

JUN 30 2014

No. S211645

Frank A. McGuire Clerk

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA Deputy

HARTFORD CASUALTY INSURANCE COMPANY,

Defendant, Cross-Complainant, and Appellant

v.

J.R. MARKETING, LLC, JANE A. RATTO, ROBERT E. RATTO,
PENELOPE A. KANE, LENORE DEMARTINIS, GERMAIN
DEMARTINIS, SCOTT HARRINGTON,
SQUIRE SANDERS (US) LLP,

Plaintiffs, Cross-Defendants, and Respondents.

After A Decision By The Court Of Appeal, First Appellate District,
Division Three, No. A133750
San Francisco County Superior Court, No. CGC-06449220,
The Honorable Ronald E. Quidachay; The Honorable Loretta Giorgi;
The Honorable Lynn O'Malley-Taylor

**SQUIRE PATTON BOGGS (US) LLP'S MOTION FOR
JUDICIAL NOTICE**

MARK C. DOSKER (114789)
MICHELLE M. FULL (240973)
Michelle.Full@squirepb.com
275 Battery Street, Suite 2600
San Francisco, California 94111
Tel: (415) 954-0200
Facsimile: (415) 393-9887

THEODORE J. BOUTROUS, JR. (132099)
*JULIAN W. POON (219843)
J.Poon@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Ave.
Los Angeles, California 90071-3197
Tel: (213) 229-7000
Fax: (213) 229-7520

Attorneys for Cross-Defendant and Respondent

SQUIRE PATTON BOGGS (US) LLP

MOTION

Pursuant to Evidence Code sections 459 and 452 and rule 8.252(a) of the California Rules of Court, Respondent Squire Patton Boggs (US) LLP respectfully requests that this Court take judicial notice of the Notice of Appeal attached as Exhibit A to the Declaration of Julian W. Poon submitted herewith.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

The Notice of Appeal is a record of the trial court that is relevant to this appeal. Because the Notice of Appeal was filed on May 21, 2014—long after this Court granted review—neither party sought judicial notice of the Notice of Appeal before the Court of Appeal. Judicial notice of the Notice of Appeal is therefore appropriate.

DATED: June 30, 2014

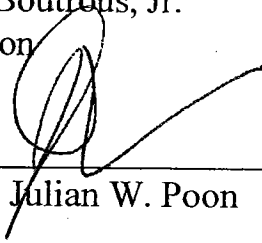
Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

Theodore J. Boutros, Jr.

Julian W. Poon

By: _____


Julian W. Poon

Attorneys for Cross-Defendant and
Respondent

SQUIRE PATTON BOGGS (US) LLP

MEMORANDUM OF POINTS AND AUTHORITIES

Under Evidence Code 452, subdivision (d), this Court may take judicial notice of “[r]ecords of . . . any court of this state.” (Evid. Code, § 452(d); see also Evid. Code, § 459(a) [“The reviewing court may take judicial notice of any matter specified in Section 452.”].)

Exhibit A to the attached Declaration of Julian W. Poon is the Notice of Appeal filed in the trial court in this action on May 21, 2014. As such, it is a record of that court and is judicially noticeable under Evidence Code section 452. (See, e.g., *In re J.P.* (2009) 170 Cal.App.4th 1292, 1295 [taking judicial notice, under Evidence Code section 452, “of the reporter’s transcript of [a] hearing”]; *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 961 [taking judicial notice of court docket]; *Hills Transp. Co. v. Southwest Forest Industries, Inc.* (1968) 266 Cal.App.2d 702, 710 [“a court may take judicial notice of all pleadings in a particular case”].) Appellant Hartford Casualty Insurance Company has repeatedly called this Court’s attention to the trial court’s reimbursement ruling. (See, e.g., Reply Br. at p. 4; Supplemental Mot. for Judicial Notice, Ex. A.) The fact that that decision is now being separately appealed, as evidenced by the Notice of Appeal, is thus relevant to this appeal.

Because the Notice of Appeal was filed on May 21, 2014—long after this Court granted review—neither party sought judicial notice of the Notice of Appeal before the Court of Appeal. Squire Sanders therefore respectfully requests that the Court take judicial notice of Exhibit A to the attached Declaration of Julian W. Poon.

DATED: June 30, 2014

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutrous, Jr.
Julian W. Poon

By: _____


Julian W. Poon

Attorneys for Cross-Defendant and
Respondent
SQUIRE PATTON BOGGS (US) LLP

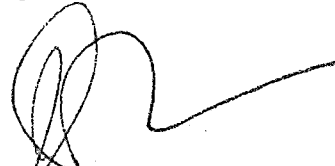
DECLARATION OF JULIAN W. POON

1. I am an attorney duly licensed to practice law in the State of California and a partner in the law firm of Gibson, Dunn & Crutcher LLP, attorneys for Squire Patton Boggs (US) LLP in the above-captioned action. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto. I make this declaration in support of Respondent's Motion for Judicial Notice.

2. Attached hereto as Exhibit A is a true and correct copy of the Notice of Appeal filed in the trial court in *J.R. Marketing, LLC, et al. v. Hartford Casualty Insurance Co., et al.*, No. CGC06449220, on May 21, 2014.

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

Executed June 27, 2014 at Los Angeles, California.



Julian W. Poon

EXHIBIT A

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SQUIRE SANDERS (US) LLP
Aneca E. Lasley (Admitted *Pro Hac Vice*)
E-mail: aneca.lasley@squiresanders.com
Michelle M. Full (State Bar No. 240973)
E-mail: michelle.full@squiresanders.com
275 Battery Street, Suite 2600
San Francisco, California 94111
Telephone: +1.415.954.0200
Facsimile: +1.415.393.9887

Attorneys for Plaintiff and Cross-Defendant
PENELOPE A. KANE

**ENDORSED
FILED**
San Francisco County Superior Court

MAY 21 2014

CLERK OF THE COURT
By: J. KONG
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

J.R. MARKETING, LLC, et al.

Plaintiffs,

vs.

HARTFORD CASUALTY INSURANCE
COMPANY, et al.

Defendants.

Case No. CGC 06449220

**PLAINTIFF AND CROSS-DEFENDANT
PENELOPE KANE'S NOTICE OF
APPEAL**

Date Action Filed: February 3, 2006
Trial Date (Phase II): February 28, 2013

HARTFORD CASUALTY INSURANCE
COMPANY,

Cross-Complainant,

vs.

J.R. MARKETING, LLC, et al.

Cross-Defendants.

Hon. Judge Lynn O'Malley Taylor
Dept: 611

1 TO THE COURT, CLERK OF THE COURT, AND ALL PARTIES AND THEIR
2 ATTORNEYS OF RECORD HEREIN, PLEASE TAKE NOTICE:

3 Plaintiff and Cross-Defendant Penelope A. Kane ("Kane") hereby appeals from the
4 Judgment After Trial in favor of Hartford on its reimbursement claim, including prejudgment
5 interest, entered by the San Francisco Superior Court on March 7, 2014, and all prior
6 interlocutory or non-final orders in, or made a part of the record of, this case (pre-trial, during
7 trial, or after trial) rendered final and appealable by the March 7, 2014 Order and Judgment.

8 Kane also appeals from the Order Denying Motions for Judgment Notwithstanding the
9 Verdict or, In the Alternative, New Trial and Denying as Moot Squire Sanders' Motion to Be
10 Relieved As Counsel entered by the San Francisco Superior Court on May 6, 2014, and all orders
11 and rulings necessarily encompassed or rendered final in the May 6 order.

12 Kane also appeals from the Order Denying Plaintiffs' Motion to Tax Costs and Granting
13 Defendant Reimbursement of Court Reporter Fees entered by the San Francisco Superior Court
14 on May 8, 2014, and all orders and rulings necessarily encompassed or rendered final in the May
15 8 order.

16
17 Dated: May 21, 2014

Respectfully Submitted,

18 SQUIRE SANDERS (US) LLP

19
20 By: 

21 Aneca E. Lasley
22 Michelle M. Full

23 Attorneys for Plaintiff and Cross-Defendant
24 PENELOPE A. KANE
25
26
27
28

1 **J.R. Marketing, LLC, et al. v. Hartford Casualty Insurance Company, et al.**
2 **San Francisco Superior Court, Case No. CGC 06449220**

3 **PROOF OF SERVICE BY MAIL**

4 I am a citizen of the United States and employed in San Francisco County, California. I
5 am over the age of eighteen years and not a party to the within-entitled action. My business
6 address is 275 Battery Street, Suite 2600, San Francisco, California 94111. I am readily familiar
7 with this firm's practice for collection and processing of correspondence for mailing with the
8 United States Postal Service.

9 On May 21, 2014, I placed with this firm at the above address for deposit with the United
10 States Postal Service a true and correct copy of the within document(s):

11 **PLAINTIFF AND CROSS-DEFENDANT PENELOPE**
12 **KANE'S NOTICE OF APPEAL**


13 in a sealed envelope, postage fully paid, addressed as follows:

14 **SEE ATTACHED SERVICE LIST**

15
16 Following ordinary business practices, the envelope was sealed and placed for collection
17 and mailing on this date, and would, in the ordinary course of business, be deposited with the
18 United States Postal Service on this date.

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

21 Executed on May 21, 2014, at San Francisco, California.

22 

23

Regina Abdul-Rahim

1 SERVICE LIST

2
3 Ira G. Greenberg, Esq. (*admitted pro hac vice*)
4 EDWARDS WILDMAN PALMER LLP
5 750 Lexington Avenue, 8th Floor
6 New York, NY 10022
7 Tel: (212) 912-2756
8 Fax: (212) 308-4844
9 E-mail: igreenberg@edwardswildman.com

Co-Counsel for Defendant
HARTFORD CASUALTY INSURANCE
COMPANY

8 Clinton J. McCord, Esq.
9 Erin L. Pfaff, Esq.
10 EDWARDS WILDMAN PALMER LLP
11 1901 Avenue of the Stars, Suite 1700
12 Los Angeles, CA 90067
13 Tel: (310) 860-8700
14 Fax: (310) 860-3800
15 E-mail: cmccord@edwardswildman.com
16 epfaff@edwardswildman.com

Co-Counsel for Defendant
HARTFORD CASUALTY INSURANCE
COMPANY

13 J. Timothy Nardell, Esq.
14 Nardell Chitsaz & Associates LLP
15 790 Mission Avenue
16 San Rafael, CA 94901
17 Tel: (415) 485-2200
18 Fax: (415) 457-1420
19 E-mail: tim@ncalegal.com

Attorneys for Plaintiffs and Cross-
Defendants
JANE E. RATTO, ROBERT E. RATTO and
PENELOPE KANE

18 Christopher D. Sullivan, Esq.
19 Kenneth A. Brunetti, Esq.
20 Greenfield Sullivan Draa & Harrington LLP
21 150 California Street, Suite 2200
22 San Francisco, CA 94111
23 Tel: (415) 283-1776
24 Fax: (415) 283-1777
25 Email: CSullivan@greenfieldsullivan.com

Plaintiffs and Cross-Defendants
J.R. Marketing, LLC, JANE E. RATTO and
ROBERT E. RATTO

No. S211645

**IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA**

HARTFORD CASUALTY INSURANCE COMPANY,

Defendant, Cross-Complainant, and Appellant

v.

J.R. MARKETING, LLC, JANE A. RATTO, ROBERT E. RATTO,
PENELOPE A. KANE, LENORE DEMARTINIS, GERMAIN
DEMARTINIS, SCOTT HARRINGTON,
SQUIRE SANDERS (US) LLP,

Plaintiffs, Cross-Defendants, and Respondents.

After A Decision By The Court Of Appeal, First Appellate District,
Division Three, No. A133750
San Francisco County Superior Court, No. CGC-06449220,
The Honorable Ronald E. Quidachay; The Honorable Loretta Giorgi;
The Honorable Lynn O'Malley-Taylor

**[PROPOSED] ORDER GRANTING SQUIRE PATTON BOGGS
(US) LLP'S MOTION FOR JUDICIAL NOTICE**

MARK C. DOSKER (114789)
MICHELLE M. FULL (240973)
Michelle.Full@squirepb.com
275 Battery Street, Suite 2600
San Francisco, California 94111
Tel: (415) 954-0200
Facsimile: (415) 393-9887

THEODORE J. BOUTROUS, JR. (132099)
*JULIAN W. POON (219843)
JPoon@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Ave.
Los Angeles, California 90071-3197
Tel: (213) 229-7000
Fax: (213) 229-7520

Attorneys for Cross-Defendant and Respondent

SQUIRE PATTON BOGGS (US) LLP

CERTIFICATE OF SERVICE

I, Carol Dickerson, hereby certify as follows:

I am employed in the City and County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105; I am employed in the office of Julian W. Poon of Gibson, Dunn & Crutcher LLP a member of the bar of this Court, and at his direction I caused **SQUIRE PATTON BOGGS (US) LLP'S MOTION FOR JUDICIAL NOTICE AND [PROPOSED] ORDER** to be served on the interested parties in this action (listed below) by:

SERVICE BY MAIL: On June 30, 2014, I placed a true copy of the above documents in a box and addressed it to the addressee(s) listed below. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business:

**David M. Axelrad
Emily V. Cuatto
Horvitz & Levy LLP
15760 Ventura Blvd., 18th Floor
Encino, CA 91436**

*Attorneys for
Defendant/Appellant,
Hartford Casualty
Insurance Company*

**Catherine L. Rivard
Mendes & Mount LLP
601 S. Figueroa St., Suite 4676
Los Angeles, CA 90071**

**Ira G. Greenberg
Edwards Wildman Palmer LLP
750 Lexington Avenue – 8th Floor
New York, NY 10022**

Steven W. Murray
Attorney at Law
14930 Ventura Boulevard, Suite 205
Sherman Oaks, CA

*Attorneys for Amicus
Curiae Steven W.
Murray, APC*

Raymond Earl Brown
Aguilera Law Group
695 Town Center Drive
Costa Mesa, CA

*Attorneys for Amici
Curiae Complex
Insurance Claims
Litigation Association
and American
Insurance Association*

Thomas Frederick Newmeyer
Newmeyer & Dillon, LLP
895 Dove Street, 5th Floor
Newport Beach, CA

*Attorneys for Amicus
Curiae California
Building Industry
Association*

Kelby Van Patten
Payne & Fears
4 Park Plaza, #1100
Irvine, CA

*Attorneys for Amicus
Curiae Centex Homes*

Gerald M. Serlin
Benedon & Serlin
21700 Oxnard Street, Suite 1290
Woodland Hills, CA

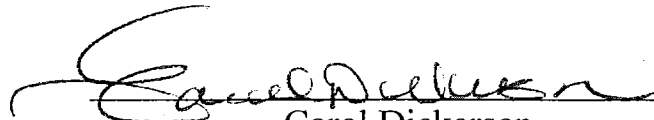
*Attorneys for Amicus
Curiae California
Insureds Counsel*

John Michael Wilson
Latham & Watkins
600 West Broadway Suite 1800
San Diego, CA

*Attorneys for Amicus
Curiae Montrose
Chemical Corporation
of California*

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed on recycled paper.

DATED: June 30, 2014


Carol Dickerson