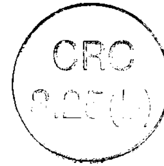


SUPREME COURT
FILED

OCT 29 2018

Jorge Navarrete Clerk

Deputy

Case No. S244737

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA,

Petitioner,

v.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,**

Respondent.

and

CANADIAN UNIVERSAL INSURANCE COMPANY, INC. ET AL.,

Real Parties in Interest.

After a Decision by the Court of Appeal
Second Appellate District, Division Three, Civil Case No. B272387
Los Angeles County Superior Court Case No. BC005158
The Honorable Carolyn B. Kuhl
The Honorable Elihu M. Berle

REAL PARTIES IN INTEREST'S CONSOLIDATED ANSWER TO AMICUS BRIEFS

GIBSON, DUNN & CRUTCHER LLP
*Theodore J. Boutrous, Jr. (SBN 132099) *tboutrous@gibsondunn.com*
Julian W. Poon (SBN 219843) *jpoon@gibsondunn.com*
Jeremy S. Smith (SBN 283812) *jssmith@gibsondunn.com*
Madeleine F. McKenna (SBN 316088) *mmckenna@gibsondunn.com*
333 South Grand Avenue
Los Angeles, California 90071
Tel.: 213.229.7000
Fax: 213.229.7520
Attorneys for CONTINENTAL CASUALTY COMPANY, COLUMBIA CASUALTY COMPANY, AMERICAN CENTENNIAL INSURANCE COMPANY, and LAMORAK INSURANCE COMPANY

Case No. S244737

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,

Respondent.

and

CANADIAN UNIVERSAL INSURANCE COMPANY, INC. ET AL.,

Real Parties in Interest.

After a Decision by the Court of Appeal
Second Appellate District, Division Three, Civil Case No. B272387
Los Angeles County Superior Court Case No. BC005158
The Honorable Carolyn B. Kuhl
The Honorable Elihu M. Berle

REAL PARTIES IN INTEREST'S CONSOLIDATED ANSWER TO AMICUS BRIEFS

GIBSON, DUNN & CRUTCHER LLP
*Theodore J. Boutrous, Jr. (SBN 132099) *tboutrous@gibsondunn.com*
Julian W. Poon (SBN 219843) *jpoon@gibsondunn.com*
Jeremy S. Smith (SBN 283812) *jssmith@gibsondunn.com*
Madeleine F. McKenna (SBN 316088) *mmckenna@gibsondunn.com*
333 South Grand Avenue
Los Angeles, California 90071
Tel.: 213.229.7000
Fax: 213.229.7520
Attorneys for CONTINENTAL CASUALTY COMPANY, COLUMBIA CASUALTY COMPANY, AMERICAN CENTENNIAL INSURANCE COMPANY, and LAMORAK INSURANCE COMPANY

BERKES CRANE ROBINSON & SEAL LLP
Steven M. Crane (SBN 108930)
scrane@bcrslaw.com
Barbara S. Hodous (SBN 102732)
bhodous@bcrslaw.com
515 South Figueroa Street, Suite 1500
Los Angeles, CA 90071
Tel.: 213.955.1150
Fax: 213.955.1155
Attorneys for Real Parties in Interest CONTINENTAL CASUALTY COMPANY and COLUMBIA CASUALTY COMPANY

CRAIG & WINKELMAN LLP
Bruce H. Winkelman (SBN 124455)
bwinkelman@craig-winkelman.com
2140 Shattuck Avenue, Suite 409
Berkeley, CA 94704
Tel.: 510.549.3330
Fax: 510.217.5894
Attorneys for Real Party in Interest MUNICH REINSURANCE AMERICA, INC. (formerly known as American Re-Insurance Company)

DUANE MORRIS LLP
Max H. Stern (SBN 154424)
mhstern@duanemorris.com
Jessica E. La Londe (SBN 235744)
One Market Plaza
Spear Street Tower, Suite 2200
San Francisco, CA 94105
Tel.: 415.957.3000
Fax: 415.957.3001
Attorneys for Real Party in Interest AMERICAN CENTENNIAL INSURANCE COMPANY

BARBANEL & TREUER, P.C.
Alan H. Barbanel (SBN 108196)
abarbanel@btlawla.com
Ilya A. Kosten (SBN 173663)
ikosten@btlawla.com
1925 Century Park East, Suite 350
Los Angeles, CA 90067
Tel.: 310.282.8088
Fax: 310.282.8779
Attorneys for Real Parties in Interest LAMORAK INSURANCE COMPANY (formerly known as OneBeacon America Insurance Company, as successor-in-interest to Employers Commercial Union Insurance Company of America, The Employers Liability Assurance Corporation, Ltd., and Employers Surplus Lines Insurance Company), and TRANSPORT INSURANCE COMPANY (as successor-in-interest to Transport Indemnity Company)

BARBER LAW GROUP
Bryan M. Barber (SBN 118001)
bbarber@barberlg.com
525 University Avenue, Suite 600
Palo Alto, CA 94301
Tel.: 415.273.2930
Fax: 415.273.2940
Attorneys for Real Party in Interest EMPLOYERS INSURANCE OF WAUSAU

LEWIS BRISBOIS BISGAARD & SMITH LLP
Peter L. Garchie (SBN 105122)
peter.garchie@lewisbrisbois.com
James P. McDonald (SBN 281804)
701 B Street, Suite 1900
San Diego, CA 92101
Tel.: 619.233.1006
Fax: 619.233.8627
Attorneys for Real Party in Interest EMPLOYERS MUTUAL CASUALTY COMPANY

SINNOTT, PUEBLA CAMPAGNE & CURET, APLC
Mary E. Gregory (SBN 210247)
mgregory@spcclaw.com
550 S. Hope Street, Suite 2350
Los Angeles, CA 90017
Tel.: 213.996.4200
Fax: 213.892.8322
Attorneys for Real Party in Interest ZURICH INTERNATIONAL (BERMUDA) LTD.

TRESSLER LLP
Charles R. Diaz (SBN 97513)
cdiaz@tresslerllp.com
1901 Avenue of the Stars, Suite 450
Los Angeles, CA 90067
Tel.: 310.203.4855
Fax: 310.203.4850
Attorneys for Real Parties in Interest FIREMAN'S FUND INSURANCE COMPANY and NATIONAL SURETY CORPORATION

TRESSLER LLP
Linda Bondi Morrison (SBN 210264)
lmorrison@tresslerllp.com
2 Park Plaza, Suite 1050
Irvine, CA 92614
Tel.: 949.336.1200
Fax: 949.752.0645
Attorneys for Real Parties in Interest ALLSTATE INSURANCE COMPANY (solely as successor-in-interest to Northbrook Excess and Surplus Insurance Company)

MCCURDY & FULLER LLP
Kevin G. McCurdy (SBN 115083)
kevin.mccurdy@mccurdylawyers.com
Vanci Y. Fuller (SBN 173317)
800 South Barranca Avenue, Suite 265
Covina, CA 91723
Tel.: 626.858.8320
Fax: 626.858.8331
Attorneys for Real Parties in Interest EVEREST REINSURANCE COMPANY (as successor-in-interest to Prudential Reinsurance Company) and MT. MCKINLEY INSURANCE COMPANY (as successor-in-interest to Gibraltar Casualty Company)

LEWIS BRISBOIS BISGAARD & SMITH LLP
Jordon E. Harriman (SBN 117150)
jordon.harriman@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Tel.: 213.250.1800
Fax: 213.250.7900

BUDD LARNER PC
Michael J. Balch. Esq.
mbalch@buddlarner.com
150 John F. Kennedy Parkway
Short Hills, NJ 07078
Tel.: 973.379.4800
Fax: 973.379.7734
Attorneys for Real Parties in Interest GENERAL REINSURANCE CORPORATION and NORTH STAR REINSURANCE CORPORATION

McCLOSKEY, WARING, WAISMAN & DRURY LLP
Andrew McCloskey (SBN 179511)
amccloskey@mwwllp.com
12671 High Bluff Drive, Suite 350
San Diego, CA 92130
Tel.: 619.237.3095
Fax: 619.237.3789
Attorneys for Real Party in Interest WESTPORT INSURANCE CORPORATION (formerly known as Puritan Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company)

CHAMBERLIN & KEASTER LLP
Kirk C. Chamberlin (SBN 132946)
kchamberlin@ckbllp.com
Michael Denlinger (SBN 130446)
mdenlinger@ckbllp.com
16000 Ventura Boulevard, Suite 700
Encino, CA 91436
Tel.: 818.385.1256
Fax: 818.385.1802
Attorneys for Real Party in Interest PROVIDENCE WASHINGTON INSURANCE COMPANY (successor by way of merger to Seaton Insurance Company, formerly known as Unigard Security Insurance Company, formerly known as Unigard Mutual Insurance Company)

TABLE OF CONTENTS

Page

I. Introduction 9

II. There Is No Valid Basis for Ignoring the Plain Language of the Insurance Contracts. 11

A. Real Parties Are Only Asking This Court to Apply the Plain Language of the Insurance Contracts at Issue. 11

B. Amici May Not Rewrite the Contracts at Issue Here............ 13

C. *Dart* Does Not Nullify the "Other Insurance" Provisions at Issue. 21

D. Canons of Construction Cannot Save Amici's Radical Rewriting of the Policies at Issue. 29

III. Conclusion 34

TABLE OF AUTHORITIES

Page(s)

Cases

Aerojet–General Corp. v. Transport Indem. Co. (1997)
17 Cal.4th 38 .... 9, 24

AIU Ins. Co. v. Superior Court (1990)
51 Cal.3d 807 .... 9, 27

Armstrong World Industries, Inc. v. Aetna Casualty & Surety Co. (1996)
45 Cal.App.4th 1 .... 23, 24

Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co. (1993)
5 Cal.4th 854 .... 17, 18

Century Sur. Co. v. United Pacific Ins. Co. (2003)
109 Cal.App.4th 1246 27

Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd. (1999)
19 Cal.4th 1182 21

City of Los Angeles v. Belridge Oil Co. (1954)
42 Cal.2d 823 18

Community Redevelopment Agency v. Aetna Casualty & Surety Co. (1996)
50 Cal.App.4th 329 .... 12, 17, 19, 28, 29, 31, 32

Continental Cas. Co. v. Phoenix Constr. Co. (1956)
46 Cal.2d 423 33

Continental Ins. Co. v. Lexington Ins. Co. (1997)
55 Cal.App.4th 637 32

Dart Industries, Inc. v. Commercial Union Insurance Co. (2002)
28 Cal.4th 1059 .... 10, 21, 22, 23, 24, 25, 26, 28, 29

Fireman's Fund Ins. Co. v. Maryland Cas. Co. (1998)
65 Cal.App.4th 1279 .... 27, 28

Garcia v. Truck Ins. Exchange (1984)
36 Cal.3d 426 33

Gray v. Zurich Ins. Co. (1966)
65 Cal.2d 263 33

Hellman v. Great American Ins. Co. (1977)
66 Cal.App.3d 298 31

Kinsman v. Unocal Corp. (2005)
37 Cal.4th 659 21

TABLE OF AUTHORITIES
(continued)

Page(s)

Legacy Vulcan Corp. v. Superior Court (2010)
185 Cal.App.4th 677 32

MacKinnon v. Truck Insurance Exchange (2003)
31 Cal.4th 635 30

McConnell v. Underwriters at Lloyds of London (1961)
56 Cal.2d 637 19

Montrose Chem. Corp. v. Admiral Ins. Co. (1995)
10 Cal.4th 645 18

North River Ins. Co. v. American Home Assurance Co. (1989)
210 Cal.App.3d 108 27

Olympic Ins. Co. v. Employers Surplus Lines Ins. Co. (1981)
126 Cal.App.3d 593 .... 19, 26, 27

Peerless Cas. Co. v. Continental Cas. Co. (1956)
144 Cal.App.2d 617 .... 22, 32

Reserve Ins. Co. v. Pisciotta (1982)
30 Cal.3d 800 17

Santisas v. Goodin (1998)
17 Cal.4th 599 24

State Farm Mut. Auto. Ins. Co. v. Jacober (1973)
10 Cal.3d 193 33

State v. Continental Ins. Co. (2012)
55 Cal.4th 186 9

State v. Continental Insurance Co. (2017)
15 Cal.App.5th 1017 17

Travelers Cas. & Sur. Co. v. Century Surety Co. (2004)
118 Cal.App.4th 1156 .... 22, 27

Vons Companies, Inc. v. United States Fire Ins. Co. (2000)
78 Cal.App.4th 52 31

Waller v. Truck Ins. Exchange, Inc. (1995)
11 Cal.4th 1 .... 9, 32

Statutes

Civ. Code, § 1636 32

Civ. Code, § 1639 .... 18, 32

TABLE OF AUTHORITIES
(continued)

Page(s)

Civ. Code, § 1641 .... 27, 32

Civ. Code, § 1644 32

Other Authorities

13 Appleman, Insurance Law and Practice (1981) 33

15 Couch on Insurance (3d ed. Dec. 2017) 20

Croskey et al., Cal. Practice Guide: Insurance Litigation 1 (The Rutter Group 1997) 26

Merriam-Webster, https://www.merriam-webster.com/thesaurus/other 13

Rest. Liability Insurance (Proposed Final Draft No. 2, Mar. 28, 2018) 20, 28

Webster's Ninth New Collegiate Dictionary (1986) 13, 16

I. INTRODUCTION

Amici United Policyholders and Santa Fe Braun, Inc. urge this Court to follow the "language" and "terms" of the insurance contracts. (Brief of United Policyholders ("United Br.") at p. 17; Brief of Santa Fe Braun, Inc. ("Santa Fe Braun Br.") at p. 14.) According to United Policyholders, the answer to "whether an insurance policy provides coverage 'is to be found solely in the language of the [applicable insurance] policies ....'" (United Br. at pp. 17-18, quoting *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 818.) And Santa Fe Braun explains that "[i]n this State, insurance contract terms dictate the rights and obligations of the insurer and policyholder." (Santa Fe Braun Br. at p. 14.)

The Real Parties in Interest[1] could not agree more. The language of the insurance contracts, "interpreted in their 'ordinary and popular sense,' ... controls judicial interpretation." (*State v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195 ("*Continental*"), quoting *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18 ("*Waller*").) The courts "may not rewrite what [the contracting parties] themselves wrote." (*Aerojet–General Corp. v. Transport Indem. Co.* (1997) 17 Cal.4th 38, 75 ("*Aerojet*").)

Here, each of the contracts states, in one way or another and often in more ways than one, that the insurer is not obligated to pay until the insured has first exhausted not only all of the insurance policies directly below it (and often listed in a schedule) in a particular policy year, but also ***any "other insurance"*** applicable to the same claim. (1PA6 at pp. 117-200; 1PA7 at pp. 207-234, italics and bold added.) Some of the policies do

---

[1] The full names and identities of the Real Parties joining in this brief are set forth both on the cover and signature pages hereto.

this in the insuring agreement itself by declaring that each insurer's liability is limited to a "loss" that exceeds the coverage provided by "***other insurances.***" (E.g., 1PA6 at p. 146, italics and bold added.) Other policies have a "Limits" provision, which explains that "the insurance afforded under this policy shall apply only ***after all underlying insurance has been exhausted.***" (1PA6 at p. 136, italics and bold added.) And nearly every policy provides through the "other insurance" provision that the policies are in excess to "***other valid and collectible insurance,***" excluding "insurance that is in excess" of the policies. (E.g., 1PA6 at pp. 118, 123, italics and bold added.) Under the most basic principle of contract law that everyone (Real Parties, Montrose, and the Amici) in this case agrees upon—the terms of the contract govern—these provisions must be given effect. The insured must first exhaust the insurance below a given excess policy—both the insurance policies specifically listed in the schedule and any ***other*** insurance underlying it applicable to the same claim.

Yet, despite professing adherence to the terms of the insurance contracts, Amici (and Montrose, for that matter) spend pages and pages trying to convince this Court that it should *not* follow that language. Amici advance four main arguments to avoid the plain language in the contracts at issue, which calls for horizontal exhaustion. *First,* Amici concoct a straw man that Real Parties are asking this Court for a "general" rule or "presumption" mandating horizontal exhaustion in all cases. (United Br. at p. 17; Santa Fe Braun Br. at p. 8.) *Second,* Amici argue that the language in the contracts about "other underlying insurance" does not mean what it says. (United Br. at p. 43; Santa Fe Braun Br. at p. 27.) *Third,* Amici claim that *Dart Industries, Inc. v. Commercial Union Insurance Co.* (2002) 28 Cal.4th 1059 renders the "other insurance" provisions nugatory in the insured-insurer context. (United Br. at pp. 19-21; Santa Fe Braun Br. at

p. 13.) And *fourth*, Amici contend that even if the "other insurance" language does mean what it says and "precedent" cannot excise it, then the Court should still not apply the plain meaning of the contracts at issue because insurance provisions are enforced (according to Amici) only if phrased in "clear," "unmistakable," and "unequivocal" language. (United Br. at pp. 17; 32; Santa Fe Braun Br. at p. 22.) As explained below, all four arguments are wrong, and only serve to confirm that this Court should faithfully apply the terms of these contracts, which call for horizontal exhaustion.

II. THERE IS NO VALID BASIS FOR IGNORING THE PLAIN LANGUAGE OF THE INSURANCE CONTRACTS

A. Real Parties Are Only Asking This Court to Apply the Plain Language of the Insurance Contracts at Issue.

Both United Policyholders and Santa Fe Braun lead with the faulty premise that Real Parties are supposedly asking this Court to adopt a "general" rule or "presumption" mandating horizontal exhaustion in all cases. (United Br. at p. 17; Santa Fe Braun Br. at p. 8; see also Montrose's RBM at p. 14 [asserting that Real Parties seek "mandatory horizontal exhaustion" that applies as a "default rule governing all continuous loss insurance claims"].) Not so.

As Real Parties explained in the *very first sentence* of their brief, "[t]he question presented by this case is whether an insured who causes progressive, multi-year environmental contamination or other 'long-tail' damage must abide ***by the language of the insurance policies*** and access its lower-layer insurance across the impacted policy years before accessing higher-layer insurance." (ABM at p. 11, italics and bold added.) Indeed, Real Parties' answering brief reiterated that "the policy language always governs" and that horizontal exhaustion would *not* apply if the "policy

language prescribes otherwise." (ABM at pp. 35, 47; see also, e.g., *id.* at p. 12 ["assuming the policy language does not require otherwise"]; *id.* at p. 15 ["absent specific policy language to the contrary"]; *id.* at p. 40 ["absent specific policy language to the contrary"]; *id.* at p. 47 ["unless the policy language prescribes otherwise"].)

To suggest otherwise, Santa Fe Braun is forced to quote out of context Real Parties' statement that "'[i]t has been settled law in California since *Community Redevelopment* that an insured must horizontally exhaust the primary coverage across all years of the long-tail injury before it can access any (higher-layer) excess policies.'" (Santa Fe Braun Br. at p. 14 fn. 5.) But Real Parties' statement was made in response to Montrose's "parade of horribles" that would supposedly ensue from "following the language of the 'other insurance' provisions." (ABM at p. 16.) The sentence about *Community Redevelopment Agency v. Aetna Casualty & Surety Co.* (1996) 50 Cal.App.4th 329 thus assumes (as is true here) that there is language in the operative contracts calling for exhaustion of "other insurance," because, of course, that is the situation in which *Community Redevelopment* would apply. Where, as here, there is contract language calling for horizontal exhaustion, "'[i]t has been settled law in California since *Community Redevelopment* that an insured must horizontally exhaust the primary coverage across all years of the long-tail injury before it can access any (higher-layer) excess policies.'" (ABM at pp. 16-17.)

Real Parties' position is simple: "[T]he policy language always governs" and horizontal exhaustion would *not* apply if the "policy language prescribes otherwise." (ABM at pp. 35, 47.)

B. Amici May Not Rewrite the Contracts at Issue Here.

United Policyholders and Santa Fe Braun fail in their attempt at rewriting and excising key terms like "other insurance" from the insurance contracts at issue.

First, United Policyholders and Santa Fe Braun argue that "'underlying insurance' is limited to *scheduled* underlying insurance in the same policy year." (United Br. at p. 45; see also Santa Fe Braun Br. at p. 24.) In other words, all that an insured such as Montrose must exhaust, according to Amici, is the insurance specifically listed in the schedule.

But Amici's contention cannot be reconciled with the fact that all the policies, in one way or another, refer to both the scheduled insurance *and* "*other* insurance." It thus makes no sense to say that the "*other* insurance" refers to the *same* insurance listed in the schedule. "Other" and "same" are antonyms, not synonyms. (Merriam-Webster, https://www.merriam-webster.com/thesaurus/other.) "Other" describes things that have not already been mentioned or included; it means "being the one (as of two or more) *remaining or not included*," "being the one or ones *distinct from that or those first mentioned* or implied," and "*not the same*." (Webster's Ninth New Collegiate Dictionary (1986) at p. 835, italics added.) Thus, "other insurance" must refer to insurance *other than* the insurance policies listed in the schedule, as the plain terms of the insurance contracts at issue make clear. For example:

- The Continental and Columbia Casualty policies provide coverage "for the amount of the ***loss*** which ***is in excess of***" the underlying insurance. "Loss," in turn, is defined as "the sums paid ... after making deductions for ***all ... other insurances*** (whether recoverable or not) ***other than the underlying insurance*** and excess insurance

purchased specifically to be in excess of this policy." (1PA6 at pp. 145-146, italics and bold added.)

- The Northbrook policies and American Centennial policies XC-00-03-64, XC-00-06-75, and XC-00-12-16 provide coverage for "the ultimate net loss in excess of the ***retained limit***," which includes "***any other underlying insurance*** collectible by the insured." (1PA6 at pp. 119-120, 159, italics and bold added.)

- The American Re-Insurance policies provide coverage for the "***[u]ltimate net loss in excess of*** the underlying insurance"; "ultimate net loss," in turn, is defined as the loss incurred "***after making deductions for all ... other insurances (other than recoveries under the underlying insurance,*** policies of co-insurance, or policies specifically in excess hereof)." (1PA6 at pp. 122-123, italics and bold added; see also 1PA6 at pp. 125-126 [Transport Indemnity policy using the same "ultimate net loss" definition].)

- Each Fireman's Fund policy states that "[i]t is a condition of this policy that the insurance afforded under this policy shall apply only after ***all underlying insurance has been exhausted***." (1PA6 at p. 136, italics and bold added.)

- American Centennial policies XC-00-03-64, XC-00-06-75, and XC-00-12-16 provide that the insurer's "liability shall be only for the ultimate net loss in excess of" the retained limit; "ultimate net loss" is defined as "the total of the applicable limits of ***the underlying policies listed*** in [Schedule A/Item 4 of the declarations] hereof, ***and the applicable limits of any other underlying insurance*** collectible by the insured." (1PA6 at p. 120, italics and bold added.)

- American Centennial policy CC-00-76-47 provides that it is excess "over ***any other*** valid and collectible insurance … ***whether or not described in the Schedule of Underlying Insurance Policies***." (1PA6 at pp. 118-119, italics and bold added.)

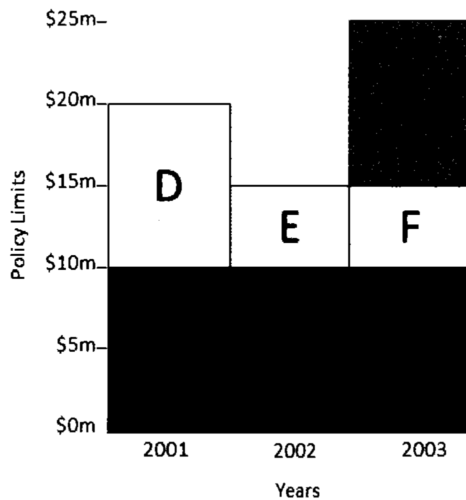
- Employers Commercial Union policy EY 8389-004 states that the insurer is liable for the insured's "ultimate net loss," defined as "the amount payable in settlement of the liability of the Insured ***after making deductions for all recoveries and for other valid and collectible insurances*** …." (1PA6 at p. 129.)

- And nearly all of the policies contain language stating that the policies are excess to "***other valid and collectible insurance***" *except for* "insurance that is in excess" of the policies—i.e., all underlying insurance (scheduled and unscheduled). (E.g., 1PA6 at pp. 120-121, italics and bold added.)

Each of the policies, though using different formulations of "other insurance," makes clear that Montrose's obligation to exhaust scheduled underlying insurance is separate from its obligation to exhaust *other underlying* insurance (i.e., insurance *other than* the specifically-scheduled lower-layer policies).

Second, United Policyholders argues that "*unscheduled* policies issued in other years *cannot* reasonably be described as 'underlying'" because "[p]olicies issued in other years are not underneath the excess policies." (United Br. at p. 48.) According to United Policyholders, the "policies issued [for] other years …. are better described as being 'next to,' 'preceding' or 'following' the policies issued in other years." (*Ibid.*)

The textual flaw in United Policyholder's argument stems from ignoring the fact there is both a horizontal (X) axis and a vertical (Y) axis in coverage charts for long-tail injuries. This can be illustrated with the aid of a simplified hypothetical coverage chart from Real Parties' Answering Brief. (See ABM at p. 11.) In the diagram below, Policy A is both "preceding" (on the X axis) *and* "below" or "underneath" policy E (on the Y axis):



United Policyholders' argument is really that policies from other years are not *directly* underneath higher-level policies: e.g., policy A is not directly underneath policy E. But the terms of the policies at issue do not limit the exhaustion requirement to policies directly underneath any particular excess policy. The policies never limit the "other insurance" to those "*directly* underlying" or "directly underneath." And the plain meaning of "underlying" is *not* limited to "*directly* underlying" (or immediately underneath). It simply means "lying beneath or below" (Webster's Ninth New Collegiate Dictionary (1986) at p. 1286); "beneath" and "below," respectively, mean "in or to a lower position than," and "in or to a lower place." (*Id.* at p. 143.) The "lower-layer" policies are just that in a long-tail-injury situation—they are in a lower position than "higher-layer"

policies by virtue of their lower attachment points. No one could dispute, for example, that in the figure above, policy A is in a lower position than policy E.[2]

Indeed, courts have had little trouble concluding that the term "underlying" as used in excess insurance contracts encompasses lower-layer insurance in *all* affected policy periods, not just *directly* underlying insurance in the same policy period. In *Community Redevelopment*, the Court of Appeal emphasized that "[t]he *only* reasonable interpretation" of the term "underlying insurance" "include[s] *all available primary insurance, not just the policy expressly listed in the Schedule of Underlying Insurance.*" (*Community Redevelopment, supra*, 50 Cal.App.4th at p. 341, italics added.)

Third, United Policyholders and Santa Fe Braun also maintain that the contracting parties could not have intended for the "other insurance" language to encompass insurance from other policy periods because the parties would not have known "at the time of contracting," "whether and to

---

[2] *State v. Continental Insurance Co.* (2017) 15 Cal.App.5th 1017 ("*Continental II*") does not suggest otherwise, and does not establish that the phrase "other insurance" must mean all other insurance, whether above or below the policy at issue. *Continental II* is distinguishable because it involved self-insured retentions that do not qualify as "insurance" and thus are not encompassed by a provision that refers to "other insurance." (ABM at pp. 42-43.) In any event, there is no reason to adopt the "'strained or absurd'" position that, for example, a second-layer excess policy providing coverage from $5 million to $10 million could actually be excess to a fifth-layer policy that provides coverage from $50 million to $100 million. (*Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 867 ("*Bay Cities*"), quoting *Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d 800, 807.) "'Courts will not adopt a strained or absurd interpretation in order to create an ambiguity where none exists.'" (*Ibid.*)

what extent the policyholder [would buy] insurance in subsequent years." (Santa Fe Braun Br. at p. 15; see also United Br. at p. 39.) Amici have it backwards. "Intent is to be inferred, if possible, from the language of the policy itself." (United Br. at p. 18, citing Civ. Code, § 1639; *Bay Cities, supra*, 5 Cal.4th at p. 867; *Montrose Chem. Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 666.) The use of the phrase "other insurance" manifests the parties' intention to capture policies they did not specifically identify (and could not have yet)—i.e., *other* insurance. If the parties intended to limit the scope of the applicable policies to those specifically known to them at the time they entered into the insurance contracts at issue, the contract would have either just listed all the known policies in the schedule or used a term like "known policies." But the parties did not do that; they left the language broad and captured any "other insurance."

Fourth, Amici contend that the parties must not have intended the "other insurance" language to encompass insurance from other policy periods because doing so "raise[s] the attachment point" specified in the excess policies at issue and thus engenders the "perverse" incentive that "the more insurance an insured purchases over time, and the greater the number of policy years 'triggered' by a continuing loss, the more difficult it becomes to access excess insurance because the attachment point in excess coverage increases as the insured purchases additional insurance in subsequent years." (Santa Fe Braun Br. at p. 28; United Br. at pp. 39-40.) But this again conflates the scheduled underlying insurance with the *other* insurance. As Real Parties explained in their Answering Brief, there would be no need for the "other insurance" catchall if the parties knew about and could add the limits of every underlying policy of insurance to the attachment point. The whole point of a catchall is to catch what has not been, or cannot be, specified. (See, e.g., *City of Los Angeles v. Belridge Oil*

Co. (1954) 42 Cal.2d 823, 829 [refusing to give credence to a narrow interpretation of a catchall tax provision because "[s]uch argument seeks to narrow the meaning of the words used to the point of actually destroying the general purpose of a 'catch-all' section"].)

Nor is there anything "perverse" about honoring and upholding the plain language of insurance policies and other contracts. Courts have long recognized that "[a] secondary policy, by its own terms, does not apply to cover a loss until the underlying primary insurance has been exhausted." (*Olympic Ins. Co. v. Employers Surplus Lines Ins. Co.* (1981) 126 Cal.App.3d 593, 600 ("*Olympic Ins. Co.*"); see also *Community Redevelopment*, *supra*, 50 Cal.App.4th at p. 339.) And where an excess policy conditions coverage on both scheduled underlying insurance and "other" insurance, the insured must exhaust all underlying insurance "even where there is more underlying primary insurance than contemplated by the terms of the secondary policy." (*Olympic Ins. Co.*, *supra*, 126 Cal.App.3d at p. 600; see also *McConnell v. Underwriters at Lloyds of London* (1961) 56 Cal.2d 637, 646 [excess policy did not attach until combined limits of all primary insurance were exhausted].)

Furthermore, horizontal exhaustion simply concerns *when* a policy is "up to bat"—the *sequence* or order in which excess policies must pay, in other words. (ABM at pp. 11, 13.) Following the plain language and requiring the insured to first exhaust other underlying insurance just ensures that—as with a single-point-in-time occurrence—the more expensive, lower-layer policies pay before the less expensive, higher-layer policies pay. (OBM at p. 58 & fn. 23 [Montrose recognizing that higher-layer excess policies have "lower premium[s]" precisely because of the "lesser [] risk" they will be called on to pay]; see also ABM at pp. 52-53.) As a leading treatise explains, a "primary policy" "requires relatively high

premiums, since almost any covered loss will require the insurer to make some payment," whereas "'excess' insurance[] ... is purchased with relatively small premiums, since most covered losses will not reach the level at which the policy kicks in, hence the insurer expects to make payments seldom, if at all." (15 Couch on Insurance (3d ed. Dec. 2017) § 6:35.) As even the proposed Restatement revision recognizes (despite proposing the adoption of Montrose's atextual rule), "vertical exhaustion under the all-sums approach puts some excess insurers in the position of paying long before primary insurers [do], which is inconsistent with the pricing of excess and primary coverage." (Rest. Liability Insurance (Proposed Final Draft No. 2, Mar. 28, 2018) § 41, com. i.)

Finally, United Policyholders argues that it is "internally inconsistent," "confusing," and "makes no sense" for Real Parties to always define "underlying insurance" as including "both [the] scheduled and 'other insurance.'" (United Br. at pp. 43-44.) But this is yet another straw man. Real Parties have *never* offered a single "interpretation" of terms "across all policies." (*Ibid.*) The meaning of the "other insurance" language in each policy depends on the precise words used in each policy and the context (a long-tail-injury situation), in which the "other insurance" language applies. For example, American Centennial policy No. XC-00-03-64 uses the term "underlying insurance" more broadly to include both the scheduled underlying insurance and "any other underlying insurance." (1PA6 at pp. 119-120.) In contrast, American Centennial policy No. CC-00-76-47 uses the term "underlying insurance" to refer to only the scheduled insurance, and then captures other insurance by using the phrase "all ... other insurance[]." (E.g., 1PA6 at p. 118 (American Centennial policy, No. CC-00-76-47).)

What all of the policies do have in common though is that each policy—*in one way or another*—states that the insurer will not pay until the insured has first exhausted not only all of the insurance policies vertically below it (and often listed in a schedule) in a particular policy year, but also any *other* underlying insurance. Just because all the policies do not do so in precisely the same words or, in Amici's view, in one "consistent" way, hardly justifies this Court throwing up its hands, as Amici effectively ask the Court to do; rather, it calls for a close examination and application of the pertinent text of each policy to the situation at hand (a long-tail injury). (See ABM at pp. 19-23, 26-31.)

C. *Dart* Does Not Nullify the "Other Insurance" Provisions at Issue.

Finding no support for their position in the plain language of the policies, Amici follow Montrose's lead and misread the pertinent caselaw in order to effectively excise the policies' "other insurance" provisions. Specifically, Amici contend that *Dart Industries, Inc. v. Commercial Union Insurance Co.* (2002) 28 Cal.4th 1059 precludes this Court from giving effect to "other insurance" provisions as written. According to Amici, *Dart* held that "other insurance" clauses "*only* apply in inter-insurer disputes" and "do not impose conditions or limitations upon the policyholder's contractual coverage rights." (United Br. at p. 19, italics added; see also Santa Fe Braun Br. at p. 13.)

Amici are reading far too much into *Dart* and violating the fundamental principle that "'[a]n opinion is not authority for propositions not considered.'" (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680, quoting *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1999) 19 Cal.4th 1182, 1195.) *Dart* said nothing about exhaustion—let alone exhaustion of excess insurance—at all.

Indeed, Amici do not (and cannot) dispute that *Dart* was a case about three policies *all at the same level* and thus presented a classic case of mutual repugnancy. (*Dart, supra*, 28 Cal.4th at p. 1079; ABM at pp. 35-37.) Specifically, as Real Parties explained in their Answering Brief, there were three primary insurers in *Dart*, each of whom claimed that "other insurance" clauses relieved them of any duty to defend the insured. (*Id.* at pp. 1065, 1079.) Although two of the insurers had written proof of their "other insurance" clauses, the third insurer did not, as its policy could no longer be found after the long passage of time. (*Id.* at p. 1064.) The question for the Court was whether the unknown contents of the "other insurance" provision in the third insurer's missing policy were material—i.e., could the missing "other insurance" provision relieve the insurer of its obligation to defend and indemnify the insured? (*Id.* at pp. 1078-1079.)

Following a long line of Court of Appeal precedents, this Court held that it did not matter whether the third insurer had an "other insurance" provision in the missing policy, because even if it did, any such provision would not be enforceable against the insured. (*Dart, supra*, 28 Cal.4th at p. 1080.) That is because when policies *at the same level* have mutually repugnant or conflicting "other insurance" clauses, courts refuse to enforce them to avoid canceling out the insurance coverage and leaving the insured bare. (*Id.* at p. 1081; see also, e.g., *Travelers Cas. & Sur. Co. v. Century Surety Co.* (2004) 118 Cal.App.4th 1156, 1161-1162 ("*Travelers*"); *Peerless Cas. Co. v. Continental Cas. Co.* (1956) 144 Cal.App.2d 617, 623 ("*Peerless*").) In that situation—where "other insurance" clauses operate at the same level of coverage—the "other insurance" clauses would only come into play in a subsequent contribution action *between the insurers* to establish "that [the insurer] had

a right to seek some kind of contribution from successive insurers also liable to [the policyholder]." (*Dart*, *supra*, 28 Cal.4th at pp. 1080-1081.)

That is not the situation presented here, as Amici concede. The "other insurance" clauses at issue here appear in excess policies at different levels of coverage and thus cannot conflict in a mutually-repugnant fashion that would leave the insured without its bargained-for coverage, because the policies do not operate at the same level.[3]

Amici nonetheless contend that *Dart* broadly held that "'other insurance' clauses do not affect the policyholder's coverage rights" *ever*—they "instead apply *only* to contribution claims between insurers." (United Br. at p. 15.) In other words, "other insurance" clauses are unenforceable against the insured not only when they give rise to a conflict that would (if enforced) cancel out both insurers' policies and deprive the insured of its bargained-for coverage, but in *all* situations, according to Amici. Santa Fe Braun offers no support for such a radically expansive reading of *Dart*, and there is none. United Policyholders, for its part, grasps at the thinnest of three straws. And both Amici overlook fundamental principles of contract interpretation.

First, United Policyholders contends that *Dart* is not "limited" to the mutually-repugnant situation because this Court "quoted with approval" the Court of Appeal's decision in *Armstrong World Industries, Inc. v. Aetna Casualty & Surety Co.* (1996) 45 Cal.App.4th 1 ("*Armstrong*"). (United Br. at p. 20.). As a threshold matter, if "[a]n appellate decision is

---

[3] As Real Parties previously explained, to the extent that "other insurance" may encompass other excess coverage at the *same layer* of coverage, any mutually repugnant "other insurance" clauses would not be given effect. (ABM at pp. 27, fn. 4, 37.)

not authority for everything *said* in the court's opinion," then an appellate decision certainly does not stand for every proposition that might be found in whichever lower-court cases the decision cites or quotes on an issue not "'actually involved and actually decided'" by the higher court. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620, italics added.) But even putting that aside, *Armstrong* does not discuss whether "other insurance provisions" are per se unenforceable with respect to insureds. The relevant issue before the court in *Armstrong* was whether an insurance policy had to pay the insured "in full" or in part. (*Armstrong*, *supra*, 45 Cal.App.4th at pp. 49, 105-106.) Foreshadowing this Court's decision in *Aerojet*, the Court of Appeal held the insurer must pay in full—i.e., "'all sums'"—and then the insurers will later "'seek contribution from others.'" (*Id.* at pp. 50-52, citations omitted.) In other words, the question in *Armstrong* was whether the "other insurance" language affected *how much* the insurer had to pay, not whether the "other insurance" language could be applied or had any effect on insureds. (*Ibid.*; see also *id.* at pp. 105-106 ["up to the policy limits"].)

Second, United Policyholders contends *Dart* held that "'other insurance' clauses" can *never* "affect the policyholder's coverage rights" in any way because the opinion discusses how "'insurers' liability is apportioned pursuant to the 'other insurance' clauses'" and how "'apportionment … has no bearing upon the insurers' obligations to the policyholder.'" (United Br. at p. 15, quoting *Dart*, *supra*, 28 Cal.4th at p. 1080.)

This argument cannot be squared with this Court's reasoning and language in *Dart*, let alone its holding. If the Court held in *Dart* that "other insurance" clauses were per se unenforceable, as Amici contend, there would have been no reason at all for the Court to have discussed the mutual-repugnancy situation. The Court could have simply explained in

one sentence that "other insurance" clauses were per se unenforceable as to insureds, and thus it did not matter whether the missing policy contained such a clause or not. But that is not even close to what this Court did. (*Dart*, *supra*, 28 Cal.4th at p. 1080.)

Moreover, the statements United Policyholders points to concern "*apportionment*" "among multiple insurers." (*Dart*, *supra*, 28 Cal.4th at p. 1080, italics added.) In the "apportionment" context, the "other insurance" provisions have "'no bearing upon the insurers' obligations to the policyholder.'" (*Ibid.*) That is because apportionment is determined *after* the obligations to the policyholder have already been decided. Indeed, that is precisely what happened in *Dart*. This Court first determined that the other-insurance provisions were not enforceable against the insured because they would be mutually repugnant, and then discussed how the clauses would affect apportionment amongst the insurers. (*Ibid.*) Simply put, the issue here is not how the "other insurance" provisions affect apportionment amongst insurers, but rather, how the contracted-for other-insurance provisions affect the relationship between the various insurers before this Court and their insured (Montrose).

Third, United Policyholders highlights footnote six in *Dart*, which states that "'`[o]ther insurance' clauses become relevant only where several insurers insure the same risk at the *same level* of coverage,'" and that "'`[a]n 'other insurance' dispute cannot arise between primary and excess insurers.'" (United Br. at p. 21, quoting *Dart*, *supra*, 28 Cal.4th at p. 1078, fn. 6.)

But this quotation also concerns nothing more than apportionment and does not stand for the proposition that "other insurance" clauses are per se unenforceable against insureds. Indeed, footnote six consists nearly

entirely of quotations from Justice Croskey's treatise on insurance law. (*Dart*, *supra*, 28 Cal.4th at p. 1078, fn. 6, quoting Croskey et al., Cal. Practice Guide: Insurance Litigation 1 (The Rutter Group 1997) ¶¶ 8:2, 8:12, pp. 8-1, 8-3.) When the late Justice stated that "'[o]ther insurance' clauses become relevant only where several insurers insure the same risk at the *same level* of coverage," he was not repudiating his own decision in *Community Redevelopment*, but rather explaining that "'[o]ther insurance' clauses become relevant only" *for purposes of apportionment* "where several insurers insure the same risk at the *same level* of coverage." Not only does that make the most sense, given the context in which this footnote appears in *Dart*, but significantly, the quotation is taken from the treatise's section on "Policies at the same level" and within a discussion about "allocation issues ... when two or more insurance policies apply at the same level of coverage (i.e., neither is specifically "primary" or "excess" to the other)." (Croskey, *supra*, ¶ 8:2, p. 8-1.) Indeed, in the treatise's separate section concerning "Primary and Excess Policies" (i.e., insurance at *different* levels of coverage), Justice Croskey, not surprisingly, agrees with his decision in *Community Redevelopment* and explains that "other insurance" provisions require "horizontal exhaustion"—"all primary policy limits for that year must be exhausted or otherwise disposed of before excess coverage attaches." (*Id.* ¶ 8:92, p. 8-31, citing *Olympic Ins. Co.*, *supra*, 126 Cal.App.3d at p. 600.) Simply put, this Court's reliance in a footnote on Justice Croskey's treatise did not somehow overrule sub silentio the same Justice's long-standing decision from *Community Redevelopment* that enforced the "other insurance" provision and required horizontal exhaustion.

Finally, Amici's attempt at reading out of existence the "other insurance" clauses found in almost all of the insurance contracts at issue cannot be reconciled with fundamental principles of contract interpretation. California law requires courts to interpret contracts "so as to give effect to every part, if reasonably practicable." (Civ. Code, § 1641; see also *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 838 ["[W]e are obligated to give effect to every part of an insurance policy"].) That is why courts routinely enforce "other insurance" clauses when they appear in policies that are in different layers and do not conflict. For example, when "other insurance" clauses appear in two primary policies and an excess policy, the primary policies' "other insurance" clauses are given no effect, whereas the "other insurance" clause in the excess policy is enforced as written. (*Fireman's Fund Ins. Co. v. Maryland Cas. Co.* (1998) 65 Cal.App.4th 1279, 1305; accord *Century Sur. Co. v. United Pacific Ins. Co.* (2003) 109 Cal.App.4th 1246, 1257 ("*Century Sur.*"); *North River Ins. Co. v. American Home Assurance Co.* (1989) 210 Cal.App.3d 108, 114; *Olympic Ins. Co., supra*, 126 Cal.App.3d at p. 600.) As a result, the excess insurer "has no duty to defend or indemnify *until all the underlying primary coverage* is exhausted or otherwise not on the risk." (*Fireman's Fund, supra*, 65 Cal.App.4th at p. 1305, italics added.) Such decisions recognize that, in general, "terms of coverage will be honored whenever possible." (*Century Sur., supra*, 109 Cal.App.4th at p. 1257; see also *Travelers, supra*, 118 Cal.App.4th at pp. 1159, 1163-1164.) Canceling out conflicting, mutually repugnant "other insurance" clauses to avoid leaving the insured bare (as in *Dart*) is the *exception* to the general rule of upholding the plain meaning of every part of a contract.

Amici also gloss over the fact that "other insurance" clauses appear in contracts *between the insurer and the insured*, and *not* amongst insurers.

Indeed, as United Policyholders acknowledges, the original purpose of "other insurance" clauses was "to prevent multiple recoveries by *insureds* in cases of overlapping policies providing coverage for the same loss"—in other words, to govern the relationship between the insurer and the insured. (*Fireman's Fund*, *supra*, 65 Cal.App.4th at p. 1306; see also United Br. at pp. 37-38, quoting *Dart*, *supra*, 28 Cal.4th at p. 1079.) It makes no sense to now say, as Amici attempt to, that a provision of a policy between two contracting parties—the insurer and the insured—actually has no effect whatsoever on the relationship between those parties.[4]

It is true that "other insurance" clauses sometimes come into play in inter-insurer contribution disputes, even outside of the mutually-repugnant situation. Indeed, *Community Redevelopment* itself concerns an inter-insurer dispute. (*Community Redevelopment*, *supra*, 50 Cal.App.4th at p. 332 & fn. 1.) But just because "other insurance" clauses can be relevant to inter-insurer contribution disputes does not mean, as United Policyholders claims, that these clauses are "inapplicable to disputes

---

[4] The nonbinding proposed revision to the Restatement on Liability Insurance makes this same mistake. It recognizes that insurance policies are contracts between an insurer and its insured, and not between insurers, but then appears to take the position that "other insurance" provisions still have no effect on those contracting parties and were just added "because they have no other place to go." (Rest. Liability Insurance (Proposed Final Draft No. 2, Mar. 28, 2018) § 20, com. a.) That cannot be right, as a matter of law or logic. As Amici themselves explain, courts must enforce the "language" and "terms" of the insurance contracts that the parties (the insurer and insured) agreed to. (United Br. at p. 17; Santa Fe Braun Br. at p. 14.) And neither the Restatement, Montrose, nor Amici have even attempted to explain—they cannot—how a term in a contract between two parties can have no effect as to them, but yet somehow bind unrelated third parties (other insurers) who are neither assignees nor third-party beneficiaries.

between policy holders and their insurers." (United Br. at p. 22.) The opposite holds true. The reason why "other insurance" clauses are relevant to some contribution actions is because the clauses are critical in answering the threshold question of whether the insurer must indemnify the insured to begin with. (*Dart*, *supra*, 28 Cal.4th at p. 1080.) If the insurer has no obligation to the insured, then there cannot be any obligation calling for contribution between the respective insurers. (*Community Redevelopment*, *supra*, 50 Cal.App.4th at p. 340.)

Community Redevelopment illustrates this perfectly. In that case, United Pacific Insurance Company (the primary insurer) could not seek contribution from Scottsdale (the excess insurer) because the "other insurance" clause in Scottsdale's contract with its *insured* meant it did not owe its *insured* anything. (*Community Redevelopment*, *supra*, 50 Cal.App.4th at pp. 338-340.)

In sum, *Dart* cannot be read to relieve Montrose of abiding by the terms of the various insurance contracts it entered into with Real Parties. The "other insurance" clauses must be enforced as written, unless, unlike here, they conflict in a mutually-repugnant fashion that cancels out the insurance coverage and leaves the insured bare.

D. Canons of Construction Cannot Save Amici's Radical Rewriting of the Policies at Issue.

Last, Amici contend that even if *Dart* does not nullify the "other insurance" clauses, the Court must ignore them because of "established rules of insurance policy interpretation." (United Br. at p. 32; see also Santa Fe Braun Br. at p. 22.) According to Amici, under canons of insurance policy construction, "other insurance" clauses can only require exhaustion of all underlying insurance if they do so in terms that are

"clear," "unmistakable," and "unequivocal." (United Br. at pp. 32, 36; Santa Fe Braun Br. at p. 26.) United Policyholders goes even further, insisting that "other insurance" clauses cannot be read to require horizontal exhaustion as long as Montrose puts forth *any* reasonable competing interpretation of those terms. (United Br. at p. 37.) But these "rules of interpretation"—neither of which Montrose has invoked—have no force here, and in any event, they do not excuse Montrose from abiding by the plain language of the insurance contracts at issue.

The first "established rule[] of insurance policy interpretation" that Amici ask the Court to apply is the rule that provisions limiting coverage must be "clear" and "unmistakable." (United Br. at p. 32; see also Santa Fe Braun Br. at p. 26.) United Policyholders grounds such a rule in this Court's decision in *MacKinnon v. Truck Insurance Exchange* (2003) 31 Cal.4th 635 ("*MacKinnon*"); Santa Fe Braun suggests that the rule comes straight from *Community Redevelopment*. (United Br. at p. 32; Santa Fe Braun Br. at p. 26.) Both Amici contend that the policies' "other insurance" clauses fail to meet this heightened standard.

As a preliminary matter, Amici are wrong that a "clear and unmistakable" rule applies here. As *MacKinnon* itself explains, that standard applies only when (unlike here) an insurance provision would *take away* coverage reasonably expected by the insured. (*MacKinnon, supra*, 31 Cal.4th at p. 648.) Horizontal exhaustion, however, is not an exclusionary clause or rule and does not take away coverage from an insured. Again, as Real Parties have explained, horizontal exhaustion simply concerns *when* a particular excess insurer is "up to bat." (ABM at pp. 11, 13.) It concerns the *sequence* of payment, not whether a particular policy covers a particular claim or in what amount. (See *ibid.*)

United Policyholders argues that "other insurance" clauses "function[] as" exclusions and would "deprive" Montrose of coverage because these clauses "arguably require [Montrose] to make contributions on behalf of insolvent insurers or on account of policies with more restrictive coverage." (United Br. at pp. 32, 36, 40.) But this again overlooks the actual text of the policies. Under excess policies that require exhaustion of "collectible" or "valid and collectible" other insurance (e.g., 1PA6 at pp. 120, 157), policies issued by an insolvent carrier do not count as "other insurance." (*Hellman v. Great American Ins. Co.* (1977) 66 Cal.App.3d 298, 304 ["The clause 'valid and collectible insurance' has widespread use in the insurance industry of the United States and has a well established meaning"—"insurance which is legally valid and is underwritten by a solvent carrier"]; *Vons Companies, Inc. v. United States Fire Ins. Co.* (2000) 78 Cal.App.4th 52, 63 ["The term 'other valid and collectible insurance' simply means another policy which is legally valid and underwritten by a solvent carrier"].) And for policies with pollution exclusions, it is *Montrose's* position that those policies apply notwithstanding the pollution exclusions. (See 4PA17 at pp. 901-914 [claiming coverage from all insurers, including those with pollution exclusions].)

Santa Fe Braun, for its part, argues that *Community Redevelopment* articulated a similar "clear[] and unequivocal[]" test. (Santa Fe Braun Br. at p. 26.) *Community Redevelopment* did no such thing. Rather, the Court of Appeal made clear that it was simply applying ordinary rules of contract interpretation—i.e., the principle that plain language controls judicial interpretation of policy terms—and not some heightened standard Amici (but not Montrose) would have this Court fashion. (*Community*

Redevelopment, 50 Cal.App.4th at p. 338, citing Civ. Code, §§ 1636, 1639, 1641.)

But even assuming arguendo that a "clear and unmistakable" rule does apply here, the policies' "other insurance" language amply satisfies that standard. The plain meaning of the policy terms "understood in their ordinary and popular sense" (Civ. Code, § 1644) establishes that the excess policies do not attach until all other underlying insurance has been exhausted. (See *ante*, Section II.B.) As explained in Real Parties' Answering Brief, Courts of Appeal have found the precise language used in the policies at issue here to require horizontal exhaustion. (See, e.g., *Legacy Vulcan Corp. v. Superior Court* (2010) 185 Cal.App.4th 677, 689; *Continental Ins. Co. v. Lexington Ins. Co.* (1997) 55 Cal.App.4th 637, 645; *Community Redevelopment, supra*, 50 Cal.App.4th at p. 341; *Peerless, supra*, 144 Cal.App.2d at pp. 625-626.) And there is no evidence before the Court that the clauses are not "conspicuous" enough.
United Policyholders' only proof of the supposed lack of obviousness is an excerpt from a different American Home policy issued to a different insured not at issue in this case. (United Br. at pp. 34-35.)

As a fallback argument, United Policyholders invokes yet another "rule" from *MacKinnon*: "Even if the 'other insurance' clauses were found to be sufficiently conspicuous and clear to be enforceable, and the Insurers' proffered interpretation reasonable, the clauses still could not be given the effect urged by Insurers *unless* there were no other reasonable interpretation of this language." (United Br. at p. 37, original italics.)

United Policyholders again misconstrues *MacKinnon*. If the plain meaning of the policies supports horizontal exhaustion, that meaning controls. (*Waller*, *supra*, 11 Cal.4th at p. 18.) It is only where a policy

term is *ambiguous* and is subject to multiple reasonable interpretations that courts may resolve such ambiguities against the drafter. (*State Farm Mut. Auto. Ins. Co. v. Jacober* (1973) 10 Cal.3d 193, 202-203, citing *Continental Cas. Co. v. Phoenix Constr. Co.* (1956) 46 Cal.2d 423, 437.)

United Policyholders attempts to insert ambiguity into the contracts at issue where none exists. In its brief, it points out that "other insurance" clauses may both prevent multiple recoveries by the insured and play a role in inter-insurer contribution disputes. (United Br. at pp. 37-38.) But just because "other insurance" clauses may serve different, well-established purposes in different contexts does not mean they (or the contracts of which they are a part) are ambiguous.

Moreover, any rule requiring that ambiguous terms be construed against the drafter applies with much less force when, as here, the insured is a sophisticated corporate entity and former manufacturer of toxic chemicals, such as Montrose. This interpretive aid is designed for insurance policies "'entered into between two parties of unequal bargaining strength, … written by the more powerful bargainer to meet its own needs, and offered to the weaker party on a take it or leave it basis.'" (*Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 438 ("*Garcia*"), quoting *Gray v. Zurich Ins. Co.* (1966) 65 Cal.2d 263, 269.) As this Court noted in *Garcia*, "'the principle that ambiguities in policies should be strictly construed against the insurer need not be strictly adhered to in instances where one large corporation and one large insurance company both advised by competent counsel do business with each other.'" (*Garcia*, *supra*, 36 Cal.3d at p. 438 fn. 6, quoting 13 Appleman, Insurance Law and Practice (1981) § 7402, pp. 300-301.) There is thus no reason to give Montrose the benefit of any doubt here.

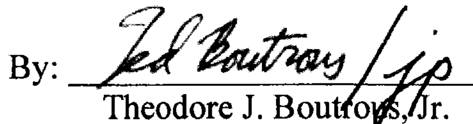
III. CONCLUSION

The plain language of the insurance contracts at issue in this case calls for horizontal exhaustion. Straw man arguments and strained readings of the policy language and caselaw cannot change that; nor can *Dart*, or demonstrably inapplicable canons of construction. This Court should affirm.

DATED: October 26, 2018

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP
*THEODORE J. BOUTROUS, JR.
JULIAN W. POON
JEREMY S. SMITH
MADELEINE F. MCKENNA

By: 
Theodore J. Boutrous, Jr.

Attorneys for American Centennial Insurance Company, Columbia Casualty Company, Continental Casualty Company, and Lamorak Insurance Company (formerly known as OneBeacon America Insurance Company, as successor-in-interest to Employers Commercial Union Insurance Company of America, the Employers Liability Assurance Corporation, Ltd., and Employers Surplus Lines Insurance Company)

BARBANEL & TREUER, P.C.
ALAN H. BARBANEL
ILYA A. KOSTEN

By:
Ilya A. Kosten

Attorneys for Real Parties in Interest Lamorak Insurance Company (formerly known as OneBeacon America Insurance Company, as successor-in-interest to Employers Commercial Union Insurance Company of America, the Employers Liability Assurance Corporation, Ltd., and Employers Surplus Lines Insurance Company), and Transport Insurance Company (as successor-in-interest to Transport Indemnity Company)

CRAIG & WINKELMAN LLP
BRUCE H. WINKELMAN

By:
Bruce H. Winkelman

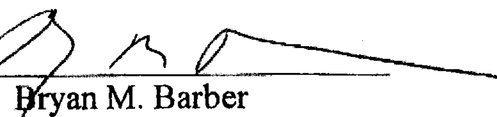
Attorneys for Real Party in Interest Munich Reinsurance America, Inc. (formerly known as American Re-Insurance Company)

LEWIS BRISBOIS BISGAARD & SMITH LLP
PETER L. GARCHIE
JAMES P. MCDONALD

By:
Peter L. Garchie

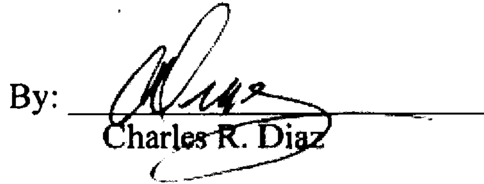
Attorneys for Real Party in Interest Employers Mutual Casualty Company

BARBER LAW GROUP
BRYAN M. BARBER

By: 
Bryan M. Barber

Attorneys for Real Party in Interest Employers Insurance of Wausau

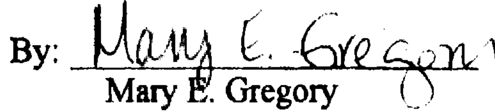
TRESSLER LLP
CHARLES R. DIAZ



By: Charles R. Diaz

Attorneys for Real Parties in Interest Fireman's Fund Insurance Company and National Surety Corporation

SINNOTT, PUEBLA CAMPAGNE & CURET, APLC
MARY E. GREGORY

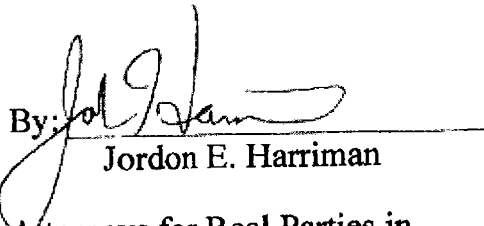


By: Mary E. Gregory

ATTORNEYS FOR REAL PARTY IN INTEREST ZURICH INTERNATIONAL (BERMUDA) LTD.

LEWIS BRISBOIS BISGAARD & SMITH LLP
JORDON E. HARRIMAN

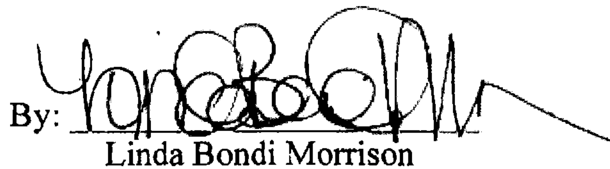
BUDD LARNER PC
MICHAEL J. BALCH



By: Jordon E. Harriman

Attorneys for Real Parties in Interest General Reinsurance Corporation and North Star Reinsurance Corporation

TRESSLER LLP
LINDA BONDI MORRISON



By: Linda Bondi Morrison

Attorneys for Real Party in Interest Allstate Insurance Company (solely as successor-in-interest to Northbrook Excess and Surplus Insurance Company)

MCCURDY & FULLER LLP
KEVIN G. MCCURDY
VANCI Y. FULLER

By: ______________________
Kevin G. McCurdy

Attorneys for Real Parties in Interest Everest Reinsurance Company (as successor-in-interest to Prudential Reinsurance Company) and Mt. McKinley Insurance Company (as successor-in-interest to Gibraltar Casualty Company)

McCLOSKEY, WARING, WAISMAN & DRURY LLP
ANDREW MCCLOSKEY

By: ______________________
Andrew McCloskey

Attorneys for Real Party in Interest Westport Insurance Corporation (formerly known as Puritan Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company)

CHAMBERLIN & KEASTER LLP
Kirk C. Chamberlin
Michael Denlinger

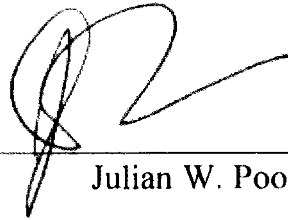
By: ______________________
Michael Denlinger

Attorneys for Real Party in Interest PROVIDENCE WASHINGTON INSURANCE COMPANY (successor by way of merger to Seaton Insurance Company, formerly known as Unigard Security Insurance Company, formerly known as Unigard Mutual Insurance Company)

CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this Consolidated Answer to Amicus Briefs contains 7,306 words, excluding the tables and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: October 26, 2018



Julian W. Poon

Attorneys for American Centennial Insurance Company, Columbia Casualty Company, Continental Casualty Company, and Lamorak Insurance Company (formerly known as OneBeacon America Insurance Company, as successor-in-interest to Employers Commercial Union Insurance Company of America, the Employers Liability Assurance Corporation, Ltd., and Employers Surplus Lines Insurance Company)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, Los Angeles, CA 90071.

On October 26, 2018, I served true copies of the following document described as **REAL PARTIES IN INTEREST'S CONSOLIDATED ANSWER TO AMICUS BRIEFS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I caused the document or documents to be electronically transmitted to TrueFiling, an electronic filing service provider, pursuant to the order authorizing electronic service and the instructions on that website.

On October 26, 2018, I also served true copies of the following document described as **REAL PARTIES IN INTEREST'S CONSOLIDATED ANSWER TO AMICUS BRIEFS** on the following parties in this action as follows:

Brook B. Roberts, Esq. John M. Wilson, Esq. Drew T. Gardiner, Esq. LATHAM & WATKINS 12670 High Bluff Drive San Diego, CA 92130 Tel.: 858.523.5400 Fax: 858.523.5450 Brook.Roberts@lw.com John.Wilson@lw.com Drew.Gardiner@lw.com	Attorneys for Plaintiff-Petitioner, MONTROSE CHEMICAL CORPORATION OF CALIFORNIA
Honorable Carolyn B. Kuhl Los Angeles Superior Court Department 12 Spring Street Courthouse 312 North Spring Street Los Angeles, CA 90012	Respondent SUPERIOR COURT

Honorable Elihu M. Berle
Los Angeles Superior Court
Department 6
Spring Street Courthouse
312 North Spring Street
Los Angeles, CA 90012

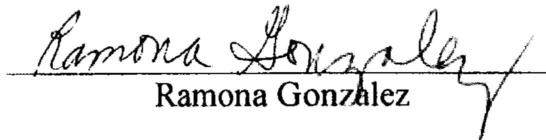
Respondent SUPERIOR COURT

Court of Appeal
Second Appellate District, Division 3
300 South Spring Street
2nd Floor, North Tower,
Los Angeles, CA 90013

BY OVERNIGHT DELIVERY: On the above-mentioned date, I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses shown above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier with delivery fees paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 26, 2018, at Los Angeles, California.



Ramona Gonzalez

SERVICE LIST

Brook B. Roberts, Esq.
John M. Wilson, Esq.
Drew T. Gardiner, Esq.
LATHAM & WATKINS
12670 High Bluff Drive
San Diego, CA 92130
Tel.: 858.523.5400
Fax: 858.523.5450
brook.roberts@lw.com
john.wilson@lw.com
drew.gardiner@lw.com

Attorneys for Plaintiff-Petitioner, MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

[Overnight Delivery & E-Service]

Steven M. Crane, Esq.
Barbara S. Hodous, Esq.
BERKES CRANE ROBINSON & SEAL LLP
515 South Figueroa Street, Suite 1500
Los Angeles, CA 90071
Tel.: 213.955.1150
Fax: 213.955.1155
scrane@bcrslaw.com
bhodous@bcrslaw.com

Attorneys for Real Parties in Interest CONTINENTAL CASUALTY COMPANY and COLUMBIA CASUALTY COMPANY

Kenneth Sumner, Esq.
Lindsey A. Morgan, Esq.
SINNOTT PUEBLA CAMPAGNE & CURET, APLC
2000 Powell Street, Suite 830
Emeryville, CA 94608
Tel.: 415.352.6200
Fax: 415.352.6224
ksumner@spcclaw.com
lmorgan@spcclaw.com

Attorneys for Real Parties in Interest AIU INSURANCE COMPANY; AMERICAN HOME ASSURANCE COMPANY; GRANITE STATE INSURANCE COMPANY; LANDMARK INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA; and NEW HAMPSHIRE INSURANCE COMPANY

Max H. Stern, Esq.
Jessica E. La Londe, Esq.
DUANE MORRIS LLP
One Market Plaza
Spear Street Tower, Suite 2200
San Francisco, CA 94105
Tel.: 415.957.3000
Fax: 415.957.3001
mhstern@duanemorris.com
jelalonde@duanemorris.com

Attorneys for Real Party in Interest AMERICAN CENTENNIAL INSURANCE COMPANY

Bruce H. Winkelman, Esq.
CRAIG & WINKELMAN LLP
2140 Shattuck Avenue, Suite 409
Berkeley, CA 94704
Tel.: 510.549.3330
Fax: 510.217.5894
bwinkelman@craig-winkelman.com

Attorneys for Real Party in Interest MUNICH REINSURANCE AMERICA, INC. (formerly known as American Re-Insurance Company)

Richard B. Goetz, Esq.
Zoheb P. Noorani, Esq.
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071
Tel.: 213.430.6000
Fax: 213.430.6407
rgoetz@omm.com
znoorani@omm.com
mreynolds@omm.com

Attorneys for Real Party in Interest TIG INSURANCE COMPANY (successor by merger to International Insurance Company)

Alan H. Barbanel, Esq.
Ilya A. Kosten, Esq.
BARBANEL & TREUER, P.C.
1925 Century Park East, Suite 350
Los Angeles, CA 90067
Tel.: 310.282.8088
Fax: 310.282.8779
abarbanel@btlawla.com
ikosten@btlawla.com

Attorneys for Real Parties in Interest LAMORAK INSURANCE COMPANY (formerly known as OneBeacon America Insurance Company, as successor-in-interest to Employers Commercial Union Insurance Company of America, The Employers Liability Assurance Corporation, Ltd., and Employers Surplus Lines Insurance Company), and TRANSPORT INSURANCE COMPANY (as successor-in-interest to Transport Indemnity Company)

Bryan M. Barber, Esq.
BARBER LAW GROUP
525 University Avenue, Suite 600
Palo Alto, CA 94301
Tel.: 415.273.2930
Fax: 415.273.2940
bbarber@barberlg.com

Attorneys for Real Party in Interest EMPLOYERS INSURANCE OF WAUSAU

Peter L. Garchie, Esq.
James P. McDonald, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
701 B Street, Suite 1900
San Diego, CA 92101
Tel.: 619.233.1006
Fax: 619.233.8627
peter.garchie@lewisbrisbois.com
james.mcdonald@lewisbrisbois.com

Attorneys for Real Party in Interest EMPLOYERS MUTUAL CASUALTY COMPANY

Charles R. Diaz, Esq.
TRESSLER LLP
1901 Avenue of the Stars, Suite 450
Los Angeles, CA 90067
Tel.: 310.203.4855
Fax: 310.203.4850
cdiaz@tresslerllp.com

Attorneys for Real Parties in Interest FIREMAN'S FUND INSURANCE COMPANY and NATIONAL SURETY CORPORATION

Elizabeth M. Brockman, Esq.
SELMAN BREITMAN, LLP
11766 Wilshire Boulevard, Suite 600
Los Angeles, CA 90025
Tel.: 310.445.0800
Fax: 310.473.2525
ebrockman@selmanlaw.com

Attorneys for Real Party in Interest FEDERAL INSURANCE COMPANY

Linda Bondi Morrison, Esq.
Lindsey D. Dean, Esq.
TRESSLER LLP
2 Park Plaza, Suite 1050
Irvine, CA 92614
Tel.: 949.336.1200
Fax: 949.752.0645
lmorrison@tresslerllp.com
ldean@tresslerllp.com

Attorneys for Real Parties in Interest ALLSTATE INSURANCE COMPANY (solely as successor-in-interest to Northbrook Excess and Surplus Insurance Company)

Kevin G. McCurdy, Esq.
Vanci Y. Fuller, Esq.
MCCURDY & FULLER LLP
800 South Barranca Avenue, Suite 265
Covina, CA 91723
Tel.: 626.858.8320
Fax: 626.858.8331
kevin.mccurdy@mccurdylawyers.com
vanci.fuller@mccurdylawyers.com

Attorneys for Real Parties in Interest EVEREST REINSURANCE COMPANY (as successor-in-interest to Prudential Reinsurance Company) and MT. MCKINLEY INSURANCE COMPANY (as successor-in-interest to Gibraltar Casualty Company)

Kirk C. Chamberlin, Esq.
Michael Denlinger, Esq.
CHAMBERLIN & KEASTER LLP
16000 Ventura Boulevard, Suite 700
Encino, CA 91436
Tel.: 818.385.1256
Fax: 818.385.1802
kchamberlin@ckbllp.com
mdenlinger@ckbllp.com

Attorneys for Real Party in Interest PROVIDENCE WASHINGTON INSURANCE COMPANY (successor by way of merger to Seaton Insurance Company, formerly known as Unigard Security Insurance Company, formerly known as Unigard Mutual Insurance Company)

Thomas R. Beer, Esq.
Peter J. Felsenfeld, Esq.
HINSHAW & CULBERTSON LLP
One California Street, 18th Floor
San Francisco, CA 94111
Tel.: 415.362.6000
Fax: 415.834.9070
tbeer@mail.hinshawlaw.com
pfelsenfeld@mail.hinshawlaw.com

Attorneys for Real Party in Interest HDI-GERLING INDUSTRIE VERSICHERUNGS, AG (formerly known as GERLING KONZERN ALLGEMEINE VERSICHERUNGS-AKTIENGESELLSCHAFT)

Jordon E. Harriman, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Tel.: 213.250.1800
Fax: 213.250.7900
jordon.harriman@lewisbrisbois.com

Attorneys for Real Parties in Interest GENERAL REINSURANCE CORPORATION and NORTH STAR REINSURANCE CORPORATION

Michael J. Balch. Esq.
BUDD LARNER PC
150 John F. Kennedy Parkway
Short Hills, NJ 07078
Tel.: 973.379.4800
Fax: 973.379.7734
mbalch@buddlarner.com

Attorneys for Real Parties in Interest GENERAL REINSURANCE CORPORATION and NORTH STAR REINSURANCE CORPORATION

Andrew T. Frankel, Esq. SIMPSON THATCHER & BARTLETT LLP 425 Lexington Avenue New York, NY 10017 Tel.: 212.455.2000 Fax: 212.455.2502 afrankel@stblaw.com	Attorneys for Real Parties in Interest TRAVELERS CASUALTY AND SURETY COMPANY (formerly known as The Aetna Casualty & Surety Company) and THE TRAVELERS INDEMNITY COMPANY
Deborah Stein, Esq. SIMPSON THATCHER & BARTLETT LLP 1999 Avenue of the Stars, 29th Floor Los Angeles, CA 90067 Tel.: 310.407.7500 Fax: 310.407.7502 pjordan@stblaw.com jmarek@stblaw.com dstein@stblaw.com	Attorneys for Real Parties in Interest TRAVELERS CASUALTY AND SURETY COMPANY (formerly known as The Aetna Casualty & Surety Company) and THE TRAVELERS INDEMNITY COMPANY
Andrew McCloskey, Esq. McCLOSKEY, WARING, WAISMAN & DRURY LLP 12671 High Bluff Drive, Suite 350 San Diego, CA 92130 Tel.: 619.237.3095 Fax: 619.237.3789 amccloskey@mwwllp.com	Attorneys for Real Party in Interest WESTPORT INSURANCE CORPORATION (formerly known as Puritan Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company)
Mary E. Gregory, Esq. SINNOTT, PUEBLA CAMPAGNE & CURET, APLC 550 South Hope Street, Suite 2350 Los Angeles, CA 90017 Tel.: 213.996.4200 Fax: 213.892.8322 mgregory@spcclaw.com	Attorneys for Real Party in Interest ZURICH INTERNATIONAL (BERMUDA) LTD.
Philip R. King, Esq. COZEN O'CONNOR 123 North Wacker Drive, Suite 1800 Chicago, IL 60606 Tel.: 312.382.3100 Fax: 312.382.8910 pking@cozen.com	Attorneys for Real Party in Interest ZURICH INTERNATIONAL (BERMUDA) LTD.
John K. Daly, Esq. COZEN O'CONNOR 707 17th Street, Suite 3100 Denver, CO 80202 Tel.: 720.479.3900 Fax: 720.479.3890 jdaly@cozen.com	Attorneys for Real Party in Interest ZURICH INTERNATIONAL (BERMUDA) LTD.

The Honorable Carolyn B. Kuhl
Los Angeles Superior Court
Department 12
Spring Street Courthouse
312 North Spring Street
Los Angeles, CA 90012

[Overnight Delivery Only]

Honorable Elihu M. Berle
Los Angeles Superior Court
Department 6
Spring Street Courthouse
312 North Spring Street
Los Angeles, CA 90012

[Overnight Delivery Only]

Court of Appeal
Second Appellate District, Division 3
300 South Spring Street
2nd Floor, North Tower,
Los Angeles, CA 90013

[Overnight Delivery Only]

David B. Goodwin, Esq.
COVINGTON & BURLING LLP
One Front Street
San Francisco, CA 94111
Tel.: 415.591.6000
Fax: 415.591.6091
dgoodwin@cov.com

Attorneys for Amicus Curiae
UNITED POLICYHOLDERS

Reynold L. Siemens, Esq.
Jeffrey A. Kiburtz, Esq.
Heather W. Habes, Esq.
COVINGTON & BURLING LLP
1999 Avenue of the Stars, Suite 3500
Los Angeles, CA 90067
Tel.: 424.332.4800
Fax: 424.332.4749
rsiemens@cov.com
jkiburtz@cov.com
hhabes@cov.com

Attorneys for Amicus Curiae
UNITED POLICYHOLDERS

Jeffrey S. Raskin, Esq.
Thomas M. Peterson, Esq.
MORGAN, LEWIS & BOCKIUS LLP
One Market Street, Spear Tower
San Francisco, CA 94105
Tel.: 415.442.1000
Fax: 415.442.1001
jeffrey.raskin@morganlewis.com
thomas.peterson@morganlewis.com

Attorneys for Amicus Curiae
SANTA FE BRAUN, INC.

Paul A. Zevnik, Esq.
David S. Cox, Esq.
MORGAN, LEWIS & BOCKIUS LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071
Tel.: 213.612.2500
Fax: 213.612.2501
paul.zevnik@morganlewis.com
david.cox@morganlewis.com

Attorneys for Amicus Curiae
SANTA FE BRAUN, INC.