Case No. S178542

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

YANTING ZHANG,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO,

Respondent.

CALIFORNIA CAPITAL INSURANCE COMPANY,

Real Party in Interest.

After A Decision By The Court Of Appeal
Fourth Appellate District, Division Two
[Case No. E047201]

ANSWER TO PETITION FOR REVIEW

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I.

ISSUE PRESENTED

The Fourth District Court of Appeal, Division Two, concluded that where a plaintiff/insured alleges conduct specifically prohibited by the UCL[1] - such as "unfair, deceptive, untrue, and/or misleading advertising" - there is no reason why an insurance company should have special immunity from UCL liability not possessed by any other industry. Petitioner/insured Yanting Zhang expressly alleged that defendant/Real Party California Capital Insurance Company made "unfair" and "fraudulent" promises in its advertising likely to deceive the public.[2] The Court concluded that "[n]o reason appears why an insurance company should not be subject to similar liability under the UCL if false advertising or similar misrepresentations can be proved." (Slip Op. at 9.) The Court held that *Moradi-Shalal*,[3] which prohibits a private right of action based on acts violating Insurance Code sections 790.03(h), *et seq.* (Unfair Insurance Practices Act, "UIPA") does not apply to exempt carriers from equitable responsibility for violating the UCL. The Court noted, however, that *Moradi-Shalal* will preclude

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1 Unfair Competition Law at Business and Professions Code sections 17200, *et seq.*

2 Zhang's Second Amended Complaint, p. 32, par. 92, ll. 1-3.

3 *Moradi-Shalal v. Fireman's Fund Ins. Cos.* (1988) 46 Cal.3d 287.

insurance company UCL liability to the extent "a plaintiff relies on conduct that violates the Unfair Insurance Practices Act but is *not otherwise prohibited*. . . ." (Slip Op. at 8; emphasis in original.)

The issue is whether insurance companies should be protected from UCL liability when the allegations against the insurance company are ***not*** dependent upon the UIPA. Further, pursuant to Insurance Code section 1861.03(a), Petitioner respectfully submits that direct statutory edict provides for such UCL liability.

The Fourth District Court of Appeal, Division Two, properly resolved the issue presented herein. To the extent there is a conflict created by the *Textron Financial Corp. v. National Union Fire Ins. Co.* (2994) 118 Cal.App.4th 1061 decision, then Petitioner/insured Yanting Zhang is not in disagreement with the conclusion that the issue should be resolved by the instant Review Petition, and by upholding the *Zhang* decision.

II.

INTRODUCTION

Real Party California Capital demurred to the third cause of action in Petitioner's Second Amended Complaint, for alleged violations of Business and Professions Code sections 17200, *et seq*. The trial court sustained California Capital's demurrer to the third cause of action, without leave to

amend. The Petitioner submits that the sustaining of California Capital's demurrer was erroneous, and, therefore, Petitioner/insured filed her Petition for Writ of Mandate.

The Court of Appeal granted Petitioner's Writ, and reversed the trial court's sustaining of California Capital's demurrer without leave to amend.

Because Petitioner's Second Amended Complaint alleged conduct to support the UCL cause of action - separate and apart from the conduct constituting violations of the UIPA - the Fourth District concluded that the UCL claims were valid. The Fourth District Court emphasized that insurance companies do not have a unique immunity from UCL liability:

> "The UCL, which on its face applies to all 'businesses' and certainly does not expressly except or exempt insurers, *does* authorize any injured person to sue for the violation of its requirements and/or prohibitions - that is, for 'unfair competition.' (Bus. & Prof. Code, § 17204.) 'Unfair competition' is defined in section 17200 to 'include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. . . .' Undoubtedly an insurer is subject to suit under the UCL, and numerous cases so reflect. (*See, e.g., Quelimane Co. v. Stewart Title Guaranty Co., supra,* 19 Cal.4th 26; *Ticconi v. Blue Shield of California Life & Health Ins. Co.* (2008) 160 Cal.App.4th 528.)" (Slip. Op. at 5.)

Real Party argued that *Moradi-Shalal* prohibited Petitioner's UCL theory, despite the fact that conduct *other* than acts violating the UIPA were

alleged to support that theory. The Fourth District Court rejected such a sweeping application of *Moradi-Shalal's* proscriptions, stating:

> "But if a plaintiff expressly alleges conduct expressly prohibited by the UCL, such as fraudulent conduct likely to deceive the public (*McKell v. Washington Mutual, Inc., supra,* 142 Cal.App.4th 1457) or false advertising, there is simply no reason to apply *Moradi-Shalal* to prohibit the cause of action. Such a case does not represent an attempt to subvert or work around the Supreme Court's holding; although the Unfair Insurance Practices Act does not provide a private cause of action, in the UCL the Legislature clearly *has* provided such a remedy for conduct which falls within its purview. Again we stress that to construe the Unfair Insurance Practices Act as immunizing insurers from the consequences of misconduct that other business must suffer would simply make no sense. *Moradi-Shalal* does not require such a result and the decision in *Manufacturers' Life* in fact supports this conclusion." (Slip. Op. at 10 - 11.)

Finally, the Court acknowledged that "a somewhat closer question would be presented" if the pleading's UCL cause of action were predicated solely on UIPA violations. In *Moradi-Shalal,* the Supreme Court decided that there is no private right of action for civil damages pursuant to the UIPA based on claims mishandling. That case does *not*, however, immunize insurance companies from the consequences (including equitable) of all *other* unlawful, unfair, or fraudulent business acts or

practices, or of unfair, deceptive, untrue, or misleading advertising. To immunize insurance companies from the consequences of misconduct for which other businesses must answer "makes no sense."

Finally, the Fourth District Court agreed with the "approach" in *Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, where the Third District Court of Appeal affirmed the overruling of a demurrer as to a UCL claim. The Court in *Progressive West* concluded that the insured's third cause of action was valid based on the factual allegations as to Progressive's violations of the UCL by its deceptive and misleading statements concerning its insurance products. The Court concluded that the carrier's "conduct is likely to deceive the public. . . ." As such, "we conclude that Preciado has stated a [UCL] cause of action and the demurrer was properly overruled." *See, Progressive West, supra,* 135 Cal.App.4th at 284 - 285.

The Fourth District Court in *Zhang* concluded that "to the extent" that *Textron Financial Corp. v. National Union Fire Ins. Co.* (2004) 118 Cal.App.4th 1061 "is inconsistent, we disagree." (Slip. Op. 10.)

The notion that insurance companies do not enjoy impunity for unlawful, unfair, or fraudulent business practices - separate and apart from UIPA misconduct - patently is not new. *See, e.g., Donabedian v. Mercury*

Ins. Co. (2004) 116 Cal.App.4th 968, 984; *Gallimore v. State Farm Fire & Cas. Ins. Co.* (2002) 102 Cal.App.4th 1388, 1392; *Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 676 - 677. As such, Petitioner respectfully submits that the Fourth District Court's decision in *Zhang* was sound, and that there is no basis for Supreme Court review. However, if the Court finds that there is a conflict among the Courts of Appeal, Petitioner submits that review is proper, and that the *Zhang* decision should be upheld.

III.

STATEMENT OF FACTS

Petitioner Yanting Zhang previously owned the insured property at issue, located at 17518 Sequoia Avenue, Hesperia, California, 92345 ("Property"). Petitioner purchased the California Capital Policy in the event of damage and loss at the Property. On July 5, 2005, a fire erupted; the fire, and the water used to extinguish the fire, caused widespread damage.

Subsequent to Petitioner's timely notice to California Capital, the carrier proceeded to engage in a campaign of harassing conduct. As Petitioner alleges in the operative pleading, California Capital's conduct took on a personally malevolent tenor, such that its behavior and actions went far beyond mere "claims handling."

To summarize the dispute between the parties:

- On January 4, 2006, California Capital concluded that the cost to repair the extensive real property damage totaled $111,277.75.
- Over the next year and a half, Petitioner obtained repair scopes and bids which were well in excess of California Capital's estimate of $111,277.75, and presented the scopes and bids to California Capital. California Capital refused to reconsider its position.
- Petitioner had no choice but to pay for the Property repairs herself, given that California Capital's estimate and offer were far less than what was needed to repair the Property.
- Representing herself, Petitioner finally was forced to file a lawsuit on July 5, 2007 against California Capital. Petitioner subsequently retained her current counsel of record. When Petitioner's counsel sought to engage in litigation, California Capital invoked Appraisal.
- Each party retained a disinterested, qualified Appraiser. The Appraisers selected a neutral Umpire. The Appraisal Award was issued on May 21, 2009. The Award based on November 2005 prices (California Capital's date) totaled $185,261.47.

The Award based on March 2007 prices (Petitioner's date) totaled $194,491.41. Both Awards are in stark contrast to the $111,277.75 California Capital demanded that Petitioner accept.

The cost of just the Appraisal itself exceeded $30,000, for Petitioner Zhang alone.

The delays and costs now have resulted in Petitioner Zhang losing the Property through foreclosure. The Property that was and is the subject of these proceedings no longer belongs to Petitioner Yanting Zhang.

In addition to its undervaluation of Petitioner's property loss, the carrier's conduct included:

- Forwarding harassing and dunning notices advising Petitioner that if she did not repair the Property, the carrier would cancel her insurance. However, it was because of California Capital's own unreasonable undervaluation, conduct, and delays that Petitioner could not properly repair the Property. California Capital then cancelled Petitioner's Policy.
- Interfering with Petitioner's attempts to retain a Public Adjuster to assist her.

- Informing the mortgage holder on the Property that Petitioner had no intention of repairing the property, which was false. By 2007, Petitioner did have the Property repaired, which was the catalyst for her substantial financial loss. California Capital's fraudulent representations to the mortgage holder caused the mortgage holder to initiate legal proceedings against the Petitioner - legal proceedings Petitioner had to defend. The stress resulting from the accusations against her caused Petitioner severe pregnancy complications, and the premature birth of her daughter, with its attendant health risks.

Meanwhile, California Capital's advertisements state, *inter alia*:

> "Our goal is to be a valuable asset to you - every step of the way, whether you have a claim or not. . . We are second to none in our dedication to your safety and security. . . Our solid commitment to stay by your side has attracted the leading insurance advisors. You can rely on our expert network of independent agents to offer you custom coverage that fits your life." *See,* www.ciginsurance.com/main_body., web page.

California Capital is not immune from liability pursuant to Business and Professions Code statutory provisions specifically designed to prohibit and proscribe such "unlawful, unfair, and fraudulent" conduct. An

insurance carrier should not have an immunity not enjoyed by any other industry for false promises made which were and are likely to deceive the public, and which were not kept.

IV.

LEGAL DISCUSSION

A. Petitioner's UCL Cause Of Action Is Not Predicated On Privileged Conduct

Real Party states that "no alleged UCL violation, even in the consumer-protection context, may be predicated upon conduct that is privileged. . . ." (Petition, p. 14.) As such, Real Party contends, allowing the Business and Professions Code theory essentially undermines the holding of *Moradi-Shalal v. Fireman's Fund Ins. Co.* (1988) 46 Cal.3d 287 - because that case holds there is no private right of action pursuant to Insurance Code section 790.03: "Plaintiffs [*sic*] cannot plead around *Moradi-Shalal* 'by relying on conduct which violates only the UIPA as the basis for a UC[L] cause of action.'" (Petition, p. 15, citing to *Manufacturers Life*.) However, *Moradi-Shalal* bars private civil actions for monetary remedies based on claims handling misconduct - the case does *not* proscribe fraudulent advertising claims seeking restitutionary relief.

Further, in *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 277, the Court expressly held that the UIPA itself does not

create a "wholesale exemption" from liability for conduct that also constitutes unlawful, unfair, or fraudulent business activities. The Court in *Manufacturers Life* stated:

> "Neither the language of the UIPA nor its history suggests that the Legislature intended by its enactment to abolish the Cartwright Act and UC[L] remedies for conduct which the UIPA also proscribes. . . ."

The Court in *Manufacturers Life* rejected the notion that in adopting the UIPA, the Legislature intended that only the Insurance Commissioner be authorized to remedy *other* unlawful conduct by insurance companies. *Manufacturers Life, supra,* 10 Cal.4th at 272 - 273. As the Fourth District Court mentioned more than once, here, insurance companies are not exempt from answering for misconduct engaged in separate and apart from claims handling.

Petitioner specifically alleges that California Capital "engaged in unfair, deceptive, untrue, and/or misleading advertising. . . ." These are acts that were not part of the claims handling in this case. The foundational premise for Petitioner's UCL claim is not "privileged."

B. Conduct That Does Not Allow A Private Right Of Action Will Support A UCL Theory

Furthermore, Petitioner's pleading alleges that California Capital violated numerous Regulations, set forth at the California Regulations, Title

10, Chapter 5, subchapter 7.5, sections 2695.1, *et seq.* As the Court stated in *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 606:

> "A *regulatory* statute may form the basis for such a UCA [Business and Professions Code section 17200] action. The Supreme Court has long held that the 'unlawful' practices which form the basis of a UCA action are '. . . *any practices forbidden by law*, be it civil or criminal, federal state, or municipal, statutory, *regulatory*, or court-made. . .'
>
> It is not necessary that the predicate law provide for private civil enforcement." (Emphases in original.)

See, Stevens v. Superior Court, supra, 75 Cal.App.4th at 606, 89 Cal.Rptr.2d at 378, quoting to *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838 - 839.

The Court in *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1335 held that even where the offending conduct violates a statute for which there is no direct enforcement, or private right of action, the conduct may properly be the subject of a UCL claim: A private plaintiff individual may bring a 17200 action even when "the conduct alleged to constitute unfair competition violates a statute for the direct enforcement of which there is no private right of action." *Id.,* citing to *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 950 and *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 565.

C. The Conduct Here Is "*Otherwise Prohibited*"; Real Party's Contention That Petitioner's UCL Claim Is Barred Because It Is Predicated Solely On The UIPA Is Erroneous

Real Party argues that Insurance Code section 790.03 includes in its proscriptions untrue, deceptive, or misleading advertising. *See,* Ins. C. § 790.03(a), (b). Real Party contends that pursuant to the UIPA, unfair, fraudulent, or false advertising "cannot be parsed or separated from conduct covered by the UIPA." (Petition, p. 17.) Thus, according to California Capital, *Moradi-Shalal* proscribes an insurance company's liability for fraudulent or false advertising under the UCL.

Petitioner respectfully submits that such a broad and sweeping view of UIPA proscriptions was *not* intended by the Court in *Moradi-Shalal.*

First, the action in *Moradi-Shalal* pertained to an insurer's alleged refusal to promptly and fairly settle the plaintiff's claim against the carrier's insured. At issue was a third party claim - not a first party claim - predicated solely on alleged claims handling misconduct. The relief sought was civil monetary damages.

Further, it is apparent from the Court's decision in *Manufacturers Life Ins. Co. v. Superior Court, supra,* that an insurance company is not shielded from liability if the conduct is proscribed in the UIPA - *as well as another* statutory scheme such as the Cartwright Act at Business and

Professions Code sections 16720, *et seq.* The Court in *Manufacturers Life* found that conduct constituting, *inter alia,* "deceptive statements" (such as those proscribed by Insurance Code section 790.03(b)) were also violative of the Cartwright Act - and were actionable under the UCL. Merely because conduct is proscribed in the UIPA does not mean that such conduct will not support a UCL theory - if the conduct is "otherwise prohibited."

The Fourth District here stated: "We understand that if a plaintiff relies on conduct that violates the Unfair Insurance Practices Act but is *not otherwise prohibited, Moradi-Shalal* requires that a civil action under the UCL be considered barred." (Slip. Op. 8.)

As in *Manufacturers Life, supra,* Petitioner alleged conduct here *that is otherwise prohibited.* Business and Professions Code section 17500 specifically proscribes false or misleading statements or advertising - "including over the Internet." This applies to "any statement. . . concerning. . . services. . . professional or otherwise. . . which is untrue or misleading, and which is known, or by the exercise of reasonable care should be known, to be untrue or misleading. . . ." *See,* Bus. & Prof. C. § 17500.

Petitioner's allegations are *not* limited to claims handling activities as in *Moradi-Shalal.* The essence of *Moradi-Shalal* is that first party insureds, and third party claimants, may not predicate causes of action for

civil damages based solely on violations of Insurance Code section 790.03(h) - relating specifically to claims handling activities. *Moradi-Shalal* did not grant insurance companies widespread immunities, including in actions seeking equitable relief due to unlawful, unfair, and fraudulent advertising practices likely to deceive the consumer public.

Thus, in *Progressive West, supra,* 135 Cal.App.4th at 283 - 284, the Court concluded that the insured's UCL cause of action was valid in light of its allegations that other purchasers of Progressive policies were likely to be deceived or misled regarding the carrier's insurance products:

> "A fraudulent business practice under section 17200 'is not based upon proof of the common law tort of deceit or deception, but is instead premised on whether the public is likely to be deceived.' (*Pastoria v. Nationwide Ins., supra*, 112 Cal.App.4th at p. 1498.) Stated another way, 'In order to state a cause of action under the fraud prong of (section 17200) a plaintiff need not show that he or others were actually deceived or confused by the conduct or business practice in question. A violation can be shown even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage. Instead, it is only necessary to show that members of the public are likely to be deceived.' (*Schnall v. Hertz Corp.* (2000) 78 Cal.App.4th 1144, 1167 - 1168.) . . . ."

Based upon the insured's allegations of Progressive's pattern and practice of deceiving consumers purchasing its insurance products, the

Court concluded that the carrier's "conduct is likely to deceive the public. . . ." As such, "we conclude that Preciado has stated a cause of action and the demurrer was properly overruled." *See, Progressive West, supra,* 135 Cal.App.4th at 284 - 285.

As the Court stated in *Manufacturers Life*, at pages 283 - 284, if there is conduct alleged, other than conduct which violates *only* Insurance Code section 790.03, then an insured's Business and Professions Code violations allegations will be upheld:

> "[B]ecause [Insurance Code] section 790.03 does not create a private civil cause of action, plaintiff could not plead around that limitation by relying on conduct which violates only the UIPA [Insurance Code section 790.03] as the basis for a UCA [Business and Professions Code section 17200] cause of action. It held, however, that the trial court had properly overruled defendants' demurrers to the UCA cause of action because the conduct on which the plaintiff predicated that cause of action also violated the Cartwright Act. Therefore, the conduct could form the basis for a cause of action under the UCA. . .
>
> This conclusion does not compromise the rule of *Moradi-Shalal* in any way. The court concluded there that the Legislature did not intend to create new causes of action when it described unlawful insurance business practices in section 790.03, and therefore that section did not create a private cause of action under the UIPA. . . The UIPA nowhere reflects legislative intent to repeal the Cartwright Act

> insofar as it applies to the insurance industry, ***and the Legislature has clearly stated its intent that the remedies and penalties under the UCA are cumulative to other remedies and penalties*** [citing to Business and Professions Code section 17205.]" (Emphasis added.)

See, Manufacturers Life Ins. Co. v. Superior Court, supra, 10 Cal.4th 257, 283 - 284. Petitioner alleged conduct violative of statutory provisions separate and apart from the UIPA. The Fourth District held that the UCL claim was supported by that conduct. Petitioner submits that the Fourth District's decision was supported and sound.

D. The Court In *Moradi-Shalal* Acknowledged That The Legislature Could Create Additional Civil Remedies; The Legislature Did Just That Pursuant To Insurance Code Section 1861.03(a)

Real Party states that "*Moradi-Shalal* determined that the Legislature intended no private right of action for claims arising under the UIPA." (Petition, p. 18.) However, the Court in *Moradi-Shalal, supra,* 46 Cal.3d at 305 stated:

> "Finally, nothing we hold herein would prevent the Legislature from creating additional civil or administrative remedies, including, of course, creation of a private cause of action for violation of section 790.03. . . ."

After the Court's August 18, 1988 *Moradi-Shalal* decision, Insurance Code section 1861.03(a) was enacted.

Insurance Code section 1861.03(a) states:

> **"§ 1861.03. Unfair insurance practices; prohibition**
>
> (a) The business of insurance ***shall*** be subject to the laws of California applicable to any other business, including, but not limited to. . . the. . . unfair business practices laws (Parts 2 commencing with Section 16600). . . of the Business and Professions Code. . ." (Added by Initiative Measure (Prop. 103); approved by the electors, Nov. 8, 1988. . .). (Emphasis added.)

Sections 17200, *et seq.* are included in Part 2 of the Business and Professions Code expressly referred to in Insurance Code section 1861.03.

Thus, in addition to the discussions hereinabove, the Fourth District's decision in *Zhang* was supported by section 1861.03.

E. The Fourth District Court Of Appeal's Reliance On *Progressive West* Was Proper

Real Party cites as demonstrative of the Fourth District Court's improper reliance on *Progressive West Ins. Co. v. Superior Court, supra,* that that case "is predicated, not on a claim-handling dispute that would allege violations of the types of activities covered by the UIPA, but an insured's post-claim reimbursement dispute." (Petition, p. 27.)

Although the claim had been paid out in *Progressive West*, the insured's allegations were still founded on conduct proscribed by the UIPA:

> "Preciado [insured] alleges Progressive fails to investigate claims, fails to properly explain policy benefits, misled Preciado and misrepresented material facts pertaining to his claim. . . and forced Preciado to retain an attorney and incur economic damages in order to receive proper benefits under the policy. . .
>
> Preciado alleges that Progressive made material misrepresentations and misled him (and presumably each of its customers it makes these same demands upon as a matter of course) in this regard. This conduct is likely to deceive the public. For purposes of this pleading, we conclude that Preciado has stated a [UCL] cause of action and the demurrer was properly overruled."

See, Progressive West Ins. Co. v. Superior Court, supra, 135 Cal.App.4th at 283 and 285. Preciado the insured alleged that Progressive, *inter alia*: (a) failed to properly investigate claims (Ins. C. § 790.03(h)(3)); (b) failed to properly explain policy benefits (Ins. C. § 790.03(h)(1), (9)); (c) misled regarding, and misrepresented, material claim facts (Ins. C. § 790.03(h)(1)); and (d) compelled Preciado the insured to retain the services of an attorney (Ins. C. § 790.03(h)(6)). These are alleged claims handling violations.

Furthermore, Insurance Code section 790.03(h)(9) provides that it is a UIPA violation for a carrier, *after* payment of a claim and when asked, to refuse to specify the coverage under which payment has been made. Thus, UIPA violations may occur even after a claim is resolved. The fact that the

insured's med pay claim had been paid in *Progressive West* neither distinguishes the case, nor demonstrates that the Fourth District's reliance on the decision was in error.

Finally, the Court in *Progressive West* found the UCL claim valid based on the allegations of fraudulent and deceptive business practices proscribed by the UCL.

F. The UCL Remedies Are "Cumulative" To All Other Remedies

Real Party posits that an insured is "made whole" by the common law remedies of breach of insurance contract and bad faith. Thus, Real Party would have insurance companies benefit from an UCL immunity not conferred on any other business, and not supported by *Moradi-Shalal.*

By the statute's express terms (*see,* section 17205), the remedies allowed pursuant to the UCL are ***cumulative*** to all other remedies or penalties under all other laws of the state.

Further, there are equitable remedies the courts may fashion pursuant to a UCL theory that may fit the facts of a specific case, including but not limited to, for example, restitution of premiums paid, and/or attorneys' fees pursuant to Code of Civil Procedure section 1021.5. *See, Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553 (where an aggrieved party is harmed by the unfair business practices of a defendant, the plaintiff may be

entitled under certain circumstances to attorneys' fees pursuant to the UCL and Code of Civil Procedure section 1021.5).

Thus, Real Party's allegation that it should be conferred an immunity pursuant to the UCL merely because there are other remedies available to the Petitioner is unavailing.

V.

CONCLUSION

Insurance companies should not be protected from UCL liability when the allegations against the insurance company are ***not*** dependent upon the UIPA, and the conduct alleged ***is*** proscribed by other law. Moreover, direct statutory edict provides for such UCL liability, pursuant to Insurance Code section 1861.03(a) - enacted ***after*** *Moradi-Shalal*.

Petitioner respectfully requests that Real Party's Petition be denied.

Dated: January 27, 2010

Respectfully submitted,

VIAU & KWASNIEWSKI

By_____

Gary K. Kwasniewski
Jeanette L. Viau
Attorneys for Petitioner
Yanting Zhang

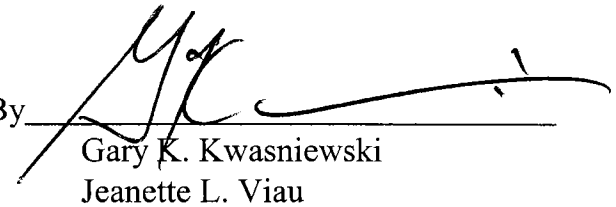
CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c)(1))

Petitioner's Answer to Petition for Review consists of 4,321 words as counted by the WordPerfect version 10 word-processing program used to generate the brief.

Dated: January 27, 2010

Respectfully submitted,

VIAU & KWASNIEWSKI

By 

Gary K. Kwasniewski
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Attorneys for Petitioner
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the State of California, over the age of 18 years, and not a party to the within action. I am employed in the County of Los Angeles, State of California. My business address is One Bunker Hill, 601 West Fifth Street, 8th Floor, Los Angeles, CA, 90071-2004. My mailing address is 466 Foothill Boulevard, No. 323, La Cañada, CA, 91011. On January 27, 2010, I served the foregoing document described as:

PETITIONER'S ANSWER TO PETITION FOR REVIEW

As set forth on Appendix A.

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

Executed on this 27th day of January, 2010, at La Cañada, California.

C Lambert

Christina Lambert

APPENDIX A

California Supreme Court 350 McAllister Street San Francisco, CA 94102 Tel: (415) 865-7000 Fax: (415) 865-7183	(By Facsimile and Federal Express)
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Steven W. Murray, Esq. A Law Corporation 14930 Ventura Boulevard, Suite 205 Sherman Oaks, CA 91403 Tel: (818) 501-2277 Fax: (818) 501-6441	Policyholders (*Amici* for Petitioner Yanting Zhang) (By Facsimile and U.S. Mail)
William L. Guasewitz, Esq. Michelman & Robinson, LLP 915 L Street, Suite 1110 Sacramento, CA 95814 Tel: (916) 447-4044 Fax: (916) 405-3404	Association of California Insurance Cos. and the Personal Insurance Federation of California (*Amici* for Real Party California Capital) (By Facsimile and U.S. Mail)

APPENDIX A (cont.)

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