

**Case No. S244737**

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

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**MONTROSE CHEMICAL CORPORATION OF CALIFORNIA,**  
*Petitioner,*

v.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF LOS ANGELES,**  
*Respondent;*

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

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**After a Decision by the Court of Appeal,  
Second Appellate District, Division Three  
Civil Case No. B272357**

**After Grant of Review and Transfer to Court of Appeal to Vacate  
Order Denying Writ of Mandate and Order to Show Cause  
Supreme Court Case No. S236148**

**After Denial of Petition for Writ of Mandate by the Court of Appeal,  
Second Appellate District, Division Three  
Civil Case No. B272387**

**Petition from the Superior Court of the State of California  
for the County of Los Angeles  
Case No. BC 005158, Honorable Elihu Berle, Presiding**

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**ANSWER IN OPPOSITION TO MONTROSE CHEMICAL  
CORPORATION OF CALIFORNIA'S PETITION FOR REVIEW**

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## ANSWER

Pursuant to California Rule of Court 8.500, defendants and real parties in interest Travelers Casualty and Surety Company and The Travelers Indemnity Company (collectively, “Travelers”) submit this Answer to the Petition for Review (“Petition”) filed by Montrose Chemical Corporation of California (“Montrose”). Travelers did not affirmatively move for summary adjudication on the question of “horizontal” versus “vertical” exhaustion in the trial court, but did oppose Montrose’s motion for the reasons set forth in the record, including that Montrose failed to establish that California law applied to the Travelers policies and that the relief Montrose was seeking was improper for reasons that are independent of the question of “horizontal” versus “vertical” exhaustion.

Following the trial court’s order on summary adjudication, Montrose petitioned the Court of Appeal for a writ of mandate invalidating that order, at which time Travelers submitted a partial Joinder in Preliminary Opposition to Montrose’s Petition for Writ of Mandate or Other Appropriate Relief filed by certain other defendants. The California Court of Appeal for the Second Appellate District (“Court of Appeal”) denied Montrose’s petition. Montrose then filed its initial Petition for Review to the Supreme Court of California, which Travelers opposed in its initial Answer in Opposition to the Petition for Review. At this Court’s direction, the Court of Appeal subsequently issued an Order to Show Cause why the

relief Montrose sought should not be granted. After briefing and oral argument, the Court of Appeal issued its opinion (the “DCA Opinion”) which denied Montrose the full relief it sought. Now, by way of the Petition, Montrose again seeks relief from this Court.

In the Petition, Montrose suggests the DCA Opinion presents an “‘important’ question of law” that “requires prompt correction” because the DCA Opinion—according to Montrose—establishes “new law” that would, *inter alia*, force policyholders like Montrose to “incur significant time and expense in unwieldy coverage litigations like this one.” (Petition at 11 and 16.) This is essentially the same substantive argument advanced by Montrose in its original petition to the Court of Appeal for writ of mandate. In its petition to the Court of Appeal, Montrose argued that—absent writ relief—the trial court order that prompted Montrose’s appeal might lead Montrose to “suffer a significant delay and incur substantial expense” by “requir[ing]” Montrose to litigate issues it may not otherwise need to pursue. (Petition for Writ of Mandate at 14 and 23; *see also* Reply ISO at 10.)

But seeking to limit the amount of litigation a litigant *might* face under certain narrow circumstances does not render an issue an “important question of law” worthy of interlocutory Supreme Court review. CAL. R. CT. 8.500. This is particularly true here, where the DCA Opinion simply applied the unremarkable proposition that “California law requires that

insurance contracts be interpreted according to their terms” when determining the method of exhaustion and attachment point of any given excess policy. DCA Opinion at 43-44; *see also id.* at 31. Indeed, Montrose’s Petition is patently premature because (i) Montrose’s stated concerns are purely speculative and will potentially be rendered moot as the proceedings in this case develop, and (ii) resolution of any appellate issues concerning exhaustion can be adequately resolved, if necessary, through the ordinary course following trial. This matter is therefore inappropriate for review by this Court. *See Paul v. Milk Depots, Inc.*, 62 Cal. 2d 129, 132 (1964) (“the duty of this court . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions”) (internal quotations and citations omitted).

Moreover, Montrose’s claim that the DCA Opinion may require it to litigate issues that it otherwise might not need to pursue is an argument that virtually *any* litigant can make upon the denial of *any* motion for summary adjudication, regardless of the applicable law. Meanwhile, in this case, there is a strong likelihood no appellate court will *ever* need to reach the issue of “horizontal” versus “vertical” exhaustion if any one of the numerous issues that have yet to be resolved and which are entirely unrelated to exhaustion—such as the applicability of policies’ pollution exclusions—ultimately precludes Montrose from obtaining the full

recovery it is seeking. Montrose simply speculates that—if it does not obtain a favorable result from this Court—it *may* need to engage in a measure of litigation greater than it believes it would in the absence of the DCA Opinion.

But, at bottom, Montrose’s real purpose for seeking a ruling that vertical exhaustion should apply has little to do with resolving an “important question of law” or avoiding litigation. Rather, as Montrose—an active and long-experienced litigant in the California courts—candidly admitted during the trial court proceedings, its real goal in seeking a ruling on the issue of vertical exhaustion is (and remains) to enable Montrose to put settlement pressure on individual defendants and otherwise increase its settlement leverage. That was a point Montrose repeatedly expressed to the trial court during the hearing on the motions below, not—as it now contends—that this issue raises an important question of law or that it would somehow streamline the litigation. (*See, e.g.*, 1PA1 at 8:22–9:4) (“Your Honor, I tried to step back after all the papers that were filed with the Court over the past several months to really remind myself why this issue is important to the case . . . . And the reason was it was posing an impediment for settlement discussions, particularly with the higher-lying carriers.”); (*id.* at 16:7-10) (“Settlement discussions, I think as we’ve seen in this case, are unduly and unnecessarily hampered if particularly the high-lying carriers have an argument that ‘you may never reach our layer.’”). A



party's desire to increase settlement leverage is, of course, no basis for a trial court's ruling on the law, let alone a reason for this Court to grant interlocutory review.

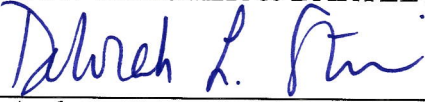
**CONCLUSION**

For the reasons set forth herein, Travelers respectfully submits that the Court should deny Montrose's Petition.

Dated: October 25, 2017

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

By:   
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Andrew T. Frankel (*pro hac vice*)  
Deborah L. Stein

*Attorneys for Real Parties in Interest  
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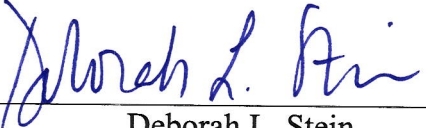
**VERIFICATION**

I, Deborah L. Stein, declare as follows:

I am a member of the firm of Simpson Thacher & Bartlett LLP, attorneys for Real Parties in Interest Travelers Casualty and Surety Company and The Travelers Indemnity Company. I have read the foregoing Answer in Opposition to Montrose Chemical Corporation of California's Petition for Review and know its contents. I have personally reviewed and am familiar with the record, files, and proceedings described in and the subject of the present answer in opposition, and know the facts set forth in the answer in opposition, to the extent that they describe the proceedings in the case, to be true and correct.

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

Executed on October 25, 2017 at Los Angeles, California.

  
\_\_\_\_\_  
Deborah L. Stein

**CERTIFICATE OF COMPLIANCE**

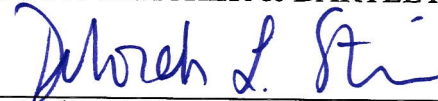
I certify that pursuant to California Rules of Court 8.504(d)(1) and in reliance on the word count feature of the software used to prepare this document, the attached Answer in Opposition to Montrose Chemical Corporation of California's Petition for Review has a typeface of 13 points or more and contains 1,009 words, including footnotes.

Dated: October 25, 2017

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

By: \_\_\_\_\_



Andrew T. Frankel (*pro hac vice*)  
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*Attorneys for Real Parties in Interest  
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(formerly known as Aetna Casualty and  
Surety Company) and The Travelers  
Indemnity Company*

**PROOF OF SERVICE**

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1999 Avenue of the Stars, 29<sup>th</sup> Floor, Los Angeles, California 90067.

On **October 25, 2017**, I caused to be served the following document(s):

**ANSWER IN OPPOSITION TO MONTROSE CHEMICAL CORPORATION OF CALIFORNIA'S PETITION FOR REVIEW**

on the interested party(ies) in this action by the following means of service:

**PLEASE SEE ATTACHED SERVICE LIST**

- ( ) [U.S. MAIL] I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices in the United States mailed at Los Angeles, California. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
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- (X) [ELECTRONIC SERVICE] Based on a court order and an agreement of the parties to accept service via Lexis-Nexis File and Serve, I caused the above-referenced document(s) to be transmitted to the electronic mail addresses designated on the Transaction Receipt located on the File and Serve website. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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- (X) (STATE) I declare that I was retained by the office of a member of the bar of this court at whose direction the service was made.



\_\_\_\_\_  
Queenie Wong

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**PROOF OF SERVICE**

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1999 Avenue of the Stars, 29<sup>th</sup> Floor, Los Angeles, California 90067.

On **October 25, 2017**, I caused to be served the following document(s):

**ANSWER IN OPPOSITION TO MONTROSE CHEMICAL CORPORATION OF CALIFORNIA'S PETITION FOR REVIEW**

on the interested party(ies) in this action by the following means of service:

**BY ELECTRONIC SERVICE**

The service copy to the California Court of Appeal, Second District, Division Three, was filed electronically via the Second District's electronic filing website.

**BY FEDEX**


The Honorable Elihu M. Berle  
LOS ANGELES COUNTY SUPERIOR COURT  
Department 323  
Central Civil West Courthouse  
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Los Angeles, California 90005

The Honorable Carolyn B. Kuhl  
LOS ANGELES COUNTY SUPERIOR COURT  
Department 309  
Central Civil West Courthouse  
600 South Commonwealth Ave.  
Los Angeles, California 90005

- (X) **[OVERNIGHT DELIVERY]** Via Federal Express, by depositing in a box or other facility regularly maintained by such overnight delivery service, or delivering such envelope to a courier or driver authorized by said overnight delivery service to receive documents, in an envelope designated by said overnight delivery service with delivery fees paid or provided for, addressed to the address last shown by that person on any documents filed in this action.

Executed on **October 25, 2017**, at Los Angeles, California.

- (X) **(STATE)** I declare that I was retained by the office of a member of the bar of this court at whose direction the service was made.

  
\_\_\_\_\_  
Queenie Wong

**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: **S244737**

Lower Court Case Number: **B272387**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **dstein@stblaw.com**
3. I served by email a copy of the following document(s) indicated below:

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

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

10-25-2017

---

Date

/s/Deborah Stein

---

Signature

Stein, Deborah (224570)

---

Last Name, First Name (PNum)

Simpson Thacher & Bartlett LLP

---

Law Firm