IN THE COURT OF APPEALS OF THE STATE OF OREGON

ALLIANZ GLOBAL RISKS US INSURANCE COMPANY and ALLIANZ UNDERWRITERS INSURANCE COMPANY,

Plaintiffs-Appellants,

vs.

ACE PROPERTY & CASUALTY INSURANCE COMPANY, as Successor to Aetna Insurance Company; CERTAIN UNDERWRITERS AT LLOYD'S LONDON; CERTAIN LONDON MARKET INSURANCE COMPANIES; GENERAL INSURANCE COMPANY; and WESTPORT INSURANCE CORPORATION, as Successor to Puritan Insurance Company,

Defendants-Respondents.

and

CON-WAY, INC., as Successor to Consolidated Freightways, Inc.,

Intervenor-Respondent.

and

ALLSTATE INSURANCE COMPANY, as Successor to Northbrook Excess and Surplus Insurance Company f/k/a Northbrook Insurance Company, et al.,

Defendants.

Multnomah County Circuit Court
Case No. 1204-04552

CA A159758 (Control)
A159858

ALLIANZ GLOBAL RISKS US INSURANCE COMPANY and ALLIANZ UNDERWRITERS INSURANCE COMPANY,

Plaintiffs-Respondents,

vs.

ACE PROPERTY & CASUALTY INSURANCE COMPANY, as Successor to Aetna Insurance Company; GENERAL INSURANCE COMPANY; and WESTPORT INSURANCE CORPORATION, as Successor to Puritan Insurance Company,

Defendants-Respondents.

and

AMERICAN HOME ASSURANCE COMPANY; CERTAIN UNDERWRITERS AT LLOYD'S LONDON; CERTAIN LONDON MARKET INSURANCE COMPANIES; CONTINENTAL CASUALTY COMPANY; LEXINGTON INSURANCE COMPANY; NORTHERN ASSURANCE COMPANY OF AMERICA,

Defendants-Appellants,

and

CON-WAY, INC., as Successor to Consolidated Freightways, Inc.,

Intervenor-Respondent,

and

ALLSTATE INSURANCE COMPANY, as Successor to

Northbrook Excess and Surplus Insurance Company, fka Northbrook Insurance Company, et al.

Defendants.

BRIEF OF AMICUS CURIAE PORT OF PORTLAND AND UNITED POLICYHOLDERS

On Consolidated Appeal from the Limited Judgment as to Fronting Insurers and Intervenor Conway, Inc. Pursuant to ORCP 67B, entered on April 27, 2015, in the Multnomah County Circuit Court, the Honorable Christopher J. Marshall

On Consolidated Appeal from the Limited Judgment Regarding 1977-1981 London Market Policies Pursuant to ORCP 67B, entered on April 27, 2015, in the Multnomah County Circuit Court, the Honorable Christopher J. Marshall

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I. INTRODUCTION AND INTEREST OF AMICUS PORT OF PORTLAND AND UNITED POLICYHOLDERS

A question presented in this case is whether liability insurance policies issued by Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies ("London"), as well as by General Insurance Company, affording coverage for injury or damage caused by "seepage, pollution or contamination" resulting from a "sudden, unintended and unexpected happening" during the policy period requires that such a happening be "abrupt" or "instantaneous" for coverage to exist. The short answer is "no." The circuit court's failure to resolve this legal question, and its failure to instruct the jury as to the proper interpretation of this particular provision (the "qualified pollution exclusion"), was erroneous and should be reversed.

The Port of Portland (the "Port") is a potentially responsible party ("PRP") for the remediation of environmental property damage at the Portland Harbor Superfund Site (the "Site"). The Port has a number of historical liability insurance policies that respond to the environmental property damage at the Site. Several of those policies were issued in the mid-1980s and contain the qualified pollution exclusion in the London policy form at issue in this case. The interpretation urged by London will make it harder for the Port to access the coverage incorporating the provision in the London policy form by requiring the Port to establish that its liability is based upon one or more

releases of contaminants that were not only unexpected and unintended, but that were also abrupt. The Port has a direct interest in the proper interpretation of the qualified pollution exclusion in the London policies at issue in this appeal.

As stated in the application, the United Policyholders is a 501(c)(3) organization that serves as the voice and information resource for insurance consumers in all 50 states and files brief to assist the courts in the interpretation of insurance provisions that will affect coverage for policyholders.

The Port and United Policyholders respectfully request the law be made clear that the qualified pollution exclusion in the London policy form that is at issue in this appeal be interpreted in a manner consistent with the Oregon Supreme Court's prior precedent, *St. Paul Fire & Marine Ins. Co., Inc. v. McCormick & Baxter Creosoting Co.* ("*McCormick & Baxter*"), 324 Or. 184, 923 P.2d 1200 (1996), thereby providing coverage for injury or damage caused by pollution as long as the injury causing event was "unexpected and unintended."

II. QUESTION PRESENTED

Do liability insurance policies affording coverage for injury or damage caused by "seepage, pollution or contamination" resulting from a "sudden, unintended and unexpected happening" during the policy period require that such a happening be "abrupt" or "instantaneous" for coverage to exist?

III. PROPOSED RULE OF LAW

The words "sudden, unintended and unexpected" as used in the London policy form should be interpreted consistently with the Oregon Supreme Court's interpretation of the "sudden and accidental" qualified pollution exclusion in *McCormick & Baxter*. There, the court held that the injury or damage caused by "pollution" was covered under the policies if the injury-causing event was "unexpected and unintended." The variations between the provision in the London policy form at issue here, and the "sudden and accidental" provision at issue in *McCormick & Baxter*, are minor and non-substantive. The London policy form, therefore, should be interpreted to cover injury or damage caused by "seepage, pollution or contamination" that is the result of an "unexpected and unintended" happening during the policy period *regardless* of whether the happening is also "abrupt" or "instantaneous".

IV. SUMMARY OF ARGUMENT

Decisions dating to the 1950s have construed the term "sudden" in business insurance policies to mean "unexpected and unintended." Those cases have held that the "primary" meaning of the term in common usage is not "abrupt" or "instantaneous," but rather "unforeseen and unexpected." *McCormick & Baxter*, 324 Or. at 215 (quoting *Anderson & Middleton Lumber Co. v. Lumbermen's Mutual Cas. Co.*, 53 Wash. 2d 404, 408-09 (1959)).

In *McCormick & Baxter*, the Oregon Supreme Court followed this line of cases and construed the term "sudden" in a policy covering injury or damage resulting from a "sudden and accidental" discharge, dispersal, release or escape of pollution as *not* requiring that the injury-causing event also be "abrupt" or "instantaneous" for coverage to exist. The provision at issue in *McCormick & Baxter* has been held by other courts to contain only "minor variations" from the London qualified pollution exclusion such that the two provisions "have the same legal meaning and effect." *Helena Chemical Co. v. Allianz Underwriters Ins. Co*., 594 SE.2d 455, 460, n. 4 (SC 2004); *Textron, Inc. v. Aetna Cas. & Sur. Co*., 754 A.2d 742, 750 (RI 2000).

The "meaning" of the provision in the London policy form should be interpreted the same as the pollution exclusion at issue in *McCormick & Baxter*, i.e. coverage exists under the policy if the injury or damage resulting from "pollution" is caused by an unintended and unexpected happening during the policy period.

V. ARGUMENT

A. Applicable Rules of Insurance Contract Interpretation

The rules of insurance contract interpretation are well-established.

The interpretation of an insurance contract is a question of law. *Hoffman Const. Co. of Alaska v. Fred S. James & Co. of Oregon*, 313 Or. 464, 469, 836 P.2d 703 (1992). Its goal is to ascertain the intention of the parties at the time of

contracting. *Totten v. New York Life Ins. Co*., 298 Or. 765, 770, 696 P.2d 1082 (1985). Mutual intent is based on the terms and conditions of the insurance policy. *Hoffman*, 313 Or. at 469.

The first step of the interpretative analysis inquires whether the policy defines the disputed term, or terms, at issue. *American Hardware Ins. Group v. West One Automotive Group, Inc*., 167 Or. App. 244, 248, 2 P.3d 413 (2000). If the disputed term is not defined in the policy, the court then examines the "plain meaning" of the term. *Id.* If there is more than one plausible interpretation of the disputed term's "plain meaning," the competing interpretations must be scrutinized in the light of the specific context in which the term is used in the policy, and also within the broader context of the policy as a whole. *Id.* If both interpretations nevertheless remain reasonable after this level of scrutiny, the court construes the disputed term *against* the drafter of the policy and in favor of coverage. *Id*.

Here, the key terms in the exception within the London qualified pollution exclusion – "sudden, unintended and unexpected" – are *not* defined in the policies at issue. The meaning of those terms under Oregon law therefore is determined by employing the interpretative rules discussed above.

B. The Term "Sudden" Is Ambiguous Under Oregon Law And Means "Unexpected" Or "Unintended."

Resolution of the meaning of the term "sudden" in the London qualified pollution exclusion is controlled by the Oregon Supreme Court's decision in

McCormick & Baxter, 324 Or. at 184. There, the pollution exclusion at issue stated that it did not exclude coverage for bodily injury or property damage resulting from a "sudden and accidental" discharge, dispersal, release or escape of pollutants. *Id*. at 212.

As in the policies at issue here, the word "sudden" was not defined in the policies at issue in *McCormick & Baxter*. To determine the meaning of the word, the court consulted a common dictionary definition of the term, which stated:

> 1a: happening without previous notice or with very brief notice: coming or occurring unexpectedly: not foreseen or prepared for * * * b: changing angle or character all at once: PRECIPITOUS * * *: ABRUPT * * * c: come upon or met with unexpectedly 2a: characterized by or manifesting hastiness: RASH, HEADLONG." *Webster's* at 2284.

Id. at 213.

Based on the dictionary definition, the court noted that the word "sudden" *may* have, but need *not always* have, a "temporal" element. *Id*. "Sudden" could mean "abrupt," "precipitous" or "rash" under the common understanding of the term, but it also could mean "happening without previous notice" or "occurring unexpectedly." *Id.* Further, the court noted, caselaw and insurance treatises had historically understood that the word "sudden" did *not* include a "temporal" element. *Id* at 215. In particular, the court drew upon the

1963 edition of the *Couch Cyclopedia of Insurance Law*, a survey of nationwide insurance law, in support of this conclusion:

> "sudden" should be given its primary meaning as a happening without previous notice, or as something coming or occurring unexpectedly, as unforeseen or unprepared for . . . "sudden" is not to be construed as synonymous with instantaneous.

Id. (quoting George J. Couch, et al., 11 *Couch Cyclopedia of Insurance Law*, § 42:383 (2d ed 1963)). Consequently, "[w]hen the insurers placed the 'sudden and accidental' clause in the pollution exclusions, that term had already been interpreted to mean 'unexpected and unintended." *Id*.

Based on this analysis, the *McCormick & Baxter* court held that the term "sudden" in the qualified pollution exclusion at issue was reasonably susceptible to more than one interpretation, and concluded that "the policies themselves do not resolve the ambiguity." *Id*. at 215. Consistent with the rules of interpretation discussed above, the court construed the term *against* the insurers that drafted the provision. It held that the ambiguous term "sudden" did *not* have a "temporal" element, and thus did not require that the discharge, dispersal, release or escape of pollution be "abrupt" or "instantaneous" for the resulting injury or damage to be covered under the policies. *Id*. at 216.

McCormick & Baxter is no outlier. To the contrary, courts across the country have found the term "sudden" as used in exceptions to pollution exclusions to be ambiguous and have interpreted the policy language in favor of

coverage as a result. *E.g.*, *Blackhawk-Central City Sanitation Dist. v. American Gur. & Liab. Ins. Co.*, 214 F.3d 1183, 1192–93 (10th Cir. 2000) (rejecting insurers' argument that "sudden" must mean "abrupt" in an exception to a pollution exclusion for "sudden accidents involving pollutants"); *Public Serv. Co. v. Wallis & Cos.*, 986 P.2d 924, 932-33 (Colo. 1999) (finding that "sudden" in a pollution exclusion could mean "unprepared for"); *Tribune Co. v. Allstate Ins. Co.*, 2003 Ill. App. LEXIS 1669, at 41 (Aug. 11, 2003) ("under Illinois law, the term 'sudden' in the policy here adds nothing. For coverage, [the insured] need show only that an unintended and unexpected happening caused the pollution."). Indeed, the Supreme Courts of New Mexico, New Hampshire and Alabama cited *McCormick & Baxter* in reaching this same result. *United Nuclear Corp. v. Allstate Ins. Co.*, 285 P.3d 644, 656 (N.M. 2012); *Hudson v. Farm Family Mut. Ins. Co.*, 142 N.H. 144, 148 (1997); *Alabama Plating Co. v. U.S. Fid. & Guar. Co.*, 690 So.2d 331, 334-35 (Ala. 1996).

C. The Words "Sudden and Accidental" Mean "Sudden, Unintended and Unexpected," The Exact Words Used In The London Policy Form Qualified Pollution Exclusion.

In the *McCormick & Baxter* decision, the Supreme Court analyzed the terms "accident" and "accidental" in the pollution exclusion with reference to case law dating to the 1960s, and by consulting the common definition of the term. In this regard, the Supreme Court noted, in *Finley v. Prudential Ins. Co.*, 236 Or. 235, 388 P.2d 21 (1963), that the policy at issue covered claims for

"accidental bodily injury" and that "the word 'accident' meant an incident or occurrence that happened by chance, without design and contrary to intention and expectation." *Id*. at 245.

The use of the word "accident" meaning "unintended and unexpected" was reiterated five years later in *Ramco, Inc. v. Pacific Ins*., 249 Or. 666, 439 P.2d 1002 (1968), where the insured sought coverage after its heaters failed to produce heat during cold weather and caused extensive damage to a hotel. The damage was unforeseen, unexpected and unintended by the insured. The *Ramco, Inc.* court held that "the definition of the word 'accident' in our decision in *Finley v. Prudential Ins. Co.*, would include the events described in this action." *Id.* at 669, 670.

Years later, in *McCormick & Baxter*, the Oregon Supreme Court again held the common meaning of the word "accidental" included:

> 2: occurring sometimes with unfortunate results by chance alone: a: UNPREDICTABLE: proceeding from an unrecognized principle, from an uncommon operation of a known principle, or from a deviation from normal." *Webster's* at 11.

McCormick & Baxter, 324 Or. at 213-14. The Supreme Court also noted that the dictionary definition stated that "when it is used in reference to events, ACCIDENTAL may stress lack of intent." *Id.* at 214. Therefore, the court held, "an accidental event may be an unintentional, or chance, event." *Id*. As stated by the Oregon Supreme Court:

> If the foregoing readings of the words "sudden" and "accidental" are given effect, the phrase "sudden and accidental" could be synonymous with the phrase "unintended and unexpected." The insurers argue that such a reading of the phrase "sudden and accidental" renders that phrase redundant, because an unintended event always is an unexpected event. That is not necessarily so. Not every unintended event (or result) necessarily is unexpected.

Id. Indeed, the words "sudden and accidental," whether used together or separately simply mean "sudden, unintended and unexpected," ***the exact words used in the London policy form qualified pollution exclusion***. The words are therefore interchangeable, and express the intention that coverage for damage or injury resulting from "pollution" is barred only to the extent that the insured expected or intended to cause the harm for which coverage is sought.

D. The London Qualified Pollution Exclusion Covers Injury Or Damage Resulting From Unexpected And Unintended Events.

Under Oregon's rules for interpreting insurance policies, "sudden" also must be interpreted in its immediate context within the pollution exclusion in which it appears. *Hoffman,* 313 Or. at 470 (requiring interpretation of policy language in context). The exclusion at issue precludes coverage for "seepage, pollution or contamination" unless "such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening . . . ." Because "seepage" typically denotes a gradual or slow event, interpreting "sudden" as meaning "abrupt" or "instantaneous" is inconsistent with how the word is used in its immediate context. Under *Hoffman*, this renders "sudden" ambiguous, and

the court must construe that ambiguity against London, just as the Washington and New Mexico Supreme Courts have done:

> [R]eading "sudden" as having a temporal meaning, like beginning abruptly, or occurring over a short period of time, or instantaneous, also leads to problems in construing the language. In each of the exclusions, there are words suggesting a gradual release or discharge, *i.e.*, "leakage" and "seepage." It does not make sense to speak of an abrupt, instantaneous seepage or leakage, nor of seepage or leakage occurring over a short period of time.

Queen City Farms, 882 P.2d at 727 (interpreting the London exclusion at issue on this appeal against London as a matter of law); *United Nuclear*, 285 P.3d at 650 (finding that ascribing a temporal meaning to "sudden" would "be in conflict with the language of the [London] pollution exclusion, because 'seepage' indicates a gradual rather than an abrupt process").

Against this result, London argued in the circuit court that the Oregon Supreme Court did not create a "rule" in *McCormick & Baxter* that "wherever the word 'sudden' appears in an insurance policy, it is ambiguous and must be construed to mean 'unexpected." This is a straw man argument. In *McCormick & Baxter*, the Supreme Court examined the historical legal construction of the term "sudden" and connected that interpretation to the meaning of the word as expressed in common dictionaries. The Supreme Court noted that courts and commentators reached the conclusion that "sudden" does not necessarily mean "abrupt" or "instantaneous" long before the 1977 to 1981 period of the London

coverage at issue in this appeal, and long before the provision was placed in policies issued to the Port in the mid-1980s. The Supreme Court, therefore, stated that when an insurer:

> continues to employ clauses which have been construed unfavorably to its contention by the courts, it may well be considered to have issued the policy with that construction placed on it and cannot be heard to insist that the loss is not covered.

McCormick & Baxter, 324 Or. at 215 (quoting John Alan Appleman and Jean Appleman, 13 *Insurance Law and Practice*, § 7404 (1976)).

In this appeal, London "cannot be heard to insist" that the word "sudden" in its qualified pollution exclusion means "abrupt" or "instantaneous" in light of case law and legal commentary to the contrary predating the periods of the policies at issue in this case by up to two decades. If London wanted coverage to exist under its policies only if injury or damage was caused by an "abrupt" or "instantaneous" event, it should have used either, or both, of those terms in its qualified pollution exclusion.

London also asserted in the circuit court that a construction of the word "sudden" as not being synonymous with "abrupt" or "instantaneous" would render the word "superfluous in contravention to Oregon's rules of insurance contract interpretation." To this end, London argued that "[i]f the word 'sudden' were interpreted to mean 'unexpected' in this context, the exception to the London pollution exclusion would apply to pollution caused by an 'unexpected,

unintended and unexpected' happening." This is a variation on the insurers' unsuccessful "redundancy" argument in *McCormick & Baxter*, discussed above.

The word replacement exercise London employs here could just as easily have been employed in *McCormick & Baxter*. As determined in that case, "sudden" means "unexpected and unintended." "Accidental" means "unexpected and unintended." Consequently, the qualified pollution exclusion at issue in *McCormick & Baxter* could be thought of providing coverage resulting from an "unexpected and unintended and unexpected and unintended" discharge, dispersal, release or escape of pollution. That apparent "redundancy" did not cause the court to hold that the term "sudden" meant "abrupt" so as to avoid rendering policy terms "superfluous." Indeed, as the Oregon Supreme Court concluded, "[n]ot every unintended event (or result) necessarily is unexpected." *McCormick & Baxter*, 324 Or. at 214.

Moreover, interpreting undefined, ambiguous words in a phrase in an insurance policy as having the same or similar meanings is permitted. *Ledford v. Gutoski*, 319 Or. 397, 401, 877 P.2d 80 (1994) (interpreting "neither expected nor intended" in a policy's definition of "occurrence" to preclude coverage only where the insured "intended to cause a particular injury or harm"); *ZRZ Realty Co. v. Beneficial Fire & Cas. Ins. Co.*, 222 Or App 453, 490-91, 194 P3d 167 (2008) (interpreting words in a phrase in an insurance policy consistently with the meaning of other words in that same phrase). The Oregon Supreme Court

has followed this interpretative principle since at least 1883. *Trutch v. Bunnell*, 11 Or. 58, 62-63, 4 P. 588 (1883) (interpreting words in a list as having the same or common characteristics); *see also Nunner v. Erickson*, 151 Or. 575, 609, 51 P.2d 839 (1935) (holding that words are "indicated or controlled by those which they are associated"). Accordingly, there is nothing improper about interpreting the qualified pollution exclusion in the London policy form as only excluding intended and expected pollution damage.

Indeed, courts nationwide have held that the London qualified pollution exclusion does not require an event to be "abrupt" or "instantaneous" for coverage to exist. Indeed, these courts have concluded that the London qualified pollution exclusion and the "sudden and accidental" exclusion at issue in *McCormick & Baxter* mean the same thing.

For example, in *Helena Chemical Co. v. Allianz Underwriters Ins. Co*., 594 SE.2d 455, 460 (SC 2004), the South Carolina Supreme Court noted that all of policies at issue contained a pollution exclusion, and held that the term "sudden" meant "unexpected" and that "we must determine whether the discharge, release, or escape of the pesticide was unexpected and accidental." The court noted, in a footnote, that "[t]here are *minor variations* among the pollution exclusion clauses. Some policies state that the exception to the exclusion applies if the pollution is caused by a 'sudden, unintended, and unexpected happening.'" *Id*. at 460 n. 4. (emphasis added).

In *Textron, Inc. v. Aetna Cas. & Sur. Co.*, 754 A.2d 742, 750 (RI 2000), the Rhode Island Supreme Court held that the word "sudden" in the pollution exclusion evidenced an intent to "bar[] coverage for the intentional or reckless polluter." It also noted that the policies at issue had "slightly different language in their respective pollution-exclusion clauses." *Id*. One barred coverage unless the event was "sudden and accidental," another barred coverage "for discharges unless they are caused by a 'sudden, unintended and unexpected happening.'" *Id*. However, the court held, "we construe the language of the second policy to have the same legal meaning and effect as that of the first." *Id*.

The Washington Supreme Court reached the same conclusion in *Queen City Farms*, 882 P.2d 703 (1994). In that case, it found that qualified pollution exclusions with exceptions for "sudden, unexpected, unintentional" discharges of pollutants and for "sudden, unintended and unexpected happenings" are ambiguous. *Id.* at 727 ("All of these policies contain the word 'sudden', which, as noted above [with respect to the "sudden and accidental" exception to the so-called domestic pollution exclusion], may be susceptible to more than one reasonable meaning."). As a result, the court "conclude[d], as did the [Washington] Court of Appeals, that these exclusions are ambiguous, and therefore should be construed against the drafter-insurer, to mean that if the polluting event is unexpected and unintended, coverage is provided." *Id.*

The Port notes that other cases, in other jurisdictions, have held that the word "sudden" in the London qualified pollution exclusion requires an event to be "abrupt" for coverage to exist. The fact that a number of courts have reached different conclusions on the interpretation of the London qualified pollution exclusion, however, is only *further* evidence that the provision is ambiguous and should be construed in favor of coverage. *See McCormick & Baxter*, 324 Or. at 216 (finding that conflicting, out-of-state cases interpreting "sudden" "illustrate that the pollution exclusion is susceptible to more than one reasonable interpretation. Accordingly, th[ose cases] simply help to demonstrate that the exclusion is ambiguous"); *Jones v. Ins. Co. of North America*, 264 Or. 276, 282 n. 1, 504 P.2d 130 (1973) ("conflicting judicial decisions as to the proper construction of a clause in an insurance policy are evidence, although not necessarily conclusive, that the clause is ambiguous").

VI. CONCLUSION

The London qualified pollution exclusion extends coverage to injury or damage resulting from "pollution" caused by an unexpected and unintended happening during the term of the policy. There is no requirement in the policy, or in the law, that the happening also be "abrupt" or "instantaneous." London could have easily included those terms in its qualified pollution exclusion had it only intended to cover "pollution" injury caused by "abrupt" or instantaneous events. It did not do so. The judgment of the circuit court on this issue should

be reversed. Moreover, the Port requests that this court confirm, as a matter of law, that the London qualified pollution exclusion is ambiguous and, as such, that it must be construed in favor of coverage. Such a result will facilitate the funding of costly but important environmental remediation and streamline current and future environmental insurance claims and litigation for Oregon policyholders.

Dated: April 28, 2016

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that on April 28, 2016, I caused to be filed the foregoing: (1) APPLICATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE ON BEHALF OF PORT OF PORTLAND; and (2) OPENING BRIEF AND EXCERPT OF RECORD OF APPELLANTS ALLIANZ GLOBAL RISKS US INSURANCE COMPANY AND ALLIANZ UNDERWRITERS INSURANCE COMPANY, with the Appellate Court Administrator by using the eFiling system.

I further certify that the following are participants in the court's ECF filing system and will be served using the court's eFiling system.

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