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Via e-filing

December 15, 2025

Honorable Chief Justice Patricia Guerrero
and the Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102-7303

Re: Letter of United Policyholders in Support of Petition for Review in *Montrose Chemical Corp. of California v. Superior Court (Canadian Universal)*, Case No. S293914

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

I write on behalf of *amicus curiae* United Policyholders ("UP") to urge the Court to grant the Petition for Review that Montrose Chemical Corporation of California filed on November 10, 2025, in Case No. S293914.

The Court should grant the Petition for three critical reasons:

First, the decision below creates a split among the appellate courts concerning the treatment of extrinsic evidence when offered to interpret a patently unambiguous contract term. Dozens of published California decisions hold that a court *must* provisionally receive and consider extrinsic evidence concerning the meaning of a contract term and then determine whether the evidence supports a meaning to which that term is reasonably susceptible. In contrast, the Court of Appeal decided that it had the discretion to refuse even to consider extrinsic evidence if it concludes, before considering the evidence, that the contract term is not ambiguous.

Second, this ruling below not only departs from nearly 70 years of California case law but also largely eviscerates Civil Code sections 1644 and 1645, which require courts to give a seemingly unambiguous contract term a different technical or special meaning if that is the meaning given to the term through usage – a meaning that typically is determined by reference to extrinsic evidence.

Third, the Petition also presents a substantive legal issue affecting dozens of pending insurance coverage disputes that has been addressed by more than twenty state supreme courts – but not this Court – that is, whether the extrinsic evidence that the Court of Appeal refused to consider shows that the exception to the standard form qualified pollution exclusion for a "sudden and accidental" discharge, dispersal, release or escape of pollutants has a special meaning in the insurance industry and thus was not intended by its drafters to limit coverage to "abrupt" polluting events.

Interest of the Amici

UP is a non-profit organization, founded in 1991, which is dedicated to educating the public on insurance issues and consumer rights. The organization is tax-exempt under Internal Revenue Code § 501(c)(3). It serves as a resource for insurance claimants and actively monitors legal and marketplace developments affecting the interests of policyholders. UP receives frequent invitations to testify at legislative and other public hearings and to participate in regulatory proceedings on rate and policy issues. In addition, UP's executive director, Amy Bach, served as an Adviser to the drafters of the Restatement of the Law of Liability Insurance.

UP has been granted leave to file *amicus curiae* briefs on behalf of policyholders in cases across the country, including *Humana Inc. v. Forsyth* (1999) 525 U.S. 299, 314 (favorably citing UP's *amicus* brief), *Pitzer College v. Indian Harbor Insurance Co.* (2019) 8 Cal.5th 93, 104–105 (same), and *Association of California Insurance Cos. v. Jones* (2017) 2 Cal.5th 376, 383 (favorably citing UP's studies). UP has submitted letters

supporting petitions for review in cases in which the Court granted review, including *Montrose Chemical Corp. of Cal. v. Superior Court* (2020) 9 Cal.5th 215.

Reasons for Granting Review

(A) *The Court of Appeal departed from longstanding California precedent when it held that neither it nor the trial court needed to look at, let alone consider, Montrose's proposed extrinsic evidence.*

Nearly sixty years ago, 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 admissible to help interpret patently unambiguous contract language if "the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." *Id*. at 37. As the Court explained, "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." *Id*. at 37-38.

PG&E did not, however, explain the process by which courts would examine the proposed extrinsic evidence. Subsequent Court of Appeal decisions filled that gap, especially *Blumenfeld v. R.H. Macy & Co.* (1979) 92 Cal.App.3d 38, 45, *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165-66, and *Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351. As is reflected in those decisions, "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." *Wolf*, 114 Cal.App.4th at 1351 (citation omitted). If the court then concludes that the contract language is reasonably susceptible, the court will admit the extrinsic evidence and proceed to interpret the contract. *Id.* Indeed, *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 1350.

This Court recently endorsed that procedure in *Another Planet Entertainment LLC v. Vigilant Insurance Co.* (2024) 15 Cal.5th 1106, 1144, 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 reasonable susceptible or inadmissible as tending to prove a meaning of which the language is not susceptible.'" *Id*., citing *PG&E*, 69 Cal.2d at 40 fn.7.

Neither the trial court nor the Court of Appeal followed this procedure. Apparently relying on the word "may" in the quotation above from *Another Planet*, which the Court of Appeal italicized (Opn. at p. 24), the ruling below affirmed the trial court's decision not to consider the extensive extrinsic evidence in the record because "controlling appellate authorities had uniformly concluded that the relevant policy language was not reasonably susceptible of [the] exact meaning [that Montrose proposed]" (Opn. at p. 25) – even though (a) none of the prior appellate authorities addressing the Qualified Pollution Exclusion ("QPE") had considered the extrinsic evidence that Montrose offered, and (b) this Court's subsequent cases approved the use of precisely that type of extrinsic evidence when construing insurance policy language.

This Court surely did not intend, by the use of "may" in *Another Planet*, to gut *PG&E* by turning the examination of extrinsic evidence into a discretionary exercise. 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*, 15 Cal.5th at 1145-48.

The Court of Appeal also attempted to justify its decision not to consider the 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 or inadmissible as tending to prove a meaning of which the language is not reasonably susceptible.'" Opn. at p. 23, citing *PG&E*, 69 Cal.2d at 39 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 the extrinsic evidence at all. To the contrary, the next sentence of that footnote, which the Court of Appeal omitted from its quotation, recommends that trial courts "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 30 fn. 7.

In short, the Court of Appeal's holding that neither the trial court nor it had any duty to look at the extrinsic evidence that Montrose offered is directly contrary to *PG&E* and to the scores of subsequent cases that applied the ruling in *PG&E*.

(B) *The ruling below threatens to gut Civil Code sections 1644 and 1645, which create an exception to the "plain meaning" ruling of contract interpretation for words that have a special meaning in the trade*.

Sections 1644 and 1645 of the Civil Code provide that a court should give a contract term a special or technical meaning if that is the meaning the parties intended. Typically, that special meaning is proven through extrinsic evidence. But under the Court of Appeal's reasoning, a court would have no obligation to consider extrinsic evidence to help interpret a contract term if the court has concluded that the term is unambiguous and cannot take the meaning that the party proposes.

To understand how the ruling below would apply, take a simple example. The plain meaning of "United Kingdom" is a country comprised of England, Scotland, Wales, and Northern Ireland. *Cambridge English Dictionary* (on line). "United Kingdom" does not include the Republic of Ireland (Eire), which is an independent country. Thus, if a party to a lawsuit were to ask a court to consider evidence that "United Kingdom" includes Eire, the court would reject the evidence out of hand under the authority of the Court of Appeal's decision below. But this Court accepted precisely that evidence and held that "United Kingdom" has a special meaning in the movie industry where it includes Eire. *Ermolieff v. R.K.O. Radio Pictures, Inc.* (1942) 19 Cal.2d 543, 550. As this Court explained, extrinsic 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*.

PG&E cited to *Ermolieff* with approval to endorse the use of extrinsic evidence to show that seemingly unambiguous contract language in fact has a special meaning through usage, giving many other similar examples (69 Cal.2d at 39 fn.6). Other cases to the same effect include *Wolf*, 114 Cal.App.4th at 661 ("gross receipts" in publishing), *Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1244-45 ("market value" in pipeline industry), and *Beneficial Fire & Casualty Insurance Co. v. Kurt Hitke & Co.* (1956) 46 Cal.2d 517, 525 ("earned commissions" and "earned premiums" in the insurance agency business).

The "special meaning" rule is directly applicable to the "sudden and accidental" exception to the qualified pollution exclusion, at issue in this appeal, and shows how the Court of Appeal's ruling extends far more broadly than the respondent insurers assert.

In 1966, the insurance industry adopted a new standard form comprehensive general liability insurance policy that provides express coverage for long-tail claims. A

few years later, after policyholders had experienced pollution claims, including claims arising from a "front page news" oil spill off the coast of Santa Barbara in 1969, the insurance industry commissioned its drafting organizations to prepare an exclusion that would place limits on coverage for environmental litigation. To that end, the drafters borrowed language from boiler and machinery policies (an early form of property insurance covering damage to boilers, turbines, and similar equipment), which covered loss to equipment resulting from a "sudden and accidental breakdown."[1] As courts construing the boiler and machinery policies had long recognized, the phrase "sudden and accidental" was a term that had a special meaning in the insurance industry, referring to an "unforeseen" or "unexpected" event, rather than an event that occurred abruptly.[2]

Thus, when the insurance policy drafting organizations debated and agreed upon exclusionary language, they borrowed from boiler and machinery policies, with their

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[1] The drafting history of the resulting qualified pollution exclusion is extensive. For a summary of that history, *see* 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* Petition, pp. 32-37; Christopher C. French, *Insurance Policies: The Grandparents of Contractual Black Holes* (2017) 67 Duke L.J. 40, 56-63; *Morton Int'l, Inc. v. General Acc. Ins. Co. of Am.* (N.J. 1993) 629 A.2d 831; *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 petition for review (at pp. 26-27, 40-43) describes and cites to the record for the extrinsic evidence that Montrose offered in the trial court.

[2] *See Couch on Insurance 2d* (1984), § 42:396 ("When coverage is limited to a sudden 'breaking' of machinery the word 'sudden' should be given its primary meaning as happening without previous notice, or as something coming or occurring unexpectedly, as unforeseen or unprepared for"); Salisbury, *supra*, 21 Envt'l L. Rev. at 379-382; *Alabama Plating Co. v. U.S. Fid. & Guar. Co.* (Ala. 1996) 690 So.2d 331, 336 & fn. 7 (citing cases); *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1189, 1193-95 (Pa. 2001) (citing to the special meaning in the industry, incorporated into to the qualified pollution exclusion).

special meaning of "sudden and accidental," to exclude 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."[3] The drafters' meeting minutes, contemporary insurance industry commentators, and the drafting organizations in their regulatory submissions all represented that this exclusion, the QPE, was intended as a *clarification* of coverage, not as a limitation on coverage. 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.[4]

Given the extensive evidence that "sudden and accidental" had a special meaning in the insurance industry when the QPE was drafted, this Court should grant review so that the lower courts and litigants can confirm that the rule in the cases cited above remains good law and that a party can offer extrinsic evidence to show that a contract term has a special meaning in the trade.

(C) *The insurance coverage issue presented below, the meaning of the QPE, presents an important question that amply warrants this Court's attention.*

With the increase in number and size of environmental claims after the adoption of state and federal environmental laws such as CERCLA in the 1970s and early 1980s, the insurance industry did an about-face and took the position that "sudden" in the QPE had a

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[3] *See* Salisbury, *supra*, 21 Envt'l L. Rev. at 361 fn.8, 368-69 & fn. 34. The 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 qualified pollution exclusion, the Insurance Rating Bureau and the Mutual Insurance Rating Bureau, merged in 1971. *Id*. at 361 fn. 8; *see generally Montrose Chem. Corp. of Cal. v. Admiral Ins. Co.* (1995) 10 Cal.4th 648, 671 & fn.13 (discussing the ISO).

[4] *See* Salisbury, *supra*, 21 Envt'l L. Rev. at 368-379.

temporal requirement: no coverage would be available, the industry said, unless the discharge, dispersal, release or escape of pollutants occurred abruptly. Insurance coverage litigation concerning the QPE ensued and continues to this day.[5]

When courts have addressed the QPE, their decisions have generally fallen into one of two camps:

- Courts that found that the term "sudden" is ambiguous and can refer to either unexpected or abrupt events, and then consulted extrinsic evidence such as the special meaning in the insurance industry, and the drafting history and regulatory filings to resolve the ambiguity, almost always ruling in favor of coverage (Pet. for Review, pp. 10-11); and
- Courts that concluded that "sudden" is unambiguous and necessarily refers to an "abrupt" event, thereby rendering extrinsic evidence irrelevant.[6]

The first California appellate decision to address the QPE, *Shell Oil Co. v. Winterthur Swiss Insurance Co.* (1992) 12 Cal.App.4th 715, 752-56, fell in the second camp, concluding that "sudden" is unambiguous and refers to a temporarily abrupt release of pollutants. Because the trial that led to the *Shell* appeal took place before any drafting history was developed, no one sought to go beyond the policy text.

In contrast, in the second California case, *ACL Technologies, Inc. v. Northbrook Property & Casualty Insurance Co.* (1993) 17 Cal.App.4th 1773, the policyholder offered some drafting history evidence to show that the exception to the QPE was latently

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[5] Although the insurance industry discontinued the QPE in the 1980s, many pending claims involve damage from polluting events occurring over many years, including years in which the QPE was a standard form exclusion, triggering insurance policies in effect during those years. *See Montrose*, 10 Cal.4th at 686-87.

[6] *See* Randy Maniloff and Jeffrey Stempel, *General Liability Insurance Coverage – Key Issues in Every State* (5th ed. 2021), ch. 14 (50-state survey of decisions construing the QPE).

ambiguous, but the appellate court refused to consider it. That court concluded that the QPE was facially unambiguous (*id.* at 1791) and that this Court's decision authorizing the consideration of extrinsic evidence even when contract language is facially unambiguous, *PG&E*, "has been criticized . . . ." *Id*. at 1793. Deciding (incorrectly) that the drafting history evidence would not show a special meaning, *ACL Technologies* declined to consider such evidence. *Id*. at 1791-94. Subsequent California decisions on the QPE that reject coverage have followed *ACL Technologies.*

The trial court in the present case concluded that it was compelled by this appellate precedent to opt for the second camp, notwithstanding post-*ACL Technologies* decisions approving the consideration of drafting history evidence and the longstanding California rule from *PG&E* that extrinsic evidence can be relevant to the interpretation of even facially unambiguous contract language. The Court of Appeal affirmed.

Review is amply warranted because the specific insurance coverage issue presented – whether the words "sudden and accidental" in the exception to the QPE have a special meaning in the insurance industry, as reflected in the drafting history, contemporaneous commentary, and contemporaneous regulatory filings, and are not limited to bodily injury or property damage arising from "abrupt" polluting events – is one that a score of state supreme courts has addressed and remains an issue of importance in numerous pending insurance coverage disputes in this State.

For all of these reasons, UP urges the Court to grant the Petition for Review.

Respectfully submitted,

/s/David B. Goodwin

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