

Supreme Court Case No. S277893

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

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**ANOTHER PLANET ENTERTAINMENT, LLC,**

Petitioner,

v.

**VIGILANT INSURANCE COMPANY,**

Respondent.

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Request for Certification to Decide a Matter of California  
Law Presented in a Matter Pending in the  
U.S. Court of Appeals, Ninth Circuit  
Case No. 21-16093

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**PETITIONER ANOTHER PLANET ENTERTAINMENT'S  
RESPONSE TO RESPONDENT'S SUPPLEMENTAL BRIEF**

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## ARGUMENT

Respondent Vigilant Insurance Company’s July 14, 2023, Supplemental Brief is improper. “No other brief may be filed except with the permission of the presiding justice . . . .” Cal. R. Ct. 8.200(a)(4). Vigilant attempts to sidestep this Rule by arguing that it can file a supplemental brief per Rule 8.520(d). But that Rule permits supplemental briefing only if “*new* authorities . . . were not *available* in time to be included in [Vigilant]’s brief on the merits.” Cal. R. Ct. 8.520(d)(1) (emphasis added). Chubb’s 2020 annual report was released in 2021, so it was available to Vigilant for some two years prior to filing its Answer Brief on June 5, 2023.

The fact that Another Planet did not cite Chubb’s 2020 Annual Report in its Opening Brief is beside the point. Only raising new issues on reply outside the scope of the opening brief and the responding brief poses problems. That is not what happened here.

“An issue is new if it does more than elaborate on issues raised in the opening brief or rebut arguments made by the respondent in respondent’s brief.” *Am. Indian Model Sch. v. Oakland Unified Sch. Dist.*, 227 Cal. App. 4th 258, 275-76 (2014). There is no problem in bringing up further support for an issue

previously raised because on reply, a petitioner “may cite new authorities in support of arguments properly raised in the opening brief.” *Id.* at 276.

Another Planet cited Chubb’s 2020 Annual Report in its Reply Brief for two reasons. First, it rebuts Vigilant’s assertion that “the pandemic could and did have myriad effects on Chubb’s business without the COVID-19 virus ever triggering coverage under Chubb’s commercial property policies.” A.B. at 58. Chubb’s 2020 Annual Report shows that, contrary to prior statements about the detrimental threat of a pandemic, Chubb’s tack of outright denying all business interruption claims arising from the COVID 19 Pandemic appears to have contributed to a banner year. Second, it contains additional statements showing that Vigilant knew that its commercial property policies would respond in a pandemic. Far from a “new” issue, this was the *first* issue that Another Planet raised in its Opening Brief and discussed for some 15 pages. O.B. § II, at 26-41.

Additionally, Another Planet cited Chubb’s 2020 Annual Report as yet another example of extrinsic evidence available to inform a reasonable construction of Vigilant’s Policy. Not only did Another Planet raise that issue in its Opening Brief, O.B. § II.B,

at 31-39, but this Court is considering a certified question, so the normal strictures of what has been raised and argued earlier in the Ninth Circuit do not have the same application now. Cal. R. Ct. 8.548(f)(5) (this Court can address any issues it deems germane to the dispute); *Another Planet Ent., LLC v. Vigilant Ins. Co.*, 56 F.4th 730, 734 (9th Cir. 2022) (“We do not intend our framing of this question to restrict the California Supreme Court’s consideration of any issues that it determines are relevant.”).

Vigilant’s protestations are of its own making by opening the door in its Answer Brief to how Chubb performed in the worst year of the Pandemic. The Supplemental Brief is improper and should be ignored.

DATED: July 14, 2023

PASICH LLP

By:   
\_\_\_\_\_  
Kirk Pasich

  
\_\_\_\_\_  
Nathan M. Davis

*Attorneys for Petitioner Another Planet Entertainment, LLC*

**CERTIFICATE OF COMPLIANCE WITH RULE 8.520**

I, the undersigned, Nathan M. Davis, declare that:

1. I am an attorney licensed to practice in all courts of the state of California and a partner at the law firm of Pasich LLP, attorneys of record for petitioner Another Planet Entertainment, LLC.

2. This certificate of compliance is submitted in accordance with rule 8.520 of the California Rules of Court.

3. This brief was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The brief contains 533 words.

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

Executed at Santa Monica, California, on July 14, 2023.

  
\_\_\_\_\_  
Nathan M. Davis

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

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Supreme Court of California

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COMPANY**

Case Number: **S277893**

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7/17/2023

Date

/s/Lisa Law

Signature

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