S239510

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

PITZER COLLEGE,
Petitioner,

vs.

INDIAN HARBOR INSURANCE COMPANY,
Respondent.

QUESTIONS CERTIFIED BY THE NINTH CIRCUIT COURT OF APPEALS
CASE NO. 14-56017

PETITIONER'S ANSWER TO BRIEF OF AMICI CURIAE COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION AND AMERICAN INSURANCE ASSOCIATION

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INTRODUCTION

Amici Curiae Complex Insurance Claims Litigation Association and American Insurance Association ("Amici") ask this Court to take radical steps to reshape California's insurance and contract law jurisprudence. Amici would have the Court (1) carve out a new exception to the notice-prejudice rule, which has stood the test of more than fifty years; (2) ignore, reverse, or radically reinterpret this Court's decision in *Nedlloyd Lines B.V. v. Superior Court*; and (3) ignore, reverse, or radically reinterpret decades of insurance law jurisprudence in California, which looks with disfavor on attempts by insurers like Indian Harbor to take advantage of their superior

bargaining power and insert onerous or ambiguous conditions to and exclusions from coverage into their unilaterally-drafted contracts. Notably, these arguments are so extreme and so far out of step with well-established California law that, for the most part, Indian Harbor itself declined to raise them.

Further, Amici's arguments go far outside the questions certified by this Court, and well beyond the arguments previously presented by the parties. "The rule is universally recognized that an appellate court will consider only those questions properly raised by the appealing parties. Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by amicus curiae will not be considered." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 711 (Bird, C.J., concurring) (quoting *Younger v. State of California* (1982) 137 Cal.App.3d 806, 813-814).)

As such, Pitzer respectfully requests that the Court decline Amici's invitation to depart from decades of insurance and contract law jurisprudence, and instead reaffirm this Court's previous decisions in *Nedlloyd*, *Campbell v. Allstate*, *Egan v. Mutual of Omaha*, and the lines of authority that follow from those cases.

ARGUMENT

I. AMICI CONFUSE THE REPORTING PERIOD IN A CLAIMS-MADE POLICY WITH AN "AS SOON AS PRACTICABLE" NOTICE PROVISION

Amici argue that California law does not recognize the application of the notice-prejudice rule to an "as soon as practicable" notice provision in a claims-made policy.[1] In support of this contention, Amici cite *KPFF, Inc. v. California Union Ins. Co.* (1997) 56 Cal.App.4th 963, 972, *Pacific Employers Ins. Co. v. Superior Court* (1990) 221 Cal.App.3d 1348, and *Ace Capital Ltd. v. ePlanning, Inc.* (E.D. Cal. 2013) 2013 WL 927084. However, all three cases involved claims that implicated the *reporting period* of a claims-made-and-reported policy, not an "as soon as practicable" notice provision. (*KPFF*, *supra* at 972; *Pacific Employers*, *supra* at 1358; *Ace Capital*, *supra* at 3.)

Amici make a similar error in citing out-of-state law on this point. Amici cite *Templo Fuente De Vida Corp. v. National Union Fire Ins. Co. of Pittsburgh* (N.J. 2016) 129 A.3d 1069, *Gulf Ins. Co. v. Dolan, Fertig and Curtis* (Fla. 1983) 433 So.2d 512, and *Bianco Professional Ass'n v. Home Ins. Co.* (N.H. 1999) 740 A.2d 1051. Of those three cases, *Gulf* and *Bianco* both deal with *reporting periods*, while *Templo Fuente* is, as discussed at

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[1] "New York law would enforce the prompt notice provision in the Indian Harbor policy as written. California law does not require a different result." (Brief of Amici Curiae, p. 9.)

length in Petitioner's Reply Brief, an aberrational decision at odds with California law and the national consensus.

Amici omit from their brief the most relevant case on point: *Pension Trust Fund for Operating Engineers v. Federal Ins. Co.* (9th Cir. 2002) 307 F.3d 944. In the *Pension Trust Fund* case, the Ninth Circuit applied California law to a claims-made policy with an "as soon as practicable" notice provision, but without a reporting requirement. (*Pension Trust Fund, supra* at 956.) The Ninth Circuit reasoned (as every court cited in any of the briefing in this case has reasoned, other than the *Templo Fuente* court) that "as soon as practicable" notice provisions and reporting requirements serve different purposes, and should be treated differently. (*Id.* at 956-957.) Specifically, the "as soon as practicable" notice provision "serves to facilitate the timely investigation of claims by bringing an event to the attention of the insurer and allows an inquiry before the scent of factual investigation grows cold," just like in an occurrence policy, while the reporting requirement is "an element of coverage." (*Id.* at 956-957 (quoting *Xebec Development Partners, Ltd. v. National Union Fire Ins. Co.* (1993) 12 Cal.App.4th 501 (disapproved on other grounds in *Essex Ins. Co. v. Five Star Dye House* (2006) 38 Cal.4th 1252) and *Textron, Inc. v. Liberty Mut. Ins. Co.* (R.I. 1994) 639 A.2d 1358) (internal quotation marks omitted).) As such, the Ninth Circuit applied the notice-prejudice rule to

the "as soon as practicable" notice provision in the claims-made policy at issue in *Pension Trust Fund*.

Amici also refer to cases involving pollution buy-back provisions in general liability policies. Typically, environmental cleanup liability is excluded from commercial general liability policies by a specific exclusion. (See, e.g., *Venoco, Inc. v. Gulf Underwriters Ins. Co.* (2009) 175 Cal.App.4th 750, 757.) Some such policies may also include an endorsement that allows the insured to receive *expanded coverage* for pollution liability under certain, carefully-specified circumstances, which typically include a very short, specifically-defined notice period. (*Id.*) Courts have generally strictly enforced such notice provisions, as they are "analogous to claims made and reported policies," in that they "provide[] additional high risk coverage for claims made within defined reporting time limits." (*Id.* at 761.)

However, Amici's attempt to analogize these cases to the present case, which involves an "as soon as practicable" notice provision, rather than a reporting requirement, and which involves a *loss* of coverage previously-purchased, rather than a failure to "buy back" coverage previously excluded, should fail. The lone California case on point, *Venoco*, expressly says so: "circumstances here are not comparable to those where insureds were late in filing claims that otherwise meet the coverage elements." (*Venoco*, *supra* at 761.)

Here, by contrast with the pollution buy-back and claims-made reporting requirement cases cited by Amici, there is no "expansion of coverage" sought by Pitzer. To the contrary, Pitzer is in the classic late-notice situation described in the quote from *Venoco* reproduced above – Pitzer's claim meets the coverage elements, except that Pitzer was late in notifying Indian Harbor.

II. AMICI ASK THE COURT TO IGNORE, REVERSE, OR RADICALLY REINTERPRET *NEDLLOYD*

The first question certified by this Court in this case is "Is California's common law notice-prejudice rule a fundamental public policy for the purpose of choice-of-law analysis?" This question flows from the test articulated by this Court in *Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, for determining whether to override a contractual choice-of-law provision. The test adopted by the Court in *Nedlloyd* is the test recommended by section 187 of the Restatement Second of Conflict of Laws. (*Nedlloyd*, *supra* at 464-465.) Unsurprisingly, much of the briefing in this case on the choice-of-law issues, both before this Court and before the courts below, including the Ninth Circuit, has focused on precisely this question – whether California's notice-prejudice rule is a "fundamental public policy" that will override a contractual choice-of-law provision in an appropriate case.

Amici's brief is a curious and notable exception. Rather than discussing the *Nedlloyd* test or the Restatement, Amici's brief argues that "[s]trong public policy considerations favor enforcement of the parties' choice of New York law," that overriding the choice-of-law provision would "frustrate the parties' reasonable expectations," and "unjustly enrich Pitzer," and that departing from a contractual choice of law would "encourage all states to prefer their own laws over the differing laws of a chosen state." (Brief of Amici Curiae, p. 14, 15, 16, 19.) Amici even argue that "the freedom to contract" is "*itself* a fundamental public policy" of California, apparently to be weighed against the notice-prejudice rule. (Brief of Amici Curiae, p. 2 (emphasis in original).) Amici spend little or no space analyzing the notice-prejudice rule itself or the public policies that support it.

Generalized arguments about freedom of contract and the appropriate rule to be applied to contractual choice-of-law provisions would have been appropriate and expected in the briefing for the *Nedlloyd* case, or in the drafting of the Restatement. But today, more than twenty-five years later, with *Nedlloyd* having been repeatedly reaffirmed and relied upon, the rule in California is settled: California will apply its own law, despite a contractual choice-of-law provision, when a fundamental policy of the state of California would be contravened by application of the chosen

state's law and when California has a materially greater interest in the resolution of the issue.

The *Nedlloyd* test strikes a balance between the unquestionably important freedom to contract, and the comparably important need for California courts to enforce California laws designed to protect Californians from unjust and inequitable practices by parties with superior bargaining power. Thus, there is no "weighing" of the freedom of contract involved with the *Nedlloyd* test – this Court, and the Restatement's drafters, already did that weighing by adopting the test in the first place.

Amici's arguments amount to a plea that this Court change that rule, whether limited to this case,[2] or specifically as to the insurance industry,[3] or specifically as to differences between New York and California law,[4] or even in general.[5] Amici do not expressly call for *Nedlloyd* to be

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[2] "[I]f Pitzer wanted New York law to govern all contract disputes except for those relating to the policy's consent clause and prompt-notice requirement, it should have made such a request before agreeing to a policy that does not provide any such exception." (Brief of Amici Curiae, p. 13.)

[3] "If insurers must anticipate that courts' enforcement of an unambiguous choice of law provision may depend on which party the chosen laws favor in a particular dispute, however, insurers will be unable to rely on the clear and explicit terms of an insurance policy." (Brief of Amici Curiae, p. 17.)

[4] "Such tug-of-war should be avoided between states such as New York and California, where substantial commerce flows between the two and insureds and insurers alike stand to benefit from the courts of each state predictably and respectfully deferring to the laws of one other[sic] based on the parties' choice of law." (Brief of Amici Curiae, p. 20.)

[5] "Such a holding [applying *Nedlloyd* to overcome the New York choice-of-law provision] would contradict California's long history of enforcing

overturned, but it is difficult to read their nine pages of freedom-of-contract arguments any other way.

One reason that Amici might have chosen not to make their request express is that it runs afoul of the basic jurisprudential principle of *stare decisis*. Under California's approach to *stare decisis*, the doctrine is especially powerful where, as here, the legislature or private parties have relied upon the decision to craft laws or private agreements. (*Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 504.) For the past twenty-five years, parties drafting or signing contracts with contacts in California have been able to consistently rely upon *Nedlloyd* as a backstop against abuses by parties with superior bargaining power. (See, e.g., *Rincon EV Realty LLC v. CP III Rincon Towers, Inc.* (2017) 8 Cal.App.5th 1 (refusing to choice of New York law which would have permitted predispute jury trial waiver); *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227 (refusing to enforce choice of Texas law which would have enforced unconscionable arbitration provision); *ABF Capital Corp. v. Grove Properties Co.* (2005) 126 Cal.App.4th 204 (refusing to enforce choice of New York law, which would have permitted non-mutual attorneys' fee clause, in violation of Cal. Civ. Code § 1717).)

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contracts based on the parties' intent, regardless of any resulting detriment to one of the parties." (Brief of Amici Curiae, p. 14.)

Amici would have this Court ignore that reliance and throw the wide range of decisions and body of law developed after *Nedlloyd* into chaos. And for what? The *Nedlloyd* test has proven over the last twenty-five years to be an eminently practical, workable rule, implemented by California's Courts of Appeal and by federal courts applying California law without difficulty or complaint. Amici cite no scholarly or judicial criticism of the *Nedlloyd* rule, preferring instead to cite pre-*Nedlloyd* decisions from another era that speak in generalities on strict enforcement of contracts or on comity. (See, e.g., Brief of Amici Curiae, p. 14 (cases on contracts from 1936 & 1951) & 18 (cases on comity from 1892 & 1941).)

Another reason Amici may have chosen not to expressly call for *Nedlloyd* to be overturned is that such a request is procedurally improper. As noted above, this Court's certified questions *assume* the application of the *Nedlloyd* test. They do not contemplate a challenge to the test. None of the parties have challenged the legitimacy of the *Nedlloyd* test before this Court or before the courts below. None of the courts below in this case have suggested that the *Nedlloyd* test was in some fashion deficient or inadequate, or subject to criticism. Amici's brief in this Court appears to represent the first time in this litigation that anyone, whether litigant or judicial officer, has suggested that the *Nedlloyd* test be overturned in favor of strict enforcement of contractual choice-of-law provisions. Amici's attempt to expand the issues is improper: "The rule is universally

recognized that an appellate court will consider only those questions properly raised by the appealing parties. Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by amicus curiae will not be considered." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 711 (Bird, C.J., concurring) (quoting *Younger v. State of California* (1982) 137 Cal.App.3d 806, 813-814).)

While arguing for the Court to abandon *Nedlloyd*, Amici argue simultaneously that a ruling in Pitzer's favor would harm the insurance market by rendering contract enforcement unpredictable. (Brief of Amici Curiae, p. 16-17.) The opposite is true. Pitzer seeks nothing more than the predictable application of well-understood precedent, in the form of a ruling that the notice-prejudice rule (which has been repeatedly described as a "strong" public policy[6]) is, in fact, a "strong" or "fundamental" public policy for choice-of-law purposes. By contrast, Amici appear to be seeking the sudden, unpredictable abandonment of a well-understood, widely-applied principle of choice-of-law doctrine in California.

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[6] See, e.g., *Service Management Systems, Inc. v. Steadfast Ins. Co.* (9th Cir. 2007) 216 Fed.Appx. 662, 664 ("California's strong public policy"); *National Union Fire Ins. Co. of Pittsburg PA v. General Star Indem. Co.* (3d Cir. 2007) 216 Fed.Appx. 273, 280 ("strong public policy"); *National Semiconductor Corp. v. Allendale Mut. Ins. Co.* (D.Conn. 1982) 549 F.Supp. 1195, 1200 ("strong and abiding policy").

Even on the specific rules at issue in this case, Pitzer's position is more in keeping with the goal of predictability in enforcement of contracts. Amici's position (which, as noted above, involves a complete reversal of well-established law) leads to the application of New York law to the notice provision in the policy. Under New York law, the application of the notice-prejudice rule turns on whether or not the policy in question was "issued or delivered" within the state of New York. (See *Indian Harbor Ins. Co. v. City of San Diego* (S.D.N.Y. 2013) 972 F.Supp.2d 634, 648-649.) Of course, the facts that determine whether a policy is to be "issued or delivered" in a particular location are largely unknown to the insured at the time of issuance of the policy, and are typically within the sole control of the insurer, as it is the insurer who issues and delivers the policy. As a result, under New York law it is difficult at best (and impossible at worst) for an insured to accurately predict the rule that will apply to any particular policy before it has been issued and delivered.

Further, even the "issued or delivered" rule under New York law is *itself* fraught with uncertainty. "The New York courts have not expressly resolved the meaning of the term 'issued' in the insurance context, and both asserted definitions—'prepared and signed' versus 'sent out or distributed officially'—find some support in the case law." (*Id.* at 649.) Amici's claim that application of New York law in this context would lead to predictable outcomes is simply not credible.

III. AMICI ASK THE COURT TO IGNORE DECADES OF CALIFORNIA INSURANCE LAW JURISPRUDENCE

This Court and other California courts have repeatedly recognized that form insurance contracts are fundamentally different from ordinary, mutually-negotiated contracts between persons of roughly equal bargaining power. This Court has called particular attention to the fact that an insurer's obligations to its insured are "a vital service labeled quasi-public in nature," that insurers' obligations "go beyond meeting reasonable expectations of coverage," that "[i]nsurers hold themselves out as fiduciaries," and that "the relationship of insurer and insured is inherently unbalanced." (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 820.) This Court made the point even more clearly in *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 690: "[j]ust as the law of contracts fails to provide adequate principles for construing the terms of an insurance policy, the substantial body of law uniquely applicable to insurance contracts is practically irrelevant to commercially oriented contracts." (quoting Louderback & Jurika, *Standards for Limiting the Tort of Bad Faith Breach of Contract* (1982) 16 U.S.F.L.Rev. 187, 200-201.)

These policy concepts have given rise to a number of insurance-specific doctrines deviating from ordinary contract law, including (1) the availability of tort remedies, including punitive damages, for bad faith breaches of an insurer's obligations (*Egan, supra*); (2) the rule that

limitations on coverage must be "conspicuous, plain, and clear" (*Haynes v. Farmers Ins. Exchange* (2004) 32 Cal.4th 1198, 1204); (3) the general rule of interpretation that ambiguities are resolved in favor of coverage (*AIU Ins. Co. v. Sup. Ct.* (1990) 51 Cal.3d 807, 822); and (4) the notice-prejudice rule (*Shell Oil Co. v. Winterthur Swiss Ins. Co.* (1993) 12 Cal.App.4th 715, 760-761).

Reading Amici's brief, however, one might never realize that this separate, well-established body of law exists. Amici do not cite or discuss *Egan* or any of the other major cases that describe the differences between insurance law and ordinary contract law. Particularly in Amici's section on choice of law, Amici instead seem committed to the idea that this Court should approach choice-of-law questions in the insurance context as if they arose in the ordinary contract law context. Amici cite to various Civil Code sections dealing with broad principles of contract interpretation (Brief of Amici Curiae, p. 12), cite cases that pre-date the development of California's insurance law jurisprudence or arose outside the insurance context (Brief of Amici Curiae, p. 14, 18), and repeatedly pretend that the form insurance policy at issue in this case was actually a mutually-negotiated, freely-drafted contract (Brief of Amici Curiae, p. 13, 15, 16).

This is not a general commercial contract case – it is an insurance case. The public policy issues that arise with respect to insurance contracts are unique to this context, and are not susceptible to analysis based purely

on ordinary contract principles. Amici's analysis, which derives solely from these ordinary contract principles, and which ignores California's substantial body of insurance law, is thus fatally flawed.

IV. AMICI'S ARGUMENTS ON CONSENT ARE SIMILARLY ERRONEOUS

Amici make two arguments on the issue of application of the notice-prejudice rule to the consent provision in this policy (the second question certified by this Court). Given California's well-established notice-prejudice rule, Amici's arguments are best understood as an attempt to distinguish between the effect of consent provisions and notice provisions, and as a result, the rules that should apply to each. Amici's first argument is that the consent provision is a "condition precedent" to coverage, and therefore outside the notice-prejudice rule. Amici's second argument is that consent is "essential to managing risk" because the insurer needs the right to "exercise control over costs accepted or payments to be made under the policy." Neither argument is meritorious, or creates a reason to treat the consent provision in this policy differently from the notice provision.

A. Amici's "Condition Precedent" Argument Fails

First, Amici argue that consent is a "condition precedent to the insurer's right to be indemnified," and that therefore a showing of prejudice is not required to invoke consent provisions, even though it *is* required for notice provisions. (Brief of Amici Curiae, p. 5 (emphasis removed).)

Amici's argument fails at the first hurdle: notice provisions are also "conditions precedent." As the United States Supreme Court has observed, notice provisions are typically included in occurrence policies as a "condition precedent" to coverage, but such language has never stopped California courts from enforcing the notice-prejudice rule. (*UNUM Life Ins. Co. of America v. Ward* (1999) 526 U.S. 358, 369.)

Even the notice provision in the insurance policy at issue in this case is itself framed as a "condition precedent" to coverage. (E.R. 230.) The notice-prejudice rule applies "even though compliance with the notice provisions is made a condition of the policy or specified as a **condition precedent** to the liability of the insurer." (*Hanover Ins. Co. v. Carroll* (1966) 241 Cal.App.2d 558, 565 (emphasis added).) As such, the fact that consent provisions are "conditions precedent" means nothing for application of the notice-prejudice rule.

B. The Policy Does Not Give Indian Harbor Control Over Remediation

Amici echo Indian Harbor's contention that consent is crucial because of Indian Harbor's interest, as the insurer, in "exercis[ing] control over costs accepted or payments to be made under the policy," or (as Indian Harbor put it) "control[ing] the remediation and approv[ing] costs through the consent provision." (Brief of Amici Curiae, p. 6, fn. 3; Indian Harbor's Answering Brief, p. 55.) Both these arguments fail for the same reason:

Indian Harbor's policy does not give Indian Harbor the control over Pitzer's first-party remediation that insurers have in third-party liability insurance situations.

Ordinarily, in the third-party liability insurance context, "the insurer is invested with the *complete control and direction* of the defense." (*Truck Ins. Exchange v. Unigard Ins. Co.* (2000) 79 Cal.App.4th 966, 981 (emphasis in original).) This basic insurance principle has led California courts to treat consent provisions and notice provisions differently in that context. (See, e.g., *Jamestown Builders, Inc. v. General Star Indemnity Co.* (1999) 77 Cal.App.4th 341, 346.) On this issue, the *Jamestown* court spoke clearly and directly – in the context of ordinary third-party liability insurance policies, "the decision to pay any remediation costs outside the civil action context raises 'a judgment call left solely to the insurer.'" (*Id.* (quoting *Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 883).) Depriving the insurer of the ability to make that judgment call by not seeking the insurer's consent violates this important right of insurers, which justifies the loss of insurance benefits.

By contrast, the Indian Harbor policy at issue in this case gives the right of control over the remediation to the *insured*, leaving Indian Harbor only with a limited veto right for unreasonable remediations. This is not unusual for first-party insurance situations where typically an insurer "promises to pay money to the insured upon the happening of an event, the

risk of which has been insured against," rather than assuming control over the repair or replacement of the insured property. (*Montrose Chemical Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 663.) This ceding of control to the insured may also be driven by a desire on the part of Indian Harbor to avoid potential tort liability beyond the limits of its policy that might be associated with an insurer-controlled remediation gone wrong. Whatever the reason, Indian Harbor does not have control over remediations under its policy in the same manner as third-party liability insurers have over defense and settlement of claims against their insureds.

This distinction is a crucial one. Control over the defense and settlement of claims is the basic policy rationale for treating consent provisions differently from notice and cooperation provisions with respect to the application of the notice-prejudice rule. (*Jamestown*, *supra* at 346 ("Precisely because the clause was intended to 'invest the insurer with *complete control and direction* of the defense or compromise of claims' [citation], the Supreme Court recognized only a limited exception . . .").) Absent such control, the public policy reasons for such a distinction evaporate, and the notice-prejudice rule should apply.

CONCLUSION

For the foregoing reasons, the Court should decline Amici's invitation to depart from decades of insurance and contract law jurisprudence, and should instead apply California's existing insurance law and choice-of-law rules to answer both certified questions in the affirmative.

Respectfully submitted,

MURTAUGH MEYER NELSON & TREGLIA, LLP

Dated: October 20, 2017

By: /s/ *Thomas N. Fay*
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CERTIFICATE OF WORD COUNT

The text of this brief consists of 5,211 words as counted by the Microsoft Word version 2010 word processing program used to generate the brief.

Dated: October 20, 2017

By: */s/ Thomas N. Fay*
THOMAS N. FAY
Attorneys for Petitioner PITZER COLLEGE

CERTIFICATE OF SERVICE
DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare that I am and was at the time of service of the papers herein referred to over the age of 18 years and not a party to the action, and I am employed in the county of Orange, California, within which county the subject mailing occurred. My business address is 2603 Main Street, Penthouse, Irvine, CA 92614-6232. I am familiar with Murtaugh Meyer Nelson & Treglia, LLP's practice for collection and processing correspondence for mailing with the United States Postal Service and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business.

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PETITIONER'S ANSWER TO BRIEF OF AMICI CURIAE COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION AND AMERICAN INSURANCE ASSOCIATION

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 20, 2017.

Brooke Cheney

BROOKE CHENEY

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Case No. S239510
Ninth Circuit Case No. 14-56017
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