No. S293914

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MONTROSE CHEMICAL COMPANY OF CALIFORNIA,
Petitioner,

v.

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

Respondent;

CANADIAN UNIVERSAL INSURANCE COMPANY, et al.,

Real Parties in Interest.

After an Order Granting Review (No. S285083) and an Opinion by the Court of Appeal, Second Appellate District, Division Three, Civil Case No. B335073; on a petition for a writ of mandamus from Los Angeles County Superior Court, Case No. BC005158, Hon. Lawrence P. Riff, Presiding

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APPLICATION OF UNITED POLICYHOLDERS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER; [PROPOSED] BRIEF AMICUS CURIAE

David B. Goodwin (Bar No. 104469)
Email: dgoodwin@cov.com
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
Tel: (415) 591-6000

Attorneys for Amicus Curiae United Policyholders

APPLICATION OF UNITED POLICYHOLDERS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to California Rules of Court, rule 8.520(f), proposed amicus United Policyholders ("UP") hereby respectfully applies to this Court for leave to file the accompanying *Amicus Curiae* Brief in support of Petitioner in the above-captioned appeal.*

UP is a non-profit organization based in California that serves as a voice and information resource for insurance consumers in the 50 states. The organization is tax-exempt under Internal Revenue Code section 501, subdivision (c)(3). UP is funded by donations and grants and does not sell insurance or accept money from insurance companies.

UP's work is divided into three program areas: *Roadmap to Recovery*™ (disaster recovery and claim help for victims of wildfires, floods, and other disasters); *Roadmap to Preparedness* (insurance and financial literacy and disaster preparedness); and *Advocacy and Action* (advancing pro-consumer laws and public policy). UP hosts a library of insurance advice, sample forms, and articles on commercial and personal lines insurance products, coverage, and the claims process at www.uphelp.org.

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* No party or counsel for any party wrote any portion of the brief. No party or counsel for any party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than the *amicus curiae*, its members, and its counsel made a monetary contribution intended to fund the preparation or submission of the brief. (California Rules of Court, rule 8.520(f)(4).) The undersigned represents UP on a *pro bono* basis.

UP monitors the insurance sales, claims and law sectors; conducts surveys; and hears from a diverse range of individual and business policyholders throughout California on a regular basis. The organization also communicates with state regulators in its capacity as an official consumer representative in the National Association of Insurance Commissioners. UP provides topical information to courts via the submission of *amicus curiae* briefs in cases involving insurance principles that affect people and businesses.

UP's consumer surveys assisted this Court in *Association of California Insurance Cos. v. Jones* (2017) 2 Cal.5th 376, and this Court cited favorably to UP's arguments in *Pitzer College v. Indian Harbor Insurance Co.* (2019) 8 Cal.5th 93, *TRB Investments, Inc. v. Fireman's Fund Insurance Co.* (2006) 40 Cal.4th 19, and *Vandenberg v. Superior Court* (1999) 21 Cal.4th 815. UP has filed *amicus curiae* briefs in hundreds of cases throughout the United States.

UP seeks to fulfill the "classic role of amicus curiae by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." (*Miller-Wahl Co. v. Commissioner of Labor & Indus.* (9th Cir. 1982) 694 F.2d 203, 204.) As commentators have stressed, an *amicus curiae* is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." (Stern et al., *Supreme Court Practice* (6th ed. 1986) 570-571 [citation omitted].)

UP is familiar with the briefs that previously have been filed in this appeal. UP also has experience with the legal issues presented by this appeal and believes its experience will make its proposed brief of assistance to this Court. In addition, UP has an interest in ensuring that all policyholders may freely and efficiently access the entirety of their insurance coverage portfolios to protect themselves and third party claimants against the risks of a loss triggering liability insurance policies with a qualified pollution exclusion.

UP therefore respectfully requests leave to file the attached *amicus curiae* brief presenting additional authorities and discussion in support of Petitioner's arguments.

Dated: June 18, 2026

Respectfully submitted,

COVINGTON & BURLING, LLP

By: /s/ David B. Goodwin
DAVID B. GOODWIN

Counsel for *Amicus Curiae*
United Policyholders

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AMICUS CURIAE BRIEF OF UNITED POLICYHOLDERS IN SUPPORT OF PETITIONER

David B. Goodwin (Bar No. 104469)
Email: dgoodwin@cov.com
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
Tel: (415) 591-6000

Attorneys for Amicus Curiae United Policyholders

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

In its landmark decision in *Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33 ("*PG&E*"), this Court held that extrinsic evidence is relevant to the interpretation of contract language even if that language "appears to the court to be plain and unambiguous on its face," as long as the evidence supports "a meaning to which the language of the instrument is reasonably susceptible." (*Id*. at p. 37.) In contrast:

> A rule that would limit the determination of the meaning of a written instrument to its four-corners merely because it seems to the court to be clear and unambiguous would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained.

(*Ibid*.)

PG&E did not specify a procedure for reviewing and assessing extrinsic evidence, but this Court stated *three times* in *PG&E* that if a party offers extrinsic evidence, the court must at least "consider" or give "consideration to" that evidence; a lower court's refusal to "consider extrinsic evidence" therefore would be "erroneous[]." (*Id*. at pp. 39-40.) That, *PG&E* explained, is because "rational interpretation requires at least a preliminary consideration of all credible evidence offered to prove the intention of the parties." (*Id*. at p. 40.)

Yet, in the proceedings below, when Petitioner Montrose Chemical Corporation of California offered extrinsic evidence concerning the meaning of the disputed insurance policy

language, the Court of Appeal refused to look at the evidence, let alone "consider" it.

The Court of Appeal erred in two critical respects. First, it contravened the *PG&E* rule and the California statute codifying that rule, Code Civ. Proc. section 1856, subdivision (g), both of which *require* courts to *consider* extrinsic evidence before deciding whether to accept or reject that evidence; and, second, the court failed to recognize that extrinsic evidence can show that seemingly unambiguous contract language in fact has a *special meaning* in a particular trade, as is the case with the language at issue in the present appeal.

For either or both of these reasons, this Court should reverse.

SUMMARY OF ARGUMENT

The extrinsic evidence at issue was created in early 1970, when the insurance industry decided to add a "qualified pollution exclusion," or QPE, to its comprehensive general liability insurance policy. At that point, the two industry associations that drafted insurance policy language formed committees to discuss, debate, and prepare the proposed new policy provision. Once accepted by the drafting associations, the language was submitted to insurance regulators for approval along with explanatory memoranda. The language also was the subject of bulletins, commentaries, and presentations to the insurance industry and to insurance brokers so that insurers issuing policies with the new exclusion, and brokers placing coverage, were aware of the drafting intent. (*See* Section II.C *infra*.)

This extensive body of evidence – referred to as the "drafting history" – is, as this Court put it in addressing another of Petitioner Montrose's longstanding efforts to obtain insurance coverage for its environmental liabilities, "of considerable assistance in determining coverage issues" and, hence, is "relevant" to the interpretation of the insurance policy language and to evaluating the insurers' arguments against coverage. (*Montrose Chem. Corp. of Cal. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 670-671 & fn. 13 ("*Montrose II*").) In fact, this Court conducted an extensive review of drafting history evidence in *Montrose II* (*id.* at pp. 671-673), even though the Court had concluded earlier in its opinion that the pertinent insurance policy language is "unambiguous[]." (*Id.* at pp. 668-669.)

Although the Court of Appeal in the present proceeding was bound by *Montrose II* and the several subsequent decisions of this Court that considered drafting history evidence when construing seemingly unambiguous contracts of insurance, the Court of Appeal refused to consider the drafting history of the QPE, a provision that bars coverage for certain polluting events but has an exception that restores coverage if the "discharge, dispersal, release or escape" of pollutants was "sudden and accidental."

The Court of Appeal assumed, incorrectly, that Montrose had taken the position that the word "sudden" in the QPE means "gradual" – in fact, Montrose had argued that the correct reading

of "sudden" as used in the exclusion is "unexpected."[1] Based on that misapprehension, the court determined that "*no* extrinsic evidence *of any sort* is relevant or admissible to prove the meaning that Montrose seeks to establish."[2]

The fundamental question that this appeal presents is whether the Court of Appeal erred when it rejected Montrose's extrinsic evidence sight unseen, under the assumption that the evidence could not be persuasive, or whether a "rational interpretation requires" a court to read and give "at least a preliminary consideration" to the proffered extrinsic evidence before deciding whether the evidence supports an interpretation to which the contract language is reasonably susceptible. (*PG&E*, 69 Cal.2d at pp. 39-40.) In other words, does the rule that this Court adopted nearly 60 years ago in *PG&E* remain good law in California?

This Court should hold that the *PG&E* rule does remain good law, for two reasons.

First, *PG&E* is far from an outlier, as the Respondent Insurers imply. To the contrary, *PG&E* has been cited and followed hundreds of times. Moreover, the *PG&E* rule makes sense: Contract language that appears to be unambiguous to a court may have a different meaning to the contracting parties (69 Cal.2d at pp. 33, 40 fn. 7), and it is the latter meaning, the

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1 *See* Opening Brief of Petitioner Montrose Chem. Corp. of Cal., pp. 22, 49-50 ("OB") (citing the record below).

2 *Montrose Chem. Corp. of Cal. v. Superior Court* (Sept. 30, 2025), No. B335073 ("Opn."), pp. 1, 14 (italics in original).

mutual intent of the parties at the time of contracting, that is definitive. (Civ. Code, § 1636.)

Perhaps for that reason, nearly all of the many courts that follow *PG&E* have been willing to consider extrinsic evidence offered by a party to support an interpretation of disputed contract language. But two pertinent decisions took the opposite approach and refused to consider extrinsic evidence: the decision below and *ACL Technologies, Inc. v. Northbrook Property & Casualty Insurance Co.* (1993) 17 Cal.App.4th 1773 ("*ACL*"), which the decision below cited 29 times, even though *ACL* both criticized *PG&E* and also refused to consider the same type of drafting history evidence that *Montrose II* had approved for interpreting insurance policy language. UP submits that *PG&E* and its progeny reached the correct result and that the decision below and *ACL* did not. (*See* Section I *infra*.)

Second, the Court of Appeal's reasoning would, if accepted here, do far more than gut *PG&E* and its progeny. It would also call into question scores of California cases, codified in Civil Code sections 1644 and 1645, as well as in Code of Civil Procedure sections 1856 and 1861, which require courts to consider extrinsic evidence of a special, technical, or local meaning of words in a contract if those words were "so used and understood" in that contract.

The "special meaning" rule is far from novel or a rule that the California courts can disregard. Since its very earliest days, this Court has refused to apply the supposedly "unambiguous" reading of contract language when extrinsic evidence shows that

the language has a special meaning, even if that meaning is quite different from the ordinary meaning.

Thus, when the Respondent Insurers misrepresent Montrose's interpretation of "sudden" in the QPE as "gradual" – and do so *thirty times* in their Answer Brief – and then argue that the Court of Appeal was entitled to disregard Montrose's extrinsic evidence about the QPE since, they say, a "dozen" can never mean "fifteen," the Insurers misstate California law. In fact the Insurers go on to concede that a dozen can mean "thirteen" to a baker; and they say nothing about the case, cited by this Court with approval, holding that a dozen can mean "ten" in a particular trade. Nor is that case an outlier. Other "special meaning" cases have held, *e.g.,* that "United Kingdom" includes Eire, an independent country; a "ton" refers to 2,240 pounds; and a "day" has ten hours, to take just a few of the examples discussed *infra* in Section II.B.

In other words, a court cannot properly conclude that contract language has only one possible interpretation without considering evidence offered by a party to the contract that the contract language had a different special meaning when the contract was made. (*PG&E,* 69 Cal.2d at pp. 37-40.)

The Court of Appeal therefore erred in refusing to consider Petitioner Montrose's "special meaning" evidence. The drafting history that Montrose offered in the trial court shows that the language of the QPE had a well-understood special meaning in the insurance industry when the exclusion was drafted fifty-six years ago, namely, that "sudden and accidental" refers to an

"unexpected and unintended" event. That special meaning is reflected in the regulatory filings and publications that accompanied the issuance of the QPE in early 1970 and is consistent with the definitions of "sudden" in the dictionaries that the drafters of the exclusion would have consulted at the time. (*See* Section II.C *infra*.)

The Court of Appeal's refusal to look at the drafting history evidence thus was error under both the *PG&E* rule and the "special meaning" rule and amply justifies reversal.

Finally, Section III *infra* turns briefly to the second issue on which the Court granted review, the effect of prior judicial construction of the QPE. UP agrees with Petitioner Montrose that the prior Court of Appeal decisions discussing the QPE did not bind the lower courts because those decisions did not consider the drafting history evidence when purporting to construe the QPE, and a judicial opinion cannot stand for a proposition that the court did not address.

ARGUMENT

I. A COURT MUST CONSIDER EXTRINSIC EVIDENCE OFFERED TO INTERPRET CONTRACT LANGUAGE EVEN IF THE LANGUAGE IS FACIALLY UNAMBIGUOUS

A. This Court Has Repeatedly Endorsed The PG&E Rule

PG&E held that extrinsic evidence is admissible in a contract dispute if "relevant to prove a meaning to which the language of the instrument is reasonably susceptible," even if the instrument "appears to the court to be plain and unambiguous on its face…." (*PG&E*, 69 Cal.2d at p. 37.) The Court then

proceeded to state, three times, that if a party offers extrinsic evidence, the court must *consider* the evidence (*id*. at pp. 39-40), rather than reject the evidence sight unseen.[3]

A few months after deciding *PG&E*, this Court addressed extrinsic evidence once again in *Delta Dynamics, Inc. v. Arioto* (1968) 69 Cal.2d 525. In that decision, the Court cited the language from *PG&E* quoted above, and added that, "[t]o determine whether offered evidence is relevant to prove such a meaning, the court *must consider* all credible evidence offered to prove the intention of the parties." (*Id*. at p. 528 (italics added).) Again, the Court held that the lower courts cannot reject extrinsic evidence out of hand.

Two years later, the Court applied the *PG&E* rule to an insurance coverage dispute. The Court stated that:

> In applying the foregoing [*PG&E*] test, the preliminary *consideration* of all credible evidence offered to prove the intention of the parties requires that the trial court *consider* evidence which includes testimony as to the circumstances surrounding the making of the agreement including the object, nature

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[3] Of course, the proffered extrinsic evidence must be the *type* of evidence that would be admissible if it shows a meaning to which the contract language is reasonably susceptible, as opposed to evidence that would not be admissible regardless of what the evidence shows, such as, *e.g.*, a party's undisclosed understanding of the meaning of the contract language (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1169) or a statement about a transaction from someone who lacks personal knowledge (*Gen. Motors Corp. v. Superior Court* (1993) 12 Cal.App.4th 435, 442). As noted above, however, this Court has already held that an insurance policy's drafting history is the type of evidence that is "of considerable assistance in determining coverage issues" and, thus, is "relevant." (*Montrose II*, 10 Cal.4th at pp. 670-671 & fn. 13.)

> and subject matter of the writing so that the court can place itself in the same situation in which the parties found themselves at the time of contracting.

(*Gribaldo, Jacobs, Jones & Assocs. v. Agrippina Versicherunges A.G.* (1970) 3 Cal.3d 434, 443 (italics added).) Yet again, the Court held that if a party offers extrinsic evidence to interpret patently unambiguous contract language, the trial court must *consider* that evidence and then determine whether the evidence is relevant to show a meaning to which the contract language is reasonably susceptible. The Court did not contemplate a process under which the trial court would not look at the evidence at all.

The Respondent Insurers nonetheless suggest that the *PG&E* rule is of questionable validity (Respondents' Answer Brief, pp. 34-44), citing, first, to Justice Mosk's dissent in *Delta Dynamics, Inc. v. Arioto*, 69 Cal.2d at p. 531. But this Court never adopted Justice Mosk's dissenting opinion.

The Insurers also cite *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11. However, that case confirms that "extrinsic evidence must be admitted provisionally in order to determine if that evidence is relevant to establish an interpretation of the instrument to which it is reasonably susceptible…." (*Id.* at p. 22.) The Court did not suggest that a court may disregard extrinsic evidence, as occurred in the present case. Moreover, *Tahoe National Bank* goes on to hold that the drafter of a *facially ambiguous* form contract cannot offer extrinsic evidence to try to explain the ambiguity that it created. (*Id.* at p. 20; *accord Lebas Fashion Imports of USA, Inc. v. ITT Hartford Ins. Group* (1996) 50 Cal.App.4th 548, 566 fn. 13 (applying that ruling to an

insurance coverage action).) *Tahoe National Bank* does not concern facially *unambiguous* contracts, the issue in *PG&E* and, arguably, in this appeal.

Critically, neither the Respondent Insurers nor the Court of Appeal mentions that in 1978, after *Delta Dynamics* and *Tahoe National Bank* were decided, the Legislature amended section 1856 of the Code of Civil Procedure to *codify* the *PG&E* rule as the law in this State. As the Law Revision Commission commentary explains, under that amendment, which added subdivision (g) to section 1856:

> Evidence offered to interpret or explain the meaning of the terms of a written agreement is subject to … the rule that the "test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the instrument is reasonably susceptible." Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co., 69 Cal.2d 33, 37 ….

(14 Cal.L.Rev.Comm. Reports (1978), p. 143; *see generally Donkin v. Donkin* (2013) 58 Cal.4th 412, 424-425 & fn. 8 ("'Explanatory comments by a law revision commission are persuasive evidence of the intent of the Legislature in subsequently enacting its recommendations into law.'") (citation omitted).)[4]

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[4] The pertinent provision added by the 1978 amendments, Code of Civil Procedure section 1856, subd. (g), clarifies that the parol evidence rule in section 1856 "does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in section 1860, or to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement …." Code of Civil Procedure section 1860,

The post-1978 decisions of this Court that the Respondent Insurers cite likewise do not reject or limit the *PG&E* rule. The majority opinion in *Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459 does not address extrinsic evidence at all; indeed, Justice Kennard's concurring opinion suggests that no such evidence was offered (*id*. at pp. 493-494), which makes sense since the writ in that action was taken at the demurrer stage. The Respondent Insurers' other two cases, *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 390-393 and *Another Planet Entertainment, LLC v. Vigilant Insurance Co.* (2024) 15 Cal.5th 1106, follow and apply the *PG&E* rule, concluding, after *considering* the offering party's extrinsic evidence, that the contract language at issue was not reasonably susceptible to the offering party's interpretation.[5]

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referenced, in section 1856, subdivision (g), provides: "For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument, and of the parties to it, may be shown, so that the Judge be placed in the position of those whose language he is to interpret."

[5] The Court of Appeal cited to Justice Baxter's concurring opinion in *Dore*, which argues that the Court should disapprove the *PG&E* rule. (Opn., p. 25 fn. 7, citing *Dore, supra*, 39 Cal.4th at pp. 395-396 (Baxter, J., conc.).) The Respondent Insurers likewise cite to that concurring opinion, doing so *seven* times in the Answer Brief (at pp. 29, 33, 36, 42). But no other justice joined that concurrence and this Court has never accepted Justice Baxter's argument; instead, the Court subsequently cited to the *PG&E* rule with approval in the Court's unanimous opinion in *Another Planet, supra*, 15 Cal.5th at p. 1144.

No decision of this Court cited by the Respondent Insurers refused to consider extrinsic evidence at all, as occurred below in the present case.

B. The PG&E Rule Requires The Lower Courts To Review And Consider Extrinsic Evidence – Rather Than Reject That Evidence Out Of Hand

Assuming that this Court does not plan to disapprove *PG&E* and its progeny – and no party has asked the Court to do so, at least not entirely – then the key question for the Court to address is the specific *process* by which courts examine proffered extrinsic evidence. *PG&E* did not set forth a mandatory procedure for doing so, apart from requiring the lower courts to *consider* the evidence, though subsequent Court of Appeal decisions have attempted to fill that gap, especially *Blumenfeld v. R.H. Macy & Co.* (1979) 92 Cal.App.3d 38, 45, *Winet*, *supra*, 4 Cal.App.4th at pp. 1165-1166, and *Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351.

As is reflected in those decisions, if a party offers extrinsic evidence concerning the meaning of contract language, the court should follow a "'two-step process: first, the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible' to the interpretation urged by a party." (*Id.* at p. 1351 (citation omitted).)

Then, if, after considering the extrinsic evidence, the court concludes that the contract language is reasonably susceptible to the proposed interpretation, the court will admit the extrinsic

evidence and proceed to interpret the contract. (*Ibid.*) Thus, *Wolf* rejected the very ruling that the Court of Appeal made in the present proceeding, holding that "it is reversible error for a trial court to refuse to consider such extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous on its face." (*Id.* at pp. 1350-1351.)[6]

As noted above, this Court effectively followed the *Wolf* procedure in *Montrose II*, 10 Cal.4th at pp. 668-69, 671-73, albeit without commentary. In addition, this Court followed the same procedure in *Another Planet*, explaining that a

> court may provisionally receive such [extrinsic] evidence until it is "in a position to determine whether in the light of all of the offered evidence, the item objected to will turn out to be admissible as tending to prove a meaning of which the language of the instrument is reasonably susceptible or inadmissible as tending to prove a meaning of which the language is not susceptible."

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[6] Many other Court of Appeal decisions agree with the holding in *Wolf*. (*See, e.g., W. Pueblo Partners, LLC v. Stone Brewing Co.* (2023) 90 Cal.App.5th 1179, 1185; *Circle Star Ctr. Assocs., L.P. v. Liberate Technologies* (2007) 147 Cal.App.4th 1203; *Southern Pac. Transp. Co. v. Santa Fe Pac. Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1240-1241; *Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912; *Pacific Gas & Elec. Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1140-1141.) The Ninth Circuit, applying California law, has endorsed the same procedure. (*See, e.g., First Nat'l Mortg. Co. v. Fed. Realty Inv. Trust* (9th Cir. 2011) 631 F.3d 1058, 1067; *Halicki Films, LLC v. Sanderson Sales & Marketing* (9th Cir. 2008) 547 F.3d 1213, 1223.)

(*Another Planet, supra*, 15 Cal.5th at p. 1144, quoting *PG&E*, 69 Cal.2d at p. 40 fn. 7.)

Neither the trial court nor the Court of Appeal followed that procedure in the present case. Apparently relying on the word "may" in the quotation above from *Another Planet*, which the Court of Appeal italicized (Opn. at p. 24), the court affirmed the trial court's decision not to consider the extensive drafting history evidence that Montrose had offered. The court explained that "controlling appellate authorities had uniformly concluded that the relevant policy language was not reasonably susceptible of [the] exact meaning [that Montrose proposed]." (*Id*. at p. 25.) The court so held even though

> (a) there was no appellate authority that "controlled" the Court of Appeal – the panel (Second Appellate District, Division Three) had never construed the "sudden and accidental" exception to the QPE and was therefore free to disagree with the decisions of other appellate panels[7];
>
> (b) none of the prior California appellate panels addressing the QPE had applied the drafting history evidence that Montrose offered to interpret the exclusion; and
>
> (c) In *Montrose II*, this Court approved the use of the same type of drafting history evidence that *ACL*, the only prior QPE decision to address extrinsic evidence, had refused to consider.

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[7] *See, e.g., Cohen v. Superior Court* (2024) 102 Cal.App.5th 706, 716.

This Court surely did not intend, by the use of "may" in *Another Planet*, to turn the examination of extrinsic evidence into a discretionary exercise and thereby disapprove the references to "consider" and "consideration" in the Court's prior cases addressing extrinsic evidence. To the contrary, *Another Planet* went on to consider the extrinsic evidence that the appellant had offered before concluding that the evidence did not support a meaning to which the policy language was reasonably susceptible. (*Another Planet*, *supra*, 15 Cal.5th at pp. 1145-1148.)

Nor should this Court transform *PG&E* into a discretionary exercise going forward. As Section II below reflects, if a court refuses to look at proffered extrinsic evidence, the court may never learn that seemingly unambiguous contract language had acquired a special meaning through usage or in a trade. A consequent failure to apply that special meaning would contravene basic principles of California contract law. (*See* Civ. Code, §§ 1636, 1644.)[8]

The Court of Appeal also attempted to justify its decision

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[8] Section II.B *infra* explains why *Curry v. Moody* (1995) 40 Cal.App.4th 1547, 1554, cited in the decision below (Opn. at p. 24) and in the Answer Brief (at pp. 30, 45), misses the point when it suggests that courts can dismiss extrinsic evidence out of hand on the ground that the contract language cannot be reasonably susceptible to the offering party's interpretation. Section II.B provides a sampling of the many instances in which contract language has a special or technical meaning that is at least as non-intuitive as *Curry's* example of "when they said 'pencils' they really meant 'car batteries'" (*Curry, supra*, 40 Cal.App.4th at p. 1554), such as a construction worker who asks a colleague for a "purse" but is actually referring to a hammer.

not to consider extrinsic evidence by citing to a footnote in *PG&E* for the proposition that "the determination of whether to receive extrinsic evidence provisionally is *situational*, and will only be necessary in circumstances where 'the trial court *may not yet* be in a position to determine whether' the proffered extrinsic evidence 'will turn out to be admissible as tending to prove a meaning of which the language of the instrument is reasonably susceptible….'" (Opn. at p. 23, quoting *PG&E*, 69 Cal.2d at pp. 39-40 fn. 7 (italics in original).) But *PG&E*'s footnote 7 was not contemplating a procedure under which a trial court refuses to receive and consider extrinsic evidence at all. To the contrary, the next sentence of that footnote, which the Court of Appeal omitted from its quotation, recommends that the trial court "admit the evidence conditionally by either reserving its ruling on the objection or by admitting the evidence subject to a motion to strike" (*PG&E*, 69 Cal.2d at pp. 39-40 fn. 7), i.e., the procedure that this Court followed in *Another Planet, supra*, 15 Cal.5th at pp. 1145-1148, and *Dore, supra*, 39 Cal.4th at pp. 390-393.

In sum, the Court of Appeal's holding that the trial court was entitled to disregard the extrinsic evidence offered by Montrose is directly contrary to *PG&E* and to the decisions of this Court and the Courts of Appeal that applied the ruling in *PG&E*. UP submits that *Wolf* and the other appellate decisions cited above enunciate a straightforward two-step process for accepting, reviewing, and assessing extrinsic evidence under the *PG&E* rule and that, at a minimum, a court must review and consider proffered extrinsic evidence of the meaning of contract language

before deciding whether the evidence supports a meaning to which the language is reasonably susceptible.

II. A COURT ALSO MUST CONSIDER EXTRINSIC EVIDENCE IF OFFERED TO SHOW THAT CONTRACT LANGUAGE HAS A SPECIAL MEANING, EVEN IF THE COURT BELIEVES THAT THE LANGUAGE IS UNAMBIGUOUS

A. The "Special Meaning" Rule

It is black-letter law that, when interpreting a contract, California courts must "give effect to the mutual intention of the parties as it existed at the time of contracting…." (Civ. Code, § 1636.) In general, that mutual intention is found in the "ordinary and popular sense" of the language in the contract. (*Id.*, §§ 1639, 1644.) But the Legislature, based on longstanding precedent from this and other courts (discussed *infra*), enacted four rules – three in 1872 and the fourth in 1978 – which created a "special meaning" or "trade usage" exception to that general practice.

The first is Civil Code section 1644, which provides that:

> The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or ***unless a special meaning is given them by usage, in which case the latter must be followed***.

(Emphasis added.) The second is Civil Code section 1645:

> ***Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate***, unless clearly used in a different sense.

(Emphasis added.) The third is Code of Civil Procedure section 1856, subd. (c), which states:

> The terms set forth in a writing … ***may be explained or supplemented*** by … usage of trade ….[9]

(Emphasis added.) And the fourth is Code of Civil Procedure section 1861, which addresses the admissibility of evidence to show that a writing has a special meaning:

> The terms of a writing are presumed to have been used in their primary and general acceptation, but ***evidence is nevertheless admissible that they have a local, technical or otherwise peculiar signification, and were so used and understood in the particular instance***, in which case the agreement must be construed accordingly.

(Emphasis added.)

Taken together, these four rules require California courts to admit evidence of a special, technical, local, or peculiar meaning given to contract language if the language was used or understood in that sense – even if the contract language appears to the court to be facially unambiguous. The Court of Appeal acknowledged the "special meaning" rule, and that the rule can apply to facially unambiguous contract language (Opn., pp. 7, 11-12), but never applied that rule to the present case, presumably because it never looked at the extrinsic evidence that Montrose had offered in the Superior Court.[10]

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[9] *See* page 22 *supra* (discussing the legislative intent to codify the *PG&E* rule when, in 1978, the Legislature amended section 1856).

[10] To be clear, this rule, when applied to standard form insurance policy language, does not require a showing that the policyholder was aware of any special meaning when the pertinent language was drafted. Instead, when construing a

Section II.B *infra* surveys the cases that have applied the "special meaning" rule to contract language that has acquired a special meaning through usage. Those cases show that contract language may have a meaning that differs materially from its ordinary meaning, and why it would be error for courts to refuse to consider extrinsic evidence of a special meaning on the ground that the language appears to the court to be unambiguous.

Section II.C *infra* then reviews some of the drafting history evidence that Montrose offered below. This evidence shows that, when the QPE was drafted, the insurance industry understood that the phrase "sudden and accidental" refers to an event that was "unexpected and unintended." Because the statutes quoted above *required* the Court of Appeal to consider and apply the evidence of that special meaning, the Court of Appeal erred in rejecting Montrose's extrinsic evidence.

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standard form insurance policy provision, this Court assesses any proffered extrinsic evidence through the lens of an insured's "objectively reasonable expectations." (*See Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 913-914 (considering extrinsic evidence but rejecting the interpretation offered through that evidence on the ground that it was inconsistent with the insured's reasonable expectations); *see generally Yahoo, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.* (2022) 14 Cal.5th 58, 71-72 (insurance policy language is interpreted to "protect" the insured's "objectively reasonable expectations").

B. The "Special Meaning" Rule Applies Even When Contract Language Appears To Be Unambiguous

1. Early Cases Applying The "Special Meaning" Rule

The "special meaning" rule is ancient in its origins. In *Smith v. Wilson*, 3 Barn. & Adol. 728 (K.B. 1832), the parties entered into a contract "to lease … a rabbit warren [such] that, at the expiration of the term, [lessee] would leave on the warren ten thousand rabbits." The English court admitted extrinsic evidence to show that, by the custom in that locality and trade, "the word 'thousand,' as applied to rabbits, meant 100 dozen" (i.e., 1,200). (*Id* at p. 729.) As the court explained, "even if, in its ordinary and popular sense, [one thousand] means ten hundred, yet if it has acquired … a peculiar sense distinct from the popular one, then … the acquired meaning must be put upon it …." (*Ibid*.)

While *Smith v. Wilson* is an English decision, the "common law of England is the rule of decision in all the courts of this State," Civ. Code, § 22.2, and this Court accordingly cited to *Smith v. Wilson* with approval in *Beneficial Fire & Casualty Insurance Co. v. Kurt Hitke & Co.* (1956) 46 Cal.2d 517, 526.

The holding in *Smith v. Wilson* – that "one thousand" actually means "100 dozen" because that was how the word was used in the trade – is the definitive answer to Respondent Insurers' assertion that "extrinsic evidence would *not* be admissible to prove that when the parties used the term 'dozen,' they actually meant *fifteen*, because there is no linguistic construction under which the word 'dozen' is reasonably

susceptible to such a meaning" (AB, p. 30 (emphasis in original); *see also* Opn., p. 24).

To the contrary, under the reasoning of *Smith v. Wilson*, evidence showing that a particular trade used "dozen" to mean "fifteen," just as bakers use "dozen" to refer to "thirteen," would be precisely the type of "special meaning" evidence that would be admissible and, likely, dispositive.

Smith v. Wilson is, of course, not the only decision to find that words used in a contract have a special meaning that is inconsistent with the ordinary meaning of those words. For example, a few years later, in *Hinton v. Locke* (N.Y. 1843) 5 Hill 437, the court admitted evidence of custom in the trade to show that the word "day" meant ten hours to carpenters, even though the ordinary meaning of "day" is twenty-four hours.

Similarly, in *Soutier v. Kellerman* (Mo. 1853) 18 Mo. 509, the court addressed a contract for the delivery of 4,000 shingles. The court held that delivery of only 2,500 shingles in four bundles fulfilled the contract to deliver 4,000 shingles because it was the practice in the lumber trade to regard "two packs of shingles, of certain dimensions, as a thousand shingles, without reference to the number of pieces in the pack." (*Id.* at pp. 511-512.)

This Court likewise cited to *Soutier* with approval in *Beneficial Fire,* 46 Cal.2d at p. 527. And by holding that delivery of 2,500 shingles can satisfy a contract to deliver 4,000, *Soutier* is another example of a case that disapproves the Respondent Insurers' reasoning, discussed above, that "dozen" has no possible meaning other than "twelve."

Turning to examples of California decisions addressing the "special meaning" rule, this Court adopted that rule just a few years after *Soutier*, in *Jenny Lind Co. v. Bower & Co.* (1858) 11 Cal. 194. In that case, the Court applied trade custom to interpret the word "north" in an action for trespass. The question was whether "north" was to be measured by the magnetic meridian (the direction in which a compass needle points) or the true meridian. (*Id.* at p. 197.) The two definitions each produced a different boundary line, which was crucial to determining whether a trespass had occurred. Although the ordinary meaning of "north" is the true meridian, the Court admitted evidence that, under "the general custom" in the mining town where the dispute occurred, the line was to run "the way the needle points," that is, according to the magnetic meridian. (*Ibid.*)

Twenty-three years after that, in *Callahan v. Stanley* (1881) 57 Cal. 476, 479, this Court reversed a trial court decision that had refused to admit evidence of the customary usage of the word "stubble" in a local farming community. The Court quoted *Webster's Dictionary* for the common meaning of "stubble," "[t]he stumps of wheat, rye, barley, oats, or buckwheat left in the ground; the part of the stalk left by the scythe or sickle." (*Id.* at p. 477.) Yet the Court nonetheless held that the trial court had erred in refusing to admit evidence that local farming custom defined stubble more broadly as "whatever is left on the ground after the harvest time," even if not cut by humans. (*Id.* at pp. 478-479.) The Court concluded: "If there was an existing usage

among farmers as to the meaning of the word 'stubble,'…it must be inferred that the contracting parties…used the word in the broader meaning which was given to it by that usage, and not in the ordinary or popular sense." (*Id.* at p. 479.) Accordingly, "[e]vidence of such usage and meaning was, therefore, admissible to define and explain the peculiar or local meaning of the word as it was used in the contract, and the Court below should have overruled the objection to the offer made by the plaintiff." (*Ibid.*)[11]

Then, in *Higgins v. California Petroleum & Asphalt Co.*, (1898) 120 Cal. 629, 632, this Court affirmed the trial court's application of a special meaning to the phrase "gross ton" in a mining contract. Under common usage, a ton is 2,000 pounds. (*Id.* at p. 630.) In fact, at the time of the decision, that common definition was codified in section 3215 of the Political Code, which provided that "twenty hundred weight constitute a ton." (*Ibid.*) But after hearing extrinsic evidence about mining industry customs, the trial court concluded that the phrase "gross ton," as used in the agreement, meant 2,240 pounds. (*Ibid.*) This Court affirmed, holding that section 1861 of the Code of Civil Procedure

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[11] The agriculture industry has furnished many other examples of the application of the "special meaning" rule. *See, e.g., Brewer v. Horst & Lachmund Co.* (1900) 127 Cal. 643 (approving the use of evidence that people in the "hops" trade would understand that "13" referred to a particular lot of hops); *Berry v. Kowalsky* (1892) 135 Cal. 94 (same; "S/87 wheat"); *Corey v. Stuve* (1911) 16 Cal.App. 310 (finding that a contract for the sale of "beets" refers in the trade to the plant's roots and not its tops).

"plainly provides that it may be shown by evidence that the language is used in a technical, local, or peculiar sense" and that this evidence supported the trial court's reading of the contract. (*Id.* at p. 631.) Thus, in *Higgins*, this Court again approved admission of the precise type of "dozen really refers to fifteen" evidence that the Respondent Insurers argue could never be admissible.

2. More Recent Cases Applying The "Special Meaning" Rule

Perhaps the best known "special meaning" case is *Ermolieff v. R.K.O. Radio Pictures* (1942) 19 Cal.2d 543, which, along with *Higgins, Callahan*, and *Jenny Lind*, was cited with approval in *PG&E*, 69 Cal.2d at p. 39 fn. 6. In *Ermolieff,* this Court construed the term "United Kingdom" in a motion picture distribution agreement. Although the plain meaning of "United Kingdom" was, in 1942 (and still is today), a country comprised of England, Scotland, Wales, and Northern Ireland – and did not include the Republic of Ireland (Eire), which is an independent country – the Court held that extrinsic evidence was admissible to show that the phrase "United Kingdom" had a special meaning in the film industry, which included Eire. (19 Cal.2d at pp. 550-552.) Extrinsic evidence, the Court concluded, "*is admissible to establish the trade usage, and that is true* ***even though the words are in their ordinary or legal meaning entirely unambiguous***, inasmuch as by reason of the usage the words are used by the parties in a different sense." (*Id.* at p. 550 (emphasis added).) In other words, the holding in *Ermolieff* was directly contrary to the Court of Appeal's holding in the current

appeal, which concluded that the QPE is unambiguous and refused to consider extrinsic evidence showing otherwise.

In *Beneficial Fire*, *supra*, 46 Cal.2d at pp. 522-523, 527, the trial court declined to consider extrinsic evidence of custom in the trade in an insurance agency contract. This Court reversed. Relying on *Ermolieff* and this Court's rulings in three of the early cases addressed in Section II.B.1 above, the Court held that the trial court should have admitted the defendant's extrinsic evidence to show the special meaning given to the terms "earned commission" and "earned premiums" in the insurance industry. Although *Beneficial Fire* found the contract to be ambiguous, the Court added that "[w]ith regard to the trade usage, ambiguity is not necessary." (*Id.* at pp. 523, 525.) The Court explained, again, that such "evidence is admissible to establish the trade usage, and that is true ***even though the words are in their ordinary or legal meaning entirely unambiguous***, inasmuch as by reason of the usage the words are used by the parties in a different sense." (*Id.* at p. 526 (citing *Ermolieff*, 19 Cal.2d at p. 550) (emphasis added).)

Beneficial Fire cited with approval to *Body-Steffner Co. v. Flotill Prods.* (1944) 63 Cal.App.2d 555. That case construed a purchase contract for canned goods by applying the trade meaning of the word "brokerage" rather than its ordinary meaning. As the Court of Appeal explained: "It is a *rule of practically universal acceptation* in common law jurisdictions that however clear and unambiguous the words of a particular contract may appear on its face it is always open to the parties to

the contract to prove that by the general and accepted usage of the trade or business in which both parties are engaged and to which the contract applies the words have acquired a meaning different from their ordinary and popular sense." (*Id*. at p. 558 (italics added).)

This rule of "practically universal acceptation" remains good law in this State, as it must, given the statutory obligation to consider evidence of a special meaning in contract cases, as discussed in Section II.A *supra*.

For example, *Wolf*, *supra*, 114 Cal.App.4th at p. 1358, held that the trial court had erred in refusing to consider extrinsic evidence of the special meaning of "gross receipts" in the entertainment industry. That case involved the rights to the plaintiff's novel *Who Censored Roger Rabbit?* and the characters in that novel. (*Id.* at p. 1346.) The plaintiff had entered into a licensing agreement with Disney under which the plaintiff would receive a five percent royalty on "gross receipts" from character merchandise. (*Id* at p. 1347.) The parties disagreed with respect to whether the term "gross receipts" obligated Disney to pay royalties only if it received cash consideration for a character license or whether noncash consideration also triggered its royalty obligations. (*Id.* at p. 1348.) The trial court, concluding that "gross receipts" unambiguously means "cash money," refused to consider the plaintiff's extrinsic evidence. (*Id.* at p. 1355.) The Court of Appeal reversed. Citing *Ermolieff*, the appellate court held that the trial court should have considered the extrinsic evidence of special meaning because the "extrinsic evidence of

trade usage … presented an alternative interpretation to which the term 'gross receipts' was reasonably susceptible in the circumstances." (*Id.* at p. 1358.)[12]

These cases reflect the indisputable fact that the English language is replete with words that have an ordinary meaning to most people, including most judges, but a quite different meaning to people in a particular trade or region. To take just a few of the legions of examples of words having very different meanings to people in particular trades or locations, in addition to the ones discussed in the cases cited above, a purchase of a "bus" is unlikely to involve motor vehicles if the contract was negotiated by parties in the computer industry; a "course" means one thing to a teacher and something very different to an architect designing a building; "piracy" has one meaning to an intellectual property specialist and a very different one to a ship captain;

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[12] *See also, e.g., Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1244-1245 (trial court should have considered extrinsic evidence of the meaning of "fair market value" in railroad easements, explaining that the extrinsic evidence is "relevant and admissible to prove usage or custom of the industry"); *Watson Land Co. v. Rio Grande Oil Co.* (1943) 61 Cal.App.2d 269, 271, 274 (interpreting the phrase "less than seventy-five cents … a barrel at the well" as it was "used and understood by the oil industry in the Los Angeles Basin area," to refer to the prices paid by one oil company); *Universal Cable Productions, LLC v. Atlantic Specialty Ins. Co.* (9th Cir. 2019) 929 F.3d 1143, 1157 (applying the insurance industry's customary usage of the word "war" in an insurance contract rather than the ordinary meaning of that term); *Petro v. Ohio Casualty Insurance Co.*, 95 F. Supp. 59, 63 (S.D. Cal. 1950) (a "student" pilot means, in the trade, a beginner and not a more advanced student).

"pants" does not have the same meaning as "trousers" to someone who is British; scientists and litigators give "discovery" completely different meanings; "action" means something quite different, depending on whether the term is used by a movie director, soldier, or lawyer; "bonnet" and "boot" are not items of clothing to an English car dealer; and to a contractor, "purse" means hammer, a "slurpee" is a useless apprentice, and a "stick" refers to a carpenter.[13]

Without context and evidence of the special meaning that the parties gave to those terms, courts may badly misconstrue contract language under the mistaken assumption that the terms are unambiguous.

3. Conclusion

As *PG&E* explained, "[t]he exclusion of testimony that might contradict the linguistic background of the judge reflects a judicial belief in the possibility of perfect verbal expression [that] ... would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained." (*PG&E*, 69 Cal.2d at pp. 37-38.) The concern that *PG&E* expressed is especially evident in contract disputes involving a special meaning since it is frequently the case that the judge is not aware of the special meaning when construing the contract language.

The solution, if a party offers competent evidence of a

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[13] *American Heritage Dictionary of the English Language* (2009 ed.), pp. 17, 209, 212, 251, 419, 516, 1271, 1336; https://www.theunionbootpro.com/slang/ (last visited June 18, 2026).

special meaning, is for the court to accept, consider, and apply that evidence when interpreting the contract language. (*Id*. at p. pp. 40-41.) To ignore the evidence on the ground that the language appears to the court to be unambiguous would be error as a matter of law.

C. The Drafting History Of The Qualified Pollution Exclusion Shows That The Words "Sudden And Accidental" In The Exclusion Have A Special Meaning

Neither the Superior Court nor the Court of Appeal applied the "special meaning" rule to the QPE. That this was not harmless error is shown by the brief summary below of the "special meaning" evidence that Montrose offered in the trial court about the QPE. As that summary reflects, the drafters of the QPE intended "sudden and accidental" to mean "expected and unintended," the very interpretation that the Court of Appeal refused to entertain.[14]

In 1966, the insurance industry adopted a new standard form comprehensive general liability insurance policy that provided express coverage for long-tail claims. (*Montrose II*, 10 Cal.4th at pp. 671-673.) A few years later, after policyholders had experienced pollution losses, including claims arising from a "front page news" oil spill off the coast of Santa Barbara in 1969,

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[14] Petitioner Montrose's Petition for Review (at pp. 26-27, 40-43) describes and cites to the drafting history evidence that Montrose offered in the trial court as well as to Montrose's offer of proof regarding that evidence. (*See* PA02718-PA02763 and the exhibits described therein.) UP summarizes that evidence here since neither Petitioner nor the Respondent Insurers did so in their merits briefing before this Court.

the insurance industry commissioned its drafting organizations to prepare an exclusion that would clarify coverage for polluting events.[15]

To that end, the drafters borrowed language from boiler and machinery policies (a form of property insurance covering damage to boilers, turbines, and similar equipment), which covered loss to equipment resulting from a "sudden and accidental breakdown."[16] Courts construing boiler and machinery policies had long recognized that the phrase "sudden and accidental" refers to an "unforeseen" or "unexpected" event, rather than to an event that occurred abruptly. As a leading commentator explained:

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[15] The drafting history of the QPE is extensive. For a summary of that history, *see* the extensive discussion in the New Jersey Supreme Court's decision in *Morton International, Inc. v. General Accident Insurance Co. of America* (N.J. 1993) 629 A.2d 831, 847-855 ("*Morton*"), and Carl A. Salisbury, *Pollution Liability Insurance Coverage, the Standard-Form Pollution Exclusion, and the Insurance Industry: A Case Study in Collective Amnesia* (1991) 21 Envt'l L. Rev. 357 ("Salisbury"). *See also* Christopher C. French, *Insurance Policies: The Grandparents of Contractual Black Holes* (2017) 67 Duke L.J. 40, 56-63; *Just v. Land Reclamation, Ltd.* (Wis. 1990) 456 N.W.2d 570; *Sunbeam Corp. v. Liberty Mut. Ins. Co.* (Pa. 2001) 781 A.2d 1189.

The principal insurance policy drafting organization referenced in various decisions of this Court, the Insurance Services Office or ISO, was formed when the organizations that drafted the QPE, the Insurance Rating Bureau and the Mutual Insurance Rating Bureau, merged a year later, in 1971. (*Salisbury*, 21 Envt'l L. Rev. at p. 361 fn. 8; *see generally Montrose II*, 10 Cal.4th at p. 671 & fn. 13 (discussing the ISO).)

[16] Salisbury, 21 Envt'l L. Rev. at pp. 369-72.

> When coverage is limited to a sudden 'breaking' of machinery, the word '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. That is, ***'sudden' is not to be construed as synonymous with instantaneous***.

(10A Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* (3d ed. 2009), § 150:30 (emphasis added; footnotes omitted); *accord Couch on Insurance* (2d ed. 1984), § 43:396.)[17]

The discussion of the meaning of "sudden and accidental" in *Couch on Insurance* is consistent with a common definition of "sudden" in the leading dictionaries that the drafters would have consulted at the time. (*See, e.g., Webster's Third New Int'l Dict.* (1968), p. 2284 ("coming or occurring unexpectedly: not foreseen or prepared for"); *Oxford Universal Dict.* (1955), p. 2069 ("Happening or coming without warning or premonition"); *Funk & Wagnalls Standard Dict.* (1970), p. 1252 ("Come upon unexpectedly"); *Concise Oxford Dict.* (1964), p. 1290 ("made or done unexpectedly"); *Webster's Second New Int'l Dict.* (1959), p. 2519 ("coming or occurring unexpectedly; unforeseen; unprepared for").[18]

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[17] This Court cited to the *Couch on Insurance* treatise 12 times in *Another Planet*, *supra*, 15 Cal.5th 1106.

[18] The Respondent Insurers cite to definitions of "sudden" in various dictionaries. (AB, pp. 52-53.) But because a court interpreting a contract must attempt to "give effect to the mutual intention of the parties *as it existed at the time of contracting*," Civ. Code, § 1636 (italics added), the Respondent Insurers' citations to dictionary definitions that long postdate the drafting of the QPE are of limited utility.

The resulting QPE bars coverage for bodily injury or property damage arising out of a "discharge, dispersal, release or escape" of pollutants unless "the discharge, dispersal, release or escape is sudden and accidental."[19] The drafters' meeting minutes, contemporary insurance industry commentators, and the drafting organizations in their regulatory submissions all represented that the QPE was intended as a *clarification* of coverage, not as a limitation on coverage.[20] Thus, the drafting organizations told the insurance community and regulators that the general liability form would continue to cover pollution liabilities as long as the polluting event was unexpected and unintended; an "abrupt" polluting event was not necessary for a claim to fall within the exception to the QPE, they explained.[21]

Around the same time, Travelers drafted its own version of the QPE, which omitted the "sudden and accidental" exception and instead barred coverage for pollution if the "emission,

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19 *Morton*, 629 A.2d at p. 846.

20 *See* Salisbury, 21 Envt'l L. Rev. at pp. 361 fn. 8, 368-69 & fn. 34; *Alabama Plating Co. v. U.S. Fid. & Guar. Co.* (Ala. 1996) 690 So.2d 331, 336 & fn. 7 (citing cases); *St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co.* (Or. 1996) 923 P.2d 1200, 1217-1218 (same); *Sunbeam Corp. v. Liberty Mut. Ins. Co.* (Pa. 2001) 781 A.2d 1189, 1193-1195 (citing to the special meaning in the industry, incorporated into the qualified pollution exclusion); *Morton*, 629 A.2d at pp. 847-848, 853-854, 875.

21 *See* Salisbury, *supra*, 21 Envt'l L. Rev. at pp. 368-379; *Morton*, 629 A.2d at pp. 853-855; *Joy Technologies, Inc. v. Liberty Mut. Ins. Co.* (W.V. 1992) 421 S.E.2d 493, 498-500; *Just v. Land Reclamation Ltd.* (Wis. 1990) 456 N.W.2d 570, 573-575; *Queen City Farms, Inc. v. Central Nat'l Ins. Co. of Omaha* (Wash. 1994) 882 P.2d 703, 720-723.

discharge, seepage, release or escape is either *expected or intended* from the standpoint of any insured …." (OB, p. 20 (italics added).) Travelers told the regulators that "the results of the two phrases ['sudden and accidental' in the QPE and 'either expected or intended' in the Travelers exclusion] are the same but we feel that the positive wording that we have used will be clearer to the insured."[22] In other words, a leading insurer publicly endorsed the very meaning of the QPE that the Court of Appeal refused to consider.

Based on the insurance industry's representations that the QPE was merely a clarification of coverage, rather than a restriction on coverage, the industry obtained approval to market comprehensive general liability policies with the exclusion,[23] and sold such coverage to many insureds, including Montrose.

At a minimum, Montrose should have been entitled to present this evidence to the trial court and that court should have determined whether the evidence supports a meaning to which the contract language was reasonably susceptible under *PG&E* – or had a "special meaning" in the trade under the statutes and case law discussed *supra*. Since the drafting history supports Montrose's proposed interpretation under both rules, the trial court should have considered Montrose's evidence regarding the meaning of the QPE before determining whether that evidence

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22 Salisbury, 21 Envt'l L. Rev. at p. 373 (quoting Travelers' statements in proceedings before the West Virginia Insurance Commissioner).

23 *Id*. at pp. 372-373; *Morton*, 629 A.2d at pp. 848-855.

supports a meaning to which the policy language is reasonably susceptible. Its failure to do so, and the Court of Appeal's approval of the trial court's decision, were error.

III. THE PRIOR JUDICIAL CONSTRUCTION ISSUE

The Court's order granting review also asked: "Under what circumstances, if any, does prior judicial construction of contract language render that language not reasonably susceptible to a construction advanced by a party and preclude preliminary consideration of extrinsic evidence proffered by that party to support that construction?" UP agrees with Petitioner Montrose that the prior judicial construction of the QPE in decisions that did not consider the drafting history evidence was not binding on the trial court or the Court of Appeal in the present case. (OB, pp. 55-64; RB, pp. 46-47.)

Most fundamentally, a prior decision cannot stand for a proposition not considered by the court that issued the decision. (*Rattigan v. Uber Techs., Inc.* (2024) 17 Cal.5th 1, 39.) *ACL* held that drafting history evidence is irrelevant, 17 Cal.App.4th at pp. 1791-1794 – a holding that this Court rejected two years later in *Montrose II* – and never addressed the "special meaning" rule; the other Court of Appeal decisions cited in the Insurers' Answer Brief (at p. 61) construed the exclusion without addressing either type of evidence. Therefore, even if those prior decisions had bound the Court of Appeal (though, as that court acknowledged, they do not (Opn., p. 26)), the prior decisions did not prevent the Court of Appeal, and of course do not prevent this Court, from considering the drafting history and the "special meaning" rule when interpreting the QPE.

CONCLUSION

For the foregoing reasons, UP urges the Court to reverse and hold that the courts below must consider and apply the extrinsic evidence that Petitioner Montrose offered concerning the meaning of the qualified pollution exclusion.

Dated: June 18, 2026

Respectfully submitted.

COVINGTON & BURLING LLP

By /s/ David B. Goodwin
DAVID B. GOODWIN

Attorneys for *Amicus Curiae*
UNITED POLICYHOLDERS

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.520(c), and in reliance upon the word count feature of the software used to prepare this document (Microsoft Word), I certify that the foregoing Brief *Amicus Curiae* of United Policyholders contains 7,459 words, exclusive of those materials not required to be counted under Rule 8.520(c)(3).

Dated: June 18, 2026

COVINGTON & BURLING LLP

/s/ David B. Goodwin
David B. Goodwin

Attorneys for *Amicus Curiae* United Policyholders

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action. My business address is Covington & Burling LLP, Salesforce Tower, 415 Mission Street, Suite 5400, San Francisco, CA 94105-2533, and my electronic service address is Echiulos@gov.com.

On June 18, 2026, I affected electronic service of the following documents described as:

APPLICATION OF UNITED POLICYHOLDERS FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER; [PROPOSED] BRIEF AMICUS CURIAE

on the interested parties below via TrueFiling by causing transmission of an electronic version of the above-described document to be submitted via TrueFiling through the user interface at www.truefiling.com.

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 18, 2026, at San Francisco, California.

Ellen Chiulos

SERVICE LIST

Court Counsel Los Angeles Superior Court 111 North Hill Street, Room 546 Los Angeles, CA 90012 courtcounselwrits@lacourt.org	Counsel for Respondent Superior Court of the State of California, Los Angeles County
Clerk California Court of Appeal Second Appellate District Division Three 300 South Spring Street North Tower, Second Floor Los Angeles, California 90013	Clerk, California Court of Appeal, Second Appellate District, Division Three
Brook B. Roberts John M. Wilson Drew T. Gardiner Steve B. Lesan Corey D. McGehee LATHAM & WATKINS LLP 12670 High Bluff Drive San Diego, CA 92130 Telephone: (858) 523-5400 Facsimile: (858) 523-5450	Counsel for Petitioner Montrose Chemical Corporation of California
Michael J. Duvall Samantha Fahr DENTONS US LLP 601 S. Figueroa Street, Ste. 2500 Los Angeles, CA 90017-5704 Telephone: (213) 623-9300 Facsimile: (213) 623-9924 michael.duvall@dentons.com samantha.jackson@dentons.com M. Keith Moskowitz DENTONS US LLP 233 South Wacker Drive, Ste. 5900 Chicago, IL 60606-6361 Telephone: (312) 876-8000	Counsel for 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

Facsimile: (312) 876-7934 keith.moskowitz@dentons.com	
Justin A. Martin DENTONS US LLP 4675 MacArthur Court Suite 1250 Newport Beach, CA 92660 Telephone: (949) 732-3700 Facsimile: (949) 732-3739 justin.martin@dentons.com Leanna Anderson DENTONS US LLP 2000 McKinney Ave Suite 1900 Dallas, TX 75201 Telephone: (214) 259-0972 Facsimile: (214) 259-0910 leanna.anderson@dentons.com	Counsel for 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 Jessica E. La Londe DUANE MORRIS LLP Spear Tower One Market Plaza, Ste. 2200 San Francisco, CA 94105-1127 Telephone: (415) 957-3000 Facsimile: (415) 957-3001 MHStern@duanemorris.com JELaLonde@duanemorris.com	Counsel for American Centennial Insurance Company and Continental Casualty Company
Bruce H. Winkelman LAW OFFICE OF BRUCE H. WINKELMAN 2001 Addison Street, Ste. 300 Berkeley, CA 94704 Telephone: (510) 549-3311 bruce@winkadr.com	Counsel for Munich Reinsurance America, Inc. (formerly known as American Re-Insurance Company)

Alan H. Barbanel BARBANEL & TREUER, P.C. 1925 Century Park East, Ste. 350 Los Angeles, CA 90067 Telephone: (310) 282-8088 Facsimile: (310) 282-8779 abarbanel@btlawla.com	Counsel for 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)
Alan H. Barbanel BARBANEL & TREUER, P.C. 1925 Century Park East, Ste. 350 Los Angeles, CA 90067 Telephone: (310) 282-8088 Facsimile: (310) 282-8779 abarbanel@btlawla.com Bernard M. Resser BARTON LLP 100 Wilshire Boulevard, Ste. 1300 Santa Monica, CA 90401 Telephone: (212) 687-6262 Facsimile: (212) 687-3667 bresser@bartonesq.com	Counsel for Transport Insurance Company (as Successor-in-Interest to Transport Indemnity Company)
James P. McDonald Ryan Peter Garchie LEWIS BRISBOIS BISGAARD & SMITH LLP 550 West "C" Street, Ste. 1700 San Diego, CA 92101 Telephone: (619) 233-1006 Facsimile: (619) 233-8627 James.McDonald@lewisbrisbois.com Ryan.Garchie@lewisbrisbois.comka	Counsel for Employers Mutual Casualty Company

Bryan M. Barber, Esq. BARBER LAW GROUP 3130 Alpine Road, Suite 288 #422 Portola Valley, CA 94028-7521 Telephone: (415) 273-2930 Facsimile: (415) 273-2940 bbarber@barberlg.com	Counsel for Employers Insurance of Wausau
Elizabeth L. Dolter KENNEDYS CMK LLP 445 Market Street, Ste. 1900 San Francisco, CA 94105 Telephone: (415) 517-8089 Facsimile: (415) 323-4445 Elizabeth.Dolter@kennedyslaw.com	Counsel for Everest Reinsurance Company (as Successor-in-Interest to Prudential Reinsurance Company) and Mt. McKinley Insurance Company (as Successor-in-Interest to Gibraltar Casualty Company)
Lawrence A. Tabb Sonia S. Waisman MUSICK PEELER & GARRETT, LLP 333 South Hope Street, Ste. 2900 Los Angeles, CA 90071-1406 Telephone: (213) 629-7600 Facsimile: (213) 624-1376 l.tabb@musickpeeler.com s.waisman@musickpeeler.com	Counsel for Yosemite Insurance Company, as successor in interest by order of transfer and novation to Providence Washington Insurance Company, as successor in interest by merger to Seaton Insurance Company, formerly known as Unigard Security Insurance Company, formerly known as Unigard Mutual Insurance Company
Richard B. Goetz O'MELVENY & MYERS LLP 400 South Hope Street, 18th Fl. Los Angeles, CA 90071 Telephone: (213) 430-6000 Facsimile: (213) 430-6407	Counsel for Federal Insurance Company

rgoetz@omm.com	
Linda Bondi Morrison TRESSLER LLP 4 Park Plaza, Ste. 1200 Irvine, CA 92614 Telephone: (949) 336-1200 Facsimile: (949) 752-0645 lmorrison@tresslerllp.com	Counsel for Allstate Insurance Company (solely as Successor-in-Interest to Northbrook Excess and Surplus Insurance Company)
Matthew C. Lovell Alison V. Lippa NICOLAIDES FINK THORPE MICHAELIDES SULLIVAN LLP 101 Montgomery Street, Ste. 2300 San Francisco, CA 94104 Telephone: (415) 745-3770 Facsimile: (415) 745-3771 mlovell@nicolaidesllp.com alippa@nicolaidesllp.com cafiling@nicolaidesllp.com	Counsel for Fireman's Fund Insurance Company; National Surety Corporation
Monica M. Kalunian LEWIS, BRISBOIS, BISGAARD & SMITH LLP 633 West 5th Street, Ste. 4000 Los Angeles, CA 90071 Telephone: (213) 250-1800 Facsimile: (213) 250-7900 monica.kalunian@lewisbrisbois.com Joseph J. Schiavone SAIBER LLC 18 Columbia Turnpike, Ste. 200 Florham Park, NJ 07932 Telephone: (973) 622-3333 jschiavone@saiber.com	Counsel for General Reinsurance Corporation and North Star Reinsurance Corporation

Thomas R. Beer Robert G. Levy HINSHAW & CULBERTSON LLP 50 California Street, Ste. 2900 San Francisco, CA 94111 Telephone: (415) 362-6000 Facsimile: (415) 834-9070 tbeer@hinshawlaw.com rlevy@hinshawlaw.com	Counsel for HDI-Gerling Industrie Versicherungs, AG (formerly known as Gerling Konzern Allgemeine Versicherungs-Aktiengesellschaft)
Richard B. Goetz Zoheb P. Noorani Jessica Snyder O'MELVENY & MYERS LLP 400 South Hope Street, 18th Fl. Los Angeles, California 90071 Telephone: (213) 430-6000 Facsimile: (213) 430-6407 rgoetz@omm.com znoorani@omm.com jsnyder@omm.com Jonathan D. Hacker O'MELVENY & MYERS LLP 1625 Eye Street, NW Washington, DC 20006 Telephone: (202) 383-5300 jhacker@omm.com F. Cody Kahoe O'MELVENY & MYERS LLP Two Embarcadero Center, 28th Fl. San Francisco, CA 94111 Telephone: (415) 984-8700 Facsimile: (415) 984-8701 ckahoe@omm.com	Counsel for TIG Insurance Company (Successor by Merger to International Insurance Company)

Andrew R. McCloskey Heather L. McCloskey MCCLOSKEY, WARING & DRURY LLP 4445 Eastgate Mall, Ste. 200 San Diego, CA 92121 Telephone: (619) 237-3095 Facsimile: (619) 237-3789 amccloskey@mwdllp.com hlmccloskey@mwdllp.com	Counsel for Westport Insurance Corporation (formerly known as Puritan Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company)
Andrew T. Frankel SIMPSON THACHER & BARTLETT, LLP 425 Lexington Avenue New York, NY 10017-3954 Telephone: (212) 455-2000 Facsimile: (212) 455-2502 afrankel@stblaw.com	Counsel for Travelers Casualty and Surety Company (formerly known as The Aetna Casualty & Surety Company) and The Travelers Indemnity Company
Chet A. Kronenberg SIMPSON THACHER & BARTLETT, LLP 1999 Avenue of the Stars, 29th Fl. Los Angeles, CA 90067 Telephone: (310) 407-7557 Facsimile: (310) 407-7502 ckronenberg@stblaw.com Jonathan C. Sanders SIMPSON THACHER & BARTLETT, LLP 2475 Hanover Street Palo Alto, CA 94304 Telephone: (650) 251-5123 Facsimile: (650) 251-5002 JSanders@stblaw.com	Counsel for Travelers Casualty and Surety Company (formerly known as The Aetna Casualty & Surety Company) and The Travelers Indemnity Company

Debra R. Puebla Michael J. Bartlett SINNOTT, PUEBLA, CAMPAGNE & CURET, APLC 515 S. Figueroa Street, Ste. 1470 Los Angeles, CA 90071 Telephone: (213) 996-4200 Facsimile: (213) 892-8322 dpuebla@spcclaw.com mbartlett@spcclaw.com	Counsel for Zurich Reinsurance Company Ltd. (f/k/a Zurich International (Bermuda) Ltd., formerly Zurich International Ltd.)
John Daly COZEN O'CONNOR 707 17th Street, Ste. 3100 Denver, CO 80202 Telephone: (720) 479-3900 Facsimile: (720) 479-3890 jdaly@cozen.com	Counsel for Zurich Reinsurance Company Ltd. (f/k/a Zurich International (Bermuda) Ltd., formerly Zurich International Ltd.)