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Supreme Court of California
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No. S293914
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA,

Petitioner-Appellant,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,
Respondents-Appellees,

CANADIAN UNIVERSAL INSURANCE COMPANY, INC. et al.,
Real Parties in Interest.

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE
CASE NO. B335073

On Appeal From Superior Court of California, Los Angeles County
Civil Case No. BC005158, HONORABLE LAWRENCE P. RIFF

ANSWER TO MONTROSE'S PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED PARTIES

Counsel of record for Real Parties in Interest, TIG Insurance Company, successor by merger to International Insurance Company, only for policy number 5233120074, and Federal Insurance Company, hereby certifies under California Rules of Court, rules 8.488 and 8.208, that the following listed parties have a direct pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

The TIG Insurance Company policy at issue in this case is the responsibility of Westchester Fire Insurance Company. Westchester Fire Insurance Company is a wholly owned subsidiary of Chubb US Holdings Inc., which is a wholly owned subsidiary of Chubb Group Holdings Inc. Chubb Group Holdings Inc. is a wholly owned subsidiary of Chubb Limited. Chubb Limited (NYSE: CB) is the only publicly traded company holding more than a 10% ownership interest in Westchester Fire Insurance Company.

Federal Insurance Company is a wholly owned subsidiary of Chubb INA Holdings LLC. Chubb INA Holdings LLC is owned 82.53968% by Chubb Group Holdings Inc. and 17.46032% by Chubb Limited. Chubb Group Holdings Inc. is a wholly owned subsidiary of Chubb Limited. Chubb Limited (NYSE: CB) is the only publicly traded company holding more than a 10% ownership interest in Federal Insurance Company.

DATED: December 1, 2025

/s/ Richard B. Goetz
Richard B. Goetz
Attorney for Real Parties in Interest TIG INSURANCE COMPANY, successor by merger to International Insurance Company, only for policy number 5233120074, and Federal Insurance Company

TABLE OF CONTENTS

Page

TABLE OF CONTENTS....4

INTRODUCTION....9

STATEMENT OF THE CASE....11

A. Montrose's Claims....11

WHY REVIEW SHOULD BE DENIED....17

I. Review is Unwarranted Because There is a Uniform Consensus That QPEs are Not Reasonably Susceptible of Montrose's Proffered Interpretation and Extrinsic Evidence Need Not be Assessed....19

A. Montrose's Proposed Interpretation of "Sudden" Within the QPEs Is the Exact Interpretation That California Appellate Panels Have Rejected and Determined "Sudden" Is Not Reasonably Susceptible to....19

B. An Unbroken Line of Cases Establishes That Montrose's Desired Interpretation Is Not Reasonable....21

C. Courts Have Uniformly Affirmed That a Term Must Be Reasonably Susceptible to a Proffered Meaning Before Evidence of That Proposed Meaning Can Be Admissible....26

D. Review Is Not Necessary to Secure Uniformity of Decision Because Such Uniformity Already Exists; *Stare Decisis* Will Be Subverted If Parties Are Permitted to Bring New Actions Requesting to Overturn Longstanding Appellate Court Decisions Without Meeting an Initial Threshold of Reasonable Susceptibility....31

II. Review is Unwarranted Because there is No Unsettled Question of Law 33

A. Montrose's Claim That There is a Question to Be Settled Is Incorrect, as *Another Planet* Confirms. 33

B. The Court of Appeal Properly Rejected Montrose's Arguments That "Sudden" Can Mean "Gradual." 34

C. California Statutory Law Also Demonstrates the Language Is Not Reasonably Susceptible to the Proposed Definition and There Is No Unsettled Question. 37

CONCLUSION 38

TABLE OF AUTHORITIES

Page(s)

Cases

ACL Techs., Inc. v. Northbrook Prop. & Cas. Ins. Co.
(1993) 17 Cal.App.4th 1773 *review denied* (Nov. 17, 1993) 16, 19, 22, 23, 24, 35

Adamo v. Fire Ins. Exch.
(2013) 219 Cal.App.4th 1286 14

A-H Plating, Inc. v. Am. Nat'l Fire Ins. Co.
(1997) 57 Cal.App.4th 427 22

AIU Ins. Co. v. Superior Court
(1990) 51 Cal.3d 807 ..... 26, 36

Am. States Ins. Co. v. Sacramento Plating, Inc.
(E.D. Cal. 1994) 861 F.Supp.964 21

Anderson v. Minn. Ins. Guar. Assoc.
(Minn. 1995) 534 N.W.2d 706 35

Another Planet Entertainment, LLC v. Vigilant Ins. Co.
(2024) 15 Cal.5th 1106 ..... 9, 16, 18, 25, 26, 29, 32

Baker v. National Interstate Ins. Co.
(2009) 180 Cal.App.4th 1319 26

Buell Indus. Inc. v. Greater N.Y. Mut. Ins. Co.
(Conn. 2002) 791 A.2d 489 34

Burns v. Progressive Cas. Ins. Co.
(E.D. Cal. Mar. 18, 2022) No. 2:19-cv-02336-KJM-DMC, 2022 WL 827036 21

Certain Underwriters at Lloyd's of London v. Superior Ct
(2001) 24 Cal.4th 945, at pp. 965 31

City of L.A. v. Travelers Indem. Co.
(C.D. Cal. Nov. 2, 2022) Case No. 2:22-cv-00130-GW, 2022 WL 16841704 21

Delta Dynamics, Inc. v. Arioto
(1968) 69 Cal.2d 525 28

TABLE OF AUTHORITIES

Page(s)

Dimmitt Chevrolet Inc. v. Se. Fid. Ins. Corp.
(Fla. 1993) 636 So.2d 700, *reh'g denied* (Fla. March 31, 1994) 35

Dore v. Arnold Worldwide, Inc.
(2006) 39 Cal.4th 384 (*Dore*) 18, 25, 26

E.I. DuPont de Nemours & Co. v. Allstate Ins. Co.
(Del. 1997) 693 A.2d 1059..... 34

Fluor Corp. v. Superior Court
(2015) 61 Cal.4th 1175..... 29

FMC Corp. v. Plaisted & Cos.
(1998) 61 Cal.App.4th 1132, *review denied* (May 27, 1998) 22

Kerr-McGee Corp. v. Admiral Ins. Co.
(Okla. 1995) 905 P.2d 760 35

Lumbermens Mut. Cas. Co. v. Belleville Ind., Inc.
(Mass. 1990) 555 N.E.2d 568..... 35

MacKinnon v. Truck Ins. Exch.
(2003) 31 Cal.4th 635..... 28, 29, 34

Mega Life & Health Ins. Co. v. Superior Ct.
(2009) 172 Cal.App.4th 1522..... 31

Miller Marital Deduction Tr. by & through Miller v. Est. of DuBois
(E.D. Cal. July 3, 2018) No. 2:16–cv–01883–SB, 2018 WL 3245038 21

Montrose Chem. Corp. v. Admiral Ins. Co.
(1995) 10 Cal.4th 645..... 29

Montrose Chemical Corp. v. Superior Court
(2025) 114 Cal.App.5th 889..... 9

Montrose Chemical Corp. v. Superior Court,
(July 10, 2024, No. S285083.) ___Cal.5th___ [2024 Cal. LEXIS 3578] 15

Morey v. Vannucci
(1998) 64 Cal.App.4th 904..... 18

TABLE OF AUTHORITIES

Page(s)

Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.
(1968) 69 Cal.2d 33 ..... 18, 25, 27, 28

Shell Oil Co. v. Winterthur Swiss Ins. Co.
(1993) 12 Cal.App.4th 715 *rehearing denied*, *modified* (Feb. 22, 1993), *review denied* (May 13, 1993) 21, 22, 23, 24, 33

Standun, Inc. v. Fireman's Fund Ins. Co.,
(1998) 62 Cal.App.4th 882 *review denied* (July 8, 1998) 21, 23, 24

State of Cal. v. Allstate Ins. Co.
(2009) 45 Cal.4th 1008..... 13, 24

Travelers Cas. & Sur. Co. v. Ribi Immunochem Rsch., Inc.
(Mont. 2005) 108 P.3d 469..... 35

Travelers Cas. & Sur. Co. v. Superior Ct.
(1998) 63 Cal.App.4th 1440, *review denied* (Sept. 16, 1998) 22

Trico Indus., Inc. v. Travelers Indem. Co.
(C.D. Cal. 1994) 853 F.Supp.1190..... 21

United States v. Montrose Chem. Corp. of Cal.,
Case No. CV 90-3122-R (JRx) 10

Wolf v. Superior Court
(2004) 114 Cal.App.4th 1343..... 28

Statutes

Civ. Code, § 1641..... 35

Code Civ. Proc., § 1856 35

Rules

Cal. Rules of Court, rule 8.500(b)(1) 10, 16

CRC, rule 8.504(b)(2) 16

INTRODUCTION[1]

Montrose's petition represents yet another chapter in its decades-long campaign to undo settled California law on the interpretation of qualified pollution exclusions ("QPEs") in insurance contracts. California appellate authorities—including this Court as recently as last year—have rejected Montrose's reasoning at every turn, in a line of cases comprising at least a dozen defeats. (1PA1[2] at pp. PA00263–265.) The present case is no different. Review by this Court is not necessary to secure uniformity of decision (as such uniformity already exists) or to settle an important question of law (as the question Montrose asks is already settled). (Cal. Rules of Court, rule 8.500(b)(1).) Therefore, the petition for review should be denied.

At issue is a contractual term that multiple California Courts of Appeal have already interpreted and explicitly defined. The key question is whether a party can continue to argue that a term is ambiguous, and propose a new definition to a policy term, where courts have already determined that the term is not reasonably susceptible to the proffered interpretation. In other words, is Montrose barred from introducing extrinsic evidence in an effort to prove an interpretation of "sudden and accidental" in

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[1] Unless otherwise specified, all quotation marks, citations, ellipses, brackets, and other alterations are omitted, and all emphases are added.

[2] "PA" herein refers to the Petitioner's Appendix, Volumes 1 to 22, Exs. 1 to 482, filed on February 13, 2024 in support of Montrose's Petition for Writ of Mandate or Other Appropriate Relief in the Second Appellate District, Court of Appeal.

the QPEs to which the language is ***not*** reasonably susceptible? The Court of Appeal below correctly answered yes: "Whatever shades of meaning the word 'sudden' may have, it does not include events that happen gradually over time. 'Gradual is the opposite of sudden.'" (Opn.[3] at p. 917.) This Court need not expend resources revisiting this well-settled principle.

In its petition, Montrose suggests that the term "sudden"—within the phrase "sudden and accidental"—does not mean what it says, and that it can be interpreted to include events that are "gradual." Every California appellate authority that has interpreted the QPEs at issue has determined that Montrose is wrong. Indeed, the Courts of Appeal have conclusively established that "sudden" is the *opposite* of "gradual."

The appellate decision below correctly recognizes that a threshold requirement is that the suggested interpretation actually be reasonable before a court can admit evidence outside the four corners of the contract. Preceding law is uniformly consistent in this regard, and there is no conflict of law to be resolved. Montrose's petition seeks to upend a contract interpretation maxim that has been well-established by a multitude of courts, including most recently by this Court in *Another Planet*: extrinsic evidence is "only relevant to the extent [it] tend[s] to prove a meaning of which the language of the policy is reasonably susceptible." *(Another Planet Entertainment, LLC v. Vigilant Ins. Co.* (2024) 15 Cal.5th 1106, 1145–1146 (*Another*

[3] "Opn." herein refers to *Montrose Chemical Corp. v. Superior Court* (2025) 114 Cal.App.5th 889.

Planet).) There is no public policy reason to reconsider these past decisions. It does not serve public policy to permit Montrose to argue in perpetuity that its interpretation is reasonable when decades of court decisions have determined it is not.

Montrose's suggested interpretation is not reasonable because the term "sudden" simply cannot include gradual events. California statutes and prior appellate and California Supreme Court decisions uniformly demonstrate that Montrose's interpretation is not reasonable. The extrinsic evidence Montrose seeks to offer does not undermine or change the underlying reasoning of these past decisions and does nothing to establish Montrose's desired result as a reasonable interpretation. The Court of Appeal properly held that California law does not permit Montrose to continuously argue for an unreasonable definition of a contract term.

STATEMENT OF THE CASE

A. Montrose's Claims

1. *Underlying Suit Against Montrose*

Montrose's claims stem from a lawsuit the government brought in the early 1990s, *United States v. Montrose Chem. Corp. of Cal.*, Case No. CV 90-3122-R (JRx), alleging that Montrose stored and disposed of hazardous substances, including DDT, in a manner that resulted in environmental harm. (Opp. Ex.[4] 3 at pp. 0904–5.) The government alleged that Montrose

[4] "Opp. Ex." herein refers to the Exhibits in Opposition to Montrose's Petition For Writ of Mandate filed on September 25,

"stor[ed] and dispos[ed] of process waste in a pond located on the Montrose Plant Property, discharge[d] . . . process and sanitary wastewater to the . . . sewer system . . . deposit[ed] . . . process wastes at landfills[,] . . . and ocean dump[ed] . . . process wastes," and that "[h]azardous substances, including DDT, MCB and BHC were also released from the Montrose DDT Plant and/or the Montrose Plant Property[] through surface water runoff from that site, aerial dispersion from that site, and discharge from that site through the . . . sewer system[.]" (*Ibid.*)

As Montrose sets forth in its petition, this dispute arises from Montrose's effort to seek insurance coverage for environmental damage in that underlying action. Insurers[5]

2024, concurrently with the Opposition to Montrose's Petition for Writ of Mandate.

[5] Real Parties in Interest AIU Insurance Company, American Home Assurance Company, Granite State Insurance Company, Landmark Insurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, New Hampshire Insurance Company, Columbia Casualty Company, Continental Casualty Company, American Centennial Insurance Company, Munich Reinsurance America, Inc. formerly known as American Re-Insurance Company, American Manufacturers Mutual Insurance Company, Employers Insurance of Wausau, Employers Mutual Casualty Company, Everest Reinsurance Company formerly known as Prudential Reinsurance Company and Mt. McKinley Insurance Company formerly known as Gibraltar Casualty Company, Federal Insurance Company, Fireman's Fund Insurance Company, National Surety Corporation, Allstate Insurance Company (as Successor-in-Interest to Northbrook Excess and Surplus Insurance Company), General Reinsurance Corporation, North Star Reinsurance Corporation, Gerling Konzern Allgemeine Versicherungs-Aktiengesellschaft, TIG Insurance Company, successor by merger

issued dozens of excess general liability policies to Montrose[6] that each contained a version of a QPE.

2. *Present Coverage Action*

The trial court has divided this suit into five phases. The present phase, Phase II-A, is aimed solely at interpreting the QPEs, including determining the proper definition of "sudden" therein.[7] The interpretation of QPEs is well-settled in California, and courts have routinely determined that QPEs exclude coverage for gradual pollution. Those courts have determined that "sudden" in QPEs has a temporal component and that the

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to International Insurance Company, only for policy number 5233120074, Westport Insurance Corporation (as Successor-in-Interest to The Manhattan Fire and Marine Insurance Company), Travelers Casualty and Surety Company (formerly known as The Aetna Casualty & Surety Company), The Travelers Indemnity Company, Yosemite Insurance Company (as successor in interest by order of transfer and novation to Providence Washington Insurance Company, as successor in interest by merger to Seaton Insurance Company, formerly known as Unigard Security Insurance Company, formerly known as Unigard Mutual Insurance Company), and Zurich Reinsurance Company, Ltd., formerly known as Zurich International (Bermuda), Ltd., incorrectly sued as Zurich International, Ltd., Hamilton Bermuda (collectively, "Insurers").

[6] Most of the policies under which Montrose seeks coverage were actually issued not to Montrose, but to Stauffer Chemical Corporation, a large Connecticut and New York-based conglomerate that formed Montrose as a joint venture to manufacture DDT.

[7] At the trial court level, Montrose asserted multiple arguments about multiple disputed terms within the QPEs, but on appeal its focus is limited to the "sudden" term within the "sudden and accidental" exception to the QPEs. (See 7PA153 at p. PA02537; 7PA158.)

QPE language is focused on the *discharge* rather than the *damage*. (See, e.g., *State of Cal. v. Allstate Ins. Co*. (2009) 45 Cal.4th 1008 (*Allstate*).)

Montrose specifically contests the meaning of the exception to the QPE for events that are "sudden and accidental." Montrose argues that the word "sudden" should be interpreted to include gradual events, asserting that the plain language covers unintentional and unexpected pollution, regardless of whether it is gradual or abrupt. (Petn.[8] at p. 24.) Montrose argued in its submission to the trial court that "[s]udden," as used in the QPEs, means "unforeseen," including "unanticipated," "unplanned," or "unprepared for." (7PA153 at p. PA02537.)

At the trial court, Montrose sought to introduce extrinsic evidence to support its interpretation of the QPEs. The court correctly determined that it could not receive such evidence because appellate courts had already established that the term "sudden" in QPEs was unambiguous as a matter of law. (See 7PA165 at p. PA02897:17–22.) The court explained that California appellate courts have held that QPEs are not "reasonably susceptible" to Montrose's proposed interpretation. (See 7PA165 at p. PA02846:12–18.) Montrose did not dispute Insurers' interpretation of the QPE terms derived from the Court of Appeal decisions and, instead, argued only that the decisions were no longer good law. (See 7PA158.)

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[8] "Petn." herein refers to Montrose's Petition for Review filed November 10, 2025 with the California Supreme Court.

On December 13, 2023, the trial court ruled that it was obligated to follow California appellate precedent and find that terms were not ambiguous where they had been previously judicially construed. (1PA1 at p. PA00261:5–8, citing *Adamo v. Fire Ins. Exch.* (2013) 219 Cal.App.4th 1286, 1293–94.) The court therefore ruled that Montrose's proffered evidence was inadmissible. (1PA1 at p. PA00259:25–27.) The court found that the California Supreme Court had already interpreted the QPE terms. (See 1PA1 at pp. PA00263–265.)

Nevertheless, the trial court certified three questions of law relating broadly to the admission of extrinsic evidence—not specific interpretation of the QPEs—under California Code of Civil Procedure section 166.1. (1PA1 at p. PA00266:1–19.) At Montrose's request, the first certified question was: "[C]an a trial court admit extrinsic evidence to interpret insurance policy terms that have previously been judicially construed by a Court of Appeal, when such extrinsic evidence was not considered by the Court of Appeal in rendering its earlier decision?"[9] (1PA1 at p. PA00266:14–17.)

On February 9, 2024, Montrose filed a writ petition seeking review of the trial court's decision and challenging the exclusion

[9] The trial court certified two additional questions: "[I]f the answer is yes, then [] 'must a trial court admit such extrinsic evidence?'" And if the trial court is not required to admit such extrinsic evidence, then "what rules of law guide the trial court in determining whether to admit all or some such evidence?" (1PA1 at p. PA00266:17–19.)

of its extrinsic evidence. The Court of Appeal denied the petition on May 9, 2024.

Montrose filed a Petition for Review in the California Supreme Court on May 20, 2024. On July 10, 2024, this Court accepted that petition and transferred the matter back to the Court of Appeal, directing the court to vacate its prior order denying the Petition for Writ of Mandate and to issue an order to show cause on the writ petition.[10] That order directed the parties to "address the issue of whether the existence of a prior judicial construction of an insurance policy's form exclusion that found it to be unambiguous precludes a trial court from considering extrinsic evidence in determining whether the exclusion is ambiguous."

The Court of Appeal agreed with the trial court and Insurers, holding that the trial court had properly excluded the extrinsic evidence because controlling appellate authorities had uniformly held the term was not reasonably susceptible of the exact interpretation Montrose offers, citing this Court's recent decision in *Another Planet*. The Court of Appeal found that "[w]hat these authorities hold . . . and what made them unconditionally binding on the trial court with respect to its evidentiary ruling—is that 'sudden' is *not reasonably susceptible* of the *exact* meaning that Montrose sought to prove by the admission of its proffered extrinsic evidence." (Opn. at p. 908.)

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[10] Order granting review, Montrose Chemical Corp. v. Superior Court, (July 10, 2024, No. S285083.) ___Cal.5th___ [2024 Cal. LEXIS 3578].)

The court stated that "because the disputed policy language is not reasonably susceptible of Montrose's proposed interpretation, *no* extrinsic evidence *of any sort* is relevant or admissible to prove the meaning that Montrose seeks to establish." (*Id.* at pp. 904–05, italics in original, citing *Another Planet*, *supra*, 15 Cal.5th at pp. 1145–1146.) The Court of Appeal also agreed with other appellate courts that "sudden" could not mean "gradual" and, in fact, was definitionally the ***opposite*** of "gradual." (*Id.* at p. 898, citing *ACL Techs., Inc. v. Northbrook Prop. & Cas. Ins. Co.* (1993) 17 Cal.App.4th 1773, 1777 *review denied* (Nov. 17, 1993) (*ACL*).) Accordingly, the court rejected Montrose's arguments that the term "sudden" in the QPE could reasonably be construed as encompassing gradual events. No party sought reconsideration in the Court of Appeal.

WHY REVIEW SHOULD BE DENIED

The decision below does not warrant this Court's review. Montrose fails to explain, as it must, "how the case presents a ground for review under [California Rules of Court (CRC)], rule 8.500(b)." (CRC, rule 8.504(b)(2).) Its petition satisfies neither potentially relevant basis for review: "[w]hen necessary to secure uniformity of decision or to settle an important question of law[.]" (CRC, rule 8.500(b)(1).)

First, this case solely involves review of a question that has been decided uniformly for decades. The decision below merely follows a long line of appellate decisions agreeing that QPEs are not reasonably susceptible of Montrose's interpretation. It

upholds this Court's decision in *Another Planet*, maintains uniformity, and respects *stare decisis*.

Second, this Court's review would not settle an important question of law because there is no question to be answered. As the Court of Appeal recognized, this Court's decision in *Another Planet* resolves any possible concerns.

The term "sudden" simply cannot be reasonably interpreted to mean or include "gradual." As lower appellate courts have recognized, this Court too would come to the same conclusion, based on its decisions in *Another Planet*, *Allstate*, *MacKinnon*, and the sound reasoning of the appellate courts. California's legal precedent, statutory law, and *stare decisis* all require a finding that Montrose's proposed interpretation is not reasonable. Any other rule would invite perpetual litigation, allowing parties to continually retry well-settled issues so long as they conjured some document not introduced in the case that led to the appellate decision–an outcome that would be not only unrealistically burdensome, but also not legally sound.

I. REVIEW IS UNWARRANTED BECAUSE THERE IS A UNIFORM CONSENSUS THAT QPES ARE NOT REASONABLY SUSCEPTIBLE OF MONTROSE'S PROFFERED INTERPRETATION AND EXTRINSIC EVIDENCE NEED NOT BE ASSESSED.

A. Montrose's Proposed Interpretation of "Sudden" Within the QPEs Is the Exact Interpretation That California Appellate Panels Have Rejected and Determined "Sudden" Is Not Reasonably Susceptible to.

Extrinsic evidence is inadmissible if it is proffered to support an interpretation to which the subject language is not "reasonably susceptible." (See *Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 40 fn.7 (*Pacific Gas*); *Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 906 ["Extrinsic evidence is . . . admissible to interpret the language of a written instrument, as long as such evidence is not used to give the instrument a meaning to which it is not reasonably susceptible."].) That is, evidence offered to prove a meaning of which language is not "reasonably susceptible" is inadmissible because it is not relevant. (*Another Planet, supra,* 15 Cal.5th at pp. 1145–46, citing *Pacific Gas*, at p. 40, fn. 7; accord, *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391 (*Dore*).) Language is ambiguous only if it is "reasonably susceptible" of more than one interpretation. (*Another Planet*, at pp. 1136, 1144.)

Montrose's argument regarding the purported necessity of considering extrinsic "drafting history" is based on an interpretation of "sudden" in the QPE that past authorities have uniformly rejected. Three decades ago, in *ACL*, Montrose itself made the identical argument that it advances now. There,

Montrose filed an amicus curiae brief in support of the insured's appeal, seeking to admit the same purported "drafting history" evidence it tries to admit here. (*supra,* 17 Cal.App.4th at pp. 1784, 1790.) The Court of Appeal considered that extrinsic evidence and determined that it was not probative for numerous reasons, including that extrinsic evidence cannot be used to prove that "sudden" means its opposite—i.e., "gradual"—or give "sudden" an interpretation that renders it mere surplusage when paired with "accidental." (*ACL*, at pp. 1791, 1785.)

Montrose nonetheless persists in arguing here that the word "sudden" can be reasonably construed to mean "unexpected" and that it does not have a temporal component. (Petn. at p. 19; see also Opn. at p. 906 ["QPEs' exception for a 'sudden' discharge, dispersal, release, or escape of pollutants **includes a 'gradual' discharge, dispersal, release, or escape of pollutants**."].) Montrose also asserts "that 'sudden' means 'unexpected' or 'unforeseen,' and the phrase 'sudden and accidental' means 'not expected or intended,' **without any additional temporal restriction, whether gradual or abrupt**." (Petn. at p. 19.) Yet the term "sudden" cannot incorporate a term that, as the Court of Appeal states, is its opposite. (See Opn. at p. 898 ["[g]radual is the opposite of sudden"].)

In response to the Court of Appeal's decision, Montrose now claims that it is *not* arguing that "sudden" means "gradual" but instead that "sudden" lacks a temporal component altogether, as if this distinction creates a difference. This abstract semantic argument attempts to distinguish between (i) "means" and (ii)

"includes in its meaning," while avoiding the key issue. Sudden events are inherently not gradual. Regardless of whether Montrose argues that "gradual" is an all-encompassing synonym of "sudden" (to the exclusion of abrupt events) or merely that "sudden" *includes* "gradual," the practical effect on coverage in this case would be the same. The issue lies with the absolute temporal contradiction between "sudden" and "gradual." That contradiction remains, whether Montrose proposes that "gradual" is an aspect of or the entirety of the meaning of "sudden." Either contention is unavailing because "sudden" contains a temporal element that cannot be synonymous with, or include, the complete opposite temporal component in the word "gradual."

B. An Unbroken Line of Cases Establishes That Montrose's Desired Interpretation Is Not Reasonable.

Montrose seeks to change decades of California law by insisting that the Court reinterpret the QPEs' application in a manner contrary to binding California appellate authority. Montrose proposes that the QPEs' application should depend on whether the insured "expected or intended" the pollution, "without any additional temporal restriction, whether gradual or abrupt." (Petn. at p. 19.) But, as the Court of Appeal noted, "controlling appellate authorities ha[ve] uniformly concluded the relevant policy language [is] not reasonably susceptible of the exact meaning" that Montrose offers extrinsic evidence to prove. (Opn. at p. 910.)

Six prior Court of Appeal panels have held that "sudden" necessarily has a temporal meaning.[11] (See *Shell Oil*, *supra*, 12

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[11] Federal courts in California have likewise considered and rejected the positions advanced by Montrose for decades. (See, e.g., *City of L.A. v. Travelers Indem. Co.* (C.D. Cal. Nov. 2, 2022) Case No. 2:22-cv-00130-GW, 2022 WL 16841704, at *15, *18 [explaining that "the terms in question have been the subject of many published decisions at this point which have made the scope of them clear. [I]n the phrase, 'sudden and accidental,' 'accidental' conveys the sense of an unexpected and unintended event, while 'sudden' conveys the sense of an unexpected event that is abrupt or immediate in nature . . . . The overwhelming weight of California authority holds that the term 'accident' refers to the nature of the act giving rise to the liability, not to the insured's intent to cause harm."], quoting *Shell Oil Co. v. Winterthur Swiss Ins. Co.* (1993) 12 Cal.App.4th 715, 754, *rehearing denied*, *modified* (Feb. 22, 1993), *review denied* (May 13, 1993) (*Shell Oil*); *Burns v. Progressive Cas. Ins. Co.* (E.D. Cal. Mar. 18, 2022) No. 2:19-cv-02336-KJM-DMC, 2022 WL 827036, at *3 ["And just as in *Shell Oil*, interpreting 'sudden' here to mean only 'unintended' would make the word 'accidental' duplicative, a result to be avoided in contract interpretation."]; *Miller Marital Deduction Tr. by & through Miller v. Est. of DuBois* (E.D. Cal. July 3, 2018) No. 2:16–cv–01883–SB, 2018 WL 3245038, at *4 ["The term 'sudden' has a temporal element and conveys the sense of an unexpected event that is abrupt or immediate in nature . . . . 'Accidental' means an unexpected or unintended discharge, not unexpected or unintended damage."], quoting *Shell Oil*, at p. 755 and *Standun, Inc. v. Fireman's Fund Ins. Co.*, (1998) 62 Cal.App.4th 882, 889 *review denied* (July 8, 1998) (*Standun*); *Am. States Ins. Co. v. Sacramento Plating, Inc.* (E.D. Cal. 1994) 861 F.Supp.964, 970 ["Under California law, the term 'sudden and accidental,' as used in [commercial general liability] policies, is not ambiguous . . . . [I]n the phrase, 'sudden and accidental,' 'accidental' conveys the sense of an unexpected and unintended event, while 'sudden' conveys the sense of an unexpected event that is abrupt or immediate in nature."], quoting *Shell Oil*, at p. 755; *Trico Indus., Inc. v. Travelers Indem.*

Cal.App.4th at pp. 754–55 ["'[S]udden' necessarily contains a temporal element" and "conveys the sense of an unexpected event that is abrupt or immediate in nature"]; *see also id.* at p. 753 ["If covered pollution has to be 'a sudden, unintended and unexpected happening,' then we must distinguish 'sudden' from 'unexpected' and 'unintended.' That distinction lies in the temporal connotation inherent in the ordinary meaning of 'sudden.'"]; *ACL, supra,* 17 Cal.App.4th at p. 1791 ["[T]he phrase 'sudden and accidental' unambiguously does not include 'gradual.'"]; *see also id.* at p. 1785 ["The most immediate 'context' for the word 'sudden' is its link, in the pollution exclusion, to the word 'accidental' . . . If, in the context of the pollution exclusion, 'sudden' meant merely 'unexpected,' then it would have no independent meaning, as the idea would also be subsumed within the word 'accidental.'"]; *Travelers Cas. & Sur. Co. v. Superior Ct.* (1998) 63 Cal.App.4th 1440, 1455, *review denied* (Sept. 16, 1998) ["We agree that the interpretation of 'sudden' must include a temporal component; otherwise, the word is rendered mere surplusage."]; *A-H Plating, Inc. v. Am. Nat'l Fire Ins. Co.* (1997) 57 Cal.App.4th 427, 435 ["'[I]n the phrase 'sudden and accidental' . . . 'sudden' conveys the sense of an unexpected event that is abrupt or immediate in nature."]; *FMC Corp. v. Plaisted & Cos.* (1998) 61 Cal.App.4th 1132, 1146, *review denied* (May 27, 1998) and disapproved of on other grounds by *State of California v.*

Co. (C.D. Cal. 1994) 853 F.Supp.1190, 1195 [summarizing numerous California and non-California cases and holding that "the word 'sudden' is unambiguous in the context of the policy exclusion, and includes a temporal element"].)

Cont'l Ins. Co. (2012) 55 Cal. 4th 186 ["'[S]udden' means, at least, 'abrupt,' and thus does not apply to gradual releases of pollutants no matter how unexpected."]; *Standun, supra*, 62 Cal.App.4th at p. 889 ["'Sudden' has a temporal element and does not mean a gradual or continuous discharge."].)

The Court of Appeal acknowledged the unbroken line of cases in which "[California's] state courts of appeal have uniformly rejected the *exact* contention that Montrose makes here" (Opn. at p. 906, italics original) and have "uniformly concluded the relevant policy language was not reasonably susceptible of that exact meaning." (*Id.* at p. 910.)

In *ACL*, the appellate court rejected the exact definition Montrose proposes here, stating that Montrose's evidence, namely drafting history evidence, could not reveal any purported "latent ambiguity." (*ACL*, *supra*, 17 Cal.App.4th at pp. 1792–94.) The Court of Appeal in *Shell Oil* came to a similar conclusion. (*Shell Oil*, *supra*, 12 Cal.App.4th at p. 746 ["At trial, the parties offered no evidence that 'expected' and 'intended' had other than their plain meanings in Shell's policies. Therefore, we interpret these words in their ordinary and popular sense."].)

The Court of Appeal here agreed with these prior decisions that "sudden" cannot be reasonably interpreted to include gradual events. The court explained: "We reach this conclusion not because past appellate panels have found the disputed policy language to be unambiguous in the abstract, but because these past authorities have uniformly rejected the *exact* interpretation advanced by Montrose—namely, that 'sudden' could be

reasonably construed to mean 'gradual' in the relevant insurance policy provisions." (Opn. at p. 898, italics original, citing *ACL, supra*, 17 Cal.App.4th at pp. 1784–1794; *Shell Oil, supra*, 12 Cal.App.4th at pp. 754–755.) In denying the writ, the court held: "Whatever shades of meaning the word 'sudden' may have, a *sudden* discharge, dispersal, release or escape of pollutants is not a *gradual* discharge, dispersal, release or escape of pollutants. 'Gradual is the opposite of sudden.'" (*Id.* at p. 898, italics original, citing *ACL*, at p. 1777.)

This Court endorsed a similar conclusion in *Allstate*, in which this Court analyzed whether multiple discharges from containment ponds into surrounding soil and groundwater—each with distinct causes—were covered under a policy with the QPE. (*Allstate, supra,* 45 Cal.4th at p. 1018.) Citing *Standun, supra*, 62 Cal.App.4th at p. 1020, this Court held that the term "accidental" in the phrase "sudden and accidental" in the QPE refers to the nature of the *discharge* and not the nature of the *damage*. Accordingly, the policyholder's subjective *intent* to damage the environment is not a component of the "accidental" term in the QPE, contrary to Montrose's contention in this case. This Court in *Allstate* specifically contrasted the phrase "sudden and accidental" against its antonym "gradual or nonaccidental," further reflecting this Court's stance that the definition of "sudden" necessarily excludes "gradual." (*Allstate,* at pp. 1029–1030.)

This Court also found that "liability for property damage caused by an accident was covered, while that caused by gradual

or nonaccidental release of pollutants was excluded." (*Allstate*, *supra*, 45 Cal.4th at pp. 1029–1030.) If "sudden" were to include gradual events, as Montrose contends, the entire section of the *Allstate* opinion discussing discharges caused both by a covered and uncovered risk would be rendered unnecessary. Thus, this Court has already endorsed, and in effect established, the interpretation of the term "sudden and accidental" in the QPE for which Montrose seeks to introduce extrinsic evidence and argue for a contrary interpretation. This Court it need not undertake the same exercise again.

C. Courts Have Uniformly Affirmed That a Term Must Be Reasonably Susceptible to a Proffered Meaning Before Evidence of That Proposed Meaning Can Be Admissible.

Montrose's effort to introduce extrinsic evidence is further foreclosed by this Court's holding in *Another Planet* that the reasonableness of a proffered meaning is a threshold determination; *i.e.*, a court must ***first*** determine that a proposed interpretation of a term is reasonable ***before*** admitting any proffered extrinsic evidence regarding the proffered interpretation. (*Another Planet*, *supra*, 15 Cal.5th at p. 1144.) Thus, extrinsic evidence is admissible only to the extent it is relevant "to prove a meaning of which the language of the policy is reasonably susceptible." (*Id.* at pp. 1145–1146, citing *Pacific Gas*, *supra*, 69 Cal.2d at p. 40, fn. 7; accord, *Dore*, *supra*, 39 Cal.4th at p. 391.)

This applies to insurance coverage exclusions: "'[A]s with any extrinsic evidence,' standardized insurance exclusions 'and

their accompanying interpretive materials' are 'only relevant to the extent they tend to prove a meaning of which the language of the policy is reasonably susceptible.'" (Opn. at p. 910, quoting *Another Planet*, *supra*, 15 Cal.5th at pp. 1145–1146.)

Montrose would have this Court reverse the analytical sequence set forth in *Another Planet*. Montrose contends that *Pacific Gas* and its progeny require courts to "provisionally receive any proffered extrinsic evidence to determine whether the disputed language is 'reasonably susceptible' to the interpretation urged by a party." (Petn. at pp. 33–34.) But those cases fundamentally differ from the present dispute because the challenged terms in those cases were in fact "reasonably susceptible" of the proposed interpretations.

Not so here. As the Court of Appeal held, "because the disputed policy language is not reasonably susceptible of Montrose's proposed interpretation, *no* extrinsic evidence of *any sort* is relevant or admissible to prove the meaning that Montrose seeks to establish." (Opn. at pp. 904–05, italics original, citing *Another Planet*, *supra*, 15 Cal.5th at pp. 1145–1146.)

Another Planet also cited *Dore*, in which this Court stated that "[w]hen a dispute arises over the meaning of contract language, the first question to be decided is whether the language is 'reasonably susceptible' to the interpretation urged by the party. If it is not, the case is over." (*Dore*, *supra*, 39 Cal.4th at p. 393.) *Another Planet* stated that "[a] policy provision will be considered ambiguous when it is capable of two or more constructions, **both of which are reasonable**." (*Another Planet*,

supra, 15 Cal.5th at p. 1136, quoting *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 822 (*AIU*).) "'Courts will not strain to create an ambiguity where none exists.' [Citation omitted.] 'Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning.'" (*Ibid.*; see also *id.* at p. 1147, fn. 6; *Baker v. National Interstate Ins. Co.* (2009) 180 Cal.App.4th 1319, 1327 ["If the language of the policy is not ambiguous, then the coverage inquiry ends, and the court determines coverage by applying the plain meaning of the unambiguous provisions of the policy."].)

Montrose treats this Court's decision in *Pacific Gas* as standing for the proposition that words have no definite meaning and that parties can always admit extrinsic evidence as long as that evidence purports to bear on the interpretation of a contractual term. *Pacific Gas* holds no such thing.

In *Pacific Gas*, the parties entered into a contract to repair plaintiff's property that included a clause in which defendant agreed to "indemnify plaintiff against all loss, damage, expense and liability resulting from injury to property." (*Pacific Gas*, *supra*, 69 Cal.2d at p. 36.) After plaintiff's property was damaged during the contracted work, plaintiff sought to recover the repair costs, citing the indemnification provision. (*Ibid.*) Defendant sought to introduce extrinsic evidence to prove that the indemnity clause was meant to cover injury to third-party property only. (*Ibid.*) The trial court found that the language was reasonably susceptible to the proffered interpretation, but declined to admit the extrinsic evidence because it would

contradict what the court viewed as the "plain meaning" of the contract. (*Ibid.*) This Court rejected the idea that a court's own understanding of a contract's "plain meaning" could override the parties' contractual intent. (See *id.* at p. 37.) The Court thus allowed defendant to introduce evidence of "admissions of plaintiff's agents, . . . defendant's conduct under similar contracts entered into with plaintiff, and . . . other proof" to demonstrate the parties' intention for the meaning of the indemnity clause. (*Id.* at p. 36.)[12]

Montrose then looks to this Court's decision in *MacKinnon,* but that case also does not support Montrose's position on the interpretation of the word "sudden" in the QPE. Contrary to Montrose's contention, *MacKinnon* did not hold that courts should always consider extrinsic evidence when interpreting

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[12] The other cases Montrose cites for the same proposition similarly involved special meaning or course of conduct between the parties, not general drafting history. In *Wolf*, the court rejected an argument that the parties were not using the "gross receipts" term in a technical sense as used in the entertainment industry. (See *Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1355 (*Wolf).*) Montrose also cites *Delta Dynamics*, where this Court determined whether a termination clause was intended to be the sole remedy in the event of failure to meet quota, or whether the clause was intended to be the condition that excused performance. (*Delta Dynamics, Inc. v. Arioto* (1968) 69 Cal.2d 525, 527–28 (*Delta Dynamics*).) The Court was assessing a contract between a manufacturer and distributor of locks, where the manufacturer had failed to deliver the full number of locks promised. (*Id.* at 526–27.) As with the rest of Montrose's cited cases, both interpretations offered were reasonable, and so the threshold for considering extrinsic evidence was met regardless. (*Id.* at 528.)

disputed policy language. (See Opn. at p. 904.) Rather, it held that such evidence *may* be considered to aid the court's interpretation. (*MacKinnon v. Truck Ins. Exch.* (2003) 31 Cal.4th 635, 653 (*MacKinnon*) ["The history and purpose of the clause, while not determinative, may properly be used by courts as an aid to discern the meaning of disputed policy language."].) And, notably, it did not change the established requirement that the proffered meaning must be reasonable. (*Id.* at p. 648 ["A policy provision will be considered ambiguous when it is capable or two or more constructions, **both of which are reasonable**."].) In *MacKinnon,* the question was whether pollution exclusion language referencing "injuries caused by the 'discharge, dispersal, release or escape of pollutants'" included the normal application of pesticides in an apartment building. (*Id.* at p. 639.) The exclusion at issue in that case did not include a sudden and accidental exception. (*Ibid.*) In determining that the pollution exclusion did not bar coverage for a tenant's bodily injury claim arising from pesticide use in the building, the *MacKinnon* Court held that the term "pollutant" in a different exclusion not at issue here did not turn on dictionary definitions, but instead should be construed to refer to the dispersal of substances "commonly thought of as pollution." (*Id.* at pp. 650–53.)

Montrose claims that post-*ACL*, this Court has "repeatedly emphasize[d] the importance of extrinsic evidence in general, and industry drafting history in particular, when interpreting form policies." (Petn. at p. 32, citing e.g., *Montrose Chem. Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 670–71; *Fluor Corp. v.*

Superior Court (2015) 61 Cal.4th 1175, 1217, fn. 47; *Another Planet*, *supra*, 15 Cal.5th at p. 1145.) Montrose argues that "modern precedent" following *ACL* and *Shell Oil* establishes that extrinsic evidence should always be considered. Yet the cases following *ACL* and *Shell Oil* uniformly involve interpretations to which the disputed language is "reasonably susceptible." Notably, one of the cases Montrose cites for this proposition is *Another Planet*, which, as addressed above, established that extrinsic evidence should *not* always be considered. Montrose has simply chosen cases where—unlike here—the party proffering extrinsic evidence had a reasonable interpretation to begin with.

In sum, "[w]hatever shades of meaning the word 'sudden' may have, it does not include events that happen gradually over time. 'Gradual is the opposite of sudden.'" (Opn. at p. 917.) As such, as the Court of Appeal aptly recognized, the word "sudden" in the QPE is not reasonably susceptible to Montrose's proffered meaning of that term; therefore, this Court should deny the petition for review.

D. Review Is Not Necessary to Secure Uniformity of Decision Because Such Uniformity Already Exists; *Stare Decisis* Will Be Subverted If Parties Are Permitted to Bring New Actions Requesting to Overturn Longstanding Appellate Court Decisions Without Meeting an Initial Threshold of Reasonable Susceptibility.

Montrose's petition fails to demonstrate that review is "necessary to secure uniformity of decision", as required under the rule setting forth the standard for granting a petition for review by this Court. In fact, Montrose's petition is inimical to

that standard, because it requests that the Court open up review of settled matters (as addressed fully in sections I.A, B and C of this brief), thereby subverting the goal of "secur[ing] uniformity of decision." Montrose seeks to admit evidence that cannot establish the definition Montrose wants to establish, because appellate courts have already found that the word "sudden" within QPEs unambiguously does not mean gradual and, in fact, means the opposite. Thus, Montrose cannot achieve its goal of including "gradual" in the definition of "sudden," regardless of what extrinsic evidence it submits. Given that multiple California appellate panels have considered and rejected the interpretation Montrose proposes, allowing continual petitions on this issue would squander court resources and diminish the weight of appellate opinions.

Montrose's attempt to rewrite California authority, if indulged, would violate *stare decisis*, "which serves the important goals of stability in the law and predictability of decision." (*Mega Life & Health Ins. Co. v. Superior Ct.* (2009) 172 Cal.App.4th 1522, 1529.) Certainty in the law is important both to courts applying it and to parties entering into contracts affected by it. Allowing litigants to repeatedly raise ambiguity arguments without evidence that the contracting parties intended to deviate from the judicial construction of policy terms corrodes any certainty in contracting. (See *Certain Underwriters at Lloyd's of London v. Superior Ct.* (2001) 24 Cal.4th 945, at pp. 965–66 ["By increasing certainty and decreasing uncertainty about the duty to indemnify, it serves to deter some litigation on the issue and to

conclude what it does not deter expeditiously and soundly."].) This Court should not indulge Montrose.

Montrose argues that the Court should interpret the word "sudden" to be its antonym because doing so would give "hundreds of millions of dollars to fund remediation for . . . environmental pollution." (Petn. at p. 24.) But contract interpretation must be based on what words mean, not what would relieve a party of its financial burden after its own actions polluted the environment. Courts cannot rewrite insurance contracts, and the parties to those insurance contracts are bound by their terms.

II. REVIEW IS UNWARRANTED BECAUSE THERE IS NO UNSETTLED QUESTION OF LAW

A. Montrose's Claim That There is a Question to Be Settled Is Incorrect, as *Another Planet* Confirms.

Montrose's petition identifies no unsettled question of law. In addition to the *ACL* court's rejection of Montrose's last attempt at this interpretation, and the long list of appellate decisions supporting that result, this Court has already answered all questions that Montrose contends are unanswered. The split of authority that Montrose strains to create simply does not exist.

There is no divergence of opinion between the past cases consistently finding "sudden" has a temporal element and "modern precedent." *Another Planet* clearly dictates that receiving extrinsic evidence, even provisionally, is only permitted where the language is reasonably susceptible to the offered interpretation. (*Another Planet*, *supra*, 15 Cal.5th at p. 1144.) The

Court of Appeal was correct in deciding, like the six other appellate courts before it, that extrinsic evidence is "only relevant to the extent [it] tend[s] to prove a meaning of which the language of the policy is reasonably susceptible." (Opn. at p. 898, quoting *Another Planet*, at pp. 1145–46.) None of Montrose's cited cases contradict the proposition that a term must be "reasonably susceptible" of a definition before a court will consider extrinsic evidence on that definition, or that "sudden" in the QPE is not "reasonably susceptible" of Montrose's proffered meaning.

B. The Court of Appeal Properly Rejected Montrose's Arguments That "Sudden" Can Mean "Gradual."

The Court of Appeal quoted *Shell Oil* in correctly identifying the unreasonableness of Montrose's proposal:

> We cannot *reasonably* call "sudden" a process that occurs slowly and incrementally over a relatively long time, no matter how unexpected or unintended the process. A "discharge, dispersal, release or escape" of pollutants that happens gradually and continuously for years is not "sudden" in the ordinary and popular sense of the word. [Citation.] Thus, "sudden" necessarily contains a temporal element in addition to its connotation of the unexpected.

(Opn. at pp. 906–07, italics original, quoting *Shell Oil, supra*, 12 Cal.App.4th at p. 754; see also *ante*, at pp. 22-24.)

Montrose's argument contrary to all of these authorities and common sense simply is not objectively reasonable.

The Court of Appeal also stated that Montrose's argument about the history of pollution exclusions was "a thinly veiled attempt to smuggle in extrinsic evidence that would be relevant only if the term 'sudden' were reasonably susceptible of a meaning that included 'gradual.'" (Opn. at p. 916.) As the Court of Appeal explained, "the full passage [in *MacKinnon*] makes clear," that the history of the insurance industry changing "from accident-based to occurrence-based coverage was relevant to the . . . adoption of the pollution exclusion" because despite the insurance industry's changes to policies, courts continued interpreting coverage for "long-term, gradual exposure to environmental pollution." (*Id.* at p. 917.) The insurance industry formulated the QPEs as a "means of avoiding 'the yawning extent of potential liability arising from the gradual or repeated discharge of hazardous substances into the environment.'" (*Ibid.*, quoting *MacKinnon*, *supra*, 31 Cal.4th at p. 645.) Just as "sudden" is the opposite of "gradual," Montrose's argument here is the opposite of what the historical evidence demonstrated.

Montrose's attempt to invoke the findings of other state Supreme Courts also misses the mark. Montrose claims that "in the many states that follow the contract interpretation approach used in this state," supreme courts have considered extrinsic evidence to ascertain the QPEs' meaning. (Petn. at p. 10.) Montrose further asserts that "[e]very high court to weigh this evidence has concluded that 'sudden and accidental' means 'unexpected and unintended,' or at a minimum is ambiguous," and "does not imply a temporal limitation." (*Ibid.*) Montrose does

not elaborate on what specific "contract interpretation approach" it refers to, but regardless, the claim that "[e]very high court" has decided that "sudden" has no temporal component is false. (*Ibid*.) Seven state Supreme Courts have considered and rejected the same "drafting history" evidence in analyzing the QPEs. (See *Buell Indus. Inc. v. Greater N.Y. Mut. Ins. Co.* (Conn. 2002) 791 A.2d 489, 501–02; *E.I. DuPont de Nemours & Co. v. Allstate Ins. Co.* (Del. 1997) 693 A.2d 1059, 1061–62; *Dimmitt Chevrolet Inc. v. Se. Fid. Ins. Corp.* (Fla. 1993) 636 So.2d 700, 705, *reh'g denied* (Fla. March 31, 1994); *Lumbermens Mut. Cas. Co. v. Belleville Ind., Inc.* (Mass. 1990) 555 N.E.2d 568, 573; *Anderson v. Minn. Ins. Guar. Assoc.* (Minn. 1995) 534 N.W.2d 706, 708–09; *Travelers Cas. & Sur. Co. v. Ribi Immunochem Rsch., Inc.* (Mont. 2005) 108 P.3d 469, 475–76; *Kerr-McGee Corp. v. Admiral Ins. Co.* (Okla. 1995) 905 P.2d 760, 764.)

California courts have also rejected this argument. (See *ACL*, *supra*, 17 Cal.App.4th at p. 1790 ["The argument is a well-veiled tautology, even assuming the assertion that 'every' court which has 'examined' the drafting history has decided the same way (at least up to now) is true. Given the rule that unambiguous language should control, use of drafting history indicates that the court involved has already decided that the language is ambiguous."].) California has its own statutory rules governing when extrinsic evidence can be admitted to interpret policy terms and how to interpret terms in light of that evidence. That some other states may have come to a different conclusion has no

bearing on whether California courts should admit the evidence or what conclusions they should reach.

C. California Statutory Law Also Demonstrates the Language Is Not Reasonably Susceptible to the Proposed Definition and There Is No Unsettled Question.

Montrose's suggested interpretation of "sudden" within "sudden and accidental" as meaning only "unforeseen" both contradicts its plain meaning (violating Code Civ. Proc., § 1856) and renders the term mere surplusage (violating Civ. Code, § 1641.)

Civil Code section 1641 requires that "the whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." In other words, it requires courts to give meaning to each term in a contract, to avoid rendering any contract term as mere surplusage. Given the language of section 1641, it would be unreasonable to presume that the term "sudden" could be devoid of a temporal component.

Civil Code section 1856(a) dictates that terms "set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement." Civil Code section 1639 dictates that intent should be "ascertained from the writing alone, if possible." To argue that the word "sudden" means "gradual" when the terms directly oppose each other would

violate the statutory requirement to give terms their plain meaning.

Citing section 1641, this Court in *AIU* rejected a reading that would render two terms in an insurance contract redundant. "Defining 'damages' as sums paid to third persons as a result of 'legal claims' would render the policy language at issue here redundant"; "if the policies are construed in this manner, the phrase 'legally obligated to pay' would have no meaning not already expressed by the subsequent phrase providing coverage of 'damages.' Under established principles, we decline to apply a definition that would create this result." (*AIU*, *supra*, 51 Cal.3d at p. 827.) Applying the same reasoning here, this Court should reject Montrose's effort to interpret the QPEs in an unreasonable, redundant manner.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Dated: December 1, 2025

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CERTIFICATE OF WORD COUNT

In accordance with California Rules of Court, rule 8.504(d)(1), and in reliance on the word count of the computer program used to prepare this brief, counsel certifies that this Answer was produced using at least 13-point font and contains 7,490 words.

Dated: December 1, 2025

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PROOF OF SERVICE

I am employed in the County of San Mateo, State of California. I am over the age of 18 years and not a party to this action. My business address is O'Melveny & Myers LLP, 2765 Sand Hill Road, 1st Floor, Menlo Park, CA 94025.

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 1, 2025, at Menlo Park, California.

/s/ Adele Perera
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I am employed in the County of San Mateo, State of California. I am over the age of 18 years and not a party to this action. My business address is O'Melveny & Myers LLP, 2765 Sand Hill Road, 1st Floor, Menlo Park, CA 94025, and my electronic service address is aperera@omm.com.

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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 12/1/2025 by Gabriela Muca, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MONTROSE CHEMICAL CORPORATION OF CALIFORNIA v. S.C. (CANADIAN UNIVERSAL INSURANCE COMPANY)**
Case Number: **S293914**
Lower Court Case Number: **B335073**

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

12/1/2025

Date

/s/Court Services

Signature

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