

May 17, 2002

Hon. Ronald M. George
Chief Justice of California
Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Dart Industries, Inc. v. Commercial Union Insurance Company*
Case No. S086518

Dear Chief Justice George and Associate Justices:

On behalf of Dart Industries, we ask the Court to accept this letter giving notice of three judicial actions after the close of briefing that may be pertinent to issues to be argued May 30, 2002. We address each of them briefly below.

1. *Burt Rigid Box Inc. v. Travelers Property Casualty Corp.* (W.D.N.Y. 2001) 126 F.Supp.2d 596. Applying New York law, the district court held that the terms of a missing insurance policy can be proved by secondary evidence and that the standard of proof is a preponderance of evidence. In granting summary judgment for the insured that there was a duty to defend and indemnify, the court found the insured produced sufficient secondary evidence (e.g., policy numbers, paid premiums, correspondence between the insured and insurer referencing claims, and payments or reserves for those claims) to satisfy the burden of proof for finding coverage.
2. *Chickasha Cotton Oil Co. v. Houston General Ins. Co.* (Tex.Ct.App. 2002) 2002 Tex.App. LEXIS 3083. The court held that even though secondary evidence did not prove the policy language, it was sufficient to establish the existence of comprehensive general liability insurance that imposed a duty to defend the

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personal injury claims in question. Accordingly, summary judgment for the insurer was reversed as to the duty to defend. However, because the insured presented no evidence of the limits of coverage, the court affirmed summary judgment that the insurer had no duty to indemnify.

3. *Scottsdale Ins. Co. v. National Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, No. S105493. On May 1, 2002, the Court issued an order depublishing this decision, which had been the subject of letters to the Court by Commercial Union on March 1, 2002 and by Dart on March 14, 2002.

Respectfully submitted,



Charles A. Bird

of

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

PROOF OF SERVICE

Dart Industries, Inc. v. Commercial Union Insurance Company
California Supreme Court, No. S086518
Court of Appeal, Second Appellate District, Div. One, No. B129601
Los Angeles County Superior Court, No. C519554

I am employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to this action; my business address is Luce, Forward, Hamilton & Scripps, 600 West Broadway, Suite 2600, San Diego, California 92101, and I served the document(s) described as:

MAY 17, 2002 LETTER TO SUPREME COURT


on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

X BY MAIL. By placing a copy in a separate envelope, with postage fully prepaid, for each addressee named below for collection and mailing on the below indicated day following the ordinary business practices at Luce, Forward, Hamilton & Scripps, at 600 west Broadway, Suite 2600, San Diego, California. I certify I am familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service.

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

Executed May 17, 2002, at San Diego, California.


Linda F. Anderson

Dart Industries, Inc. v. Commercial Union Insurance Company
California Supreme Court, No. S086518
Court of Appeal, Second Appellate District, Div. One, No. B129601
Los Angeles County Superior Court, No. C519554

SERVICE LIST

Neil H. Selman, Esq.
Jeffrey C. Segal, Esq.
SELMAN, BREITMAN & BURGESS
11766 Wilshire Blvd., 6th Floor
Los Angeles, CA 90025-6538
Tel: (310) 445-0800

Attorneys for Defendant and Appellant
COMMERCIAL UNION INSURANCE
COMPANY

BILL LOCKYER
Attorney General
RANDALL P. BORCHERDING
Supervising Deput Attorney General
JULIAN O. STANDEN
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Telephone: (415) 703-5535

Elliot L. Bien, Esq.
BEIN & SUMMERS, LLP
23 Palomino Road
Novato, California 94947
Telephone: (414) 898-2900

Attorneys for AMICUS CURIAE
INSURANCE ENVIRONMENTAL
LITIGATION ASSOCIATION

Laura A. Foggan, Esq.
Daniel E. Troy, Esq.
Kimberly Hrabosky, Esq.
WILEY, REIN & FIELDING
1776 K. Street, N.W.
Washington, D.C. 20006
Telephone: (202) 719-7000

Of Counsel

Paul J. Killion, Esq.
Max H. Stern, Esq.
Kate Cutler, Esq.
HANCOCK ROTHERT & BUNSHOFT
4 Embarcadero Center, 3rd Fl.
San Francisco, CA 94111-4168
Telephone: (415) 981-5550

Attorneys for AMICI CURIAE LONDON
MARKET INSURERS

Randy M. Hess, Esq.
Duane W. Shewaga, Esq.
Michelle L. Fogliani, Esq.
ADLESON, HESS & KELLY
577 Salmar Avenue, 2nd Fl.
Campbell, CA 95008
Telephone: (408) 341-0234

Attorneys for AMICUS CALIFORNIA
TRUSTEE'S ASSOCIATION

David L. Alexander, Esq.
Michele Heffes, Esq.
PORT OF OAKLAND
530 Water Street
Oakland, CA 94607
Telephone: (510) 272-1100

Attorneys for AMICUS CURIAE CITY
OAKLAND, a MUNICIPAL
CORPORATION, ACTING BY AND
THROUGH ITS BOARD OF PORT
COMMISSIONERS

Deborah S. Ballati, Esq.
Pamela H. Davis, Esq.
FARELLA BRAUN & MARTEL LLP
235 Montgomery Street
San Francisco, CA 94101
Telephone: (415) 954-4400

Michael Y. Horton, Esq.
David S. Cox, Esq.
ZEVNIK HORTON GUIBORD
McGOVERN PALMER & FOGNANI
333 South Grand Ave., 21st Floor
Los Angeles, CA 90071
Telephone: (213) 437-5200

Attorneys for AMICUS CURIAE ITT
INDUSTRIES, INC.

Gabriel A. Jackson, Esq.
William P. Buranich, Esq.
JACHSON & WALLACE
580 California Street, 15th Floor
San Francisco, CA 94104
Telephone: (415) 982-6300

Attorneys for AMICI CURIAE KELLY-
MOORE PAINT COMPANY UNISYS
CORPORATION

Richard C. Darwin, Esq.
COVINGTON & BURLING
601 California Street, 19th Floor
San Francisco, CA 94108
Telephone: (415) 591-6000

Attorneys for PHARMACEUTICAL
RESEARCH AND MANUFACTURERS
OF AMERICA

Robert A. Long, Jr. Esq.
Karin L. Kizer, Esq.
COVINGTON & BURLING
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Telephone: (202) 662-6000

John A. MacDonald, Esq.
ANDERSON KILL & OLICK, P.C.
1600 Market Street, Suite 3201
Philadelphia, PA 19103
Telephone: (215) 568-4202

Attorneys for AMICUS CURIAE
UNITED POLICYHOLDERS

Amy Bach, Esq.
UNITED POLICYHOLDERS
42 Miller Avenue
Mill Valley, CA 94941

David M. Halbreich, Esq.
BROBECK, PHLEGER & HARRISON
550 S. Hope Street
Los Angeles, CA 90071
Telephone: (213) 489-4060

Attorneys for AMICI CURIAE WESTERN
MAC ARTHUR COMPANY AND MAC
ARTHUR COMPANY

Thomas M. Peterson, Esq.
Marilyn Fisher, Esq.
BROBECK PHLEGER & HARRISON
One Market Spear Tower
San Francisco, CA 94105
Telephone: (415) 442-0900

Office of the Clerk
Superior Court of California
Attn: Hon. Loren Miller, Judge
One Regent Street
Department "N"
Inglewood, CA 90301

Clerk of the Court
California Courts of Appeal
Second Appellant District, Div. One
300 S. Spring Street, Floor 2, N. Tower
Los Angeles, CA 90013-1213