Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 1/27/2022 at 8:47:07 AM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 1/27/2022 by Celia Wong, Deputy Clerk

S267746

IN THE SUPREME COURT OF CALIFORNIA

ALLIED PREMIER INSURANCE,
Respondent,

v.

UNITED FINANCIAL CASUALTY COMPANY,
Petitioner.

ON A CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE NO. 20-55099

REPLY BRIEF ON THE MERITS

HORVITZ & LEVY LLP
LISA PERROCHET (BAR NO. 132858)
*PEDER K. BATALDEN (BAR NO. 205054)
3601 WEST OLIVE AVENUE, 8TH FLOOR
BURBANK, CALIFORNIA 91505-4681
(818) 995-0800 • FAX: (844) 497-6592
lperrochet@horvitzlevy.com
pbatalden@horvitzlevy.com

PATRICK HOWE LAW APC
PATRICK M. HOWE (BAR NO. 154669)
402 WEST BROADWAY, SUITE 1025
SAN DIEGO, CALIFORNIA 92101-8508
(619) 398-3422 • FAX: (619) 452-2507
pat@patrickhowelaw.com

ATTORNEYS FOR PETITIONER
UNITED FINANCIAL CASUALTY COMPANY

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 3

INTRODUCTION 5

LEGAL ARGUMENT 6

I. The uncanceled certificate of insurance on file with the DMV did not extend United Financial's insurance coverage beyond the policy period. 6

A. Allied improperly equates two documents for which the Legislature, in the MCPPA, prescribed separate functions. 6

B. Allied improperly construes the MCPPA just as the repealed HCA would have been construed, failing to account for the Legislature's rewriting of key terms. 10

C. In relying on a DMV-required endorsement, Allied fails to account for features of the endorsement that show it creates a *surety* obligation, not *insurance* creating a basis for contribution to Allied's settlement payment. 14

D. This Court should not—as Allied does—disregard either the federal authorities that wrestle with the issues here or the Legislature's efforts to harmonize state and federal law. 17

II. Allied barely disputes the alternative approach, under which the surety obligation may outlast the policy's *cancellation*, but never its *expiration*. 19

III. Allied's claims against United Financial fail for independent reasons grounded in equity. 21

CONCLUSION 23

CERTIFICATE OF WORD COUNT 24

TABLE OF AUTHORITIES

Page(s)

Cases

Allied Premier Insurance v. United Financial Casualty Co.
(9th Cir. 2021) 991 F.3d 1070 9

Benson v. Workers' Comp. Appeals Bd.
(2009) 170 Cal.App.4th 1535 ..... 12, 13

Calfarm Ins. Co. v. Deukmejian
(1989) 48 Cal.3d 805 20

Carolina Cas. Ins. Co. v. Yeates
(10th Cir. 2009) 584 F.3d 868 18

DaFonte v. Up-Right, Inc.
(1992) 2 Cal.4th 593 8

Fireman's Fund Ins. Co. v. Allstate Ins. Co.
(1991) 234 Cal.App.3d 1154 ..... 12, 19, 22

Hartford Acc. & Indem. Co. v. Sentry Ins. Co.
(N.H. 1987) 536 A.2d 185 20

Haynes v. Farmers Ins. Exchange
(2004) 32 Cal.4th 1198 15

Morris v. Municipal Court
(1982) 32 Cal.3d 553 21

O'Brien v. Dudenhoeffer
(1993) 16 Cal.App.4th 327 13

Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.
(1978) 21 Cal.3d 650 13

People v. Ault
(2004) 33 Cal.4th 1250 22

People v. Canizales
(2019) 7 Cal.5th 591 21

In re Todd's Estate
(1941) 17 Cal.2d 270 13

Samson v. Transamerica Ins. Co.
(1981) 30 Cal.3d 220 ..... 15, 17

Transamerica Ins. Co. v. Tab Transportation, Inc.
(1995) 12 Cal.4th 389 ..... *passim*

Waters v. Miller
(11th Cir. 2009) 564 F.3d 1355 ..... 19, 20

Statutes

Vehicle Code, § 34630, subd. (b) 7

Florida Statues, § 320.02, subd. (5)(e) 20

Miscellaneous

9A Couch on Insurance (2021) § 132:54 15

REPLY BRIEF ON THE MERITS

INTRODUCTION

"Ordinarily, an insurance company incurs no liability for an accident that occurs after the policy period has ended." (*Transamerica Ins. Co. v. Tab Transportation, Inc.* (1995) 12 Cal.4th 389, 393–394 (*Transamerica*).) Here, Allied resists this uncontroversial principle and swings for the fences: "an insurance policy remains in full force and effect, *potentially indefinitely*, until properly canceled by the insurance company." (ABOM 6, emphasis added.) But that result is unsupported by the governing statute (the MCPPA), its legislative history, analogous federal precedent, or by common sense. All good things—even insurance coverage—must come to an end.

We begin with the common ground reflected in the parties' opening and answering briefs. Both Allied and United Financial understand how contribution works: multiple insurers who insure the same insured against the same risk at the same time share responsibility for indemnifying their insured (absent countervailing equitable considerations). (OBOM 18–19, 30–31, 38–39; ABOM 41–43, 50–51.) At the time of the accident, United Financial's stated policy period had expired, while Allied's had not. (OBOM 14–15, 19; see ABOM 50.) And the parties agree that Allied paid to settle the action against the insured, while United Financial did not. (OBOM 15; ABOM 50.) Together, these points mean that United Financial was *not* insuring the same risk as Allied—and thus need *not* contribute to Allied's settlement payment—*unless* United Financial's coverage obligation was

somehow extended beyond its policy period. Whether coverage was extended is the bone of contention here.

Allied's theory is that United Financial's insurance coverage was extended beyond its policy period—indeed, indefinitely—because it failed to cancel a certificate of insurance it had filed with the DMV. United Financial's opening brief itemized four significant flaws in that theory. Allied has not remedied those flaws in its answering brief. For the reasons set forth below, this Court should hold that an uncanceled certificate on file with the DMV does *not* extend insurance coverage past the expiration of the policy period.

LEGAL ARGUMENT

I. The uncanceled certificate of insurance on file with the DMV did not extend United Financial's insurance coverage beyond the policy period.

A. Allied improperly equates two documents for which the Legislature, in the MCPPA, prescribed separate functions.

The district court concluded that a trucker's insurance coverage under an expired policy persists until the insurer properly cancels all certificates of insurance on file with the DMV. (1 ER 13.) But as United Financial explained in its opening brief, that approach treats the certificate as a document conferring coverage, in effect conflating the certificate with the policy. (OBOM 20.) That doesn't make sense because the certificate and the policy are distinct documents serving distinct purposes in the statutory scheme. (OBOM 20–21.)

Allied's position shifts over the course of its brief. Initially, Allied conflates *three* documents—the policy, the certificate, and the endorsement—lumping them together as "a single thing." (ABOM 9; see ABOM 12 ["The Endorsement itself makes clear that it and the policy are one and the same"].) Allied goes so far as to claim that "[t]he policy and the COI are not separate documents." (ABOM 28.) Yet Allied elsewhere admits that a certificate "is not a policy"; instead, a certificate is "evidence of the policy." (ABOM 17.) Then Allied veers back to the notion that the certificate " 'shall provide coverage.' " (*Ibid.*) But of course that cannot be—only policies provide coverage, and Allied concedes the certificate "does not contain insuring language; instead, it refers to the actual policy." (ABOM 27.) This confusion pervades the brief. Although the statutory language requires insurers to cancel *certificates*, not policies (Veh. Code, § 34630, subd. (b)), Allied insists that United Financial "failed to properly cancel its insurance *policy*." (ABOM 7, emphasis added.)

Putting aside the inconsistency of Allied's briefing, we understand Allied to make three categories of arguments that warrant a response.

First, to bolster its conflation of the certificate and policy, Allied criticizes United Financial for treating them as "stand-alone documents." (ABOM 9, 25.) In fact, United Financial has never taken *that* position. We don't dispute the obvious connections between the certificate and the policy. And we have never claimed (as Allied avers) that they "exist independently of each other." (ABOM 9.) The documents contain cross-references

and are plainly related. But that is not to deny that each document plays a distinct role, the point that Allied seeks to obscure. United Financial's brief described the individual roles played by each document and explained their meaning in that context. (OBOM 11–13 [discussing DMV forms and functions].)

Second, Allied emphasizes certain aspects of the DMV's cancellation form, but they do not help Allied's cause. Allied notes that DMV Form 66 is entitled "Notice of Cancellation *of Insurance*," from which Allied infers that the cancellation must include the policy, not merely the certificate. (ABOM 8–9, emphasis added.) But Allied cites no authority allowing a court to construe a statutory scheme based on the title of an agency form. This Court is wary of relying on titles in construing *statutes*. (See *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 602 ["Title or chapter headings are unofficial and do not alter the explicit scope, meaning, or intent of a statute"].) Surely the title of a check-a-box *agency form* lacking legislative approval or ratification cannot control statutory meaning or parties' contractual obligations.

Allied goes on to cite the text of DMV Form 66 (ABOM 27), which refers to canceling the "policy, including applicable endorsement and certifications" (SER 81). According to Allied, this shows that a policy is not canceled unless the certificate is canceled as well, undermining United Financial's position that a certificate alone is (or need be) canceled. But Allied's argument proves far too much. If it were true that an insurer terminates its *policy* by filing a DMV Form 66 cancellation notice, then United

Financial wins this case hands down—it *did* properly file a cancellation notice at the end of its policy period, *prior to the accident*. (OBOM 14–15, citing SER 5, 81; see *Allied Premier Insurance v. United Financial Casualty Co*. (9th Cir. 2021) 991 F.3d 1070, 1072, fn. 1 ["Allied is relying on a technically defective Notice of Cancellation from November 5, 2013, notwithstanding the fact that it must have been fully apprised that United's insurance policy terminated on April 12, 2015, and that *the DMV accepted and processed United's final Notice of Cancellation*" (emphasis added)].)

Third, Allied offers two policy arguments. Allied asserts that our position "would create a loophole in the financial responsibility requirements." (ABOM 27.) Not so. If an uncanceled certificate remains on file, the insurer owes a surety-like obligation (via the endorsement) that will *protect the public*. (OBOM 25–29.) That obligation—which is the core goal of financial responsibility requirements—is *not* insurance (a point Allied misunderstands), but it *does* protect any victim of a motor carrier. The goal is not to protect subsequent insurers, like Allied, who collected premiums to assume the mantle of covering a risk previously falling under an expired policy. Relatedly, Allied says that if an insurance policy could lapse or expire without notice to the DMV, then the certificate "becomes a hollow document" that "provides nothing." (ABOM 28.) In other words, according to Allied, United Financial's position creates "no incentive" for insurers to timely cancel their certificates. (ABOM 8.) But as just explained, the endorsement creates a surety obligation until it is

properly canceled, so every insurer has an incentive to promptly comply with the cancellation rules. A mistaken failure to cancel means the surety obligation remains; it does not revive expired insurance coverage.

In sum, Allied has failed to muster support for its major premise that a certificate on file with the DMV is indistinguishable from an insurance policy issued to protect the insured.

B. Allied improperly construes the MCPPA just as the repealed HCA would have been construed, failing to account for the Legislature's rewriting of key terms.

Much of Allied's brief is devoted to this Court's decision in *Transamerica*, which interpreted the now-repealed HCA in factually similar circumstances. As United Financial's opening brief explained, however, the Legislature replaced the HCA with the MCPPA and modified key provisions of the statutory scheme. (OBOM 20–24.) Those modifications compel a result in this case that is different from that in *Transamerica*.

Allied concedes "the MCPPA differs from the HCA in form" (ABOM 7), but says the Legislature's new "language is a distinction without a difference" (ABOM 19). Allied therefore argues that case law interpreting the HCA, like *Transamerica*, should be followed uncritically today. None of Allied's four arguments for construing the MCPPA and the HCA identically are persuasive.

First, Allied downplays the statutory changes, arguing the Legislature modified the HCA only "to respond to a federal regulation" that doesn't touch the dispute about canceling

certificates here. (ABOM 8, 14–15.) But the fact the Legislature had one purpose does not disprove it had another. Allied's own brief shows that the Legislature's purpose was much broader than Allied admits:

> "This bill would restructure the state's regulatory authority over highway carriers of property and passengers operating within California to reflect the preemptions enacted in federal law *and would make additional changes related to the transfer of remaining state regulatory powers among various state agencies*."

(ABOM 14–15, emphasis added [citing legislative history].) The "additional changes" accompanying the regulatory transfer (from the PUC to the DMV) help to explain the Legislature's shift from canceling policies to canceling certificates. (See OBOM 20–21.)

Second, Allied maintains there's no legislative history implying an intent to change the meaning of the financial responsibility provisions. (ABOM 15.) That overlooks how legislative drafters replaced references in the HCA to " 'a policy of insurance' " with references in the MCPPA to a " 'certificate of insurance.' " (OBOM 22–23.) Indeed, Allied later admits that the HCA placed limits on canceling a *policy*, while the MCPPA shifted ground to place limits on canceling the *certificate*. (ABOM 20.) In keeping with this legislative shift in focus, Allied must also concede that, under the HCA, an insurer had to submit its policy to the PUC, while an insurer now need not submit its policy to the DMV (unless asked) under the MCPPA. (ABOM 20–21.) That is strong evidence of the Legislature's intent to change

the status quo to emphasize the filing and cancellation of certificates over the filing and cancellation of insurance policies.

Third, Allied suggests the Legislature had to speak more clearly if it intended to permit a policy to terminate without notice to the DMV. (ABOM 18.) Allied has it backwards. The ordinary rule, as this Court has recognized, is that insurance coverage terminates when the policy period ends. (*Ante*, p. 3, quoting *Transamerica, supra*, Cal.4th at pp. 393–394.) Deviating from that default rule, to extend coverage beyond the policy period, would require a clear indication from the Legislature. But adhering to the default rule (as here) should not require a special statement.

Fourth, Allied suggests the Legislature would have mentioned *Transamerica* or *Fireman's Fund Ins. Co. v. Allstate Ins. Co.* (1991) 234 Cal.App.3d 1154 (*Fireman's Fund*) when it enacted the MCPPA if it had intended to change existing law and undermine those decisions. (ABOM 29, 48–49.) The Legislature is certainly free to criticize judicial decisions it disfavors, and Allied offers one such example. (ABOM 49 [noting the Legislature "sometimes" mentions a case it seeks to negate if it is "unhappy with the way California courts interpreted" language that was insufficiently clear].) But Allied cites no authority *requiring* the Legislature to catalog the judicial decisions it displaces—at a cost of failing to accomplish the change that its plainly amended language would otherwise direct.

Principles of statutory construction refute Allied's position. (See *Benson v. Workers' Comp. Appeals Bd.* (2009) 170

Cal.App.4th 1535, 1557 (*Benson*) ["[W]e are not convinced that the absence of reference to *Wilkinson* by name in either the statutory language or the legislative history compels its survival. The Legislature may have on occasion explicitly mentioned certain judicial decisions it sought to overrule. [Citations.] But Benson cites no legal authority compelling the Legislature to do so," citing *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659].) This Court infers a change in meaning from a change in language as part of its healthy respect for a coordinate branch of government: " 'any essential change in the phraseology of a statutory provision would indicate an intention on the part of the legislature to change the meaning of such provision rather than to interpret it.' " (*In re Todd's Estate* (1941) 17 Cal.2d 270, 274–275 [construing sections of the Probate Code that were mapped over from the Civil Code, then changed in part].)

In other words, rather than flyspecking legislative history for a list of "disliked" judicial decisions (as Allied would apparently favor), courts assume that when (as here) the Legislature changes statutory language *after* a court has construed it, the Legislature intended to change the meaning. (See *Benson*, *supra*, 170 Cal.App.4th at pp. 1550, 1557; *O'Brien v. Dudenhoeffer* (1993) 16 Cal.App.4th 327, 335 ["An amendment materially changing a statute following a court decision interpreting the statute in its original form is to be regarded as an indication of legislative intent to change the meaning of the

law. . . . We must reject an interpretation of the statute which would leave the prior judicial construction in effect."].)

For these reasons, the Legislature's transition from the HCA to the MCPPA favors United Financial's position and blocks Allied from resting on this Court's decision in *Transamerica*.

C. In relying on a DMV-required endorsement, Allied fails to account for features of the endorsement that show it creates a *surety* obligation, not *insurance* creating a basis for contribution to Allied's settlement payment.

We have discussed the role of the policy and the certificate above. The remaining element is the endorsement set forth on DMV Form 67. The MCPPA does not mention an endorsement, as Allied admits. (ABOM 34.) An endorsement is required by the certificate and the DMV's implementing regulation. (See *ibid.*)

United Financial's opening brief explained that the endorsement does not furnish liability insurance coverage like that provided by the policy. Under the endorsement, the insurer need not defend its motor carrier, it need only pay a judgment against him (his "legal liability"), and any such payments to third parties may be recouped from the motor carrier. (OBOM 25–26.) Allied thinks this endorsement is just more insurance—an indefinite extension of the policy period, even after the policy expires, until all certificates are canceled. But United Financial has explained that the endorsement creates a different form of obligation—a suretyship—designed to compensate the public for harm, not to indemnify the insured motor carrier for liability.

Allied strenuously disagrees. Its objections can be grouped into three categories. None has merit.

First, Allied aims to show that the endorsement must supply insurance coverage because the endorsement is "an inseparable part of the underlying policy." (ABOM 25.) The endorsement is both " 'attached to' " and " 'made a part of' " the policy. (*Ibid.*, citing *Samson v. Transamerica Ins. Co.* (1981) 30 Cal.3d 220, 230–231 (*Samson*).) And Allied says the endorsement could not "survive on its own without a policy." (*Ibid.*)

Yet incorporating an endorsement into an insurance policy does not mean the endorsement provides *coverage*, or even that the endorsement concerns *insurance*. Allied's unstated premise is that endorsements necessarily address insurance. Allied cites no authority for that premise, however, and we have gathered contrary authority. (OBOM 27–28 [collecting federal cases explaining that a motor carrier endorsement does *not* provide insurance]; see generally 9A Couch on Insurance (2021) § 132:54, fn. 4 ["The MCS-90 endorsement to a motor carrier's liability policy is intended to impose a surety obligation on the motor carrier's insurer"].) In other words, while endorsements can modify insurance coverage, that is not their only role. (Cf. *Haynes v. Farmers Ins. Exchange* (2004) 32 Cal.4th 1198, 1208 [referring to non-insurance components of an endorsement—"surround[ing] language that has nothing to do with exclusions or limitations on coverage"].)

Second, Allied points out that insurance coverage can be required by statutes, whose terms become incorporated into

insurance policies. (ABOM 25.) But no statute requires indefinitely extending the coverage Allied seeks, nor does any statute require the endorsement here; the MCPPA does not mention it. Moreover, Allied's point simply begs the question (presented by this case) whether the endorsement supplies insurance coverage or a different form of obligation.

Third, Allied fears that accepting the characterization of the endorsement as creating a suretyship would "destroy[ ]" the statutory purpose of motor carriers maintaining financial responsibility (ABOM 8), and "undermine the Endorsement" itself (ABOM 34). "[T]he entire system of financial responsibility for motor carriers used in California for decades would be eviscerated." (ABOM 43.)

This hyperbole is unwarranted. The objective of a system of financial responsibility is to create a " 'safety net to protect the public,' " meaning third parties injured by motor carriers who lack insurance coverage. (OBOM 29.) United Financial's position maintains that public safety net by obligating an insurer to act as a surety and pay a judgment against a motor carrier (unless it cancels its certificates on file with the DMV). The public is no less protected when one insurer's policy expires and another insurer's replacement policy takes effect (as here).

If protecting the public were the *only* objective, the Legislature would not allow insurers to have policy periods, or to cancel any of their obligations. The Legislature would have crafted a different scheme that pursued public safety to its logical endpoint no matter the cost. But the Legislature did not do that.

The MCPPA reflects a natural balance between the demands of public safety and the need for insurers to predict and price risks. In other words, the very fact the Legislature and the DMV have allowed for cancellation defeats Allied's most heated rhetoric.

D. This Court should not—as Allied does—disregard either the federal authorities that wrestle with the issues here or the Legislature's efforts to harmonize state and federal law.

In explaining the role of the endorsement here, United Financial drew upon a body of federal cases (as well as other authorities) construing a similar federal motor carrier endorsement. (OBOM 26–29.) Allied resists any analogy to this body of law, but its grounds are unconvincing.

Allied tries to distinguish the federal MCS-90 endorsement (and cases interpreting it) because it is "attached" to an insurance policy, while a DMV Form 67 endorsement is "made a part of" the policy. (ABOM 36.) This Court rejected that approach in *Transamerica* by defining "attached to" as "incorporate[d] . . . into the policy." (*Transamerica*, *supra*, 12 Cal.4th at p. 394, citing *Samson*, *supra*, 30 Cal.3d at p. 231.) And Allied overlooks the fact that the DMV Form 67 endorsement must *also* be "attached to" the policy. (See SER 75 ["This Endorsement shall be attached to and made a part of all policies"].) This effort to distinguish the federal and state endorsements is doomed.

Allied advances one more purported distinction. It argues that the federal regulatory scheme differs from the MCPPA as shown by the fact that, under federal law (unlike state law), it's impossible for two insurance policies to "exist at the same time

covering the same insured for the same liability." (ABOM 37.) That is simply not the case, as shown by the leading federal decision, *Carolina Cas. Ins. Co. v. Yeates* (10th Cir. 2009) 584 F.3d 868, 881 ["The MCS–90 endorsement comes into play, then, only where . . . *the carrier's other insurance coverage* is either insufficient . . . or is non-existent" (emphasis added)], 884 [" '[federal] regulations do not alter or affect the obligations between the insured and the insurer, or *where there is more than one insurer*, the apportionment of liability between them' " (emphasis added)], 885 ["the endorsement may be implicated . . . where *all the motor carrier's insurance policies providing coverage for a specific accident* have policy limits, in aggregate, which are set too low" (emphasis added)], 886 ["the MCS–90 endorsement here is not triggered [because] *there is another insurance policy*, the State Farm policy, available to satisfy a liability judgment against Bingham Livestock" (additional emphasis added)].)

Allied promotes a regime in which California and federal courts would respond differently to a similar problem. (See ABOM 36–37.) That doesn't make sense and is bad policy. Allied makes no attempt to argue it would be *good* policy. Allied simply grasps at any semantic difference to avoid the obvious analogy to parallel federal law. Yet it is difficult to imagine the Legislature intending to diverge from the federal approach. After all, as Allied must concede (see ABOM 8), the Legislature is attentive to federal law in this area—it repealed the HCA and enacted the MCPPA in part to maintain harmony with new federal regulations. In sum, this Court should aim to find common

ground with the federal cases, not look for semantic or makeweight distinctions.

II. Allied barely disputes the alternative approach, under which the surety obligation may outlast the policy's *cancellation*, but never its *expiration*.

In its opening brief, United Financial proffered another way to harmonize the statutory scheme and DMV Forms that also complies with the holding of *Fireman's Fund, supra*, 234 Cal.App.3d 1154 and similar case law from other jurisdictions. (OBOM 31–38.) In brief, we explained that the surety-like obligation imposed by the endorsement may persist after an insurance policy is *canceled* (meaning it is terminated early), but not after the policy *expires*, since the endorsement provisions for terminating the *policy* apply equally to terminating the *endorsement*. (OBOM 31–33.)

Allied does not engage with the logic of this alternative approach. Instead, Allied quibbles with the approach at its margins by criticizing certain authorities that United Financial has cited. (ABOM 44–48.) Those criticisms are misplaced.

First, Allied disputes any analogy to *Waters v. Miller* (11th Cir. 2009) 564 F.3d 1355. In that case, as United Financial has explained (OBOM 34), the Eleventh Circuit properly distinguished *cancellation* from *expiration* in roughly the same factual scenario presented here. A Florida law providing that a trucker's "policy 'may not be canceled on less than 30 days' written notice' " did not cause coverage to persist when the insurer neglected to cancel the policy; instead all of the insurer's

obligations "*expire*[*d*] because of non-renewal by the insured." (*Waters*, at p. 1357, quoting Fla. Stat., § 320.02, subd. (5)(e).)

Allied does not dispute the factual similarity to *Waters*. United Financial's policy here had *expired* when the accident occurred, yet Allied seeks to establish coverage under a statute addressing *cancellation*. Allied insists that *Waters* should not be followed because a Florida statute "expressly distinguishes cancellations from non-renewals." (ABOM 45.) But California law is the same. Statutes in the Insurance Code define cancellation and expiration (and non-renewal) mutually exclusively, and this Court has applied them in that way. (OBOM 21, fn. 1, citing *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 826, fn. 19.) Because Allied's effort to distinguish Florida law crumbles, this Court should find *Waters* persuasive.

Second, Allied dredges up various factual dissimilarities between the New Hampshire Supreme Court's decision in *Hartford Acc. & Indem. Co. v. Sentry Ins. Co.* (N.H. 1987) 536 A.2d 185 and our case. (ABOM 46–47.) Allied is right. The cases are not on all fours. In fact, United Financial has never claimed otherwise. What is instructive about the case is its careful distinction between cancellation and non-renewal (see OBOM 34–35), the same distinction drawn in our state's Insurance Code.

Finally, Allied notes that Justice Baxter's dissenting opinion for three Justices in *Transamerica* is "not binding precedent." (ABOM 47.) True enough. Our point in referring this Court to Justice Baxter's opinion was to illustrate how applying the time-honored distinction between cancellation and expiration

should lead to a different outcome here than in *Transamerica*. And since *Transamerica* construed a now-repealed statutory scheme, this Court is liberated to consider the wisdom of Justice Baxter's views as it reviews the new MCPPA provisions. (OBOM 35–36.) Dissenters are not always wrong. (See, e.g., *People v. Canizales* (2019) 7 Cal.5th 591, 606 ["Justice Werdegar's dissenting opinion in *Smith* thus provides a helpful basis for a clear and workable test"]; *Morris v. Municipal Court* (1982) 32 Cal.3d 553, 559, fn. 5 ["Time has proven the dissent correct"].)

Because there is no indication in the MCPPA that the Legislature intended to impose perpetual obligations after a policy expires according to its terms, this Court may decide that United Financial owed no obligation of any kind once its policy expired—uncanceled certificate or not.

III. Allied's claims against United Financial fail for independent reasons grounded in equity.

In the opening brief, United Financial showed that Allied's claims fail as a matter of law even if (as Allied contends) both insurers provided primary insurance coverage at the time of accident. (OBOM 38–41.)

Allied's brief does not mention its subrogation and declaratory relief claims, tacitly conceding that they fail.

Allied does mention its contribution claim. Allied disagrees that ordering contribution would be inequitable (ABOM 51), yet Allied supplies no analysis. It does not address our points that equity counsels against contribution because (a) the accident occurred during Allied's policy period (not United Financial's

policy period); (b) Allied received a premium to cover the risk (United Financial did not); and (c) as the Ninth Circuit observed, Allied seeks a windfall because United Financial had canceled the *last* certificate of insurance it filed for Porras. (OBOM 39.)

Allied says simply that contribution cannot be inequitable if the courts in *Transamerica* and *Fireman's Fund* ruled against insurers given their minimal burden in canceling certificates. (ABOM 51.) But *Transamerica* offers no guidance on this score because it was not a contribution case among insurers; there, an insured motor carrier and its insurer had sued each other directly over coverage and indemnity rights. (*Transamerica*, *supra*, 12 Cal.4th at p. 396.) *Fireman's Fund* was at least an action involving multiple insurers. But it doesn't mention the terms "contribution" or "equity," and it contains no analysis of the type United Financial offers here in arguing that Allied's position fails as a matter of law. (See *Fireman's Fund*, *supra*.) "It is axiomatic that cases are not authority for propositions not considered." (*People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.)

In sum, Allied has not responded to our core points. This Court should indicate to the Ninth Circuit that United Financial is legally entitled to prevail in this action independent of the certified question.

CONCLUSION

Insurance coverage under a commercial trucker's insurance policy expires on its own terms and does *not* persist indefinitely until the insurer cancels the corresponding certificate of insurance it filed with the DMV. This Court should answer the Ninth Circuit's certified question in the negative.

January 27, 2022

HORVITZ & LEVY LLP
LISA PERROCHET
PEDER K. BATALDEN
PATRICK HOWE LAW APC
PATRICK M. HOWE

By:

Peder K. Batalden

Attorneys for Petitioner
United Financial Casualty Company

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(c)(1).)

The text of this brief consists of 4,506 words as counted by the program used to generate the brief.

Dated: January 27, 2022

PROOF OF SERVICE

Allied Premier Ins. v. United Financial Casualty Co.
Case No. S267746

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On January 27, 2022, I served true copies of the following document(s) described as **REPLY BRIEF ON THE MERITS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

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

Executed on January 27, 2022, at Burbank, California.

Emma Henderson

Emma Henderson

SERVICE LIST
Allied Premier Ins. v. United Financial Casualty Co.
Case No. S267746

Hillary Arrow Booth
Booth LLP
11835 West Olympic Boulevard
Suite 600E
Los Angeles, CA 90064
hbooth@boothllp.com

Counsel for Respondent
Allied Premier Insurance

Via TrueFiling

Patrick M. Howe
Patrick Howe Law, APC
402 West Broadway
Suite 1025
San Diego, CA 92101
pat@patrickhowelaw.com

Counsel for Petitioner
United Financial Casualty Company

Via TrueFiling

Hon. Jesus G. Bernal
3470 Twelfth Street
Courtroom 1
Riverside, CA 92501-3000

Trial Judge
Case No.: 5:18-cv-00088-JGB-KK

Via U.S. Mail

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 1/27/2022 by Celia Wong, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **ALLIED PREMIER INSURANCE v. UNITED FINANCIAL CASUALTY COMPANY**
Case Number: **S267746**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **pbatalden@horvitzlevy.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Reply Brief on the Merits - Allied Premier Insurance v. UFCC

Service Recipients:

Person Served	Email Address	Type	Date / Time
Emma Henderson Horvitz & Levy LLP	ehenderson@horvitzlevy.com	e-Serve	1/27/2022 8:47:07 AM
Peder Batalden Horvitz & Levy LLP 205054	pbatalden@horvitzlevy.com	e-Serve	1/27/2022 8:47:07 AM
Patrick Howe Patrick Howe Law, APC 154669	pat@patrickhowelaw.com	e-Serve	1/27/2022 8:47:07 AM
Donna Eifert Booth LLP 125936	deifert@boothllp.com	e-Serve	1/27/2022 8:47:07 AM
Hillary Booth Booth LLP 125936	hbooth@boothllp.com	e-Serve	1/27/2022 8:47:07 AM
Lisa Perrochet Horvitz & Levy LLP 132858	lperrochet@horvitzlevy.com	e-Serve	1/27/2022 8:47:07 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

1/27/2022
Date

/s/Peder Batalden
Signature

Batalden, Peder (205054)

Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm