

S267746**General Docket****United States Court of Appeals for the Ninth Circuit****Court of Appeals Docket #:** 20-55099**Docketed:** 01/29/2020**Nature of Suit:** 4110 Insurance**Termed:** 03/22/2021

Allied Premier Insurance v. United Financial Casualty Co.

Appeal From: U.S. District Court for Central California, Riverside**Fee Status:** Paid**Case Type Information:**

- 1) civil
- 2) private
- 3) null

Originating Court Information:**District:** 0973-5 : 5:18-cv-00088-JGB-KK**Court Reporter:** Adele Celeste Frazier, Court Reporter**Court Reporter:** Alberto V. Ortiz, Court Reporter Supervisor**Trial Judge:** Jesus G. Bernal, District Judge**Date Filed:** 01/12/2018**Date Order/Judgment:**

12/30/2019

Date Order/Judgment EOD:

12/30/2019

Date NOA Filed:

01/28/2020

Date Rec'd COA:

01/28/2020

Prior Cases:

None

Current Cases:

None

ALLIED PREMIER INSURANCE, a Risk Retention Group;
a Connecticut corporation
Plaintiff – Appellee,

Hillary Arrow Booth, Attorney
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v.

UNITED FINANCIAL CASUALTY COMPANY, an Ohio
corporation
Defendant – Appellant,

Patrick M. Howe, Counsel
Direct: 619-398-3422
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Patrick M. Howe, Attorney at Law
402 W. Broadway
Suite 1025
San Diego, CA 92101

ALLIED PREMIER INSURANCE, a Risk Retention Group; a Connecticut corporation,

Plaintiff – Appellee,

v.

UNITED FINANCIAL CASUALTY COMPANY, an Ohio corporation,

Defendant – Appellant.

- 01/29/2020 1 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Appellant United Financial Casualty Company Mediation Questionnaire due on 02/05/2020. Transcript ordered by 02/27/2020. Transcript due 03/30/2020. Appellant United Financial Casualty Company opening brief due 05/07/2020. Appellee Allied Premier Insurance answering brief due 06/08/2020. Appellant's optional reply brief is due 21 days after service of the answering brief. [11577680] (JBS) [Entered: 01/29/2020 08:55 AM]
- 02/03/2020 2 Filed (ECF) Appellant United Financial Casualty Company Mediation Questionnaire. Date of service: 02/03/2020. [11582417] [20-55099] (Howe, Patrick) [Entered: 02/03/2020 11:05 AM]
- 02/03/2020 3 The Mediation Questionnaire for this case was filed on 02/03/2020. To submit pertinent **confidential** information directly to the Circuit Mediators, please use the following **link**. Confidential submissions may include any information relevant to mediation of the case and settlement potential, including, but not limited to, settlement history, ongoing or potential settlement discussions, non-litigated party related issues, other pending actions, and timing considerations that may impact mediation efforts.[11582692]. [20-55099] (AD) [Entered: 02/03/2020 12:44 PM]
- 02/21/2020 4 MEDIATION CONFERENCE SCHEDULED – DIAL-IN Assessment Conference, 03/11/2020, 11:30 a.m. PACIFIC Time. See order for instructions and details. [11604407] (CL) [Entered: 02/21/2020 09:27 AM]
- 03/04/2020 5 MEDIATION CONFERENCE RESCHEDULED – DIAL-IN Assessment Conference, 03/25/2020, 10:30 a.m. Pacific Time (originally scheduled on 03/11/2020). [11617506] (BLS) [Entered: 03/04/2020 09:49 AM]
- 03/25/2020 6 MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant settlement discussions while the appeal is pending. [11642115] (CL) [Entered: 03/25/2020 04:55 PM]
- 04/21/2020 7 Filed (ECF) Appellant United Financial Casualty Company Correspondence: Notice re COVID-19 extension of time to file opening brief.. Date of service: 04/21/2020 [11667008] [20-55099] (Howe, Patrick) [Entered: 04/21/2020 10:41 AM]
- 04/21/2020 Updated deadlines. Automatic 60 day extension Re: Notice Covid 19 (Docket Entry No. [Z]). Appellant United Financial Casualty Company opening brief due 07/06/2020. Appellee Allied Premier Insurance answering brief due 08/05/2020. The optional reply brief is due 21 days after service of the answering brief. [11667564] (EU) [Entered: 04/21/2020 02:40 PM]
- 07/06/2020 8 Submitted (ECF) Opening Brief for review. Submitted by Appellant United Financial Casualty Company. Date of service: 07/06/2020. [11742443] [20-55099] (Howe, Patrick) [Entered: 07/06/2020 10:52 AM]
- 07/06/2020 9 Submitted (ECF) excerpts of record. Submitted by Appellant United Financial Casualty Company. Date of service: 07/06/2020. [11742449] [20-55099] (Howe, Patrick) [Entered: 07/06/2020 10:54 AM]
- 07/06/2020 10 Filed clerk order: The opening brief [8] submitted by United Financial Casualty Company is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The excerpts of record [9] submitted by United Financial Casualty Company are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11742468] (KWG) [Entered: 07/06/2020 11:01 AM]
- 07/10/2020 11 Received 3 paper copies of excerpts of record [9] in 2 volume(s) filed by Appellant United Financial Casualty Company. [11749196] (LA) [Entered: 07/10/2020 02:32 PM]

- 07/10/2020 12 Received 6 paper copies of Opening Brief [8] filed by United Financial Casualty Company. [11749656] (SD) [Entered: 07/10/2020 06:34 PM]
- 07/20/2020 13 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Allied Premier Insurance. New requested due date is 09/04/2020. [11758365] [20-55099] (Culver, Ian) [Entered: 07/20/2020 10:26 AM]
- 07/20/2020 14 **Streamlined request [13] by Appellee Allied Premier Insurance to extend time to file the brief is approved. Amended briefing schedule: Appellee Allied Premier Insurance answering brief due 09/04/2020. The optional reply brief is due 21 days from the date of service of the answering brief.** [11758681] (JN) [Entered: 07/20/2020 12:08 PM]
- 09/04/2020 15 Submitted (ECF) Answering Brief for review. Submitted by Appellee Allied Premier Insurance. Date of service: 09/04/2020. [11813808] [20-55099] (Culver, Ian) [Entered: 09/04/2020 12:28 PM]
- 09/04/2020 16 Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Allied Premier Insurance. Date of service: 09/04/2020. [11813810] [20-55099] (Culver, Ian) [Entered: 09/04/2020 12:30 PM]
- 09/04/2020 17 Filed clerk order: The answering brief [15] submitted by Allied Premier Insurance is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The supplemental excerpts of record [16] submitted by Allied Premier Insurance are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11814530] (SML) [Entered: 09/04/2020 06:54 PM]
- 09/10/2020 18 Received 3 paper copies of supplemental excerpts of record [16] in 1 volume(s) filed by Appellee Allied Premier Insurance. [11818892] (KWG) [Entered: 09/10/2020 11:19 AM]
- 09/10/2020 19 Received 6 paper copies of Answering Brief [15] filed by Allied Premier Insurance. [11819506] (DB) [Entered: 09/10/2020 03:46 PM]
- 09/11/2020 20 Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant United Financial Casualty Company. New requested due date is 10/23/2020. [11820784] [20-55099] (Howe, Patrick) [Entered: 09/11/2020 01:42 PM]
- 09/11/2020 21 **Streamlined request [20] by Appellant United Financial Casualty Company to extend time to file the brief is approved. Streamlined requests allow for a 30 day extension of time to file the brief. Amended briefing schedule: the optional reply brief is due 10/26/2020.** [11821297] (JN) [Entered: 09/11/2020 04:28 PM]
- 09/24/2020 22 This case is being considered for an upcoming oral argument calendar in Pasadena

Please review the Pasadena sitting dates for January 2021 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file **Form 32 within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's **instructions** carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation).[11835715].

[20-55099] (AW) [Entered: 09/24/2020 01:12 PM]

10/13/2020 23 This case is being considered for an upcoming oral argument calendar in Pasadena

Please review the Pasadena sitting dates for February 2021 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file **Form 32 within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation).[11856841].

[20-55099] (AW) [Entered: 10/13/2020 03:43 PM]

10/22/2020 24 Submitted (ECF) Reply Brief for review. Submitted by Appellant United Financial Casualty Company. Date of service: 10/22/2020. [11869320] [20-55099] (Howe, Patrick) [Entered: 10/22/2020 06:53 PM]

10/23/2020 25 Filed clerk order: The reply brief [24] submitted by United Financial Casualty Company is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [11869455] (SML) [Entered: 10/23/2020 08:39 AM]

10/28/2020 26 Received 6 paper copies of Reply Brief [24] filed by United Financial Casualty Company. [11880144] (DB) [Entered: 11/03/2020 09:48 AM]

11/29/2020 27 Notice of Oral Argument on Thursday, February 11, 2021 – 09:00 A.M. – Courtroom 3 – Scheduled Location: Pasadena CA.
The hearing time is the local time zone at the scheduled hearing location, even if the argument is fully remote.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, any argument may be held **remotely** with all of the judges and attorneys appearing by video or telephone. Travel to a courthouse will not be required. If the panel determines that it will hold oral argument, the Clerk's Office will be in contact with you directly at least two weeks before the set argument date to make any necessary arrangements for remote appearance.

Be sure to review the GUIDELINES for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 21 days before Thursday, February 11, 2021. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[11908349]. [20-55099] (AW) [Entered:

11/29/2020 06:10 AM]

- 12/18/2020 28 Notice of Oral Argument on Thursday, February 11, 2021 – 1:00 P.M. – Courtroom 3 – Scheduled Location: Pasadena CA.
The hearing time is the local time zone at the scheduled hearing location, even if the argument is fully remote.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, any argument may be held **remotely** with all of the judges and attorneys appearing by video or telephone. Travel to a courthouse will not be required. If the panel determines that it will hold oral argument, the Clerk's Office will be in contact with you directly at least two weeks before the set argument date to make any necessary arrangements for remote appearance.

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 21 days before Thursday, February 11, 2021. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[11932717]. [20-55099] (AW) [Entered: 12/18/2020 10:39 AM]

- 12/23/2020 29 Filed (ECF) Acknowledgment of hearing notice by Attorney Patrick M. Howe for Appellant United Financial Casualty Company. Hearing in Pasadena on 02/11/2021 at 1:00 P.M. (Courtroom: 3). Filer sharing argument time: No. (Argument minutes: 15.) Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 12/23/2020. [11938837] [20-55099] (Howe, Patrick) [Entered: 12/23/2020 04:34 PM]
- 01/20/2021 30 Filed (ECF) notice of appearance of Hillary Arrow Booth (Booth LLP, 11835 W. Olympic Blvd., Suite 600E, Los Angeles, CA 90064) for Appellee Allied Premier Insurance. Date of service: 01/20/2021. (Party was previously proceeding with counsel.) [11970206] [20-55099] (Culver, Ian) [Entered: 01/20/2021 05:22 PM]
- 01/20/2021 31 **Notice of Appearance (ECF Filing) [30] is rejected. Filer is not permitted to file on behalf of another attorney. Each attorney must file their own notice of appearance.** [11972002] (NAC) [Entered: 01/20/2021 06:46 PM]
- 01/21/2021 32 Filed (ECF) notice of appearance of Hillary Arrow Booth (Booth LLP, 11835 W. Olympic Blvd., Suite 600E, Los Angeles, CA 90064) for Appellee Allied Premier Insurance. Date of service: 01/21/2021. (Party was previously proceeding with counsel.) [11974647] [20-55099] (Culver, Ian) [Entered: 01/21/2021 10:45 AM]
- 01/21/2021 33 **Notice of Appearance (ECF Filing) [32] is rejected. Filer is not permitted to file on behalf of another attorney. Each attorney must file their own notice of appearance.** [11974652] (NAC) [Entered: 01/21/2021 10:47 AM]
- 01/28/2021 34 Filed (ECF) notice of appearance of Hillary Arrow Booth (Booth LLP, 11835 W. Olympic Blvd., Suite 600E, Los Angeles, CA 90064) for Appellee Allied Premier Insurance. Date of service: 01/28/2021. (Party was previously proceeding with counsel.) [11984464] [20-55099] (Booth, Hillary) [Entered:

01/28/2021 11:06 AM]

- 01/28/2021 35 Added Attorney(s) Hillary Arrow Booth for party(s) Appellee Allied Premier Insurance, in case 20-55099. [11984509] (NAC) [Entered: 01/28/2021 11:21 AM]
- 02/09/2021 36 Filed (ECF) Acknowledgment of hearing notice by Attorney Hillary Arrow Booth for Appellee Allied Premier Insurance. Hearing in Pasadena on 02/11/2021 at 1:00 P.M. (Courtroom: Courtroom 3). Filer sharing argument time: No. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 02/09/2021. [11998546] [20-55099] (Booth, Hillary) [Entered: 02/09/2021 05:40 PM]
- 02/11/2021 37 ARGUED AND SUBMITTED TO DIARMAID F. O'SCANLAIN, CONSUELO M. CALLAHAN and JOHN B. OWENS. [12000974] (DLM) [Entered: 02/11/2021 02:28 PM]
- 02/12/2021 38 Filed Audio recording of oral argument.
Note: Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/>
[12001868] (DLM) [Entered: 02/12/2021 09:32 AM]
- 03/22/2021 39 Order filed for PUBLICATION (DIARMAID F. O'SCANLAIN, CONSUELO M. CALLAHAN and JOHN B. OWENS) Pursuant to California Rule of Court 8.548, we certify to the California Supreme Court the question of law set forth in Part I of this order. (SEE ORDER FOR FULL TEXT). In light of our decision to certify the question set forth above, submission of this case is withdrawn, and all proceedings in this court are stayed pending the California Supreme Court's decision whether it will accept review and, if so, receipt of the answer to the certified question. The Clerk is directed to administratively close this docket pending further order. The parties shall notify the Clerk of this court within one week after the California Supreme Court accepts or rejects the certified question, and again within one week after the California Supreme Court renders its opinion if accepted. The panel will resume control and jurisdiction upon receipt of an answer to the certified question or upon the California Supreme Court's decision to decline to answer the certified question. The Clerk of this court shall file an original and ten copies of this order with the clerk of the California Supreme Court, along with copies of all briefs, and shall file a certificate of service on the parties. Upon request of the California Supreme Court, and as the California Supreme Court deems necessary, the Clerk of this court shall also transmit the original or copies of portions of the record. IT IS SO ORDERED. [12048407] (AKM) [Entered: 03/22/2021 08:25 AM]
- 03/22/2021 40 Filed (ECF) Notice of withdrawal of counsel. Filed by Attorney Ian Culver for Appellee Allied Premier Insurance. Party proceeding without counsel: No. Date of service: 03/22/2021. [12048422] [20-55099] (Culver, Ian) [Entered: 03/22/2021 08:37 AM]
- 03/22/2021 41 Terminated Ian Culver for Allied Premier Insurance in 20-55099 [12048432] (NAC) [Entered: 03/22/2021 08:42 AM]

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 Co.**

Case Number: **TEMP-B0J89BGY**

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.
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ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR WRIT OF MANDATE	20-55099_certification_order
ADDITIONAL DOCUMENTS	20-55099_docket
ADDITIONAL DOCUMENTS	20-55099_opening_brief
ADDITIONAL DOCUMENTS	20-55099_Appellant_EOR_Vol1
ADDITIONAL DOCUMENTS	20-55099_Appellant_EOR_Vol2
ADDITIONAL DOCUMENTS	20-55099_answering_brief
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Hillary Arrow Booth 125936	hbooth@boothllp.com	e-Serve	3/22/2021 9:48:59 AM
Patrick M. Howe 154669	pat@patrickhowelaw.com	e-Serve	3/22/2021 9:48:59 AM

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3/22/2021

Date

/s/Opinions Clerk

Signature

Unit, Records (Pro Per)

Last Name, First Name (PNum)

United States Court of Appeals for the Ninth Circuit

Law Firm