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ADVANCE SHEET HEADNOTE
June 1, 2026

2026 CO 40

No. 24SC440, *Progressive Direct Ins. v. Ortiz* – Uninsured Motorist (“UM”) Coverage – § 10-4-609, C.R.S. (2025) – UM Insurer Participation in Tort Litigation Between Uninsured and Insured Motorists – *State Farm Mut. Auto. Ins. Co. v. Brekke*, 105 P.3d 177 (Colo. 2004).

The supreme court granted certiorari to review whether it should reconsider its decision in *State Farm Mutual Automobile Insurance Co. v. Brekke*, 105 P.3d 177 (Colo. 2004). There, the supreme court held that to provide a court with the information necessary to determine a uninsured motorist (“UM”) insurer’s level of participation in tort litigation between its insured and an uninsured motorist, a UM insurer must plead with particularity the legitimate defenses it intends to raise as soon as practicable. *Id.* at 192 & n.20, 193.

With one minor clarification regarding C.R.C.P. 8 and C.R.C.P. 9(b), the supreme court declines to overrule *Brekke*. Instead, the court concludes that *Brekke*’s guiding principles stand. To provide a court with the information needed to timely determine a UM insurer’s appropriate level of participation in tort litigation between its insured and an uninsured motorist, an insurer must—as

soon as practicable – plead its legitimate defenses specifically. Rule 9(b) does not apply unless a UM insurer asserts fraud or mistake as a legitimate defense.

Because the UM insurer in this case failed to meet *Brekke's* requirements, the supreme court concludes that the district court did not abuse its discretion in barring the UM insurer from contesting liability in the tort litigation between its insured and an uninsured motorist. The district court appropriately balanced the interests of the parties and provided the insurer with the opportunity for a fair hearing on its legitimate defenses. Accordingly, the supreme court affirms the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 40

Supreme Court Case No. 24SC440
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 23CA292

Petitioner:

Progressive Direct Insurance Company,

v.

Respondent:

Andrew Ortiz.

Judgment Affirmed

en banc

June 1, 2026

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE BOATRIGHT, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BLANCO** joined.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 The General Assembly enacted the uninsured motorist (“UM”)¹ statute, section 10-4-609, C.R.S. (2025), to mandate uninsured and underinsured motorist coverage as part of automobile liability policies in Colorado, providing protection for insured persons who suffer bodily injury or death caused by uninsured or underinsured motorists. *See id.* The statute establishes minimum coverage requirements, defines the scope of protection, and specifies how coverage amounts are calculated and applied. *Id.* Its purpose is to provide a mechanism through which an insured motorist may “purchase insurance coverage against loss caused by the negligent conduct of a financially irresponsible motorist.” *Aetna Cas. & Sur. Co. v. McMichael*, 906 P.2d 92, 98 (Colo. 1995); *see also DeHerrera v. Sentry Ins. Co.*, 30 P.3d 167, 174 (Colo. 2001).

¶2 Uninsured motorist coverage

shall be in addition to any legal liability coverage and shall cover the difference, if any, between the amount of the limits of any legal liability coverage and the amount of the damages sustained, excluding exemplary damages, up to the maximum amount of the coverage obtained pursuant to this section.

¹ Significantly, UM coverage extends beyond traditional uninsured vehicles to include underinsured motorist (“UIM”) protection. § 10-4-609, C.R.S. (2025). This case involves only UM coverage, though our holding here extends to UIM coverage as well.

§ 10-4-609(1)(c). This gap-filling function ensures that insureds receive compensation up to their policy limits when the at-fault party's insurance is insufficient or nonexistent. As a prerequisite to receiving payment from its UM insurer, an insured must establish the liability of the uninsured motorist and that the insured sustained damages. *See Aetna*, 906 P.2d at 98; *see also DeHerrera*, 30 P.3d at 174; § 10-4-609.

¶3 The relationship between a UM carrier and its insured is not without some tension. In *State Farm Mutual Automobile Insurance Co. v. Brekke*, 105 P.3d 177, 186-93 (Colo. 2004), we recognized that a UM insurer's participation in tort litigation between its insured and an uninsured motorist "creates a real and inherent conflict of interest." "The insurance provider's conflicting duty to the insured and its interest in defending the uninsured motorist creates strong tension between its legal obligations and its business interests." *Id.* at 188. Given this tension, we set out guiding principles: A court determining a UM insurer's appropriate level of participation in this type of litigation must "balance[] the duties of the insurance provider and the insured's right to an undiluted UM recovery against the interest of the insurance provider in receiving a fair hearing on its legitimate defenses." *Id.* at 191.

¶4 To provide a court with the information necessary to determine a UM insurer's level of participation, we continued, an insurer must plead with

particularity the legitimate defenses it intends to raise as soon as practicable. *Id.* at 192 & n.20, 193.

¶5 Progressive Direct Insurance Company (“Progressive”) now asks us to reconsider the particularized pleading and timeliness requirement standard we adopted in *Brekke*. *See id.*² With one minor clarification regarding C.R.C.P. 8 and C.R.C.P. 9(b), we decline to do so. Instead, we conclude that *Brekke*’s guiding principles stand. To provide a court with the information needed to timely determine a UM insurer’s appropriate level of participation in tort litigation between its insured and an uninsured motorist, an insurer must—as soon as practicable—plead its legitimate defenses specifically. Rule 9(b) does not apply unless a UM insurer asserts fraud or mistake as a legitimate defense. Generalized, boilerplate allegations do not meet either standard. The resulting determination by a court is subject to review for an abuse of discretion. *Brekke*, 105 P.3d at 183.

¶6 Progressive failed to meet *Brekke*’s requirements. Consequently, we conclude that the district court did not abuse its discretion when it ruled that Progressive could not contest liability in the tort litigation between its insured, Andrew Ortiz (“Ortiz”), and the uninsured motorist, Tania Granados Camacho

² We granted certiorari to review the following issue:

Whether the court should reconsider the . . . *Brekke* . . . standard related to the particularized pleading and timeliness requirements imposed on insurers in UM litigation.

(“Camacho”). The district court appropriately balanced the interests of the parties and provided Progressive with the opportunity for a fair hearing on its legitimate defenses. Accordingly, we affirm the judgment of the court of appeals.

I. Facts and Procedural History

¶7 This case arises from an accident between an uninsured driver, Camacho, and the insured plaintiff in this case, Ortiz. Camacho’s and Ortiz’s vehicles collided with one another as Ortiz attempted to turn left into a parking lot. At the time of the collision, Camacho was uninsured, driving with only a learner’s permit, and unsupervised by an adult. Ortiz was insured by Progressive under a policy that included UM coverage.

¶8 After the crash, Ortiz filed a claim with Progressive for UM benefits. Progressive denied Ortiz’s claim after concluding that Ortiz was more than 50% at fault for the collision. Ortiz then filed suit against Camacho alleging negligence and negligence per se. He also asserted claims against Progressive for breach of contract, common law insurance bad faith, and unreasonable delay and denial of insurance benefits under sections 10-3-1115 to -1116, C.R.S. (2025).

¶9 Camacho never responded to Ortiz’s complaint. Ortiz filed a motion seeking default judgment – which the court interpreted as a motion for entry of a clerk’s default against Camacho. The court granted the motion pursuant to C.R.C.P. 55(a) and directed the clerk to enter Camacho’s default. Though

Progressive had been served with Ortiz's motion and the district court's order entering default, Progressive did not file a response to the motion or take any action with respect to the court's order.

¶10 Progressive, however, did file an answer to Ortiz's complaint in which it (1) admitted that Camacho was partially at fault for the accident; and (2) responded to every one of Ortiz's allegations against Camacho by stating that the claim was "not direc[t]ed to [Progressive] and therefore no response is required." In its affirmative defenses, Progressive asserted that any damages sustained by Ortiz were due to intervening or superseding causes or circumstances, and the acts or omissions of parties other than Progressive. It further claimed that Ortiz's right of recovery against it, if any, may be barred or diminished by his comparative or contributory fault.

¶11 Later, Ortiz and Progressive submitted a joint proposed case management order. In his description of the case and identification of the issues to be tried, Ortiz asserted that the "issues concern liability, causation of [his] injuries, the extent of [his] damages, [and] the bad faith conduct of Progressive." In its description, Progressive denied Ortiz's claims against it and described the case as "a simple liability dispute where [Ortiz] has failed to support his claim that he was not the majority at fault for the underlying motor vehicle accident." Progressive

also listed several affirmative defenses that it intended to assert. It did not, however, include comparative fault in that list.

¶12 The district court issued a case management order that largely accepted the language in the parties' proposed case management order, including their respective descriptions of the nature of the case, the issues to be tried, and Progressive's affirmative defenses.

¶13 Ten months after the district court granted entry of the clerk's default against Camacho, Ortiz moved for partial summary judgment against both Camacho and Progressive. He argued that the undisputed facts showed that Camacho was "the sole proximate cause of the subject motor vehicle collision" and, thus, his injuries. Progressive responded to Ortiz's motion by asserting – for the first time – that it was "entitled to participate in the liability and damages components of the default[] judgment hearing." The district court denied Ortiz's motion as to Camacho after concluding that default judgment, not summary judgment, was the proper remedy given the procedural posture of the case vis-à-vis Camacho. The court, however, suggested that it would consider a motion for default judgment against Camacho if Ortiz filed one.

¶14 The court indicated that it would allow Progressive to contest Ortiz's damages in a default judgment hearing, but that it would not allow it to contest Camacho's liability in such a hearing. It reasoned that the entry of default in favor

of Ortiz, and against Camacho, established Camacho's liability "for purposes of moving forward with default judgment." Moreover, the court emphasized, Progressive did not raise any objection or even concern about its liability issues ten months earlier when the court granted the entry of default.

¶15 Relying on this court's guidance in *Brekke*, 105 P.3d at 186–93, the district court additionally found that even if it was inclined to hear Progressive's liability challenge during a default judgment hearing, Progressive failed to make the required particularized showing that its participation in determining liability was necessary to ensure a fair hearing. To the contrary, the district court found that Progressive presented only "general, boilerplate affirmative defenses or statements" in its answer and "did not raise any objection or even concern about its liability issues" when default was entered.

¶16 But the district court emphasized that Progressive could—just as *Brekke* contemplated—fully participate in the damages phase of the default judgment hearing where Ortiz would attempt to establish the damages he suffered in the crash. After that, Ortiz's claims against Progressive for bad faith breach and breach of contract would separately proceed to trial before a jury.

¶17 Progressive and Ortiz subsequently participated in the damages phase of the default judgment hearing. Camacho did not participate. During the hearing,

Ortiz and his treating physician testified about causation and the extent of Ortiz's damages. Progressive's counsel cross-examined both witnesses.

¶18 Thereafter, the district court concluded that Camacho's liability for the accident with Ortiz was established by her default. With respect to damages, the court awarded Ortiz \$20,000 of the \$100,000 in noneconomic and permanent physical impairment damages that he sought.

¶19 The court entered default judgment in favor of Ortiz and against Camacho in the amount of \$86,958.66. This consisted of the \$20,000 award for noneconomic and permanent physical impairment damages, along with approximately \$48,000 in medical expenses, and approximately \$18,000 in prejudgment interest. Progressive then paid Ortiz this amount, effectively resolving his claim for breach of contract.

¶20 Later, Progressive and Ortiz proceeded to trial before a jury on Ortiz's two remaining claims: common law and statutory bad faith breach of an insurance contract. Causation was the central theme during the trial. Progressive's argument was that Ortiz was primarily at fault for the crash. Its counsel repeatedly advanced this position during opening statements, throughout witness examinations, and during closing argument. Progressive acknowledged that Camacho was found liable for the crash in earlier litigation but emphasized that this was simply because of a "technical default." And Progressive explained to

the jury that it initially refused to pay Ortiz any UM benefits because it reasonably determined, based on its investigation, that Ortiz was more than 50% at fault for the accident.

¶21 Consistent with Progressive’s position, the district court instructed the jury that:

- the . . . court found Camacho at fault for the accident by default because she “did not respond or contest liability”;
- Progressive “denies that it acted in bad faith or unreasonably delayed or denied [UM] benefits” because “it found through its own investigation that [Ortiz] was at fault for the accident, a decision it maintains was reasonable and a good faith basis to deny uninsured motorist benefits”;
- “[w]hether or not a person has a valid driver’s license is not relevant to determining whether that person was driving negligently at the time of the accident”; and
- at the time of the accident, several Colorado statutes, all of which were potentially relevant to determining fault for the accident, governed vehicles turning left, drivers passing other drivers on the right, driving on roadways laned for traffic, and careless driving that causes bodily injury.

Ortiz v. Progressive Direct Ins. Co., 2024 COA 54, ¶ 15, 554 P.3d 537, 542 (alterations in original).

¶22 The jury found in Ortiz’s favor on both claims, awarding him \$76,493.53 for unreasonable delay and denial of insurance benefits and \$140,000 for common law insurance bad faith. Thereafter, Progressive moved the court for a new trial on the basis that there were “inherent and unaddressed inconsistencies in the [c]ourt’s

[o]rders.” Specifically, Progressive argued that the district court’s summary judgment order barring it from contesting Camacho’s liability was inconsistent with the pleadings and proposed case management order, which Progressive claimed identified comparative fault as an issue to be tried. The district court denied Progressive’s motion, reasoning that the statements in the proposed case management order, “which were prepared by the parties not the [c]ourt, indicate that Progressive was contesting its liability on [Ortiz’s] claims for breach of contract and bad faith claims,” not “challenging or seeking to stand in . . . Camacho’s shoes to contest liability in this lawsuit on [Ortiz’s] negligence claim.”

¶23 More importantly, the district court added, Progressive’s statement of the issues in the proposed case management order did not include the particularized showing required under *Brekke*, 105 P.3d at 192. Further, Progressive did not attempt to make the required showing until nearly a year after default had already been entered against Camacho.

¶24 On appeal, Progressive argued that it was improperly restricted from participating in the tort litigation between Camacho and Ortiz, which prejudiced Progressive “by precluding any consideration of its coverage defense or reduction of damages based on comparative fault.” *Ortiz*, ¶¶ 30–31, 554 P.3d at 544–45.

¶25 The division was unpersuaded. It began its consideration of Progressive’s argument by reviewing our holding in *Brekke*, 105 P.3d at 192 & n.20, 193: To

provide a court with the information necessary to determine a UM insurer's level of participation, an insurer must plead with particularity the legitimate defenses it intends to raise as soon as practicable. *Ortiz*, ¶ 24, 554 P.3d at 544.

¶26 Applying *Brekke*, the division explained that a court must consider, in each case, "the unique relationship between the insured and insurance provider and balance the insurance provider's duties to the insured and the insured's right to undiluted UM recovery against the interest of the insurance provider in receiving a fair hearing on its legitimate defenses." *Ortiz*, ¶ 35, 554 P.3d at 545 (quoting *Brekke*, 105 P.3d at 181). In this case, the division concluded "[t]he district court did exactly that." *Id.*

¶27 The district court—consistent with *Brekke*—assessed the need for Progressive to participate in the liability determination based on the specific circumstances of the insurer-insured relationship and Progressive's insufficient pleading of its comparative fault defense. *See Ortiz*, ¶ 35, 554 P.3d at 545. The division continued, "[T]he district court sought to balance the interests of the parties and compensate for Progressive's exclusion from the liability determination by permitting Progressive to participate in the damages hearing and proceed to trial on the claims that Ortiz brought against it." *Id.* at ¶ 35, 554 P.3d at 545-46.

¶28 During the damages phase of the default judgment hearing and the jury trial, Progressive was able, the division emphasized, to explore the respective fault of each driver and the cause of the accident. *Id.* at ¶ 36, 554 P.3d at 546. “And its defense was partially successful.” *Id.* Following the damages hearing, “Ortiz received just [20%] of his requested noneconomic damages and damages for permanent physical impairment.” *Id.* Thus, the division discerned no abuse of discretion in the district court’s decision to bar Progressive from contesting Camacho’s liability during the default judgment hearing. *Id.* at ¶¶ 37, 51, 554 P.3d at 546, 548.

¶29 In his special concurrence, Judge Lipinsky disagreed with the division’s application of *Brekke* and articulated three reasons why its holding may lead to unjust results for insurance providers. *Ortiz*, ¶ 52, 554 P.3d at 548 (Lipinsky, J., specially concurring).

¶30 First, Progressive should have been able to litigate Ortiz’s liability – “specifically, whether he was more than 50% at fault for the collision.” *Id.* at ¶ 53, 554 P.3d at 548. Because Progressive was denied its day in court, Judge Lipinsky explained, “[W]e do not know whether Ortiz was entitled to recover UM benefits from Progressive.” *Id.* at ¶ 54, 554 P.3d at 548. Second, Camacho’s liability “should not have been binding on Progressive.” *Id.* at ¶ 55, 554 P.3d at 548. Thus, in Judge Lipinsky’s view, the district court should’ve allowed Progressive to

litigate Ortiz's fault (1) before it entered the Rule 55(a) default, and (2) "despite the entry of" the default. *Id.* Third, footnote twenty in *Brekke* "can lead to unjust outcomes in UM coverage cases by resolving [an insured's] coverage claims based on a formalistic requirement that the supreme court appears to have invented." *Ortiz*, ¶ 56, 554 P.3d at 548 (Lipinsky, J., specially concurring).

¶31 Judge Lipinsky accordingly urged this court "to reconsider *Brekke*'s restrictions on an insurer's ability to defend itself against its policyholder's coverage claims in UM litigation." *Ortiz*, ¶ 122, 554 P.3d at 557.

¶32 Progressive now appeals the division's decision and, echoing the concurrence, asks this court to reconsider *Brekke*'s particularity and timeliness requirements.

II. Analysis

¶33 We begin our analysis by setting out the standard of review. We then briefly describe UM coverage before explaining our decision in *Brekke*, the quasi-fiduciary relationship caused by the special nature of UM coverage, and the steps a court must take to determine the appropriate level of participation by an insurer in tort litigation between its insured and an uninsured motorist. Finally, after pausing to discuss *stare decisis*, we analyze whether to reconsider our holding in *Brekke*.

A. Standard of Review

¶34 Progressive asks us to: (1) reconsider the *Brekke* particularity and timeliness requirements, and (2) reverse the division’s conclusion that the district court did not abuse its discretion in prohibiting Progressive from contesting Camacho’s liability during the default judgment hearing, *Ortiz*, ¶¶ 37, 51, 554 P.3d at 546, 548. As such, we review this case de novo. See *Gallegos v. Colo. Ground Water Comm’n*, 147 P.3d 20, 28 (Colo. 2006) (“We review the district court’s . . . application of . . . case law de novo.”); see also *In re Marriage of Durie*, 2020 CO 7, ¶ 13, 456 P.3d 463, 468.

B. UM Coverage

¶35 The UM statute requires auto insurance policies to offer optional UM coverage. § 10-4-609(1)(a)(I). This coverage, as the name suggests, provides benefits when a tortfeasor lacks liability insurance or is underinsured. See *DeHerrera*, 30 P.3d at 173–74. Specifically, a UM policy “is first-party coverage,” which “allows an insured to collect payment from [their] own insurer for injury suffered as a result of the actions of an at-fault uninsured or underinsured driver.” *Apodaca v. Allstate Ins. Co.*, 255 P.3d 1099, 1103 (Colo. 2011).

¶36 An insured must establish that they are “legally entitled to recover damages[;]” that is, “that the fault of the uninsured [or underinsured] motorist gave rise to damages and the extent of those damages.” *Borjas v. State Farm Mut.*

Auto. Ins. Co., 33 P.3d 1265, 1269 (Colo. App. 2001) (quoting § 10-4-609(1)(a)(I)). “Once the insured meets this burden, the insurer is under a contractual and statutory duty to compensate the insured.” *Peterman v. State Farm Mut. Auto. Ins. Co.*, 961 P.2d 487, 493 (Colo. 1998).

C. *Brekke*

¶37 In *Brekke*, we addressed the disparity in power and resources between a UM insurer and its insured when an insurer wants to participate in tort litigation between its insured and an uninsured motorist. 105 P.3d at 187–88. As noted, UM coverage only applies “if the insured is ‘legally entitled’ to damages.” *Id.* at 188 (quoting § 10-4-609(1)(a)(I)). And, because “a finding of no liability or of limited damages on the part of the uninsured motorist will eliminate or limit a claim under the insurance provider’s UM coverage[,] . . . it is to the insurance provider’s advantage to advocate the interests of the uninsured motorist in the tort litigation.” *Id.* Even so, while an insurer has an interest in participating in the tort litigation, its insured’s UM coverage may not be diluted. *See id.* at 190.

¶38 Thus, as we explained in *Brekke*, an insurer’s participation in tort litigation between its insured and an uninsured motorist “creates a real and inherent conflict of interest.” *Id.* at 187. Specifically, “[t]he insurance provider’s conflicting duty to the insured and its interest in defending the uninsured motorist creates strong tension between its legal obligations and its business interests.” *Id.* at 188.

¶39 Accordingly, in *Brekke*, we emphasized that when a UM insurer seeks to participate in litigation between its insured and an uninsured motorist, the court must determine the insurer’s appropriate level of participation in such litigation. *See id.* at 183. To do so, a court must balance “the duties of the insurance provider and the insured’s right to an undiluted UM recovery against the interest of the insurance provider in receiving a fair hearing on its legitimate defenses.” *Id.* at 191. And, given the imbalance of power and resources between an insured and insurer, “the burden falls on the insurance provider to show that its interest in a fair hearing on its legitimate defenses will be unprotected without greater participation in the proceedings.” *Id.* at 192. Thus, we concluded in *Brekke* that an insurer must plead with particularity the legitimate defenses it intends to raise as soon as practicable so a court would have the information necessary to determine a UM insurer’s appropriate level of participation. *Id.* at 192 & n.20, 193.

D. Stare Decisis

¶40 Progressive’s request for us to review our prior holding in *Brekke* triggers principles of stare decisis.

¶41 “Stare decisis is a judge-made doctrine that promotes uniformity, certainty, and stability of the law.” *People v. LaRosa*, 2013 CO 2, ¶ 28, 293 P.3d 567, 574. While “[t]he principles of stare decisis provide that this Court will follow the rule of law it has established in earlier cases[.]” *Bedor v. Johnson*, 2013 CO 4, ¶ 23, 292 P.3d 924,

929, “[we] are not without power to depart from a prior ruling, or to overrule it, where sound reasons exist[.]” *Creacy v. Indus. Comm’n*, 366 P.2d 384, 386 (Colo. 1961); see also *People v. Porter*, 2015 CO 34, ¶ 23, 348 P.3d 922, 927 (“[Stare decisis] is not so rigid as to prevent us from reevaluating our precedent.”).

¶42 However, “[w]e will depart from our existing law only if we are clearly convinced that (1) the rule was originally erroneous or is no longer sound because of changing conditions[,] and (2) more good than harm will come from departing from precedent.” *Love v. Klosky*, 2018 CO 20, ¶ 15, 413 P.3d 1267, 1270.

¶43 With these principles in mind, we turn to the issue before us to determine whether it is appropriate to depart from our precedent in *Brekke*. For the reasons explained below, we conclude it is not. While we clarify our holding in *Brekke*, the case remains good law.

E. No Sound Reason Exists to Depart from Our Holding in *Brekke*

¶44 Progressive asks this court to reconsider the particularized pleading and timeliness standards we articulated in *Brekke*. It contends that *Brekke* represents a radical change in the rules of civil procedure, including Rule 8 (governing the pleading of basic affirmative defenses like comparative negligence) and Rule 9 (outlining the requirements for pleading certain claims, including fraud, with particularity). It asserts that this court may not modify Rule 8 or extend Rule 9 through *Brekke* because such a radical change should proceed through the

established protocol of the Civil Rules Committee rather than by way of a footnote in an opinion.

¶45 Progressive additionally argues that *Brekke's* holding is contrary to the public policy declarations in Colorado's statutes governing comparative negligence, § 13-21-111, C.R.S. (2025), and UM coverage, § 10-4-609. In its view, this change is not necessary to balance the interests of the insured and insurer nor to "assur[e] timely notice to the insured of the UM insurer's legitimate defenses." Finally, it contends that the division should have reversed the district court's decision to apply *Brekke's* heightened standards and bar Progressive from presenting its comparative negligence defense during the default judgment hearing. It asks that we reconsider *Brekke* and remand this case for a jury trial on Camacho's liability. Save for one point of clarification, we disagree.

¶46 We are unpersuaded by Progressive's arguments. Our holding in *Brekke* wasn't intended to amend the rules of civil procedure. Rather, the pleading requirements we established there apply to a very narrow universe of cases. Specifically, the requirements are intended to provide a *court* with the information it needs to determine the scope of an insurer's participation in tort litigation between its insured and an uninsured motorist. To analyze the competing interests in this circumstance and decide how the tort litigation should move

forward, a court must know what legitimate defenses a UM insurer plans to pursue. And it needs this information as soon as practicable.

¶47 Progressive's contention with respect to Rule 9(b) is somewhat more availing. Rule 9(b) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." C.R.C.P. 9(b). To the extent that footnote twenty in *Brekke* may be read to suggest that the particularized pleading standard set forth in Rule 9(b) always applies in this situation, we clarify that it does not. Rule 9(b) does not apply unless a UM insurer asserts fraud or mistake as a legitimate defense. In sum, *Brekke* is best understood as requiring a UM insurer to plead its legitimate defenses specifically unless fraud or mistake are asserted as legitimate defenses. Generalized, boilerplate defenses are insufficient to meet either standard.

¶48 That clarification aside, we perceive no reason to overrule or otherwise limit our holding in *Brekke*. See *Love*, ¶ 15, 413 P.3d at 1270 (holding that courts will not depart from prior rulings if there is no sound reason to do so). We are unconvinced by Progressive's remaining public policy argument, which we considered and rejected in *Brekke*. Progressive argues that *Brekke*'s pleading and timeliness standards create an unnecessary risk that insureds, whose negligence is 50% or more, can receive UM benefits contrary to public policy. See § 13-21-111. However, *Brekke*'s holding recognizes that risk as well as UM insurers' conflict of

interest—when participating in tort litigation between its insured and an uninsured motorist—and appropriately balances the interests of UM insurers and their insureds in such litigation. *See, e.g.*, 105 P.3d at 181, 183, 186, 189-90, 192.

¶49 Insurers will be permitted to participate in tort litigation between the insured and uninsured motorist “only when it clearly appears that the legitimate defenses of the insurance provider will not be presented to the court without such” participation. *Id.* at 193. Accordingly, a “court must determine the extent of participation by an insurance provider in the tort litigation on a case-by-case basis, subject to review for abuse of discretion.” *Id.* at 183.

¶50 The district court proceeded exactly as *Brekke* requires. Upon learning for the first time that Progressive wished to participate in the proceeding between Ortiz and Camacho—ten months after the district court’s entry of the clerk’s default against Camacho and the completion of discovery—the court applied *Brekke*’s requirements to assess the timing and particularity of Progressive’s pleadings. In doing so, the court addressed three issues. First, the court considered the effect of the entry of default. It concluded that Camacho’s liability was established when default was entered in April of 2021 and “Progressive did not raise any objection or even concern about its liability issues at that time.”

Second, the court considered whether Progressive had met the necessary showing as soon as practicable as required under *Brekke*.³ It concluded that

even if the [c]ourt were inclined to hear such a challenge, the [c]ourt finds that . . . Progressive has not met its burden to show that its participation in a default judgment hearing on the issue of liability is required to ensure a fair hearing. . . . Progressive has not made the particularized showing required under *Brekke* in its [a]nswer or [r]esponse to the [m]otion [for summary judgment]. Moreover, the arguments made in the [r]esponse to the [m]otion about comparative/contributory fault between [Ortiz] and . . . Camacho could have been made at the outset of the case—namely in the [a]nswer or in response to [Ortiz’s] motion for entry of default—and were not raised. *Brekke* requires more than general, boilerplate affirmative defenses or statements. And, raising these issues now does not meet *Brekke*’s “as soon as practicable” mandate.

(Citation omitted.)

¶51 And third, the district court examined whether Progressive met its burden to show that its interest in a fair hearing on its legitimate defenses would be unprotected without greater participation in the proceedings. As to this issue, the court concluded that Progressive could “fully participate in any default judgment damages hearing.” During this hearing and the trial between Progressive and Ortiz, “Progressive explored the cause of the accident and the respective fault of”

³ The district court considered whether Progressive made a “*particularized showing*.” It appears nonetheless to have analyzed whether Progressive set forth its legitimate defenses specifically, rather than whether Progressive met Rule 9(b)’s particularized pleading standard. But even if the court had applied Rule 9(b), it still reached the correct conclusion as Progressive’s arguments were not made “as soon as practicable.” *Brekke*, 105 P.3d at 192.

Ortiz and Camacho. At trial, the court instructed the jury regarding the default judgment, explaining that the court found Camacho at fault for the accident by default because she “did not respond or contest liability.” It further explained in the instructions that Progressive “denies that it acted in bad faith or unreasonably delayed or denied [UM] benefits” because “it found through its own investigation that [Ortiz] was at fault for the accident, a decision it maintains was reasonable and a good faith basis to deny uninsured motorist benefits.”

¶52 And Progressive’s “defense was partially successful. Due to Progressive’s cross-examination during the damages hearing of Ortiz and his treating physician about causation and the extent of Ortiz’s damages, Ortiz received just [20%] of his requested noneconomic damages and damages for permanent physical impairment.” *Ortiz*, ¶ 36, 554 P.3d at 546. Accordingly, we agree with the division: Progressive’s argument “that the district court precluded ‘any consideration of its coverage defense or reduction of damages based on comparative fault’ is thus without merit.” *Id.*

¶53 In this case, Progressive failed to specifically plead the legitimate defenses it intended to raise as soon as practicable. *See id.* at ¶¶ 35–37, 554 P.3d at 545–46; *see also Brekke*, 105 P.3d at 192. Progressive waited until ten months after the court granted entry of the clerk’s default and the close of discovery to mention its interest in participating in the proceedings between Ortiz and Camacho. And, as

explained above, Progressive’s briefing in its answer and response to Ortiz’s motion for summary judgment lacked specificity and contained general, boilerplate affirmative defenses and statements insufficient to satisfy *Brekke*’s requirements. Accordingly, the division properly affirmed the district court’s conclusion

that Progressive’s failure to respond to Ortiz’s allegations against Camacho (by asserting in its answer that those allegations were directed only to Camacho), its general denials of responsibility, its vague assertion that comparative fault may play an unspecified role in the litigation, and its failure to adequately raise the issue of comparative fault until nearly a year after default was entered against Camacho were insufficient for Progressive to show the necessity of its participation in the liability determination.

Ortiz, ¶ 33, 554 P.3d at 545.

III. Conclusion

¶54 Our decision in *Brekke* announces specific notice and timing requirements for a UM insurer that seeks to participate in tort litigation between its insured and an uninsured motorist: To provide a court with the information necessary to determine a UM insurer’s appropriate level of participation, an insurer must—as soon as practicable—plead its legitimate defenses specifically. Pleading with particularity as required by Rule 9(b) is not required unless a UM insurer asserts fraud or mistake as a legitimate defense. Generalized, boilerplate allegations do not meet either standard. *Brekke*, 105 P.3d at 192–93.

¶55 While we clarify footnote twenty, *Brekke* remains good law in all other respects. UM coverage provides important protections to insureds, which may not be diluted by insurers. And while UM insurers also have a legitimate stake in tort litigation between their insureds and uninsured motorists, their participation in such litigation has prerequisites.

¶56 Accordingly, we affirm the division's judgment and remand the case to the division with instructions to return it to the district court to determine and award the amount of appellate attorney fees and costs incurred by Ortiz on appeal.