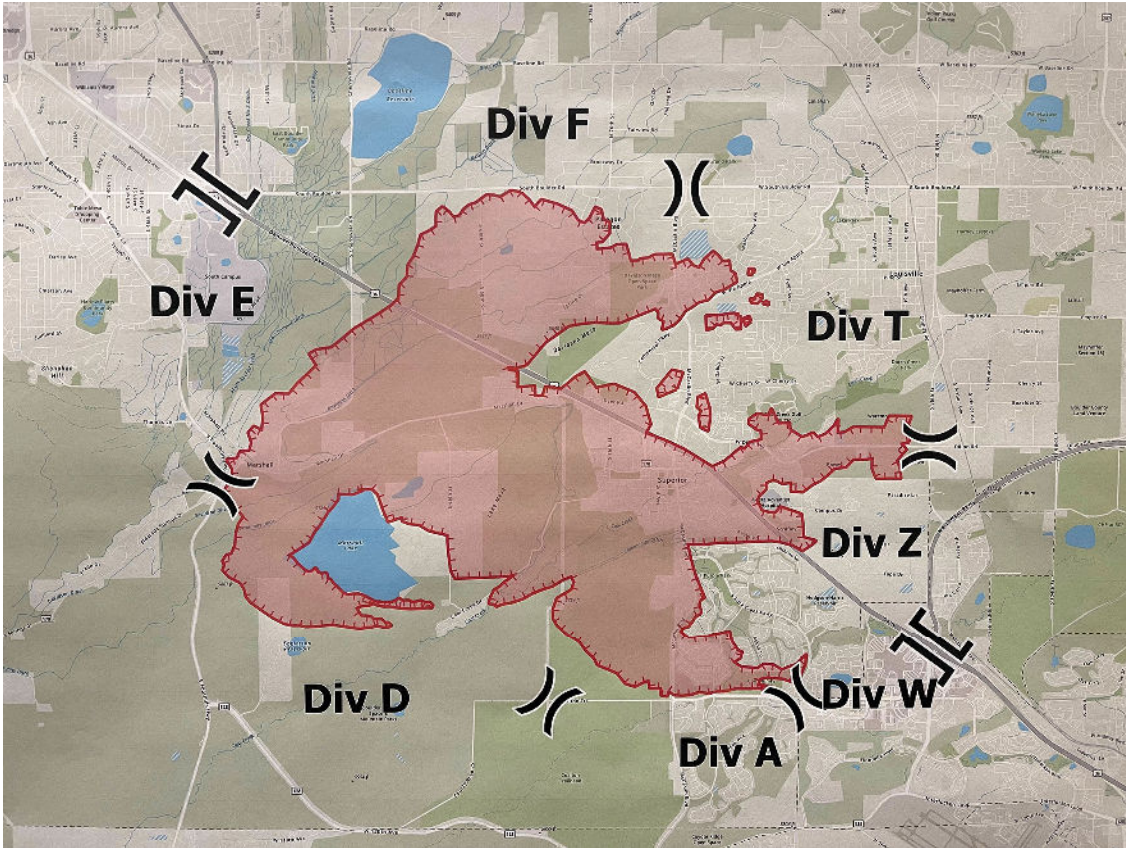
INSURANCE CORPORATION, LIBERTY MUTUAL PERSONAL INSURANCE COMPANY, LIBERTY COUNTY MUTUAL INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY, AMERICAN ECONOMY INSURANCE COMPANY, LIBERTY INSURANCE CORPORATION, LIBERTY MUTUAL INSURANCE COMPANY, EMPLOYERS INSURANCE COMPANY OF WAUSAU, IRONSHORE SPECIALTY INSURANCE COMPANY, CHURCH MUTUAL INSURANCE COMPANY, S.I., AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, AMERICAN MODERN PROPERTY AND CASUALTY INSURANCE COMPANY, AMERICAN MODERN HOME INSURANCE COMPANY, AMERICAN FAMILY HOME INSURANCE COMPANY, ENDURANCE WORLDWIDE INSURANCE LIMITED, ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY, SOMPO AMERICA INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. PRPNA2103068, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: PN2150153, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: W2A7ED210201, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. PRPNA2102032, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: PTNAM2106762, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON AND INSURERS SUBSCRIBING TO POLICY NO. PRPNA2104626, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. PRPNA2103067, AVIVA INSURANCE LIMITED, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO.: PTNAM2103437, TOKIO MARINE AMERICA INSURANCE COMPANY, INDIVIDUALLY AND AS ASSIGNEE OF ALLIED WORLD ASSURANCE COMPANY LIMITED, STEADFAST INSURANCE COMPANY, GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA, STARR SURPLUS LINES INSURANCE COMPANY, GUIDEONE NATIONAL INSURANCE COMPANY, HILLTOP SPECIALTY INSURANCE COMPANY, FIDELIS INSURANCE BERMUDA LIMITED, LANDMARK AMERICAN INSURANCE COMPANY, RSUI INDEMNITY COMPANY, HOUSTON SPECIALTY INSURANCE COMPANY, NATIONAL FIRE & MARINE INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NO. LMGRP21917365, UNITED STATES LIABILITY INSURANCE COMPANY, MOUNT VERNON FIRE INSURANCE COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON AND INSURERS SUBSCRIBING TO POLICY NO.: PN306170P, MARKEL SERVICE, INC. AS ASSIGNEE OF MARKEL BERMUDA LIMITED, SECURA INSURANCE COMPANY, PHILADELPHIA INDEMNITY INSURANCE COMPANY, BERKLEY INSURANCE COMPANY, TRI-STATE INSURANCE COMPANY OF MINNESOTA, STARNET INSURANCE COMPANY, GREAT AMERICAN ASSURANCE COMPANY, BRIT INSURANCE SERVICES USA, LLC D/B/A BRIT GLOBAL SPECIALTY USA, SPINNAKER INSURANCE COMPANY, HORACE MANN PROPERTY AND CASUALTY COMPANY, TEACHERS INSURANCE COMPANY, UNITED SERVICES AUTOMOBILE ASSOCIATION, USAA CASUALTY INSURANCE COMPANY, USAA GENERAL INDEMNITY COMPANY, GARRISON PROPERTY AND

CASUALTY INSURANCE COMPANY, FEDERATED SERVICE INSURANCE COMPANY, EVANSTON INSURANCE COMPANY, MARKEL AMERICAN INSURANCE COMPANY, MARKEL INSURANCE COMPANY, and SENTRY SELECT INSURANCE COMPANY (collectively, “Plaintiffs”), hereby bring the following Complaint against Defendants PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY, and DOES 1-50 (collectively, “Defendants”) seeking recovery of damages Plaintiffs suffered as a result of the Marshall Wildfire that began on December 30, 2021. Plaintiffs, and each of them, alleges as follows:

INTRODUCTION

1. This subrogation action stems from a wildfire, known as the “Marshall Fire,” which ignited on December 30, 2021, near the intersection of Colorado 93 and Marshall Road, and ultimately burned a large area in Boulder County, including the City of Boulder, the City of Louisville, and the Town of Superior.
2. Plaintiffs, as subrogees of their insureds, bring this action against Defendants for property damage, loss of use, and other damages arising out of the Marshall Fire.
3. The Marshall Fire burned over 6,026 acres, damaged and destroyed 1,084 structures, and killed two people. The map below shows the fire perimeter of the Marshall Fire, which was fully contained on or about January 1, 2022¹:

¹ <https://www.boulderoem.com/summary-of-wildfire-emergency-information/>



4. Plaintiffs sustained damages as a result of the Marshall Fire and seek just compensation and compensatory damages as more particularly described below.

PARTIES

5. Plaintiffs were and are various insurance companies authorized and doing business in the State of Colorado by providing insurance coverage to property owners, renters, businesses and others for properties and businesses located in the State of Colorado. As a component of that business, Plaintiffs issued insurance policies providing coverage against loss due to damage caused by fire, water, and other casualties.
6. Plaintiffs have paid or will pay covered losses to their respective insureds, in accordance with their respective insurance policies, including but not limited to, homeowners, automobile, business/commercial, and property insurance policies, for damages caused by the Marshall Fire. Such payments include, but are not limited to, repair of real and personal property, replacement of real and personal property, additional living expenses, loss of use, and business interruption.

7. Defendant PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY (“Xcel Energy”), was and is a Colorado corporation conducting business in the State of Colorado, including but not limited to, Boulder County and Denver County. Xcel Energy’s principal place of business is located in Denver, Colorado. Xcel Energy provides utility services including the generation, transmission, and distribution of electricity to members of the public, including the residents of Boulder County and Broomfield County.
8. Defendants DOES 1-50, inclusive, are persons, partnerships, corporations, and/or associations whose true identities are unknown to Plaintiffs and who are therefore identified by such fictitious names. Plaintiffs are informed and believe, and on that basis allege, that each Defendant designated herein as a Doe may be responsible, in whole or in part, for Plaintiffs’ damages. Pursuant to Rule 9(a)(2) of the Colorado Rules of Civil Procedure, Plaintiffs will seek to amend this Complaint to set forth the true names and capacities of any of these defendants when their identities become known.
9. At all times mentioned herein, Defendants, and each of them, were the agents, servants and employees of their co-Defendants, and in doing the things herein alleged, were acting within the course and scope of such agency, service and employment.

JURISDICTION AND VENUE

10. This Court has jurisdiction of this matter pursuant to Colorado Revised Statutes § 13-1-124 or otherwise under Colorado statutes and law.
11. Upon information and belief, Defendants’ acts and omissions that led to the ignition of the Marshall Fire occurred in the County of Boulder, Colorado. Plaintiffs’ damages were also incurred in the County of Boulder. On that basis, pursuant to Colo. R. Civ. P. 98(c), the Twentieth Judicial District is the proper venue for this action.

FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

12. Plaintiffs reallege and incorporate by reference each and every allegation above as though fully set forth herein.
13. At all relevant times Xcel Energy was and is a regulated electric and natural gas delivery company that serves approximately 3.7 million electricity and 2.1 million natural gas customers across parts of eight Midwestern and Western states.²

² <https://co.my.xcelenergy.com/s/about/corporate-governance>

14. At all relevant times, Xcel Energy installed, constructed, built, maintained, and/or operated overhead power lines, together with supporting poles and appurtenance (collectively its “Electrical Equipment”) for the transmission of electricity to the general public.
15. Colorado’s Public Utilities Commission has issued Xcel Energy a certificate of public convenience and necessity, designating it as “certificated” public utility with the exclusive right to provide service in Boulder County, Colorado. Xcel Energy has been granted regulated monopoly status throughout the area affected by the Marshall Fire under C.R.S.A. § 40-5-101.
16. The State of Colorado has vested Xcel Energy with the power of eminent domain, pursuant to C.R.S.A. § 38-5-105, to take property for the public use as part of its operations as a public utility.
17. At all times prior to December 30, 2021, Xcel Energy had a non-delegable, non-transferable duty to properly design, construct, inspect, maintain, repair, manage, and/or operate its Electrical Equipment.
18. Xcel Energy has expressed “[s]afety is [its] number one priority” and that “[the public’s] safety is always in mind.”³ The Colorado Public Utilities Commission requires Xcel Energy to construct, install and maintain its Electrical Equipment and facilities “in accordance with accepted engineering practice in the electric industry to assure continuity of service, uniformity in the quality of service, and the safety of persons and property.”⁴
19. Xcel Energy’s electrical transmission and distribution system, including its Electrical Equipment, are inherently dangerous and hazardous instrumentalities. The transmission and distribution of electricity requires Xcel Energy to exercise an increased level of care commensurate with and proportionate to the increased risk of danger associated with electrical transmission and distribution systems.
20. The design, construction, and maintenance of high voltage electric power systems in the United States are generally held to industry safety standards found in the National Electrical Safety Code (the “NESC”). These industry standards are nationally accepted as the minimum criterion for the design, construction and maintenance of utility, electrical and communication systems throughout the United States.

³ <https://co.my.xcelenergy.com/s/outage-safety/public-safety/electric>

⁴ Rule 3200 – Construction, Installation, Maintenance, and Operation of the Code of Colorado Regulations – Rules Regarding Electric Utilities.

21. The practical purpose of the NESC is to safeguard persons and property from hazards arising from the installation, operation and maintenance of electrical supply and communication facilities. Code provisions contained in the NESC are considered necessary and, with proper adherence, should result in electrical installations being free from hazard.
22. The NESC required Xcel Energy to install, inspect and maintain its Electrical Equipment at appropriate intervals. By way of example, NESC Rule 121 states that by implementing proper inspection and maintenance standards “[g]radual deterioration of the system will be detected, defective conditions will be avoided by proper repairs and replacements, and injuries will be avoided.”
23. Prior to December 30, 2021, Xcel Energy failed to properly design, construct, inspect, maintain, repair, manage, and/or operate its Electrical Equipment pursuant to the applicable NESC safety standards, accepted engineering practice in the electric industry, and pursuant to any other applicable codes or standards. As a result, Xcel Energy’s Electrical Equipment caused a fire near the Marshall Mesa Trailhead which ultimately became the Marshall Fire.
24. On the date of the Marshall Fire, Boulder County, Colorado experienced a high wind event, that resulted in gusts between sixty (60) and ninety (90) miles per hour in Boulder County.⁵
25. High wind events are a relatively common occurrence in the Rocky Mountain regions, as a result of localized inversion effects. Hurricane force winds of more than one-hundred miles per hour (100 mph) were observed just two weeks prior to the ignition of the Marshall Fire in Colorado Springs.⁶ Data from the National Renewable Energy Laboratory and the National Wind Technology Center show that Boulder sees wind gusts exceeding eighty miles per hour (80mph) most years, often in December or January.
26. Xcel Energy is demonstrably aware of Colorado’s wind patterns and propensity for high wind events. Xcel Energy explicitly observes and plans around high wind events in Colorado – constructing and operating wind farms throughout the state in order to profit from Colorado’s windy conditions.
27. Prior to the ignition of the Marshall Fire, the National Weather Service issued a high wind warning for Boulder County, Colorado. Xcel Energy specifically acknowledged the

5 <https://www.denverpost.com/2021/12/30/colorado-top-wind-speeds-fires-dec-30/>

6 <https://www.csu.org/Pages/Dec2021windstorm.aspx>

danger posed by high winds and encouraged customers to report power outages via the Xcel Energy mobile app or by texting the company at a pre-assigned number.⁷

28. Even though Xcel Energy knew that its Electrical Equipment was old and again, unsafe, and/or vulnerable to weather and environmental conditions, it failed to conform to industry standards and accepted best practices to ensure the safety of persons and property.
29. Despite Xcel Energy's familiarity and expertise with Colorado's wind patterns, and the warnings issued by the National Weather Service, Xcel Energy failed to take preventative measures in the face of known high-risk weather conditions and did not de-energize its Electrical Equipment prior to the onset of the windstorm.
30. Plaintiffs allege the Marshall Fire was caused by negligent and improper maintenance, inspection, ownership, and operation of the Electrical Equipment owned, operated, and maintained by Xcel Energy.
31. Pursuant to their policies of insurance, Plaintiffs' insureds presented claims to Plaintiffs seeking indemnification and reimbursement for damages resulting from the Marshall Fire. Plaintiffs investigated, adjusted, and paid, and may in the future pay, said covered damage and loss, consistent with their policies of insurance and their obligations under law, and said payments were contemplated by their insurance policies, and were not voluntary.
32. Plaintiffs were damaged as a result of the Marshall Fire, and have an existing, assignable cause of action against Defendants, which their insureds could have asserted for their own benefit had they not been compensated for their losses by Plaintiffs. As such, Plaintiffs have equitable and legal rights against Defendants herein, to the extent of payments made or to be made to and/or on behalf of their insureds.

FIRE ORIGINS

33. In the aftermath of the Marshall Fire, the Boulder County Sheriff's Office conducted an investigation into origins and causes of the Fire with assistance from the Office of the District Attorney, the United States Forest Service, the Colorado Department of Mining and Reclamation Services, the Colorado Bureau of Investigation, several local fire departments, and other experts. The investigation included interviews with hundreds of witnesses and extensive judicial analysis. A summary report (the "Official Report") of that investigation was released to the public on June 8, 2023.

⁷ <https://www.9news.com/article/weather/weather-colorado/high-winds-emergency-plans/73-650dceaa-1045-43a3-9d7c-54c29013f05d>

34. The Official Report concluded, and Plaintiffs thereon allege, that the Marshall Fire resulted from the merger of two fires with separate specific areas of origin. The first area of origin, the “Twelve Tribes Ignition,” occurred to the north of Colorado State Highway 170 at the Twelve Tribes⁸ compound at 5325 Eldorado Springs Drive. The second area of origin, the “Xcel Energy Ignition,” occurred to the South of Highway 170 near the Marshall Mesa Trailhead area. The resulting fires ultimately merged into one fire - the Marshall Fire. The image below depicts the relative positions of the two specific areas of origin.



35. On December 24, 2021, six days before the Marshall Fire, residents of the Twelve Tribes Compound conducted a controlled burn in order to dispose of old fencing material, tree branches, discarded pallets, and other refuse.
36. That same day, Boulder County Officials visited the Twelve Tribes Compound. Firefighters on scene determined that the residents of the Twelve Tribe Compound

⁸ The Twelve Tribes is a religious community that moved into Colorado in the early 2000s. An estimated 40 people live at the Eldorado Springs Drive compound.

<https://www.denverpost.com/2022/03/03/twelve-tribes-cult-child-abuse/>

planned to let their refuse fire burn out and subsequently cover the area with dirt. According to the Official Report, County officials determined the residents' plan to manage their refuse fire was "responsible."

37. Residents of the Twelve Tribes Compound permitted their refuse fire to burn until approximately 5:00 p.m. on December 24, 2021, at which point the fire had reduced to coals. The fire was then covered with dirt, and produced no smoke or other visible indicia of burning over the following days.
38. The Twelve Tribes Ignition occurred at approximately 11:20 a.m. on December 30, 2021, when high winds uncovered the previously buried refuse fire and exposed still-smoldering embers to fresh oxygen.
39. The resulting fire did not spread quickly due to several environmental factors including the topography of the area, the lack of ground fuels, and the swirling winds in the area. As of 11:51 a.m., the fire had not spread from the Twelve Tribes property.
40. The Xcel Energy Ignition occurred near the Marshall Mesa Trailhead, at or near geocoordinates N39.95255, W105.2323, at or near Xcel Energy utility pole #2075-225-188688. As the Official Report concluded, the causes of the Xcel Energy Ignition included, but were not limited to, hot particles discharged from Xcel Energy's Electrical Equipment.
41. Video footage, captured by a motion-activated trail camera installed at the Marshall Mesa Trailhead, documents that, between 10:30 a.m. and 11:10 a.m. on December 30, 2021, the easternmost phase of a distribution line owned and operated by Xcel Energy along nearby Highway 93 came unmoored from a crossarm and sagged low enough to contact a support brace. Still photographs of this video footage, included in the Official Report, document that the easternmost phase was unmoored as depicted below:



42. Subsequent photos taken from the same video footage documents visible smoke and flame spreading from beneath Xcel Energy's Electrical Equipment, as depicted below.



43. Xcel Energy's Electrical Equipment, including its overhead distribution lines, wire conductors, pole mounted transformers, neutral conductors, poles, and all other attachments are within the Xcel Energy Ignition's area of origin. The Xcel Energy Ignition resulted from an arcing event associated with Xcel Energy's energized Electrical Equipment. This arcing event produced molten metal and other super-heated material that dropped to the ground and ignited dry vegetation ground fuels.
44. Unlike the fire from the Twelve Tribes Ignition, the Xcel Energy Ignition resulted in a rapidly spreading fire. The Xcel Energy Ignition occurred on a flat mesa, which provided favorable conditions for fire to spread laterally along the ground in high winds. In addition, the Xcel Energy Ignition was situated near a dense, forested park with a significant amount of available terrain fuel load.
45. The fire resulting from the Xcel Energy Ignition burned nearby dense fuel load causing "firebrands"; which are flaming or glowing fuel particles that are carried by wind, convection currents, or by gravity into unburned fuels. Those firebrands ignited spot fires to the East of both Fires, and the resultant spot fires spread and burned homes in the City of Louisville and the Town of Superior.
46. Xcel Energy's Electrical Equipment caused the rapid growth and spread of the Marshall Fire, which burned over 6,026 acres, destroyed 1,084 structures, and killed two people.

FIRST CAUSE OF ACTION
(Inverse Condemnation)
(As to Xcel Energy and DOES 1-50)

47. Plaintiffs reallege and incorporate by reference each and every allegation above as though fully set forth herein.
48. On or around December 30, 2021, Plaintiffs' insureds were owners of real property and/or personal property and/or automobiles in areas burned by the Marshall Fire.
49. Xcel Energy's design, development, construction, installation, control, management, maintenance, inspection, ownership, and operation of its Electrical Equipment, which was a substantial cause of Plaintiffs' insured's damages, constitute a public improvement for a public use under Colorado law.
50. Article II, § 15 of the Colorado Constitution states as follows:

Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a

board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

51. Xcel Energy operates a public utility with the power of eminent domain under Colorado law, granting it the right to take private land for a public use. C.R.S.A. § 38-5-105.
52. Xcel Energy operates for the public use pursuant to the terms of its certificate of public convenience and necessity issued by the Colorado Public Utilities Commission. Xcel Energy has exclusive right to provide electrical service in Boulder County, Colorado and operates as a public entity to the extent it provides a public service as a legal “certificated” monopoly in its service area. C.R.S.A. § 40-5-101.
53. Xcel Energy’s electrical utility operations are “essentially for the public benefit” within the meaning of Colorado’s taking law, and the Marshall Fire that resulted from Xcel Energy’s operations constituted a taking for the public use. *See Carousel Farms Metro. Dist. V. Woodcrest Homes, Inc.*, 2019 CO 51, ¶ 26.
54. Electricity is a dangerous instrumentality that poses an inherent risk that requires the exercise of increased care and precaution commensurate with and proportionate to that increased danger so as to make the transport of electricity through Xcel Energy’s Electrical Equipment safe under all circumstances and exigencies posed by prevailing environmental conditions, as well as other risks, to ensure maximum safety under all local conditions in the service area, including the risk of fire.
55. Xcel Energy deliberately designed and constructed its Electrical Equipment to transport electricity from its powerplant to substations through high-voltage transmission lines for the purpose of providing electricity to the public. This includes Xcel Energy’s design of its Electrical Equipment with system protection devices, including but not limited to fuses, breakers, and reclosers (“System Protection Devices”) to trip and stop the flow of electricity should an electrical overcurrent event occur. The inherent danger in electricity and Xcel Energy’s design of its Electrical Equipment materialized in an arcing event that was a substantial factor in causing and contributing to the spread of the Marshall Fire.
56. The injury to Plaintiffs’ insureds’ property was the inescapable and unavoidable consequence of Xcel Energy’s Electrical Equipment as deliberately designed,

constructed, and maintained. This damage was the necessary and probable result of Defendants' public improvement that supplied electricity for a public use.

57. As an actual result of Defendant's acts and/or omissions, Plaintiffs' insureds were permanently deprived of the use and enjoyment of their property in violation of Article II, § 15 of the Colorado Constitution. As a direct result of the taking of Plaintiffs' insureds' properties, Plaintiffs sustained damages in amounts to be proven at trial.

SECOND CAUSE OF ACTION
(Negligence)
(As to Xcel Energy and DOES 1-50)

58. Plaintiffs reallege and incorporate by reference each and every allegation above as though fully set forth herein.
59. At all times prior to December 30, 2021, Xcel Energy had a non-delegable, non-transferable duty to properly design, construct, inspect, maintain, repair, manage, and/or operate its Electrical Equipment.
60. Xcel Energy further had a duty to conduct its business in a reasonable, competent and workmanlike manner so as not to injure Plaintiffs' insureds.
61. Xcel Energy also owed a duty to exercise reasonable care to avoid a foreseeable risk of injury to Plaintiffs' insureds and to act with reasonable skill and diligence in the performance of the work and services it provided.
62. Xcel Energy breached these duties, through acts and omissions, in one or more of the following ways:
- a. Failing to properly design, develop, construct, install, control, manage, maintain, inspect, repair and/or operate its Electrical Equipment;
 - b. Failing to perform the required work of it in a manner consistent with reasonable care, design specifications, industry standards, uniform and local codes and/or other safety and regulatory provisions;
 - c. Failing to adhere to utility maintenance standards in accordance with recognized and accepted industry standards and practices;
 - d. Failing to recognize, consider, appreciate, and take appropriate precautionary safety measures to avoid conditions that could present an unreasonable risk of injury, harm, and/or damage to persons or property;

- e. Failing to conduct reasonable and adequate inspections of its Electrical Equipment to ensure that its electrical distribution system was in good condition and appropriate for use under the circumstances, that it complied with all applicable codes and regulations, and was safe and for its intended and foreseeable use;
 - f. Failing to properly direct, coordinate, and supervise its employees, independent contractors, and subcontractors;
 - g. Failing to adequately train and supervise its employees, independent contractors and subcontractors to ensure that all work was properly performed in a workmanlike manner and according to all plans, specifications, industry standards, and in compliance with all applicable codes, regulations, and safety standards;
 - h. Failing to identify or notice the dangerous and hazardous condition of its Electrical Equipment, and the fire hazard presented by its operation of its Electrical Equipment in such condition;
 - i. Failing to recognize, identify, or discover the safety threat, fire hazard, or other dangerous conditions created by its inadequate inspection, maintenance, and operation of its electrical distribution system;
 - j. Failing otherwise to use ordinary care under the circumstances; and
 - k. Other negligent acts and/or omissions that will be revealed through discovery.
63. The negligence on the part of Defendants, and each of them, was the direct and proximate cause of the Incident, and the damages alleged in this Complaint.
64. As a direct and proximate result of the negligence of the Defendants, and each of them, the Marshall Fire resulted, and Plaintiffs sustained the damages alleged in this Complaint, in an amount to be proven at trial.

JURY DEMAND

Plaintiffs hereby demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- a. Compensatory and consequential damages in an amount to be proven at trial;
- b. For prejudgment and post judgment interest, per Colorado Revised Statutes §§ 5-12-101 and 5-12-102;
- c. For attorney's fees and costs of suit incurred herein, as allowed by law; and
- d. For any additional relief as the Court deems just and proper.

Dated this 6th day of July 2023.

***ORIGINAL SIGNATURE ON FILE AT THE
OFFICE OF GROTEFELD HOFFMANN
PURSUANT TO C.R.C.P. 121 § 1-26***

/s/ P. Joel Radakovich

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Dated this 6th day of July 2023.

**ORIGINAL SIGNATURE ON FILE AT THE
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Dated this 6th day of July 2023.

***ORIGINAL SIGNATURE ON FILE AT THE
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Reciprocal Exchange

Dated this 6th day of July 2023.

***ORIGINAL SIGNATURE ON FILE AT THE
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Dated this 6th day of July 2023.

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Dated this 6th day of July 2023.

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Liberty Mutual Personal Insurance Company, Liberty County Mutual Insurance Company, Liberty Mutual Fire Insurance Company, American Economy Insurance Company, Liberty Insurance Corporation, Liberty Mutual Insurance Company, Employers Insurance Company of Wausau, Ironshore Specialty Insurance Company, and Church Mutual Insurance Company, S.I.

Dated this 6th day of July 2023.

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Dated this 6th day of July 2023.

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Surplus Lines Insurance Company, GuideOne National Insurance Company, Hilltop Specialty Insurance Company, Fidelis Insurance Bermuda Limited, Landmark American Insurance Company, RSUI Indemnity Company, Houston Specialty Insurance Company, National Fire & Marine Insurance Company, Certain Underwriters at Lloyd's of London Subscribing to Policy No. LMPRP21917365, United States Liability Insurance Company, Mount Vernon Fire Insurance Company, Certain Underwriters at Lloyd's of London and Insurers Subscribing to Policy No.: PN306170P, and Markel Services, Inc. as Assignee of Markel Bermuda Limited

Dated this 6th day of July 2023.

***ORIGINAL SIGNATURE ON FILE AT THE
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Dated this 6th day of July 2023.

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Dated this 6th day of July 2023.

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