

S267746

No. 20-55099

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALLIED PREMIER INSURANCE,

Plaintiff-Appellee

vs.

UNITED FINANCIAL CASUALTY COMPANY,

Defendant-Appellant

Appeal from the United States District Court for the Central
District of California, No. 5:18-cv-00088-JGB-KKX,
The Honorable Jesus G. Bernal

EXCERPTS OF RECORD
Volume 2 of 2 • Pages 33-123

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**Allied Premier Insurance v. United Financial
Casualty Company**

Ninth Circuit Case No. 20-55099

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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 Allied Premier Insurance, a Risk
17 Retention Group, a Connecticut
18 corporation,
19

20 Plaintiff,
21

22 v.
23

24 United Financial Casualty
25 Company, an Ohio corporation,
26
27 Defendant.
28

Case No. 5:18-cv-00088 JGB (KKx)

**NOTICE OF APPEAL AND
REPRESENTATION
STATEMENT**

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Please take notice that, pursuant to Rule 3 of the FEDERAL RULES OF APPELLATE PROCEDURE, United Financial Casualty Company, the defendant in the above-named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on December 30, 2019 (Dkt. no. 50).

Defendant’s Representation Statement is attached to this notice as required by Ninth Circuit Rule 3-2(b).

January 28, 2020

PATRICK HOWE LAW, APC

By: /s/Patrick M. Howe
Patrick M. Howe
Attorney for defendant United
Financial Casualty Company

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REPRESENTATION STATEMENT

Pursuant to Rule 12(b) of the FEDERAL RULES OF APPELLATE PROCEDURE and Ninth Circuit Rule 3-2(b), defendant submits the following list of parties to the action and their respective counsel of record:

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Allied Premier Insurance, a Risk
Retention Group, a Connecticut
corporation,

Plaintiff,

v.

United Financial Casualty
Company, an Ohio corporation,

Defendant.

Case No. 5:18-cv-00088-JGB-KK

**Memorandum of Points and
Authorities in Support of
United Financial Casualty
Company’s Opposition to Allied
Premier Insurance’s Motion for
Summary Judgment**

Date: 1/28/19
Time: 9:00 AM
Judge: Hon. J. Bernal
Ctrm: 1

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1. INTRODUCTION

Allied Premier Insurance’s (“Allied”) motion is based on the mistaken notion that United Financial Casualty Company’s (“UFCC”) *insurance policy* with José Porrás was still in effect at the time of the September 1, 2015 car accident in this case, even though the policy by its own terms expired five months earlier. Allied argues the *insurance policy* was still in force because one of UFCC’s MCP 65 certificates of insurance was still active with the California Department of Motor Vehicles (“DMV”).

Allied is wrong. Allied fails to acknowledge the critical distinction between UFCC’s *insurance policy* (i.e., a contract designed to protect the assets of the policyholder) and UFCC’s DMV certificate of insurance (i.e., a surety designed to provide a safety net for injured members of the general public where actual insurance coverage is unavailable or insufficient).

Allied also relies on case law, statutes, and regulations involving a pre-1996 Public Utilities Commission-based (“PUC”) statutory scheme, under which an insurer’s *insurance policy* remained in force unless properly canceled with the PUC. That whole statutory scheme was replaced in 1996. Since 1996, the motor carrier law has been governed by CALIFORNIA VEHICLE CODE section 34600 et seq. and related DMV regulations. The DMV-based statutory scheme expressly recognizes the critical distinction between an insurer’s insurance policy and the public certificate of insurance.

Specifically, under current law, when a commercial trucker’s insurance policy expires, the terms of the *insurance contract* control the relations between the insurance company and its policyholder (e.g., whether the insurer owes a defense or coverage for a third-party

1 claim). The insurer's DMV certificate of insurance, on the other hand,
2 controls only the relations between the insurance company and a
3 member of the general public that has obtained a judgment against
4 the policyholder.

5 Here, the wrongful death claimants received \$1 million in
6 insurance contract money from Allied after Allied settled their claims
7 in return for a full release of the commercial trucker. The wrongful
8 death claimants did not obtain a judgment against the trucker that
9 remains unsatisfied because of a lack of insurance coverage or an
10 insufficient amount of insurance coverage.

11 Accordingly, Allied cannot take advantage of a public certificate of
12 insurance designed to protect the general public from harm created by
13 an uninsured or underinsured commercial trucker. Allied received
14 premium money to provide \$1 million in insurance coverage for
15 covered losses. The accident in this case was covered under Allied's
16 policy. Allied paid the loss because it was contractually required to do
17 so. Allied is not entitled to push any part of that contractual obligation
18 on to UFCC through this current lawsuit.

19 **2. SUMMARY OF ARGUMENT**

20 The court should deny Allied's motion for four reasons:

21 1. First, UFCC's insurance contract was not in force at the time of
22 loss because it expired by its own terms five months before the
23 accident. UFCC therefore had no duty to indemnify the commercial
24 trucker against the claims in the wrongful death lawsuit. UFCC's DMV
25 certificate of insurance did not apply because its "safety net" benefit
26 flowed only to the third-party wrongful death claimants. The benefit
27 did not flow to UFCC's policyholder or to another insurance company.
28 The claimants did not need the "safety net" because Allied's policy

1 provided actual coverage and the settlement paid under the coverage
2 was more than \$750,000, i.e., \$1 million.

3 2. Second, UFCC's DMV certificate of insurance did not apply
4 because the wrongful death claimants did not obtain a judgment
5 against the commercial trucker, a mandatory requirement under the
6 motor carrier law. They did not secure a judgment because Allied
7 settled the wrongful death lawsuit prior to trial.

8 3. Third, even if UFCC's certificate of insurance was triggered,
9 Allied was solely responsible for the \$1 million settlement under
10 CALIFORNIA INSURANCE CODE section 11580.9. Under that statute, the
11 insurance policy that specifically described the loss vehicle is primary
12 for all purposes. The Allied policy specifically described the loss
13 vehicle. The UFCC DMV certificate did not.

14 4. Fourth, an insurer is entitled to equitable contribution or
15 subrogation from another insurer only for benefits owed under an
16 actual insurance policy. UFCC's insurance policy was not in force at
17 the time of loss; only UFCC's DMV certificate of insurance remained
18 active. Allied has no rights under the DMV certificate of insurance
19 because it provided a potential benefit only to innocent members of
20 the public.

21 3. FACTS

22 3.1. José Porrás was a "motor carrier of property."

23 The auto accident involved in this matter occurred on September 1,
24 2015. (Allied UMF 15; Jt. Stmt., p. 4, ¶ 15.)¹ At the time of loss, José

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26 _____
27 ¹ "Allied UMF" refers to the referenced fact in Allied's statement of
28 undisputed material facts, Dkt. 20-2. "Jt. Stmt." refers to the parties'
Joint Statement of Stipulated Facts and Exhibits, Dkt. 16.

1 **4.1. UFCC had no duty to indemnify Jose Porras because the**
2 **UFCC policy was not in force and the DMV certificate’s**
3 **benefit flowed only to the wrongful death claimants.**

4 UFCC’s insurance policy provided coverage only for accidents and
5 losses that occurred during the policy term. (UFCC Add’l Fact 22; Jt.
6 Stmnt., Ex. 1/p. 31.) There is no dispute the policy was not in force on
7 the September 1, 2015 date of loss because it lapsed five months earlier
8 when Mr. Porras did not renew with UFCC. (Allied UMF 10; Jt.
9 Stmnt., p. 3, ¶ 10.)

10 Allied acknowledges this, but claims that UFCC still had an
11 obligation to indemnify Mr. Porras against the claims in the Jones
12 wrongful death lawsuit. Allied argues that, under the motor carrier
13 law, UFCC’s policy (notwithstanding its express terms) was deemed to
14 still be in force because one of UFCC’s DMV certificates of insurance
15 was still active. Allied’s argument is without merit for two reasons:

16 **4.1.1. Allied’s “PUC” cases do not apply; the motor carrier**
17 **law was changed in 1996; the Vehicle Code and DMV**
18 **rules now control.**

19 First, Allied’s argument is based on case law, statutes and
20 regulations involving a PUC-based statutory scheme that no longer
21 exists. Allied sites *Transamerica Ins. Co. v. Tab Transportation, Inc.*,
22 12 Cal.4th 389 (1995) and *Fireman’s Fund Ins. Co. v. Allstate Ins. Co.*,
23 234 Cal.App.3d 1154 (1991). In each case, the court held an insurance
24 policy, notwithstanding having expired by its own terms, continued in
25 force by operation of law because the insurer did not give the PUC
26 proper written notice of cancellation. The court held the result was
27 required under former CALIFORNIA PUBLIC UTILITIES CODE section
28 3634 and PUC General Order no. 100. The former statute stated that a

1 “*policy of insurance* or surety bond shall not be cancelable on less than
2 30 days’ written notice to the commission” *Tab Transportation*, 12
3 Cal.4th at 398, emphasis added; *Fireman’s Fund*, 234 Cal.App.3d at
4 1157, emphasis added. The PUC General Order in effect at the time
5 stated that every “*policy of insurance* ... shall not be cancelable on less
6 than thirty (30) days’ written notice to the [PUC]” and that “*every*
7 *insurance policy* ... shall contain a provision that such *policy* ... will
8 remain in full force and effect until canceled in the manner provided”
9 by the General Order. See *Tab Transportation*, 12 Cal.4th at 398,
10 emphasis added.

11 In *Tab Transportation*, the California Supreme Court reasoned
12 that, where a statute and regulation are by law incorporated into the
13 terms of the actual insurance policy, the statute and regulation prevail
14 in any conflict with the actual insurance contract terms. 12 Cal.4th at
15 400 (regulation’s requirement that “policy to remain in ‘full force and
16 effect until canceled’ converted the policy from a one-year term policy
17 to a policy that was to remain in effect ‘until canceled.’”).

18 These PUC-based cases, statute, and regulatory order no longer
19 apply. In 1996, the California Legislature transferred control of motor
20 carrier regulation to the DMV by enacting the Motor Carriers of
21 Property Permit Act, CALIFORNIA VEHICLE CODE section 34600 et
22 seq. (See UFCC Suppl. Req. for Jud. Not., Ex. 14, p. 8, showing
23 enactment date in 1996.) Under CALIFORNIA VEHICLE CODE section
24 34630(a), the commercial trucker proves his financial responsibility
25 by having his insurer file a “certificate of insurance” with the DMV.
26 Whereas former CALIFORNIA PUBLIC UTILITIES CODE section 3460
27 stated the “insurance policy” remained in force until proper notice of
28 cancellation was given to the PUC, CALIFORNIA VEHICLE CODE section

1 34600(a) states that the “certificate of insurance” cannot be canceled
2 on less than 30 days’ notice to the DMV. The current statute contains
3 no requirements governing cancellation of the actual insurance
4 contract between the insurer and the policyholder.

5 The DMV’s regulations also acknowledge the critical distinction
6 between the insurance policy and an insurer’s “certificate of
7 insurance.” Under 13 CAL. CODE REGS. section 220.06, the DMV
8 mandates an insurer file a “certificate of insurance” with the DMV on
9 DMV form MCP 65 and issue to the policyholder an endorsement on
10 DMV form MCP 67. Those required forms, unlike forms under former
11 PUC General Order 100, do not govern cancellation of the insurance
12 policy. Rather, the forms refer only to cancellation of the “certificate of
13 insurance.” MCP form 65 states “this Certificate of Insurance shall not
14 be canceled on less than thirty (30) days’ notice from the Insurer to
15 the DMV ...” (UFCC Add’l Fact 25; Jt. Stmt., Ex. 2/p. 72, 6th bullet
16 point.) MCP form 67 also states “the Certificate of Insurance shall not
17 be canceled on less than thirty (30) days’ notice from the Insurer to
18 the DMV....”⁵ (UFCC Add’l Fact 27; Jt. Stmt., Ex. 3/p. 73, 4th bullet
19 point.)

20
21 ⁵ Even later versions of PUC General Order no. 100 were revised to
22 acknowledge the distinction between an insurance policy and a
23 certificate of insurance filed with the regulator. For example, version
24 100-M (effective 1/1/94), no longer contained the language the *Tab*
25 *Transportation* and *Fireman’s Fund* courts relied on in holding that
26 the insurance policies involved remained in force, i.e., every “policy of
27 insurance ... shall not be cancelable on less than thirty (30) days’
28 written notice to the [PUC]” and “every insurance policy ... shall
contain a provision that such policy ... will remain in full force and
effect until canceled in the manner provided” by the General Order.
See *Tab Transportation*, 12 Cal.4th at 398. Instead, version 100-M

1 Accordingly, unlike in *Tab Transportation* and *Fireman's Fund*,
 2 there is no conflict between UFCC's insurance policy and the motor
 3 carrier law and regulations concerning cancellation of the insurance
 4 contract. UFCC's insurance contract, therefore, was not in force (and
 5 cannot be deemed as in force) at the time of loss. This means UFCC
 6 had no obligation to indemnify Jose Porras against the claims in the
 7 wrongful death lawsuit.⁶

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 13 deleted the phrases "policy of insurance" and "insurance policy" and
 14 replaced them with "certificate of insurance": a "certificate of
 15 insurance ... shall not be cancelable on less than thirty (30) days" and
 16 every "insurance certificate ... shall remain in full force and effect until
 17 canceled in the manner provided by" the order. (See General Order
 100-M, subd. (6) and (8), attached as Ex. 13 to UFCC Suppl. Req. for
 Jud. Not., pp. 6-7.)

18 ⁶ The DMV regulations' distinction between an insurance contract
 19 and a DMV certificate of insurance is evident in several additional
 20 ways. For example, whereas an insurance policy promises the
 21 policyholder a defense against covered claims, the DMV form MCP 67
 22 endorsement issued to the policyholder does not; it expressly excludes
 23 any obligation to defend. (UFCC Add'l Fact 40; Jt. Stmt., Ex. 3/p. 73,
 24 1st bullet point.) Also, whereas an insurance policy does not provide
 25 the insurer with a reimbursement right against its policyholder for
 26 money paid to resolve third-party claims, the DMV form MCP 67
 27 expressly provides a right of reimbursement for all money paid under
 28 the public filing. (UFCC Add'l Fact 38; Jt. Stmt., Ex. 3/p. 73, 6th
 bullet point.) Additionally, the DMV certificate of insurance, on its
 face, states that, unless otherwise specified in the certificate, all terms
 and conditions of the insurance policy govern the insurer's obligations.
 (*Id.*)

1 **4.1.2. UFCC’s DMV certificate was not triggered because the**
 2 **wrongful death claimants received more than**
 3 **\$750,000 in insurance policy money from Allied.**

4 Absent another valid insurance contract that applied to the loss,
 5 Allied has no right of contribution or equitable subrogation. (See *infra*
 6 at part 4.4, pp. 19–20.) UFCC’s DMV certificate of insurance cannot
 7 be a substitute source of recovery for Allied. UFCC’s certificate was not
 8 an insurance policy aimed at protecting Mr. Porrás’ assets.⁷ Rather, it
 9 acted as a surety to protect innocent members of the general public,
 10 such as the wrongful death claimants, in the event they suffered at the
 11 hands of a commercial trucker and insurance contract benefits were
 12 either unavailable (e.g., due to a lack of coverage) or insufficient (i.e.,
 13 less than \$750,000). See *Condor Ins. Co. v. Williamsburg Nat’l Ins.*
 14 *Co.*, 49 Cal.App.4th 554, 560 (1986) (purpose of public filing is “to
 15 protect the public against reckless operation of such vehicles by
 16 financially irresponsible owners, and to provide a means of recovery
 17 for those injured in their person or property by such operation.”),
 18 citing *Argonaut Ins. Co. v. Transport Indem. Co.*, 6 Cal.3d 496, 504
 19 (1972); *Airlines Reporting*, 31 Cal.App.4th at 1464 (unlike liability
 20 insurance policies, surety bonds protect innocent third parties, not the
 21 bond purchaser).

22 _____

23 ⁷ In fact, if UFCC were obligated to pay money under the DMV
 24 certificate, it would have an absolute right to pursue Mr. Porrás for
 25 reimbursement of all amounts paid. (UFCC Add’l Fact 28; Jt. Stmt.,
 26 Ex. 3/p. 73, 6th bullet point; see also *Airlines Reporting Corp. v.*
 27 *United States Fidelity & Guar. Co.*, 31 Cal.App.4th 1458, 1464 (1995)
 28 (unlike liability insurers, which have no right of subrogation against
 their policyholders, sureties are entitled to reimbursement from their
 principals).

1 Given this, where there is sufficient insurance coverage to protect a
2 third-party claimant, a public filing does not share the risk with an
3 insurance policy that provides actual coverage. *Paul Masson Co. v.*
4 *Colonial Ins. Company*, 14 Cal.App.3d 265, 274 (1971); *Condor*, 49
5 Cal.App.4th at 560. For example, in *Paul Masson*, Colonial Insurance
6 insured a subhauler that delivered a load of champagne bottles to Paul
7 Masson. One of the subhauler's employees was injured during the
8 delivery. He sued Paul Masson and the bottle manufacturer. Both
9 were additional insureds under Colonial's policy. The employee
10 obtained a \$25,000 judgment. *Id.* at 269, note 1. Colonial paid the
11 judgment and then sued, among others, the prime hauler's insurance
12 company. Colonial claimed the prime hauler's insurer had to pay or
13 contribute to the judgment because the insurer's policy was endorsed
14 with a public filing that promised third-party claimants at least
15 \$25,000 in financial protection. *Id.* at 273.

16 The court held Colonial was solely responsible. The court concluded
17 the prime hauler insurer's public filing's sole purpose was to provide a
18 \$25,000 "safety net" in the event actual insurance was unavailable or
19 insufficient. *Id.* The court noted Colonial's policy provided sufficient
20 coverage, such that the public filing was neither triggered nor
21 necessary. *Id.* at 274.

22 In *Condor*, on the other hand, the court concluded a public filing
23 was triggered because the insurance coverage was insufficient to
24 satisfy the third-party claimant's judgment. There, the third-party
25 claimant obtained a \$1,314,200 judgment against a subhauler. The
26 subhauler's insurer paid its policy limits of \$250,000. The insurer
27 then sued the prime hauler's insurer, arguing the latter was obligated
28 under a public filing to contribute to the judgment. *Condor*, 49

1 Cal.App.4th at 558. The court agreed. The court acknowledged the
2 holding in *Paul Masson*, but determined the facts in front of it were
3 different because the third-party claimant’s judgment exceeded the
4 amount of available insurance coverage. *Id.* at 563–564.

5 *Paul Masson* governs here.⁸ Through its policy, Allied provided
6 \$1 million in actual insurance coverage. Allied used that coverage to
7 resolve the wrongful death claimants’ lawsuit against Mr. Porrás.
8 Unlike in *Condor*, there was no further amount owed to the third-
9 party claimants. UFCC’s DMV certificate, therefore, was never
10 triggered and was not necessary.⁹

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15 ⁸ *Paul Masson* and *Condor*, like *Tab Transportation* and *Fireman’s*
16 *Fund* cited by Allied, involved public filings under the pre-1996 PUC
17 statutory scheme. UFCC cites these cases to show that, even under the
18 prior motor carrier law, the public filing was meant to be a “safety net”
19 for an injured member of the general public where insurance coverage
20 was unavailable or insufficient (i.e., below the limit required by the
21 public filing). The cases show that a filing is neither triggered nor
22 necessary where a third-party’s claims are satisfied by available
23 insurance coverage.

24 ⁹ In fact, a contrary finding would result in a “circular” scenario
25 detrimental to Mr. Porrás. As noted, given the surety nature of UFCC’s
26 DMV certificate of insurance, UFCC has a reimbursement right
27 against Mr. Porrás for any amounts paid under the certificate. (UFCC
28 Add’l Fact 28; Jt. Stmt., Ex. 3/p. 73, 6th bullet point.) If Allied were
allowed to shift its policy-based contractual responsibility to UFCC
under the certificate, UFCC could then enforce its reimbursement
right against Mr. Porrás. Mr. Porrás, no doubt, would then look to
Allied to satisfy the reimbursement claim, which would bring us back
to square one.

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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

14 ALLIED PREMIER INSURANCE, A
15 RISK RETENTION GROUP, a
16 Connecticut corporation,

17 Plaintiff,

18 v.

19 UNITED FINANCIAL CASUALTY
20 COMPANY, an Ohio corporation,

21 Defendants.

Case No. 5:18-cv-00088-JGB-KK

Dist. Judge Jesus G. Bernal

**NOTICE OF MOTION AND
MOTION OF PLAINTIFF ALLIED
PREMIER INSURANCE, A RISK
RETENTION GROUP FOR
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: January 28, 2019

Time: 9:00 a.m.

Place: Courtroom 1 (Riverside)

Complaint Filed: December 12, 2017

Matter Removed: January 12, 2018

Trial Date: March 26, 2019

TO THE DEFENDANT AND ITS ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on January 28, 2019, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 1 of the above-entitled Court located at 3470 Twelfth Street, Riverside, California, Plaintiff ALLIED PREMIER INSURANCE, A RISK RETENTION GROUP (“Allied Premier” or “Plaintiff”) will and hereby does move for summary judgment on its operative December 12, 2017, Complaint in this matter (removed from the Superior Court of

1 the State of California for the County of San Bernardino) (Doc. 1-1) against
2 Defendant UNITED FINANCIAL CASUALTY COMPANY (“Defendant”) for
3 Declaratory Relief, Equitable Contribution, and Equitable Subrogation pursuant to
4 and consistent with Federal Rule of Civil Procedure 56, Local Rule of Court 56,
5 this Court’s Standing Order (Doc. 8), and this Court’s Civil Trial Scheduling Order
6 (Doc. 15).

7 This Motion is made on the grounds that that there is no genuine
8 dispute as to any material fact and Plaintiff is entitled to judgment as a matter of
9 law on its claims for Declaratory Relief, Equitable Contribution, and Equitable
10 Subrogation. At the time of the traffic incident in the underlying lawsuit and by
11 virtue of Defendant’s failure to cancel its Certificate of Insurance with the
12 California Department of Motor Vehicles, there were two primary commercial
13 automotive insurance policies in effect to cover and respond to claims against Jose
14 Porrás and his 2013 Dodge RAM, and Allied Premier is therefore entitled to
15 contribution and/or subrogation from Defendant.

16 This Motion is based upon this Notice of Motion and Motion, the
17 Declaration of Ian P. Culver and the exhibits thereto, Plaintiff’s Statement of
18 Undisputed Facts, and upon such other and further evidence and legal argument as
19 this Court may receive at or before the hearing on this Motion.

20
21 DATED: December 31, 2018 BOOTH LLP

22
23 By: /s/ Ian P. Culver
24 Hillary Arrow Booth
25 Ian P. Culver
26 Attorneys for Plaintiff, ALLIED
27 PREMIER INSURANCE A RISK
28 RETENTION GROUP

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This insurance litigation arises out of a traffic collision on September
4 1, 2015, in which a young woman tragically lost her life. However, this action is
5 just about as unemotional as they come and involves only two insurers and this
6 Court’s interpretation of mostly stipulated facts against the background of
7 California insurance statutes and Department of Motor Vehicles’ procedures.

8 Because one of the drivers was a California-licensed motor carrier,
9 this case takes on a certain complexity. Because motor carriers typical operate
10 larger vehicles, driving more hours and more miles, California has various laws
11 designed to ensure that such carriers have sufficient financial responsibility to meet
12 claims brought by third parties injured or harmed by the motor carrier’s operations.
13 Significant to this case, the DMV requires a specific notice when an insurer
14 cancels its policy with its motor carrier insured. In this case, the parties dispute
15 whether Defendant’s notice to the DMV was sufficient. Allied Premier claims that
16 the notice was ineffective and that, as a result, Defendant’s certificate of insurance
17 was still in effect on September 1, 2015, and therefore available and subject to
18 Allied Premier’s claims for equitable contribution and subrogation.

19 On mostly stipulated facts, Plaintiff brings this Motion for Summary
20 Judgment. Allied Premier seeks from Defendant \$500,000.00 plus prejudgment
21 interest, which amounts to Defendant’s proportionate share of the settlement.
22

23 **II. STATEMENT OF UNDISPUTED FACTS¹**

24 Effective May 2, 2013, UFCC insured José Porrás under a commercial
25 auto insurance policy, policy number 02156772. Statement of Undisputed Facts

26 _____
27 ¹ The majority of the facts set forth herein come from the Joint Statement of
28 Stipulated Facts and Exhibits (Doc. 16), filed in this matter on December 19, 2018.
The Joint Statement is attached to the Declaration of Ian P. Culver as Exhibit “3.”

1 laws when considering a summary judgment motion. *E.g.*, *Clausen v. M/V NEW*
 2 *CARISSA*, 339 F.3d 1049, 1065 (9th Cir. 2003), *as amended on denial of reh'g*
 3 (Sept. 25, 2003). Summary judgment is particularly appropriate in matters relating
 4 to insurance coverage where the sole question before the court is one of law. *E.g.*,
 5 *Homestead Ins. Co. v. Ryness Co.*, 851 F.Supp. 1441, 1443 (N.D. Cal. 1992), *aff'd*
 6 15 F.3d 1085 (9th Cir. 1994); *see also Continental Heller Corp. v. Amtech*
 7 *Mechanical Services, Inc.*, 53 Cal.App.4th 500, 504 (1997). “The court hearing a
 8 motion for summary judgment can base its ruling on stipulations and admissions
 9 by counsel or opposing parties during the course of the litigation.” E. Matters
 10 Constituting Proof, ¶ 14:193, Rutter Group Prac. Guide Fed. Civ. Pro. Before Trial
 11 Ch. 14-E (citing *In re Durability Inc.*, 212 F3d 551, 555 (10th Cir. 2000)).
 12

13 **B. Defendant’s Policy Was In Force at the Time of the Incident**

14 California courts require an insurer to strictly comply with the DMV
 15 cancellation notice requirements under the financial responsibility statutes
 16 regulating motor carriers of property. *See Transamerica Ins. Co. v. Tab Transp.,*
 17 *Inc.*, 12 Cal.4th 389, 401 (1995); *Fireman’s Fund Ins. Co. v. Allstate Ins. Co.*, 234
 18 Cal.App.3d 1154, 1166-67 (1991). Failing to give that notice, the insurer must pay
 19 the motor carrier’s financial responsibility obligations to third parties.

20 In the former case, the Supreme Court considered the strict
 21 compliance requirement under the predecessor Highway Carrier’s Act.
 22 Transamerica Insurance Company insured a motor carrier (then referred to as
 23 “highway carriers,”) covering its financial responsibility under the Act.
 24 Transamerica filed an insurance certificate with the PUC. After the policy expired
 25 in 1981, it failed to notify the PUC of the expiration/cancellation of its policy. The
 26 motor carrier, Tab Transportation, Inc., obtained replacement coverage with
 27 Federal Insurance Company, which filed an insurance certificate with the PUC.
 28

1 Later Tab replaced that policy with a Home Indemnity Company policy, which
2 also filed a certificate with the PUC. Almost nine years after the expiration of the
3 Transamerica policy, a Tab tractor-trailer truck collided with an Amtrak passenger
4 train, resulting in multiple fatalities. When Tab was sued for \$6 million for
5 wrongful death, personal injury and property damage to the train, Federal and
6 Home agreed to pay their policy limits to settle the suit. Transamerica, as
7 Defendant has done in the present case, claimed its policy had been canceled and
8 denied any obligation to contribute toward the settlement.

9 The Supreme Court disagreed, holding Transamerica was required to
10 provide coverage under the terms of the financial responsibility laws deemed
11 incorporated into its policy:

12
13 Ordinarily, an insurance company incurs no liability for
14 an accident that occurs after the policy period has ended.
15 But this is not an ordinary case, as explained briefly
16 below.

17 Highway carriers licensed in California are subject to a
18 regulatory scheme administered by the Public Utilities
19 Commission (hereafter PUC), requiring them to obtain
20 adequate liability insurance and to submit proof thereof
21 to the PUC. Underlying this requirement is the
22 recognition of the need to protect the public “ ‘against
23 ruinous carrier competition and such possible attendant
24 evils as inadequate insurance...’
25 [Citation.]” ***161 (*Samson v. Transamerica Ins.*
26 *Co.* (1981) 30 Cal.3d 220, 233, 178 Cal.Rptr. 343, 636
27 P.2d 32.)

28 To ensure that the public is so protected at all times, the
regulatory scheme requires—by means of a standard
PUC form endorsement attached to the policy—that a
liability policy issued to a highway carrier continue “in
full force and effect until canceled,” by giving 30 days’
written notice to the PUC. The effect of attaching the
endorsement to the policy, as we held in *Samson v.*
Transamerica Ins. Co., *supra*, 30 Cal.3d 220, 231, 178
Cal.Rptr. 343, 636 P.2d 32, is to automatically
incorporate the provisions of the endorsement into the
policy. Here, incorporation of the provisions of the
endorsement into the Transamerica policy converted it
from a one-year term policy that covered the period from
February 1, 1980, until February 1, 1981, to a policy that

1 remained continuously in effect until canceled. Because
2 Transamerica failed to give the PUC the required notice
3 of cancellation when there was no policy renewal by Tab,
4 the policy was still in effect and thus provided coverage
5 for Tab at the time of the 1989 accident.

6 *Id.* at 393-94.

7 Strict compliance with the cancellation requirements was also upheld
8 in *Fireman's Fund Ins. Co., supra*, 234 Cal.App.3d at 1154. The insured owner of
9 a tractor, purchased a commercial automobile policy from Fireman's Fund with a
10 \$1 million liability limit. The insured changed its primary insurance carrier from
11 Fireman's Fund to Central National Insurance Company. Fireman's Fund failed to
12 notify the PUC of the cancellation of its policy.

13 After the Fireman's Fund policy was replaced, the insured's tractor-
14 trailer rig collided with a passenger vehicle resulting in serious injuries. Fireman's
15 Fund, Allstate Insurance Company, Central National and other insurers settled the
16 resulting personal injury litigation. Fireman's Fund paid \$250,000 of its \$1 million
17 limit. In the coverage action between Fireman's Fund and Allstate, the court held
18 that Fireman's Fund's noncompliance with the statutory advance notice
19 requirement to the PUC resulted in "continued, uninterrupted coverage".
20 *Fireman's Fund* at 1162. Therefore, Fireman's Fund, the original insurer,
21 remained liable despite the cancellation of its policy as to the named insured. As a
22 result, Fireman's Fund's full policy limits were exposed and it was required to
23 reimburse Allstate the remaining \$750,000 under its policy.

24 The court listed the "sound reasons" for strict compliance with the
25 notice of cancellation provisions. First, "continuing coverage until the PUC
26 receives notice of cancellation may deter lax practices in the insurance industry."
27 *Id.* at 1166. Second, "Fireman's exposure, despite the lapse of six months between
28 cancellation and the accident, may seem unjust. However, the relevant legal
and regulatory scheme has been on the books for decades." *Id.* Finally,

1 “Fireman’s could have easily eliminated its exposure by simply filing the
2 appropriate notice with the PUC. This is a minimal burden--one that is required to
3 maintain the trustworthiness and vitality of statutes and regulations enacted to
4 protect the public interest.” *Id.*

5 California Vehicle Code section 34630 provides in pertinent part as
6 follows:

7 (a) A motor carrier permit shall not be granted to any
8 motor carrier of property until there is filed with the
9 department proof of financial responsibility in the form
10 of a currently effective certificate of insurance, issued by
11 a company licensed to write that insurance in this state or
12 by a nonadmitted insurer subject to Section 1763 of the
13 Insurance Code, if the policy represented by the
14 certificate meets the minimum insurance requirements
15 contained in Section 34631.5. The certificate of insurance
16 or surety bond shall provide coverage with respect to the
17 operation, maintenance, or use of any vehicle for which a
18 permit is required, although the vehicle may not be
19 specifically described in the policy, or a bond of surety
20 issued by a company licensed to write surety bonds in
21 this state, or written evidence of self-insurance by
22 providing the self-insured number granted by the
23 department on a form approved by the department.

24 (b) Proof of financial responsibility shall be continued in
25 effect during the active life of the motor carrier permit.
26 The certificate of insurance shall not be cancelable on
27 less than 30 days’ written notice from the insurer to the
28 department except in the event of cessation of operations
as a permitted motor carrier of property.

Section 34631.5 provides in pertinent part as follows:

21 (b) (1) The protection required under subdivision (a)
22 shall be evidenced by the deposit with the department,
23 covering each vehicle used or to be used in conducting
24 the service performed by each motor carrier of property,
25 an authorized certificate of public liability and property
26 damage insurance, issued by a company licensed to write
27 the insurance in the State of California, or by a
28 nonadmitted insurer subject to Section 1763 of the
Insurance Code.

(2) The protection required under subdivision (a) by
every motor carrier of property engaged in interstate or
foreign transportation of property in or through
California, shall be evidenced by the filing and

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acceptance of a department authorized certificate of insurance, or qualification as a self-insurer as may be authorized by law.

(3) A certificate of insurance, evidencing the protection, ***shall not be cancelable on less than 30 days’ written notice to the department, the notice to commence to run from the date notice is actually received at the office of the department in Sacramento.***

(4) Every insurance certificate or equivalent protection to the public shall contain a provision that the certificate or equivalent protection shall remain in full force and effect until canceled in the manner provided by paragraph (3).

The statutes, regulations, and cases do not define what “actually received” means. According to the Merriam-Webster online dictionary, to “receive” means “to come into possession of.”³

There is no dispute that the DMV had returned to UFCC a notice of cancellation form that UFCC had previously submitted in an attempt to cancel evidence of José Porras’ financial responsibility as a motor carrier of property through the UFCC policy and that, as a result, on September 1, 2015, the California Department of Motor Vehicles had in its file certificates of insurance from both UFCC and Allied to evidence José Porras’ financial responsibility as a motor carrier of property. *See* SUF Nos. 13-14. By returning the form, the DMV did not come into possession of the cancellation and therefore never “actually received” it. *See* Cal. Veh. Code § 34631.5.

During the deposition of the Person Most Knowledgeable for the DMV, Ms. Tamisha Anderson testified that if a cancellation form does not match the insurance certificate it seeks to cancel exactly, it will be returned to the insurer. *See* SUF No. 21.

For these reasons, therefore, the Defendant policy was in force as of September 1, 2015.

³ <https://www.merriam-webster.com/dictionary/receive>, accessed December 31, 2018

1 **C. Defendant’s Policy Provided Coverage for the Incident of**
2 **September 1, 2015**

3 Given that the undisputed facts, the statutes (California Vehicle Code
4 §§ 34630 and 34631.5), and cases such as *Fireman’s Fund Ins. Co.* and
5 *Transamerica Ins. Co.* provide that the Defendant policy was in effect on
6 September 1, 2015, the next question is whether, under the terms of the policy,
7 coverage would be afforded for the incident. The insuring agreement provides as
8 follows:

9 Subject to the Limits of Liability, if **you** pay the premium
10 for liability coverage for the **insured auto** involved, **we**
11 will pay damages, other than punitive or exemplary
12 damages, for **bodily injury, property damage, and**
13 **covered pollution cost or expense**, for which an **insured**
14 becomes legally responsible because of an **accident**
15 arising out of the ownership, maintenance or use of that
16 **insured auto.**

17 *See* SUF No. 1 (Ex. 1 at 15 to Ex. 3 to Culver Decl.). On the allegations of the
18 Complaint in the underlying lawsuit, the Defendant policy would have been
19 obligated to defend and indemnify Mr. Porras. *See* SUF Nos. 15, 17-20. It was in
20 effect and the insured auto was the one involved in the collision. *See id.* Based on
21 the policy’s plain language and pursuant to California Insurance Code sections
22 such as 11580.1 and the cases thereunder, the UFCC policy, as continued in effect
23 by the failure of Defendant to properly cancel the policy, provides coverage for the
24 incident.

25
26 **D. Defendant’s Policy Was Co-Primary with Allied Premier’s**

27 California Insurance Code section 11580.9 provides as follows:
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(d) Except as provided in subdivisions (a), (b), and (c), where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle or vehicles in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned automobile shall be primary and the insurance afforded by any other policy or policies shall be excess.

* * *

(f) The presumptions stated in subdivisions (a) to (d), inclusive, may be modified or amended only by written agreement signed by all insurers who have issued a policy or policies applicable to a loss described in these subdivisions and all named insureds under these policies.

In *Fireman’s Fund, supra*, the court concluded that the policy continued in effect by the failure to cancel, like Defendant’s here, was co-primary with the Allstate policy. 234 Cal.App.3d at 1168.

E. Allied Premier Is Entitled to Summary Judgment on Its Claims

1. *Allied Premier Is Entitled to Summary Judgment on Its Equitable Contribution Claim*

“Where two or more insurers independently provide primary insurance on the same risk for which they are both liable for any loss to the same insured, the insurance carrier who pays the loss or defends a lawsuit against the insured is entitled to equitable contribution from the other insurer or insurers ...” *American Continental Ins. Co. v. American Casualty Co.*, 86 Cal.App.4th 929, 936-37 (2001).

As set forth above, on the undisputed facts, Allied Premier is entitled to summary judgment on its claim for equitable contribution against Defendant.

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2. Allied Premier Is Entitled to Summary Judgment on Its Equitable Subrogation Claim

“The essential elements of an insurer’s cause of action for equitable subrogation are as follows: (a) the insured suffered a loss for which the defendant is liable, either as the wrongdoer whose act or omission caused the loss or because the defendant is legally responsible to the insured for the loss caused by the wrongdoer; (b) the claimed loss was one for which the insurer was *not* primarily liable; (c) the insurer has compensated the insured in whole or in part for the same loss for which the defendant is primarily liable; (d) the insurer has paid the claim of its insured to protect its own interest and not as a volunteer; (e) the insured has an existing, assignable cause of action against the defendant which the insured could have asserted for its own benefit had it not been compensated for its loss by the insurer; (f) the insurer has suffered damages caused by the act or omission upon which the liability of the defendant depends; (g) justice requires that the loss be entirely shifted from the insurer to the defendant, whose equitable position is inferior to that of the insurer; and (h) the insurer’s damages are in a liquidated sum, generally the amount paid to the insured.” *Fireman’s Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal.App.4th 1279, 1292 (1998).

As set forth above, on the undisputed facts, Allied Premier is entitled to summary judgment on its claim for equitable subrogation against Defendant.

3. Allied Premier Is Entitled to Summary Judgment on Its Declaratory Relief Claim

In the absence of genuine disputes of material fact, summary judgment is appropriate in cases seeking declaratory relief. *Cf.*, *St. Paul Fire & Marine Ins. Co. v. Weiner*, 606 F.2d 864, 868 (9th Cir. 1979).

As set forth above, on the undisputed facts, Allied Premier is entitled

1 to summary judgment on its claim for declaratory relief against Defendant.

2

3 **IV. CONCLUSION**

4 For the foregoing reasons, Allied Premier respectfully requests that
5 this Court grant it summary judgment in this matter.

6

7 DATED: December 31, 2018 BOOTH LLP

8

9

By: /s/ Ian P. Culver
Hillary Arrow Booth
Ian P. Culver
Attorneys for Plaintiff, ALLIED
PREMIER INSURANCE A RISK
RETENTION GROUP

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 Allied Premier Insurance, a Risk
14 Retention Group, a Connecticut
15 corporation,

16 Plaintiff,

17 v.

18
19 United Financial Casualty
20 Company, an Ohio corporation,

21 Defendant.

Case No. 5:1-cv-00088-JGB-KK

**Memorandum of Points and
Authorities in Support of
United Financial Casualty
Company's Motion for
Summary Judgment**

Date: 1/28/19

Time: 9:00 AM

Judge: Hon. J. Bernal

Ctrl: 1

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 4.3. UFCC had no duty to indemnify Jose Porras because Allied was wholly responsible under California Insurance Code section 11580.9.12

 4.4. Allied is not entitled to equitable contribution or equitable subrogation because the doctrines apply only to sharing of losses under insurance policies, not under a public filing.14

5. CONCLUSION15

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1. INTRODUCTION

To operate on California roads, a commercial trucker must prove his financial responsibility to the California Department of Motor Vehicles (“DMV”). He does this by having his commercial auto insurer file a public certificate of insurance with the DMV verifying that the trucker carries at least \$750,000 in public liability insurance.

The sole purpose of the public filing is to provide a “safety net” of last resort to innocent members of the general public that are injured by the commercial trucker. By filing the certificate, the liability insurer acts as a surety. It promises to pay up to \$750,000 towards a judgment against the trucker where coverage for some reason is unavailable under an actual insurance policy (e.g., the vehicle involved in the loss is not listed on the policy, an excluded driver was driving the vehicle, etc.) or where available coverage is less than \$750,000.

In this case, a commercial trucker caused the death of a member of the general public in an auto collision. Her survivors filed suit and obtained a \$1 million settlement from the trucker’s commercial auto insurer at the time, Allied Premier Insurance (“Allied”). Allied paid the settlement under its insurance policy because the policy was in force at the time of loss and provided actual insurance coverage.

Allied then sued United Financial Casualty Company (“UFCC”), the trucker’s prior insurer, for full or partial reimbursement of the \$1 million settlement. Allied claims UFCC must pay because, even though the UFCC insurance policy was not in force on the date of loss, UFCC had an active public filing on file with the DMV at the time.

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2. SUMMARY OF ARGUMENT

The court should grant UFCC summary judgment on Allied’s three causes of action for declaratory relief, equitable contribution, and equitable subrogation for four reasons:

1. First, UFCC’s public filing did not apply because its “safety net” benefit flowed only to the third-party wrongful death claimants. The benefit did not flow to UFCC’s policyholder or to another insurance company. The claimants did not need the “safety net” because Allied’s policy provided actual coverage and the settlement paid under the coverage was more than \$750,000, i.e., \$1 million.

2. Second, UFCC’s public filing did not apply because the wrongful death claimants did not obtain a judgment against the commercial trucker, a mandatory requirement under the public filing law. They did not secure a judgment because Allied settled the wrongful death lawsuit prior to trial.

3. Third, even if UFCC’s filing was triggered, Allied was wholly responsible for the \$1 million settlement under CALIFORNIA INSURANCE CODE section 11580.9. Under that statute, the insurance policy that specifically described the loss vehicle is primary for all purposes. The Allied policy specifically described the loss vehicle. The UFCC public filing did not.

4. Fourth, an insurer is entitled to equitable contribution or subrogation from another insurer only for benefits owed under an actual insurance policy. Allied does not contend the UFCC policy covered the loss in this case. Instead, Allied claims the UFCC public filing was triggered. The public filing was not an insurance policy. It was a surety that provided a potential benefit only to innocent members of the public.

1 is a genuine issue for trial. FED. R. CIV. P. 56 (e); *Celotex*, 477 U.S. at
 2 324. “A mere scintilla of evidence supporting the nonmoving party’s
 3 position is insufficient.” the moving party must prevail on summary
 4 judgment unless there is “evidence on which a jury could reasonably
 5 find for the non-moving party.” *Rivera v. Philip Morris, Inc.*, 395 F.3d
 6 1142, 1146 (9th Cir. 2005).

7 Based on the standards, the court should grant UFCC summary
 8 judgment on Allied’s complaint for the following reasons.

9 **4.1. UFCC had no duty to indemnify Jose Porras because the**
 10 **public filing’s benefit flowed only to the wrongful death**
 11 **claimants.**

12 There is no dispute the UFCC policy provided coverage only for
 13 accidents and losses that occurred during the policy term. (UMF 4; Jt.
 14 Smnt., Ex. 1/p. 31.) There is also no dispute the UFCC policy was not
 15 in force on the September 1, 2015 date of loss because it lapsed five
 16 months earlier when Mr. Porras did not renew with UFCC. (UMF 21;
 17 Jt. Smnt., p. 3, ¶ 10.) Allied acknowledges this, but claims UFCC had
 18 an obligation to indemnify Mr. Porras against the claims in the Jones
 19 wrongful death lawsuit because one of UFCC’s public filing was still
 20 active with the DMV at the time of loss.

21 Allied’s claim is without merit. UFCC’s public filing was not an
 22 insurance policy aimed at protecting Mr. Porras’ assets.⁴ Rather, it

24 ⁴ In fact, if UFCC were obligated to pay money under the public filing
 25 to a third-party claimant, it would have an absolute right to pursue
 26 Mr. Porras for reimbursement of all amounts paid. (UMF 11; Jt.
 27 Smnt., Ex. 3/p. 73, 6th bullet point; see also *Airlines Reporting Corp.*
 28 *v. United States Fidelity & Guar. Co.*, 31 Cal.App.4th 1458, 1464
 (1995) (unlike liability insurers, which have no right of subrogation

1 acted as a surety to protect innocent members of the general public,
2 such as the wrongful death claimants, in the event they suffered at the
3 hands of a motor carrier of property and insurance contract benefits
4 were either unavailable (e.g., due to a lack of coverage) or insufficient
5 (i.e., less than \$750,000). See *Condor Ins. Co. v. Williamsburg Nat'l*
6 *Ins. Co.*, 49 Cal.App.4th 554, 560 (1986) (purpose of public filing is “to
7 protect the public against reckless operation of such vehicles by
8 financially irresponsible owners, and to provide a means of recovery
9 for those injured in their person or property by such operation.”),
10 citing *Argonaut Ins. Co. v. Transport Indem. Co.*, 6 Cal.3d 496, 504
11 (1972); *Airlines Reporting*, 31 Cal.App.4th at 1464 (unlike liability
12 insurance policies, surety bonds protect innocent third parties, not the
13 bond purchaser).

14 Given this, where there is sufficient insurance coverage to protect a
15 third-party claimant, a public filing does not share the risk with an
16 insurance policy that provides actual coverage. *Paul Masson Co. v.*
17 *Colonial Ins. Company*, 14 Cal.App.3d 265, 274 (1971); *Condor*, 49
18 Cal.App.4th at 560.

19 For example, in *Paul Masson*, Colonial Insurance insured a
20 subhauler that delivered a load of champagne bottles to Paul Masson.
21 One of the subhauler’s employees was injured during the delivery. He
22 sued Paul Masson and the bottle manufacturer. Both were additional
23 insureds under Colonial’s policy. The employee obtained a \$25,000
24 judgment. *Id.* at 269, note 1. Colonial paid the judgment and then
25 sued, among others, the prime hauler’s insurance company. Colonial

26
27 against their policyholders, sureties are entitled to reimbursement
28 from their principals).

1 claimed the prime hauler’s insurer had to pay or contribute to the
2 judgment because the insurer’s policy was endorsed with a public
3 filing that promised third-party claimants at least \$25,000 in financial
4 protection. *Id.* at 273.

5 The court held Colonial was wholly responsible. The court
6 concluded the prime hauler insurer’s public filing’s sole purpose was to
7 provide a \$25,000 “safety net” in the event actual insurance was
8 unavailable or insufficient. *Id.* The court noted Colonial’s policy
9 provided sufficient coverage, such that the public filing was neither
10 triggered nor necessary. *Id.* at 274.

11 In *Condor*, on the other hand, the court concluded a public filing
12 was triggered because the insurance coverage was insufficient to
13 satisfy the third-party claimant’s judgment. There, the third-party
14 claimant obtained a \$1,314,200 judgment against a subhauler. The
15 subhauler’s insurer paid its policy limits of \$250,000. The insurer
16 then sued the prime hauler’s insurer, arguing the latter was obligated
17 under a public filing to contribute to the judgment. *Condor*, 49
18 Cal.App.4th at 558. The court agreed. The court acknowledged the
19 holding in *Paul Masson*, but determined the facts in front of it were
20 different because the third-party claimant’s judgment exceeded the
21 amount of available insurance coverage. *Id.* at 563–564.

22 *Paul Masson* governs here. Through its policy, Allied provided
23 \$1 million in actual insurance coverage. Allied used that coverage to
24 resolve the wrongful death claimants’ lawsuit against Mr. Porras.
25 Unlike in *Condor*, there was no further amount owed to the third-

1 party claimants. UFCC’s public filing, therefore, was never triggered
2 and was not necessary.⁵

3 **4.2. UFCC had no duty to indemnify Jose Porras because the**
4 **public filing applied only to judgments against Mr. Porras.**

5 UFCC’s public filing also did not apply because the wrongful death
6 claimants did not obtain a judgment against Mr. Porras; Allied settled
7 the case before trial.

8 Under the public filing law, Mr. Porras was required to “provide
9 and thereafter continue in effect adequate protection against *liability*
10 *imposed by law* upon (him) for the payment of damages in the amount
11 of a combined single limit of not less than seven hundred fifty
12 thousand dollars (\$750,000) on account of bodily injuries to, or death
13 of, one or more persons, or damage to or destruction of, property other
14 than property being transported by the carrier for any shipper or
15 consignee whether the property of one or more than one claimant in
16 any one accident.” CAL. VEH. CODE, § 34631.5(a), emphasis added.

17 “Liability imposed by law” means a judgment against the motor
18 carrier of property. See *Certain Underwriters at Lloyd’s of London v.*
19 *Superior Court*, 24 Cal.4th 945, 960 (2001); *San Diego Housing*
20 *Comm’n v. Industrial Indem. Co.*, 68 Cal.App.4th 526, 544 (1998)

21
22 ⁵ In fact, a contrary finding would result in a “circular logic” scenario
23 detrimental to Mr. Porras. As noted, given the surety nature of UFCC’s
24 public filing, UFCC has a reimbursement right against Mr. Porras for
25 any amounts paid under the public filing. (UMF 11; Jt. Smnt.,
26 Ex. 3/p. 73, 6th bullet point.) If Allied were allowed to shift its policy-
27 based contractual responsibility to UFCC under the public filing,
28 UFCC could then enforce its reimbursement right against Mr. Porras.
Mr. Porras, no doubt, would then look to Allied to satisfy the
reimbursement claim, which would bring us back to square one.

1 (until a judgment is entered, insured not “legally obligated” to make
2 any payment). See also *Carolina Cas. Ins. Co. v. Yeates*, 584 F.3d 868,
3 875 (10th Cir. 2009) (federal motor carrier public filing triggered only
4 when third-party claimant obtains final judgment against insured).

5 There was no judgment against Mr. Porras, the motor carrier of
6 property under UFCC’s public filing. As such, no one, including Allied,
7 is entitled to payment under the UFCC filing.

8 **4.3. UFCC had no duty to indemnify Jose Porras because Allied**
9 **was wholly responsible under California Insurance Code**
10 **section 11580.9.**

11 Even if UFCC’s public filing had been triggered in the first instance,
12 Allied’s claims are still without merit. Under CALIFORNIA INSURANCE
13 CODE section 11580.9, which governs disputes between insurance
14 companies for vehicle losses, Allied was solely responsible for the
15 \$1 million settlement of the underlying wrongful death case against
16 Mr. Porras.

17 In California, the Legislature enacted a statute to do away with
18 “other insurance” fights between insurance companies on losses where
19 two or more policies apply to a given auto accident. CALIFORNIA
20 INSURANCE CODE section 11580.9 contains a series of *conclusive*
21 *presumptions*. When it enacted the statute, the Legislature declared
22 the purpose of the law was to avoid conflicts and litigation concerning
23 the responsibility of applicable insurance policies and that the law
24 expressed the total public policy of California “respecting the order in
25 which two or more of such liability insurance policies covering the
26 same loss shall apply....” CAL. INS. CODE, § 11580.8.

27 Subdivision (d) of the statute that governs here. It states:
28

1 Except as provided in subdivisions (a), (b), and (c)
2 [which apply to businesses selling, fixing, parking
3 and renting cars and to premises owners], where two
4 or more policies affording valid and collectible
5 liability insurance apply to the same motor vehicle or
6 vehicles in an occurrence out of which a liability loss
7 shall arise, it shall be *conclusively presumed* that the
8 insurance afforded by that policy in which the motor
9 vehicle is described or rated as an owned automobile
10 shall be primary and the insurance afforded by any
11 other policy or policies shall be excess.

12 (Emphasis added.)

13 The statute, by its express terms, applies where two or more liability
14 policies apply to the same motor vehicle(s). If the vehicle is described
15 or rated as an owned automobile on a policy, *that policy is deemed to*
16 *be primary*, regardless of the status of the other policy(ies). The
17 vehicle is described or rated if there is a particular description of the
18 vehicle by the policy (e.g., year, make, model and/or VIN). *Ohio*
19 *Casualty Ins. Co. v. Aetna Ins. Company*, 85 Cal.App.3d 521, 524
20 (1978).

21 The Allied policy described the loss vehicle, Mr. Porrás' 2013 Dodge
22 RAM pickup truck, with VIN ending 8804. It described it by make,
23 model, year, and VIN. (UMF 24; Jt. Smnt., p. 3/¶ 11 and Ex. 6/p. 83.)
24 The UFCC public filing, however, did not. (UMF 6; Jt. Smnt., p. 2/¶ 2
25 and Ex. 2/p. 72.) It said nothing about any particular vehicle.

26 Accordingly, Allied's \$1 million policy was primary for all purposes.
27 Allied settled the wrongful death case for \$1 million. It cannot recover
28 from UFCC for any part of that amount under any of its causes of
action.

1 **4.4. Allied is not entitled to equitable contribution or equitable**
2 **subrogation because the doctrines apply only to sharing of**
3 **losses under insurance policies, not under a public filing.**

4 In the world of “insurance company v. insurance company”
5 litigation, an insurer that pays too much money for a loss under its
6 policy has certain remedies available to pursue a second insurer that
7 should have paid more under its policy. The first insurer can sue the
8 second for (1) equitable contribution, to ensure that both insurers pay
9 their fair share of a given loss;⁶ (2) equitable indemnity, to ensure that
10 an insurer that pays a claim for which another insurer is primarily
11 liable is fully reimbursed;⁷ or (3) equitable subrogation, to ensure that
12 an insurer that has paid a loss created by another’s wrongful act may
13 “step into the shoes” of the policyholder and pursue recovery from the
14 wrongdoer.⁸

15 _____
16 ⁶ For example, a joint policyholder is sued for \$50,000, both insurers
17 are on the same level of coverage, the limit of coverage on each
18 insurer’s policy is \$100,000, the first insurer resolves the loss by
19 paying \$50,000 under its policy, and the second insurer pays nothing.
20 The first insurer can sue for \$25,000 so that each insurer pays an
21 equal amount. See, e.g., *Maryland Cas. Co. v. Nationwide Mut. Ins.*
Co., 81 Cal.App.4th 1082, 1089 (2000).

22 ⁷ For example, a joint policyholder is sued for \$50,000, the first
23 insurer resolves the loss by paying \$50,000 under its policy pursuant
24 to a reservation of rights to deny coverage, and the second insurer pays
25 nothing despite coverage under its policy. The first insurer can sue for
26 \$50,000 so that it is fully reimbursed for the debt owed primarily by
27 the second insurer. See, e.g., *United Services Automobile Association v.*
Alaska Ins. Company, 94 Cal.App.4th 638, 644–645 (2001).

28 ⁸ For example, a joint policyholder is sued for \$50,000. The first
insurer provides excess coverage from \$51,000 to \$100,000. The
second insurer provides primary coverage from \$1.00 to \$50,000. The

1 Under all three scenarios, however, the first insurer can seek the
2 equitable remedy only for money due under another insurer's contract
3 with its policyholder. See, e.g., *Fireman's Fund Ins. Co. v. Maryland*
4 *Cas. Co.*, 65 Cal.App.4th 1279, 1295 (1998), emphasis added
5 (contribution applies only where multiple insurers "share equal
6 *contractual* liability" for defense costs and indemnity money). There is
7 no reported case that allows an insurance company that has paid
8 money under its policy to sue another insurer under a public filing.
9 That is because, as noted, a filing's benefit flows only to a third-party
10 claimant (not another insurer), and allowing such relief would
11 wrongfully expose the insured to a reimbursement claim for money
12 paid under the filing. See *supra* note 5.

13 5. CONCLUSION

14 Allied's policy was the only policy in force at the time of loss. Allied,
15 therefore, is solely responsible for the \$1 million it paid under its
16 policy to resolve the wrongful death claims against Mr. Porrás. UFCC's
17 public filing was never triggered.

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24 second insurer fails to accept a \$50,000 settlement offer to resolve the
25 case, the claim goes to trial, the policyholder suffers a \$100,000
26 judgment, and the two insurers each pay \$50,000 each to satisfy the
27 claim. The first insurer (i.e., the excess insurer) can sue the second
28 insurer for \$50,000 because it wrongfully failed to settle within its
\$50,000 limit. See, e.g., *Commercial Union Assur. Cos. v. Safeway*
Stores, Inc., 26 Cal.3d 912, 918 (1980).

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Accordingly, for the above reasons, the court should grant UFCC's motion and enter judgment for UFCC on Allied's entire complaint.

December 28, 2018

Patrick Howe Law, APC

By: /s/ Patrick M. Howe
Patrick M. Howe
Attorney for defendant United
Financial Casualty Company
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20 *United Financial Casualty Company*

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 Allied Premier Insurance, a Risk
24 Retention Group, a Connecticut
25 corporation,

26 Plaintiff,

27 v.

28 United Financial Casualty Company,
an Ohio corporation,

Defendant.

Case No. 5:18-cv-00088 JGB
(KKx)

**Joint Statement of Stipulated Facts
and Exhibits**

1 Subject to objections under Rules 401–415 of the *Federal Rules of*
2 *Evidence*, Allied Premier Insurance (“Allied”) and United Financial Casualty
3 Company (“UFCC”) stipulate to the following facts and admissibility of the
4 attached exhibits for purposes of the parties’ cross-motions for summary
5 judgment/partial summary judgment (the “motions”):

6 1. Effective May 2, 2013, UFCC insured José Porras under a
7 commercial auto insurance policy, policy number 02156772. The policy
8 listed a 2013 Dodge RAM 3500 pickup truck, VIN ending 5181, as a
9 scheduled auto and provided bodily injury liability coverage of \$750,000.
10 Exhibit 1 hereto is a true and correct copy of the UFCC policy in force
11 effective May 2, 2013.

12 2. On or about May 2, 2013, at José Porras’ request, UFCC submitted
13 to the California Department of Motor Vehicles a certificate of insurance, on
14 DMV form MCP 65, to evidence José Porras’ financial responsibility as a
15 motor carrier of property pursuant to *California Vehicle Code* sections
16 34630, *et seq.* Exhibit 2 hereto is a true and correct copy of the certificate of
17 insurance.

18 3. On or about May 2, 2013, UFCC issued to José Porras an
19 endorsement to the UFCC policy, on DMV form MCP 67. Exhibit 3 hereto is
20 a true and correct copy of the endorsement.

21 4. On or about August 17, 2013, José Porras, doing business as Horizon
22 Transporters, submitted an Application for Motor Carrier Permit to the
23 California Department of Motor Vehicles. Exhibit 4 hereto is a true and
24 correct copy of the application.

25 5. Effective October 2, 2013, the California Department of Motor
26 Vehicles issued José Porras a motor carrier of property permit, permit no.
27 0433971.

1 6. Prior to April 12, 2015, the UFCC policy renewed and remained in
2 force at times. The bodily injury liability coverage limit also increased to
3 \$1 million.

4 7. Prior to April 12, 2015, UFCC also submitted to the California
5 Department of Motor Vehicles at times MCP 65 certificates of insurance to
6 evidence José Porras' financial responsibility as a motor carrier of property.

7 8. Prior to April 12, 2015, UFCC also submitted to the California
8 Department of Motor Vehicles at times DMV form MCP 66 notices of
9 cancellation, which the Department received.

10 9. Prior to April 12, 2015, UFCC also issued to José Porras at times
11 DMV form MCP 67 endorsements.

12 10. Effective April 12, 2015, the UFCC policy lapsed when José Porras
13 did not renew the policy pursuant to its provisions for automatic termination.
14 UFCC submitted to the California Department of Motor Vehicles a notice of
15 cancellation, on DMV form MCP 66, to evidence the cancellation of José
16 Porras' financial responsibility as a motor carrier of property through the
17 UFCC policy. Exhibit 5 hereto is a true and correct copy of the notice of
18 cancellation.

19 11. Effective April 13, 2015, Allied insured José Porras under a
20 commercial auto insurance policy, policy number AP 201-510-0189. The
21 policy listed a 2013 Dodge RAM 3500 pickup truck, VIN ending 8804, as a
22 scheduled auto and provided bodily injury liability coverage of \$1 million.
23 Exhibit 6 hereto is a true and correct copy of the declarations page on the
24 Allied policy.

25 12. On or about April 17, 2015, at José Porras' request, Allied submitted
26 to the California Department of Motor Vehicles a certificate of insurance, on
27 DMV form MCP 65, to evidence José Porras' financial responsibility as a
28 motor carrier of property pursuant to *California Vehicle Code* sections

1 34630, *et seq.* Exhibit 7 hereto is a true and correct copy of the certificate of
2 insurance.

3 13. Prior to September 1, 2015, the California Department of Motor
4 Vehicles returned to UFCC a notice of cancellation form DMV MCP 66 that
5 UFCC had previously submitted in an attempt to cancel evidence of José
6 Porrás' financial responsibility as a motor carrier of property through the
7 UFCC policy on the grounds that the policy number or the effective date on
8 the Notice of Cancellation was not on file with the department. Exhibit 8
9 hereto is a true and correct copy of the Notice of Incomplete Filing.

10 14. Thus, on September 1, 2015, the California Department of Motor
11 Vehicles had in its file certificates of insurance from both UFCC and Allied
12 to evidence José Porrás' financial responsibility as a motor carrier of
13 property pursuant to *California Vehicle Code* sections 34630, *et seq.*

14 15. On September 1, 2015, José Porrás and Jennifer Jones were involved
15 in an automobile collision in Rialto, California. Mr. Porrás was driving a
16 2013 Dodge RAM 3500 pickup truck, VIN ending 8804. Ms. Jones died as a
17 result of the collision.

18 16. On September 1, 2015, the California Department of Motor Vehicles'
19 internet-based Motor Carrier Permit Active Carrier List listed Mr. Porrás as
20 an active carrier and identified his liability insurer as UFCC.

21 17. On or about December 3, 2015, Jennifer Jones' surviving parents
22 filed a wrongful death lawsuit against Mr. Porrás in San Bernardino Superior
23 Court. Exhibit 9 hereto is a true and correct copy of the complaint in the
24 wrongful death lawsuit.

25 18. The September 1, 2015 loss was covered under the terms of the
26 Allied policy. Allied retained counsel to defend José Porrás in the wrongful
27 death lawsuit. In November 2016, Allied settled the wrongful death lawsuit
28 for \$1 million.

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19. UFCC did not defend or contribute to the settlement of the wrongful death lawsuit, despite having received and denied a tender upon the UFCC policy.

December 18, 2018 Booth LLP
By: /s/ Ian P. Culver
Ian P. Culver
Attorneys for plaintiff Allied
Premier Insurance
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December 18, 2018 Patrick Howe Law, APC
By: /s/ Patrick M. Howe
Patrick M. Howe
Attorney for defendant United
Financial Casualty Company
pat@patrickhowelaw.com

I, Patrick M Howe, attest that all signatories listed above, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

December 18, 2018 Patrick Howe Law, APC
By: /s/ Patrick M. Howe
Patrick M. Howe
Attorney for defendant
United Financial Casualty Company
pat@patrickhowelaw.com

CHASSIE TRUCK INS
33 STERN ST
LAGUNA NIGUEL, CA 92677



Named insured

JOSE F PORRAS
HORIZON TRANSPORTERS
[Redacted]

Policy number: 02156772-0

Underwritten by:
United Financial Casualty Company

May 3, 2013
Policy Period: Apr 12, 2013 - Oct 12, 2013
Page 1 of 2

progressiveagent.com

Online Service

Make payments, check billing activity, print policy documents, or check the status of a claim.

1-949-484-0180

CHASSIE TRUCK INS

Contact your agent for personalized service.

1-800-444-4487

For customer service if your agent is unavailable or to report a claim.

Commercial Auto Insurance Coverage Summary

This is your Declarations Page

Your coverage has changed

Your coverage began the later of April 12, 2013 at 12:01 a.m. or at the time your application is executed on the first day of the policy period. This policy period ends on October 12, 2013 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for an auto may not be combined with the limits for the same coverage on another auto, unless the policy contract allows the stacking of limits. The policy contract is form 6912 (06/10). The contract is modified by forms 2852CA (09/06), MCS90 (10/99), MC1632 (06/04), 1198 (01/04), 4852CA (10/04), 4881CA (12/04) and Z228 (01/11).

The named insured organization type is a sole proprietorship.

Policy changes effective May 2, 2013

Premium change:	\$35.00
Changes:	The filing information for this policy has changed.

The changes shown above will not be effective prior to the time the changes were requested.

Outline of coverage

Description	Limits	Deductible
Liability To Others		
Bodily Injury and Property Damage Liability	\$750,000 combined single limit	
Uninsured/Underinsured Motorist	\$30,000 each person/\$60,000 each accident	
Uninsured Motorist Property Damage	Rejected	
Comprehensive		
See Auto Coverage Schedule	Limit of liability less deductible	
Collision		
See Auto Coverage Schedule	Limit of liability less deductible	
Subtotal policy premium		
California Vehicle Assessment Fee		
Fees		
Total 6 month policy premium and fees		

Rated driver

- JOSE F PORRAS

Auto coverage schedule

1.	2004 Dodge Ram 3500 VIN: 3D7MA48C94G175181	Stated Amount: *\$ [REDACTED] Garaging Zip Code: [REDACTED] Radius: 300
Liability Premium	[REDACTED]	
Physical Damage Premium	[REDACTED]	
		Auto Total [REDACTED]
2.	2014 NON Owned Trailer VIN: NON OWNED	Stated Amount: [REDACTED] Garaging Zip Code: [REDACTED] Radius: 300
Liability Premium	[REDACTED]	
Physical Damage Premium	[REDACTED]	
		Auto Total [REDACTED]

*A vehicle's stated amount should indicate its current retail value, including any special or permanently attached equipment. In the event of a total loss, the maximum amount payable is the lesser of the Stated Amount or Actual Cash Value, less deductible. Be sure to check stated amount at every renewal in order to receive the best value from your Progressive Commercial Auto policy.

Premium discount

Policy	02156772-0	Paid In Full
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Additional Insured information

1. Additional Insured	RELIA BUILT, LLC 21500 HWY 18 APPLE VALLEY, CA 92307
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Company officers

Michael W. Bink
President

Patricia M. Corwin
Secretary

1781 CA 0611



CALIFORNIA

COMMERCIAL AUTO FORMS

PLEASE READ YOUR POLICY AGREEMENT CAREFULLY.

Provisions of this Agreement and its endorsements restrict coverage. Be certain you understand all of the coverage terms, the exclusions, and your rights and duties.

All forms in the endorsement section do not automatically pertain to your policy. Please refer to your declarations page for form numbers associated with your policy. Only those endorsements whose form numbers appear on your declarations page apply to your policy. All other parts of the policy that have not been modified by an endorsement will remain unchanged.

This booklet contains Form 6912 (06/10) and a section of optional endorsements.

PROGRESSIVE[®]

EXHIBIT 1
Page 008

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PART I - LIABILITY TO OTHERS

INSURING AGREEMENT - LIABILITY TO OTHERS

Subject to the Limits of Liability, if **you** pay the premium for liability coverage for the **insured auto** involved, **we** will pay damages, other than punitive or exemplary damages, for **bodily injury, property damage, and covered pollution cost or expense**, for which an **insured** becomes legally responsible because of an **accident** arising out of the ownership, maintenance or use of that **insured auto**. However, **we** will only pay for the **covered pollution cost or expense** if the same **accident** also caused **bodily injury or property damage** to which this insurance applies.

We will settle or defend, at **our** option, any claim or lawsuit for damages covered by this Part I. **We** have no duty to settle or defend any lawsuit, or make any additional payments, after the Limit of Liability for this coverage has been exhausted by payment of judgments or settlements.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

- A. When used in Part I - Liability To Others, **insured** means:
1. **You** with respect to an **insured auto**.
 2. Any person while using, with **your** permission, and within the scope of that permission, an **insured auto you own, hire, or borrow** except:
 - (a) A person while he or she is working in a business of selling, leasing, repairing, parking, storing, servicing, delivering or testing **autos**, unless that business is **yours** and it was so represented in **your** application.
 - (b) A person, other than one of **your** employees, partners (if **you** are a partnership), members (if **you** are a limited liability company), officers or directors (if **you** are a corporation), or a lessee or borrower or any of their employees, while he or she is moving property to or from an **insured auto**.
 - (c) The owner or anyone else from whom the **insured auto** is leased, hired, or borrowed unless the **insured auto** is a **trailer** connected to a power unit that is an **insured auto**. However, this exception does not apply if the **insured auto** is specifically described on the **declarations page**.
For purposes of this subsection A.2., an **insured auto you own** includes any **auto** specifically described on the **declarations page**.
 3. Any other person or organization, but only with respect to the legal liability of that person or organization for acts or omissions of any person otherwise covered under this Part I - Liability To Others.

If **we** make a filing or submit a certificate of insurance on **your** behalf with a regulatory or governmental agency, the term "**insured**" as used in such filing or certificate, and in any related endorsement, refers only to the person or organization named on such filing, certificate or endorsement.

This extension does not apply to the limit or limits specified by any law governing commercial carriers of passengers or property.

We will not pay anyone more than once for the same elements of **loss** because of this extension.

EXCLUSIONS - PLEASE READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE FOR AN ACCIDENT OR LOSS WILL NOT BE AFFORDED UNDER THIS PART I - LIABILITY TO OTHERS.

Coverage under this Part I, including **our** duty to defend, does not apply to:

1. **Expected or Intended Injury**

Bodily injury or **property damage** either expected by or caused intentionally by or at the direction of any **insured**.

2. **Contractual**

Any liability assumed by an **insured** under any contract or agreement, unless the agreement is an **insured contract** that was executed prior to the occurrence of any **bodily injury** or **property damage**.

However, this exclusion does not apply to liability for damages that an **insured** would have in the absence of the contract or agreement.

3. **Worker's Compensation**

Any obligation for which an **insured** or an insurer of that **insured**, even if one does not exist, may be held liable under workers' compensation, unemployment compensation, disability benefits law, or any similar law.

4. **Nuclear Energy Liability**

An **accident** for which any person is insured under nuclear energy liability insurance. This exclusion applies even if the limits of that insurance are exhausted.

5. **Employee Indemnification and Employer's Liability**

Bodily injury to:

- a. An employee of any **insured** arising out of or within the course of:
 - (i) That employee's employment by any **insured**; or
 - (ii) Performing duties related to the conduct of any **insured's** business; or
- b. The spouse, child, parent, brother or sister of that employee as a consequence of Paragraph a. above.

This exclusion applies:

- a. Whether the **insured** may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to **bodily injury** to a domestic employee if benefits are neither paid nor required to be provided under any workers' compensation, disability benefits, or similar law, or to liability for **bodily injury** assumed by the **insured** under an **insured contract**. For the purposes of this policy, a domestic employee is a person engaged in household or domestic work performed principally in connection with a residence premises.

6. **Fellow Employee**

Bodily injury to:

- a. a fellow employee of an **insured** injured while within the course of their employment or while performing duties related to the conduct of **your** business.
- b. the spouse, child, parent, brother, or sister of that fellow employee as a consequence of Paragraph a. above.

7. **Care, Custody or Control**

Property damage to, or **covered pollution cost or expense** involving, any property owned by, rented to, being transported by, used by, or in the care, custody or control of the **insured**, including any motor vehicle operated or being towed. But this exclusion does not apply to liability assumed under a sidetrack agreement.

8. **Movement of Property by Mechanical Device**

Bodily injury or **property damage** resulting from or caused by the movement of property by a mechanical device, other than a hand truck, not attached to an **insured auto**.

9. **Handling of Property**

Bodily injury or **property damage** resulting from or caused by the handling of property:

- a. before it is moved from the place where it is accepted by the **insured** for movement into or onto **your insured auto**; or
- b. after it has been moved from **your insured auto** to the place where it is finally delivered by the **insured**.

10. **Pollution**

Bodily injury or **property damage** resulting from or caused by the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of any **pollutants**:

- a. That are, or that are contained in any property that is:
 - (i) Being transported or towed by, handled, or handled for movement into, onto, or from, the **insured auto**;
 - (ii) Otherwise in the course of transit by or on behalf of the **insured**; or
 - (iii) Being stored, disposed of, treated, or processed in or upon the **insured auto**;
- b. Before the **pollutants** or any property in which the **pollutants** are contained are moved from the place where they are accepted by the **insured** for movement into or onto the **insured auto**; or

- c. After the **pollutants** or any property in which the **pollutants** are contained are moved from the **insured auto** to the place where they are finally delivered, disposed of, or abandoned by the **insured**.

The above Paragraph a. of this exclusion does not apply to fuels, lubricants, fluids, exhaust gasses, or other similar **pollutants** that are needed for or result from the normal electrical, hydraulic, or mechanical functioning of the **insured auto** or its parts, if:

- (1) The **pollutants** escape, seep, migrate, or are discharged, dispersed, or released directly from an **insured auto** part designed by its manufacturer to hold, store, receive, or dispose of such **pollutants** and is a part that would be required for the customary operation of the **insured auto**; and
- (2) The **bodily injury, property damage, or covered pollution cost or expense** does not arise out of the operation of any equipment listed in Paragraphs b. and c. of the definition of **auto**.

The above Paragraphs b. and c. of this exclusion do not apply to **accidents** that occur away from premises owned by or rented to an **insured** with respect to **pollutants** not in or upon an **insured auto** if:

- (1) The **pollutants** or any property in which the **pollutants** are contained are upset, overturned, or damaged as a result of the maintenance or use of an **insured auto**; and
- (2) The discharge, dispersal, seepage, migration, release, or escape of the **pollutants** is caused directly by such upset, overturn, or damage.

11. **Racing**

Bodily injury or property damage arising out of **you** or an **insured** participating in, or preparing for, a prearranged or organized racing, speed or demolition contest, stunting activity, or performance contest.

12. **War**

Bodily injury or property damage arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

13. **Operations**

Bodily injury, property damage, or covered pollution cost or expense arising out of the operation of:

- a. any equipment listed in Paragraphs b. and c. of the definition of **auto**; or
- b. machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law where it is licensed or principally garaged.

14. **Completed Operations**

Bodily injury or **property damage** arising out of, or caused by, **your** work after that work has been completed or abandoned.

For purposes of this exclusion, **your** work means:

- a. Work or operations performed by **you** or on **your** behalf;
- b. Materials, parts, or equipment furnished in connection with such work or operations; and
- c. The delivery of liquids.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability, or performance of any of the items included in Paragraphs a., b., or c. above.

Your work will be deemed completed at the earliest of the following times:

- a. When all of the work called for in **your** contract has been completed.
- b. When all of the work to be done at a particular site has been completed if **your** contract calls for work at more than one site.
- c. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be treated as completed.

LIMIT OF LIABILITY

We will pay no more than the Limit of Liability shown on the **declarations page** for this coverage for the **insured auto** involved in the **accident** regardless of:

1. the number of premiums paid;
 2. the number of **insured autos** or trailers shown on the **declarations page**;
 3. the number of policies issued by **us**;
 4. the number of vehicles or **insureds** involved in an **accident**; or
 5. the number of claims or lawsuits arising out of an **accident**,
- subject to the following:

1. **Coverage Required by Filings**

If **we** have filed a certificate of insurance on **your** behalf with any regulatory or governmental agency, and:

- (i) **we** are required to pay any judgment entered against **you**; or
- (ii) **we** agree to settle a claim or lawsuit;

for **bodily injury**, **property damage**, or **covered pollution cost or expense** arising out of an **accident** or **loss** otherwise not covered under the terms of this policy solely because of such certificate of insurance, **we** will be obligated to pay no more than the minimum amount required by that agency or applicable law. If

PAYMENT OF LOSS

At **our** option, **we** may pay the **loss** in money, or repair or replace the damaged or stolen property. **We** may, at any time before the **loss** is paid or the property is replaced, return, at **our** expense, any stolen property either to **you** or to the address shown on the **declarations page**, with payment for the resulting damage less any applicable deductibles. **We** may keep all or part of the property at the agreed or appraised value, but there shall be no abandonment to **us**.

We may make payment for a **loss** either to **you** or the owner of the property. Payment for a **loss** is required only if **you** have fully complied with the terms of this policy.

You must convey title to and possession of the damaged, destroyed, or stolen property to **us** if **we** pay the actual cash value of **your insured auto** less the deductible or if **we** pay the amount necessary to replace **your insured auto** less the deductible.

LOSS PAYEE AGREEMENT

We will pay the Loss Payee named in the policy for **loss** to **your insured auto**, as the interest of the Loss Payee may appear.

This insurance covers the interest of the Loss Payee unless the **loss** results from fraudulent acts or omissions on **your** part.

Cancellation ends this agreement as to the Loss Payee's interest.

If **we** make any payment to the Loss Payee, **we** will obtain the Loss Payee's rights against any other party.

GENERAL PROVISIONS

1. Policy Period and Territory

This policy applies only to **accidents** and **losses** occurring during the policy period shown on the **declarations page** and that occur within a state, territory, or possession of the United States of America, or a province or territory of Canada, or while an **insured auto** is being transported between their ports.

2. Policy Changes

This policy, **your** insurance application (which is made a part of this policy as if attached hereto), the **declarations page**, as amended, and endorsements to this policy issued by **us** contain all the agreements between **you** and **us**. Subject to the following, its terms may not be changed or waived except by an endorsement issued by **us**.

13. **Severability**

Except with respect to the Limit of Liability, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or lawsuit is brought.

14. **Settlement of Claims**

We may use estimating, appraisal, or injury evaluation systems to adjust claims under this policy and to determine the amount of damages, expenses, or loss payable under this policy. Such systems may be developed by **us** or a third party and may include computer software, databases, and specialized technology.

15. **Automatic Termination**

If **we** or an affiliate offers to renew or continue this policy and **you** or **your** representative does not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due will mean that **you** have not accepted **our** offer.

If **you** obtain other insurance on an **insured auto**, any similar insurance provided by this policy will terminate as to that **insured auto** on the effective date of the other insurance.

If an **insured auto** is sold or transferred, any insurance provided by this policy will terminate as to that **insured auto** on the effective date of the sale or transfer.

16. **Duty to Report Changes**

You must promptly notify **us** when:

1. **your** mailing or business address changes;
2. the principal garaging address of an **insured auto** changes;
3. there is a change to the persons who regularly operate an **insured auto**; or
4. **you** acquire, sell, or dispose of **autos**.

17. **Terms of Policy Conformed to Statutes**

If any provision of this policy fails to conform to the statutes of the state listed on **your** application as **your** business location, the provision shall be deemed amended to conform to such statutes. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on **your** application as **your** business location.

Form 6912 (06/10)

DATE RECEIVED BY DMV

MOTOR CARRIER (CA)#
CA# 433971

CERTIFICATE OF INSURANCE

Motor Carriers of Property

INSURER (INSURANCE COMPANY) NAME AND ADDRESS United Financial Casualty Company PO BOX 94739 CLEVELAND, OH 44101	NAIC # 11770 SURPLUS LINE BROKER # OTHER #	Status: <input checked="" type="checkbox"/> Licensed to write insurance in the State of California (Admitted Insurer) <input type="checkbox"/> Nonadmitted Insurer subject to Section 1763 of the California Insurance Code. <input type="checkbox"/> Charitable Risk Pool <input type="checkbox"/> Risk Retention Group
INSURED (MOTOR CARRIER) NAME AND ADDRESS JOSE F PORRAS HORIZON TRANSPORTERS [REDACTED]		Filed with the: California Department of Motor Vehicles Motor Carrier Services Branch P. O. Box 932370 MS G875 Sacramento, CA 94232-3700 (916) 657-8153

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	LIMITS	
PRIMARY LIABILITY <input type="checkbox"/> Coverage below statutory minimum limits. <input checked="" type="checkbox"/> Coverage equal to or exceeding statutory minimum limits.	CA 02156772	05/02/2013	COMBINED SINGLE LIMIT	\$750,000
			BODILY INJURY OR DEATH (ONE PERSON)	
			BODILY INJURY OR DEATH (MORE THAN ONE PERSON)	
EXCESS LIABILITY <input type="checkbox"/> Coverage between primary coverage and statutory minimum limits. <input type="checkbox"/> Coverage provided at or above statutory minimum limits.			COMBINED SINGLE LIMIT	\$ _____ in excess of \$ _____
			BODILY INJURY (ONE PERSON)	\$ _____ in excess of \$ _____
			BODILY INJURY OR DEATH (MORE THAN ONE PERSON)	\$ _____ in excess of \$ _____
			PROPERTY DAMAGE	\$ _____ in excess of \$ _____
WORKERS' COMPENSATION			<input type="checkbox"/> WC Statutory Limits	

Insurer certifies to each of the following:

- The motor carrier of property (Insured) identified herein is covered by an insurance policy providing bodily injury or death liability, property damage liability insurance, or workers' compensation insurance within the coverage limits identified above as required by California Vehicle Code (CVC) Sections 34630, 34631.5 and 34640, and by Part 387 of Title 49 of the Code of Federal Regulations.
- This insurance policy covers all vehicles used in conducting the service performed by the Insured for which a motor carrier permit is required whether or not said vehicle is listed in the insurance policy.
- A fully executed endorsement, on a form authorized by the Department of Motor Vehicles (DMV), is attached to the referenced policy to conform to the requirements of the Motor Carriers of Property Permit Act, CVC Section 34600 and following, and the rules and regulations of the DMV. (This provision does not apply to Workers' Compensation Insurance.)
- For the purposes of Charitable Risk Pool coverage, this policy meets the requirements of the CVC Section 34631.
- For the purposes of Risk Retention Group coverage, this policy meets the requirements of the Risk Retention Act of 1991, California Insurance Code Section 125 and following, and is authorized to do business in California.

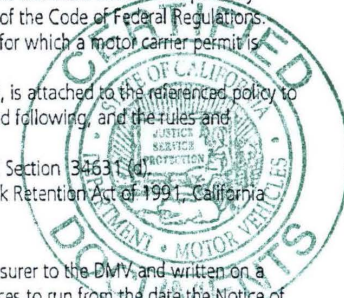
Insurer agrees to each of the following:

- This Certificate of Insurance shall not be canceled on less than thirty (30) days notice from the Insurer to the DMV and written on a Notice of Cancellation form authorized by the DMV, and that the thirty (30) day period commences to run from the date the Notice of Cancellation form was actually received at the office of the California Department of Motor Vehicles, Motor Carrier Services Branch, in Sacramento, California.
- A duplicate original of the referenced policy, a DMV authorized endorsement, and all other related endorsements and documentation, shall be furnished to DMV upon request.

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

PRINTED NAME OF INSURER'S AUTHORIZED REPRESENTATIVE Kevin Maher	TELEPHONE NUMBER 1-800-444-4487	EMAIL ADDRESS CV_FILINGS@PROGRESSIVE.COM
SIGNATURE OF INSURER'S AUTHORIZED REPRESENTATIVE 	EXECUTED AT (CITY, STATE) MAYFIELD VILLAGE, OH	DATE 05/02/2013

DMV 65 MCP (REV. 9/2007) UH



9

DATE RECEIVED BY DMV

INSURANCE POLICY ENDORSEMENT

MOTOR CARRIER (CA)#
CA# 433971

Motor Carriers of Property Bodily Injury Liability and Property Damage Liability

INSURER (INSURANCE COMPANY) NAME AND ADDRESS United Financial Casualty Company PO BOX 94739 CLEVELAND, OH 44101	NAIC # 11770 SURPLUS LINE BROKER # OTHER #	Status: <input checked="" type="checkbox"/> Licensed to write insurance in the State of California (Admitted Insurer) <input type="checkbox"/> Nonadmitted Insurer subject to Section 1763 of the California Insurance Code. <input type="checkbox"/> Charitable Risk Pool <input type="checkbox"/> Risk Retention Group
INSURED (MOTOR CARRIER) NAME AND ADDRESS JOSE F PORRAS HORIZON TRANSPORTERS <div style="background-color: black; width: 100px; height: 20px; margin-top: 5px;"></div>		SURPLUS LINE BROKER NAME

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	LIMITS	
PRIMARY LIABILITY <input type="checkbox"/> Coverage below statutory minimum limits. <input checked="" type="checkbox"/> Coverage equal to or exceeding statutory minimum limits.	CA 02156772-0	05/02/2013	COMBINED SINGLE LIMIT	\$750,000
			BODILY INJURY OR DEATH (ONE PERSON)	
			BODILY INJURY OR DEATH (MORE THAN ONE PERSON)	
EXCESS LIABILITY <input type="checkbox"/> Coverage between primary coverage and statutory minimum limits. <input type="checkbox"/> Coverage provided at or above statutory minimum limits.			COMBINED SINGLE LIMIT	\$ _____ in excess of \$ _____
			BODILY INJURY (ONE PERSON)	\$ _____ in excess of \$ _____
			BODILY INJURY OR DEATH (MORE THAN ONE PERSON)	\$ _____ in excess of \$ _____
			PROPERTY DAMAGE	\$ _____ in excess of \$ _____

This Endorsement shall be attached to and made a part of all policies insuring motor carriers of property required to obtain a permit pursuant to the Motor Carriers of Property Permit Act, commencing with California Vehicle Code section 34600. The purpose of this Endorsement is to assure compliance with the Act and related rules and regulations.

Insurer agrees to each of the following:

- The coverage provided by the endorsement excludes any costs of defense or other expense that the policy provides.
- To pay, consistent with the minimum insurance coverage required by California Vehicle Code Section 34631.5, and consistent with the limits it provides herein, any legal liability of insured for bodily injury, death, or property damage arising out of the operation, maintenance, or use of any vehicle(s) for which a motor carrier permit is required, whether or not such vehicle(s) is described in the attached policy.
- No provision, stipulation, or limitation contained in the attached policy or any endorsement shall relieve insurer from obligations arising out of this Endorsement or the Act, regardless of the insured's financial solvency, indebtedness or bankruptcy.
- The Certificate of Insurance shall not be canceled on less than thirty (30) days notice from the Insurer to the DMV, written on an authorized Notice of Cancellation form and that the thirty (30) day/period commences to run from the date the Notice of Cancellation was actually received at the office of the California Department of Motor Vehicles, Motor Carrier Services Branch, in Sacramento, California.
- To furnish DMV with a duplicate original of the referenced policy, DMV authorized endorsement, and all other related endorsements and documentation upon request.
- Except as specified in this endorsement, the terms, conditions, and limitations of this policy remain in full force and effect. This endorsement shall not prevent insurer from seeking reimbursement from insured for any payment made by insurer solely on account of the provisions herein.

Insurer certifies to each of the following:

- This insurance policy covers all vehicles used in conducting the service performed by the insured for which a motor carrier permit is required whether or not said vehicle(s) is listed in the insurance policy.

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

PRINTED NAME OF INSURER'S AUTHORIZED REPRESENTATIVE Kevin Maher	TELEPHONE NUMBER 1-800-444-4487	EMAIL ADDRESS (OPTIONAL) CV_FILINGS@PROGRESSIVE.COM
SIGNATURE OF INSURER'S AUTHORIZED REPRESENTATIVE 	EXECUTED AT (CITY, STATE) MAYFIELD VILLAGE, OH	DATE 05/02/2013

DMV 67 MCP (REV. 8/2007) UH REGS

DATE RECEIVED BY DMV

MOTOR CARRIER (CA)#
CA# 433971

NOTICE OF CANCELLATION OF INSURANCE

Motor Carriers of Property

INSURER (INSURANCE COMPANY) NAME AND ADDRESS United Financial Casualty Company PO BOX 94739 CLEVELAND, OH 44101	NAIC # 11770 SURPLUS LINE BROKER # OTHER #	Status: <input checked="" type="checkbox"/> Licensed to write insurance in the State of California (Admitted Insurer) <input type="checkbox"/> Nonadmitted Insurer subject to Section 1763 of the California Insurance Code. _____ <input type="checkbox"/> Charitable Risk Pool SURPLUS LINE BROKER NAME <input type="checkbox"/> Risk Retention Group
INSURED (MOTOR CARRIER) NAME AND ADDRESS JOSE F PORRAS HORIZON TRANSPORTERS 1757 W GILBERT ST SAN BERNARDINO, CA 92411-0000	Filed with the: California Department of Motor Vehicles Motor Carrier Services Branch P. O. Box 932370 MS G875 Sacramento, CA 94232-3700 (916) 657-8153	

POLICY

INSURANCE POLICY NUMBER CA 02156772	EFFECTIVE DATE 04/24/2014
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DATE ORIGINAL CERTIFICATE OF INSURANCE WAS ISSUED
04/24/2014

(Please check the applicable insurance listed below)

Bodily Injury Liability and Property Damage Liability Insurance

Insurer hereby gives notice that the above referenced policy, including applicable endorsement and certifications, is hereby **CANCELLED**.

This cancellation shall be effective thirty (30) days after the date received by the Motor Carrier Services Branch, Department of Motor Vehicles in Sacramento, CA or on 04/12/2015 at 12:01 a.m. (at the address of the insured), whichever occurs last.
DATE TIME

Workers' Compensation Insurance

Insurer hereby gives notice that the above referenced policy is hereby cancelled effective on _____ at _____ a.m. (at the address of the insured).
DATE TIME

Excess Liability Insurance

Insurer hereby gives notice that the above referenced policy, including applicable endorsement and certifications is hereby **CANCELLED**.
 This cancellation shall be effective thirty (30) days after the date received by the Motor Carrier Services Branch, Department of Motor Vehicles in Sacramento, CA or on _____ at _____ a.m. (at the address of the insured), whichever occurs last.
DATE TIME

This Notice of Cancellation is applicable only to the Insured and the Policy identified herein.

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

PRINTED NAME OF INSURER'S AUTHORIZED REPRESENTATIVE Kevin Maher	TELEPHONE NUMBER 1-800-444-4487	EMAIL ADDRESS CV_FILINGS@PROGRESSIVE.COM
SIGNATURE OF INSURER'S AUTHORIZED REPRESENTATIVE 	EXECUTED AT (CITY, STATE) MAYFIELD VILLAGE, OH	DATE 02/06/2015

POLICY NUMBER: AP2015100189
 JOSE F PORRAS
 DBA HORIZON TRANSPORTERS

COMMERCIAL AUTO

CA DS 21 10 13

MOTOR CARRIER DECLARATIONS

ITEM ONE

Company Name:	ALLIED PREMIER INSURANCE A RISK RETENTION GROUP 1130 WEST OLIVE AVENUE, BURBANK, CA 91506		NAIC #15639
Producer Name:	VALLEYS BEST INSURANCE SERVICES, LLC		
Named Insured:	JOSE F PORRAS DBA HORIZON TRANSPORTERS		
Mailing Address:	[REDACTED]		

Policy Period	
From: 04/13/2015	
To: 04/13/2016	At 12:01 AM Standard Time at your mailing address shown above
Previous Policy Number:	

Form Of Business:		
<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Individual
<input type="checkbox"/> Partnership	<input type="checkbox"/> Other:	

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

Premium Shown Is Payable At Inception: \$ 6,300.00
Audit Period (if applicable): <input type="checkbox"/> Annually <input type="checkbox"/> Semiannually <input type="checkbox"/> Quarterly <input type="checkbox"/> Monthly

NOTICE

This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.

ITEM TWO

Schedule Of Coverages And Covered Autos

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the Covered Autos section of the Motor Carrier Coverage Form next to the name of the coverage.

Coverages	Covered Autos	Limit	Premium
Covered Autos Liability	67	\$ 1,000,000	██████████
Personal Injury Protection (Or Equivalent No-fault Coverage)		Separately Stated In Each Personal Injury Protection Endorsement Minus \$ Deductible	\$
Added Personal Injury Protection (Or Equivalent Added No-fault Coverage)		Separately Stated In Each Added Personal Injury Protection Endorsement	\$
Property Protection Insurance (Michigan Only)		Separately Stated In The Property Protection Insurance Endorsement Minus \$ Deductible For Each Accident	\$
Auto Medical Payments		\$ Each Insured	\$
Medical Expense And Income Loss Benefits (Virginia Only)		Separately Stated In The Medical Expense And Income Loss Benefits Endorsement	\$
Uninsured Motorists		\$	\$
Underinsured Motorists (When Not Included In Uninsured Motorists Coverage)		\$	\$

ITEM TWO
Schedule Of Coverages And Covered Autos (Cont'd)

Coverages	Covered Autos	Limit	Premium
Trailer Interchange Comprehensive Coverage		Least Of Actual Cash Value, Cost Of Repair Or \$ Limit Of Insurance	\$
		\$ Deductible For Each Covered Trailer	
Trailer Interchange Specified Causes Of Loss Coverage		Least Of Actual Cash Value, Cost Of Repair Or \$ Limit Of Insurance	\$
		\$ Deductible For Each Covered Trailer	
Trailer Interchange Collision Coverage		Least Of Actual Cash Value, Cost Of Repair Or \$ Limit Of Insurance	\$
		\$ Deductible For Each Covered Trailer	
Physical Damage Comprehensive Coverage		Actual Cash Value Or Cost Of Repair, Whichever Is Less, Minus \$ Deductible For Each Covered Auto, But No Deductible Applies To Loss Caused By Fire Or Lightning See Item Four for Hired or Borrowed Autos.	\$
Physical Damage Specified Causes Of Loss Coverage		Actual Cash Value Or Cost Of Repair, Whichever Is Less, Minus \$ Deductible For Each Covered Auto For Loss Caused By Mischief Or Vandalism See Item Four for Hired or Borrowed Autos.	\$
Physical Damage Collision Coverage		Actual Cash Value Or Cost Of Repair, Whichever Is Less, Minus \$ Deductible For Each Covered Auto See Item Four for Hired or Borrowed Autos.	\$
Physical Damage Towing And Labor		\$ For Each Disablement Of A Private Passenger Auto	\$
			\$
Premium For Endorsements			\$
Estimated Total Premium*			\$

*This policy may be subject to final audit.

ITEM THREE

Schedule Of Covered Autos You Own

Covered Auto Number: 1						
Town And State Where The Covered Auto Will Be Principally Garaged: <div style="background-color: black; width: 150px; height: 20px; margin: 5px 0;"></div>						
Covered Auto Description						
Year: 2013	Model:			Trade Name: DODGE		
Body Type: PICKUP				Serial Number(s):		
Vehicle Identification Number (VIN): 3C63RRGL6DG568804						
Classification						
Original Cost New	Radius Of Operation	Business Use s=service r=retail c=commercial	Size GVW, GCW Or Vehicle Seating Capacity	Age Group	Secondary Rating Classification	Code
\$	0-300	C				
Except For Towing, All Physical Damage Loss Is Payable To You And The Loss Payee Named Below According To Their Interests In The Auto At The Time Of The Loss:						

ITEM THREE

Schedule Of Covered Autos You Own (Cont'd)

Coverages – Premiums, Limits And Deductibles (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding Item Two column applies instead.)		
Coverages	Limit	Premium
Covered Autos Liability	\$ 1,000,000	\$ INCLUDED
Personal Injury Protection	Stated In Each Personal Injury Protection Endorsement Minus \$ Deductible	\$
Added Personal Injury Protection	Stated In Each Added Personal Injury Protection Endorsement	\$
Property Protection Insurance (Michigan Only)	Stated In The Property Protection Insurance Endorsement Minus \$ Deductible	\$
Auto Medical Payments	\$ Each Insured	\$
Medical Expense And Income Loss Benefits (Virginia Only)	Stated In The Medical Expense And Income Loss Benefits Endorsement For Each Person	\$
Comprehensive	Stated In Item Two Minus \$ Deductible	\$
Specified Causes Of Loss	Stated In Item Two Minus \$ Deductible	\$
Collision	Stated In Item Two Minus \$ Deductible	\$
Towing And Labor	\$ Per Disablement	\$

ITEM THREE
Schedule Of Covered Autos You Own (Cont'd)

Covered Auto Number: 2						
Town And State Where The Covered Auto Will Be Principally Garaged: <div style="background-color: black; width: 150px; height: 20px; margin: 5px 0;"></div>						
Covered Auto Description						
Year: 0000	Model:			Trade Name: UNOWNED		
Body Type: TRAILER				Serial Number(s):		
Vehicle Identification Number (VIN): 0000						
Classification						
Original Cost New	Radius Of Operation	Business Use s=service r=retail c=commercial	Size GVW, GCW Or Vehicle Seating Capacity	Age Group	Secondary Rating Classification	Code
\$	0-300	C				
Except For Towing, All Physical Damage Loss Is Payable To You And The Loss Payee Named Below According To Their Interests In The Auto At The Time Of The Loss:						

ITEM THREE**Schedule Of Covered Autos You Own (Cont'd)**

Coverages – Premiums, Limits And Deductibles (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding Item Two column applies instead.)		
Coverages	Limit	Premium
Covered Autos Liability	\$ 1,000,000	\$ INCLUDED
Personal Injury Protection	Stated In Each Personal Injury Protection Endorsement Minus \$ Deductible	\$
Added Personal Injury Protection	Stated In Each Added Personal Injury Protection Endorsement	\$
Property Protection Insurance (Michigan Only)	Stated In The Property Protection Insurance Endorsement Minus \$ Deductible	\$
Auto Medical Payments	\$ Each Insured	\$
Medical Expense And Income Loss Benefits (Virginia Only)	Stated In The Medical Expense And Income Loss Benefits Endorsement For Each Person	\$
Comprehensive	Stated In Item Two Minus \$ Deductible	\$
Specified Causes Of Loss	Stated In Item Two Minus \$ Deductible	\$
Collision	Stated In Item Two Minus \$ Deductible	\$
Towing And Labor	\$ Per Disablement	\$

ITEM FOUR

Schedule Of Hired Or Borrowed Covered Auto Coverage And Premiums

Covered Autos Liability Coverage – Cost Of Hire Rating Basis For Autos Used In Your Motor Carrier Operations (Other Than Mobile Or Farm Equipment)		
Covered Autos Liability Coverage	Estimated Annual Cost Of Hire For All States	Premium
Primary Coverage	\$	\$
Excess Coverage	\$	\$
Total Hired Auto Premium		\$
For "autos" used in your motor carrier operations, cost of hire means: <ol style="list-style-type: none"> 1. The total dollar amount of costs you incurred for the hire of automobiles (includes "trailers" and semitrailers) and, if not included therein, 2. The total remunerations of all operators and drivers' helpers, of hired automobiles, whether hired with a driver by lessor or an "employee" of the lessee, or any other third party, and 3. The total dollar amount of any other costs (e.g., repair, maintenance, fuel, etc.) directly associated with operating the hired automobiles, whether such costs are absorbed by the "insured", paid to the lessor or owner, or paid to others. 		

Covered Autos Liability Coverage – Cost Of Hire Rating Basis For Autos NOT Used In Your Motor Carrier Operations (Other Than Mobile Or Farm Equipment)			
Covered Autos Liability Coverage	State	Estimated Annual Cost Of Hire For Each State	Premium
Primary Coverage		\$	\$
Excess Coverage		\$	\$
Total Hired Auto Premium			\$
For "autos" NOT used in your motor carrier operations, cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners or "employees" or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.			



154 APR 30 2015

CERTIFICATE OF INSURANCE

NOTOR NUMBER/DATE
433971

Motor Carriers of Property

INSURER (INSURANCE COMPANY) NAME AND ADDRESS ALLIED PREMIER INSURANCE A RISK RETENTION GROUP 1130 WOLIVE AVENUE BURBANK, CA 91506		NAIC # 15639	Status: <input type="checkbox"/> Licensed to write Insurance in the State of California (Admitted Insurer) <input type="checkbox"/> Non-admitted Insurer subject to Section 1763 of the California Insurance Code. <input type="checkbox"/> Charitable Risk Pool <input checked="" type="checkbox"/> Risk Retention Group
		SURPLUS LINE BROKER #	
		OTHER #	
INSURED (MOTOR CARRIER) NAME AND ADDRESS JOSE F PORRAS DBA HORIZON TRANSPORTERS [REDACTED]		Filed with the: California Department of Motor Vehicles Registration Operations Division P. O. Box 932370 MS 0375 Sacramento, CA 94232-3700 (916) 657-8153	
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	LIMITS
PRIMARY LIABILITY <input type="checkbox"/> Coverage below statutory minimum limits. <input checked="" type="checkbox"/> Coverage equal to or exceeding statutory minimum limits.	AP2015100189	04/13/2015	COMBINED SINGLE LIMIT \$ 750,000 BODILY INJURY OR DEATH (ONE PERSON) \$ BODILY INJURY OR DEATH (MORE THAN ONE PERSON) \$ PROPERTY DAMAGE \$
EXCESS LIABILITY <input type="checkbox"/> Coverage between primary coverage and statutory minimum limits. <input type="checkbox"/> Coverage provided at or above statutory minimum limits.			COMBINED SINGLE LIMIT \$ _____ in excess of \$ _____ BODILY INJURY (ONE PERSON) \$ _____ in excess of \$ _____ BODILY INJURY OR DEATH (MORE THAN ONE PERSON) \$ _____ in excess of \$ _____ PROPERTY DAMAGE \$ _____ in excess of \$ _____
WORKERS' COMPENSATION			<input type="checkbox"/> WC Statutory Limits

Insurer certifies to each of the following:

- The motor carrier of property (Insured) identified herein is covered by an insurance policy providing bodily injury or death liability, property damage liability insurance, or workers' compensation insurance within the coverage limits identified above as required by California Vehicle Code (CVC) Sections 34630, 34631.5, and 34640, and by Part 387 of Title 49 of the Code of Federal Regulations.
- This insurance policy covers all vehicles used in conducting the service performed by the Insured for which a motor carrier permit is required whether or not said vehicle is listed in the insurance policy.
- A fully executed endorsement, on a form authorized by the Department of Motor Vehicles (DMV), is attached to the referenced policy to conform to the requirements of the Motor Carriers of Property Permit Act, CVC Section 34600 and following, and the rules and regulations of the DMV. (This provision does not apply to Workers' Compensation Insurance.)
- For the purposes of Charitable Risk Pool coverage, this policy meets the requirements of the CVC Section 34681 (c).
- For the purposes of Risk Retention Group coverage, this policy meets the requirements of the Risk Retention Act of 1991, California Insurance Code Section 125 and following, and is authorized to do business in California.

Insurer agrees to each of the following:

- This Certificate of Insurance shall not be canceled on less than thirty (30) days notice from the Insurer to the DMV and written on a Notice of Cancellation form authorized by the DMV, and that the thirty (30) day period commences to run from the date the Notice of Cancellation form was actually received at the office of the California Department of Motor Vehicles, Registration Operations Division, in Sacramento, California.
- A duplicate original of the referenced policy, a DMV authorized endorsement, and all other related endorsements and documentation, shall be furnished to DMV upon request.

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

PRINTED NAME OF INSURER'S AUTHORIZED REPRESENTATIVE VJ Peritt	TELEPHONE NUMBER (801) 252-3525	EMAIL ADDRESS underwriting@alliedpremier.com
SIGNATURE OF INSURER'S AUTHORIZED REPRESENTATIVE [Signature]	EXECUTED AT (CITY AND STATE) Burbank, CA	DATE 04/17/2015

MC 65 M (REV. 7/2014) UH

Print Clear Form

(DEPARTMENT OF MOTOR VEHICLES)
REGISTRATION OPERATIONS DIVISION (MS G875)
(P.O. BOX 932370
SACRAMENTO, CA 94232-3700)
(916) 657-8153



11/07/2013

NOTICE OF INCOMPLETE FILING

UNITED FINANCIAL CASUALTY INS CO
PO BOX 94739
CLEVELAND, OH 44101

Motor Carrier Permit Number:
433971

The Certificate of Insurance or Notice of Cancellation is being returned for the following reason.

- Insurance company is not authorized by the California Department of Insurance
- Name of insured on certificate/cancellation does not match legal name of motor carrier
- Non-approved form. Must be submitted on a Certificate of Insurance (DMV 65 MCP).
- Liability coverage amount not entered on Certificate of Insurance.
- Policy number or effective is date not entered on Certificate/Cancellation of Insurance.
- Policy number, policy or cancellation effective date is not entered on Certificate of Insurance or Notice of Cancellation.
- Policy number or effective date on Notice of Cancellation is not on file with the department.
- Certificate of Insurance or Notice of Cancellation is illegible.
- Certificate of Insurance or Notice of Cancellation is not signed.
- Liability coverage amount insufficient, \$ _____ coverage is required.
- Other;

NOV 15 2013

If you have any questions or concerns regarding this matter, contact the Department of Motor Vehicles, Motor Carrier Services Branch at (916) 657-8153.

(Motor Carrier Services Branch)

(California Relay Telephone Service for the deaf or hearing impaired from TDD Phones: 1-800-735-2929; from Voice Phones: 1-800-735-2922)

NO POSTMARK

DMV 139 MCP (REV. 11/2009)

A Public Service Agency

DATE RECEIVED BY DMV

MOTOR CARRIER (CA)#
CA# 433971

NOTICE OF CANCELLATION OF INSURANCE

Motor Carriers of Property

INSURER (INSURANCE COMPANY) NAME AND ADDRESS United Financial Casualty Company PO BOX 94739 CLEVELAND, OH 44101	NAIC # 11770 SURPLUS LINE BROKER # OTHER #	Status: <input checked="" type="checkbox"/> Licensed to write insurance in the State of California (Admitted Insurer) <input type="checkbox"/> Nonadmitted Insurer subject to Section 1763 of the California Insurance Code. <input type="checkbox"/> Charitable Risk Pool <input type="checkbox"/> Risk Retention Group
INSURED (MOTOR CARRIER) NAME AND ADDRESS JOSE F PORRAS HORIZON TRANSPORTERS <div style="background-color: black; width: 100px; height: 20px; margin-top: 5px;"></div>	Filed with the: California Department of Motor Vehicles Motor Carrier Services Branch P. O. Box 932370 MS G875 Sacramento, CA 94232-3700 (916) 657-8153	

POLICY

INSURANCE POLICY NUMBER CA 02156772	EFFECTIVE DATE 10/12/2013
DATE ORIGINAL CERTIFICATE OF INSURANCE WAS ISSUED 10/12/2013	

(Please check the applicable insurance listed below)

Bodily Injury Liability and Property Damage Liability Insurance

Insurer hereby gives notice that the above referenced policy, including applicable endorsement and certifications, is hereby **CANCELLED**.

This cancellation shall be effective thirty (30) days after the date received by the Motor Carrier Services Branch, Department of Motor Vehicles in Sacramento, CA or on 12/10/2013 at 12:01 a.m. (at the address of the insured), whichever occurs last.

Workers' Compensation Insurance

Insurer hereby gives notice that the above referenced policy is hereby cancelled effective on _____ at _____ a.m. (at the address of the insured).

Excess Liability Insurance

Insurer hereby gives notice that the above referenced policy, including applicable endorsement and certifications is hereby **CANCELLED**.

This cancellation shall be effective thirty (30) days after the date received by the Motor Carrier Services Branch, Department of Motor Vehicles in Sacramento, CA or on _____ at _____ a.m. (at the address of the insured), whichever occurs last.

This Notice of Cancellation is applicable only to the Insured and the Policy identified herein.

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

PRINTED NAME OF INSURER'S AUTHORIZED REPRESENTATIVE Kevin Maher	TELEPHONE NUMBER 1-800-444-4487	EMAIL ADDRESS CV_FILINGS@PROGRESSIVE.COM
SIGNATURE OF INSURER'S AUTHORIZED REPRESENTATIVE 	EXECUTED AT (CITY, STATE) MAYFIELD VILLAGE, OH	DATE 11/05/2013

DMV 66 MCP (REV. 9/2007) UH-EF

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Patrick M. Howe (SBN 154669)
pat@patrickhowelaw.com
Patrick Howe Law, APC
402 W. Broadway, Ste. 1025
San Diego, CA 92101
(619) 398-3422 Phone
(619) 452-2507 Fax

Attorney for defendant
United Financial Casualty Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Allied Premier Insurance, a Risk
Retention Group, a Connecticut
corporation,

Plaintiff,

v.

United Financial Casualty
Company, an Ohio corporation,
Defendant.

Case No. 5:18-cv-00088 JGB (KKx)

**United Financial Casualty
Company’s Answer to
Complaint**

Demand for Jury Trial

United Financial Casualty Company, on behalf of itself and no
other defendant, answers plaintiff’s complaint as follows:

Responses to Allegations

1. Answering paragraph 1, United Financial Casualty Company
lacks sufficient knowledge or information to form a belief about the
truth of the allegations and therefore denies them.

2. Answering paragraph 2, United Financial Casualty Company
admits the allegations.

1 43. *Intervening Cause.* The damages, injuries, and losses alleged
2 by plaintiff, if any, were proximately caused or contributed to by the
3 negligence or otherwise actionable conduct of persons or entities other
4 than United Financial Casualty Company. Such negligence or other
5 actionable conduct was an intervening and superseding cause of the
6 damages, injuries, and losses of which plaintiff complains.

7 44. *Civil Code sections 3301 and 3302.* Plaintiff's claims for
8 damages, plus interest, are barred by the provisions of CALIFORNIA
9 CIVIL CODE sections 3301 and 3302.

10 45. *Policy not in Force.* Plaintiff's claims are barred because policy
11 02156722 issued by United Financial Casualty Company was not in
12 force on the alleged date of loss but instead had been timely canceled
13 with proper notice given to United Financial Casualty Company's
14 insured and the California Department of Motor Vehicles.

15 46. *Lack of Capacity.* Plaintiff lacks the capacity to pursue the
16 claims alleged in the complaint.

17 47. *Lack of Standing.* Plaintiff lacks standing to pursue the claims
18 alleged in the complaint.

19 48. *No Stacking.* Plaintiff's claims are barred because, to the extent
20 the DMV 67 MCP endorsement to the United Financial Casualty
21 Company policy applies, any benefits due under the endorsement
22 cannot be stacked upon those plaintiff was obligated to pay on behalf
23 of Jose Porras.

24 49. *Insurance Code section 11580.9.* Plaintiff's claims are barred
25 because, to the extent the DMV 67 MCP endorsement to the United
26 Financial Casualty Company applies, plaintiff's policy was primary to
27 the endorsement issued by United Financial Casualty Company
28 pursuant to CALIFORNIA INSURANCE CODE section 11580.9.

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San Diego, CA 92101
(619) 398-3422 Phone
(619) 452-2507 Fax

Attorney for defendant
United Financial Casualty Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Allied Premier Insurance, a Risk
Retention Group, a Connecticut
corporation,

Plaintiff,

v.

United Financial Casualty
Company, an Ohio corporation,
Defendant.

Case No. 2:18-cv-00287

**Notice of Removal of Action
under 28 U.S.C. section 1441(b)
(Diversity)**

Demand for Jury Trial

Please take notice that defendant United Financial Casualty
Company, pursuant to 28 U.S.C. sections 1441(b) and 1446, removes to
this court the state court action described below for the following
reasons:

Jurisdiction

1. This action is a civil action of which this court has original
jurisdiction under 28 U.S.C. section 1332. The action may be removed
to this court by United Financial Casualty Company pursuant to 28

1 U.S.C. section 1441(b), in that it is a civil action between citizens of
2 different states and the matter in controversy exceeds the sum of
3 \$75,000, exclusive of interest and costs.

4 2. On December 12, 2017, plaintiff Allied Premier Insurance
5 commenced this action by filing a complaint in California Superior
6 Court, for the County of San Bernardino. (Complaint, Ex. 1, p. 6.)
7 Allied Premier Insurance claims it defended and indemnified its
8 insured, Jose Porras, against claims in a personal injury lawsuit arising
9 out of an auto accident that occurred on September 1, 2015. Allied
10 Premier Insurance claims it paid \$1 million to resolve the personal
11 injury lawsuit on behalf of Mr. Porras. Allied Premier Insurance claims
12 United Financial Casualty Company was responsible for defending
13 and indemnifying Mr. Porras and/or contributing to such defense and
14 indemnification. In its complaint, Allied Premier Insurance asserts
15 causes of action against United Financial Casualty Company for
16 declaratory relief, equitable contribution, and equitable subrogation.

17 3. Allied Premier Insurance is, and at the time of commencement
18 of the state court action was, a corporation incorporated under the
19 laws of Connecticut. (1/10/18 printout from California Department of
20 Insurance official website, Ex. 2, p. 12; 1/10/18 printout from
21 California Secretary of State official website, Ex. 3, p. 14.) Allied
22 Premier Insurance's principal place of business is, and at the time of
23 commencement of the state court action was, in Utah and/or
24 California.

25 4. United Financial Casualty Company is, and at the time of
26 commencement of the state court action was, a corporation
27 incorporated under the laws of Ohio. (1/10/18 printout from California
28 Department of Insurance official website, Ex. 4, p. 16; 1/10/18 printout

1 from California Secretary of State official website, Ex. 5, p. 18.) United
2 Financial Casualty Company's principal place of business is, and at the
3 time of commencement of the state court action was, in Mayfield
4 Village, Ohio.

5 5. The amount in controversy exceeds \$75,000. Allied Premier
6 Insurance claims it is entitled to damages against United Financial
7 Casualty Company, in whole or in part, for the \$1 million that Allied
8 Premier Insurance contends it paid to resolve the personal injury
9 lawsuit against Jose Porras. (Complaint, Ex. 1, p. 8/¶ 15.)

10 **Other Allegations**

11 6. United Financial Casualty Company first became aware of the
12 existence of the state court complaint on December 15, 2017, when it
13 was served with summons and complaint.

14 7. Copies of additional state court documents are attached hereto
15 as Exhibit 6, pp. 20–26. United Financial Casualty Company has not
16 been served with and is unaware of any other state court documents
17 and is unaware of any hearings or other proceedings that have taken
18 place in state court to date.

19
20 January 12, 2018

Patrick Howe Law, APC

21 By: /s/Patrick M. Howe

22 Patrick M. Howe

23 Attorney for defendant United
24 Financial Casualty Company

25 *pat@patrickhowelaw.com*
26
27
28

COPY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

DEC 12 2017

By *[Signature]* Deputy
[Signature]

BY FAX

1 Hillary Arrow Booth (SBN 125936)
2 hbooth@boothllp.com
3 Ian P. Culver (SBN 245106)
4 iculver@boothllp.com
5 BOOTH LLP
6 1849 Sawtelle Blvd., Suite 500
7 Los Angeles, CA 90025
8 Telephone: (310) 641-1800
9 Facsimile: (310) 641-1818

Attorneys for Plaintiff ALLIED PREMIER INSURANCE, A RISK RETENTION GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO - CIVIL

11 ALLIED PREMIER INSURANCE, A RISK
12 RETENTION GROUP, a Connecticut
13 corporation,

Plaintiff,

v.

15 UNITED FINANCIAL CASUALTY
16 COMPANY, an Ohio corporation,

17 Defendants.

Case No.

CIVDS1724638

Assigned to Hon. Judge

COMPLAINT FOR DECLARATORY
RELIEF, EQUITABLE CONTRIBUTION,
AND EQUITABLE SUBROGATION

Complaint Filed:

Trial Date:

Not Set

19 Plaintiff ALLIED PREMIER INSURANCE, A RISK RETENTION GROUP

20 ("Allied Premier" or "Plaintiff") alleges as follows:

21 PARTIES

22 1. At all relevant times herein, Allied Premier was an insurer and corporation
23 authorized to conduct business in the State of California.

24 2. Plaintiff is informed and believes that Defendant UNITED FINANCIAL
25 CASUALTY COMPANY ("Defendant") was an insurer and corporation authorized to conduct
26 business in the State of California.

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VENUE

3. Venue is proper in San Bernardino County Superior Court because the underlying action (*Emmett Jones, Jr. and Sherri Bruner-Jones v. Jose Francisco Porras and Horizon Transporters*, Case No. CIVDS1517662) (the "Lawsuit") was brought in such Court and because Defendant's insured at all relevant times resided in San Bernardino County.

GENERAL ALLEGATIONS

4. This action seeks declaratory relief regarding Defendant's duty to indemnify the mutual insured in the Lawsuit. Allied Premier also seeks equitable contribution for the mutual insured's indemnity or alternatively equitable indemnity.

5. On September 1, 2015, Jose Francisco Porras ("Mr. Porras") and Jennifer Jones were involved in an automobile collision in Rialto, California, in which Mr. Porras was driving a 2013 Dodge Ram Truck (the "Truck") (the "Collision"). As a result of the Collision, Ms. Jones passed away.

6. At the time of the Collision, Porras maintained a policy of automobile insurance issued by Allied Premier, policy number AP2015100189, insuring the Truck with a \$1,000,000.00 limit (the "Allied Premier Policy").

7. Plaintiff is informed and believes that Defendant had issued a policy of insurance to Mr. Porras numbered 02156772, insuring the Truck with a \$1,000,000.00 limit (the "Defendant Policy").

8. Plaintiff is informed and believes that when the Defendant Policy was issued, Defendant knew that Mr. Porras was a motor carrier of property as that term is defined under California law and that, as a condition of doing business under his motor carrier permit (CA# 0433971), Mr. Porras was required to maintain a certain level of insurance coverage, and Defendant was required by law to submit certain forms to the California Department of Motor Vehicles ("DMV"), namely forms DMV65MPC and DMV67MPC.

9. On information and belief, the term of the Defendant Policy was October 12, 2013, to April 12, 2014.

///

1 10. Under California law, an insurance policy submitted to the DMV for purposes of
2 complying with the Motor Carriers of Property Permit Act may not be terminated and shall not
3 expire by its own terms without thirty (30) days' notice from the insurer to the DMV.

4 11. On information and belief, Defendant attempted to cancel the policy with the
5 DMV in or about May 2015.

6 12. On information and belief, at least as of January 22, 2016, DMV records showed
7 the Defendant Policy as being in effect.

8 13. On or about December 3, 2015, the Lawsuit was filed. The Complaint alleged, in
9 part, as follows:

10 At all times herein mentioned, Defendants and each of them, Jose
11 Francisco Porras; Horizon Transporters; and DOES 1-50, were the
12 owners and operators of a 2013 Dodge Truck, (License Number:
13 CA 60752M1), which violently T-boned the driver's side of the
14 vehicle driven by Jennifer Jones (Decedent) as the result of
15 Defendant(s) running a red light at the intersection of Baseline
16 Road and Eucalyptus Avenue in the city of Ontario, in the County
17 of San Bernardino, State of California.

18 14. Plaintiff retained counsel to defend the Lawsuit. In the course of the litigation,
19 Plaintiff became aware of the Defendant Policy and the matter was tendered to Defendant. In or
20 around July 2016, Defendant denied any obligation to defend or indemnify Mr. Porras.

21 15. In November 2016, the Lawsuit was settled for \$1,000,000.00, paid by Allied
22 Premier under the Allied Premier Policy with no involvement in or cooperation by Defendant.

23 **FIRST CAUSE OF ACTION**

24 Declaratory Relief—Duty to Indemnify

25 16. Allied Premier realleges and reincorporates the allegations of Paragraphs 1 to 15
26 as is set forth in full herein.

27 17. An actual controversy has now arisen and exists between Allied Premier and
28 Defendant regarding the rights and obligations under the Defendant Policy to indemnify Mr.

1 Porras for their legal liability for damages alleged in the Lawsuit.

2 18. Allied Premier contends that the Defendant Policy remained in effect as of and on
3 the date of the Collision because as of the date of the Collision the California Department of
4 Motor Vehicles had not been notified that the Defendant Policy had been cancelled. As a result,
5 Defendant is obligated to provide indemnity for the legal liability of Mr. Porras for the claims
6 asserted in the Lawsuit.

7 19. Allied Premier is informed and believes that Defendant disputes Allied Premier's
8 contentions.

9 20. An actual justifiable controversy exists between Allied Premier, on the one hand,
10 and Defendant, on the other hand. Allied Premier therefore seeks a declaration as to the parties'
11 respective rights and obligations, if any, with respect to the indemnity of Mr. Porras for the
12 claims set forth in and settlement of the claims alleged in the Lawsuit.

13 **SECOND CAUSE OF ACTION**

14 Equitable Contribution

15 21. Allied Premier realleges and reincorporates the allegations of Paragraphs 1 to 15
16 as is set forth in full herein.

17 22. Allied Premier alleges that Defendant is responsible for an equitable portion of
18 the amounts expended by Allied Premier for indemnity for the Settlement.

19 23. To the extent that Allied Premier was required to and did pay more than its fair
20 proportionate share of any sums toward the settlement of the Lawsuit, it is entitled to recover in
21 equity from Defendant, which paid nothing toward the settlement, an award of monetary
22 compensation that equalizes the burden among all the liability insurance carriers with the mutual
23 obligation to Mr. Porras.

24 **THIRD CAUSE OF ACTION**

25 Equitable Subrogation

26 24. Allied Premier realleges and reincorporates the allegations of Paragraphs 1 to 15
27 as is set forth in full herein.

28 ///



**Service of Process
Transmittal**

12/15/2017
CT Log Number 532480006

TO: Kristin Charles
Progressive Casualty Insurance Company
10929 Disk Dr.
Rancho Cordova, CA 95670-6077

RE: Process Served in California

FOR: United Financial Casualty Company (Domestic State: OH)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: ALLIED PREMIER INSURANCE, etc., Pltf. vs. United Financial Casualty Company , etc., Dft.

DOCUMENT(S) SERVED: Summons, Complaint, Cover Sheet, Instructions, Certificate

COURT/AGENCY: San Bernardino County - Superior Court - San Bernardino, CA
Case # CIVDS1724638

NATURE OF ACTION: Insurance Litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 12/15/2017 at 14:45

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service

ATTORNEY(S) / SENDER(S): Hillary Arrow Booth
Booth LLP
1849 Sawtelle Blvd.
Suite 500
Los Angeles, CA 90025
310-641-1800

ACTION ITEMS: CT has retained the current log, Retain Date: 12/16/2017, Expected Purge Date: 12/21/2017

Image SOP

Email Notification, Sean W. Allen sean_w_allen@progressive.com

Email Notification, Deborah Fisk deborah_fisk@progressive.com

Email Notification, Paula Stewart paula_stewart@progressive.com

Email Notification, Kristin Charles kcharle1@progressive.com

Email Notification, Bonnie Thomas bonnie_thomas@progressive.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017

Page 1 of 2 / BV

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

**UFCC EXHIBIT 6
Page 020**



**Service of Process
Transmittal**

12/15/2017

CT Log Number 532480006

TO: Kristin Charles
Progressive Casualty Insurance Company
10929 Disk Dr.
Rancho Cordova, CA 95670-6077

RE: Process Served in California

FOR: United Financial Casualty Company (Domestic State: OH)

TELEPHONE: 213-337-4615

Page 2 of 2 / BV

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

**UFCC EXHIBIT 6
Page 021**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Eastern Division - Riverside)
CIVIL DOCKET FOR CASE #: 5:18-cv-00088-JGB-KK**

Allied Premier Insurance, a Risk Retention Group v. United
Financial Casualty Company
Assigned to: Judge Jesus G. Bernal
Referred to: Magistrate Judge Kenly Kiya Kato
Case in other court: Ninth Circuit, 20-55099
San Bernardino Superior Court,
CIVDS1724638

Date Filed: 01/12/2018
Date Terminated: 12/30/2019
Jury Demand: Defendant
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Cause: 28:1441 Notice of Removal - Insurance Contract

Plaintiff

**Allied Premier Insurance, a Risk
Retention Group**
a Connecticut corporation

represented by **Hillary Arrow Booth**
Booth LLP
1849 Sawtelle Boulevard Suite 500
Los Angeles, CA 90025
310-641-1800
Fax: 310-641-1818
Email: hbooth@boothllp.com
ATTORNEY TO BE NOTICED

Ian P Culver
Booth LLP
11835 West Olympic Boulevard Suite 600E
Los Angeles, CA 90064
310-641-1800
Fax: 310-641-1818
Email: iculver@boothllp.com
ATTORNEY TO BE NOTICED

V.

Defendant

United Financial Casualty Company
an Ohio corporation

represented by **Patrick M Howe**
Patrick Howe Law APC
402 West Broadway Suite 1025
San Diego, CA 92101
619-398-3422
Fax: 619-452-2507
Email: pat@patrickhowelaw.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/12/2018	1	NOTICE OF REMOVAL from San Bernardino Superior Court, case number CIVDS1724638 Receipt No: 0973-21090920 - Fee: \$400, filed by Defendant United

		Financial Casualty Company. (Attachments: # 1 State Court Complaint, # 2 Exhibit 1-6) (Attorney Patrick M Howe added to party United Financial Casualty Company(pty:dft)) (Howe, Patrick) (Entered: 01/12/2018)
01/12/2018	2	CIVIL COVER SHEET filed by Defendant United Financial Casualty Company. (Howe, Patrick) (Entered: 01/12/2018)
01/12/2018	3	CERTIFICATE of Interested Parties filed by Defendant United Financial Casualty Company, identifying Progressive Commercial Holdings, Inc.. (Howe, Patrick) (Entered: 01/12/2018)
01/12/2018		CONFORMED COPY OF COMPLAINT against defendant United Financial Casualty Company, filed by plaintiff Allied Premier Insurance, a Risk Retention Group. (esa) (Entered: 01/16/2018)
01/15/2018	4	PROOF OF SERVICE filed by Defendant United Financial Casualty Company, re Certificate/Notice of Interested Parties 3 , Notice of Removal (Attorney Civil Case Opening), 1 , Civil Cover Sheet (CV-71) 2 served on 01/15/2018. (Howe, Patrick) (Entered: 01/15/2018)
01/16/2018	5	NOTICE RE INTRA-DISTRICT TRANSFER by Clerk of Court due to incorrect intra-district venue selected by the filer. Case is transferred to the Eastern Division. Case has been assigned to Judge Jesus G. Bernal for all further proceedings. Any matters that may be referred to a Magistrate Judge are assigned to Kenly Kiya Kato. New Case Number 5:18-cv-00088 JGB (KKx). (esa) (Entered: 01/16/2018)
01/16/2018	6	NOTICE OF ASSIGNMENT to District Judge Jesus G. Bernal and Magistrate Judge Kenly Kiya Kato. (esa) (Entered: 01/16/2018)
01/16/2018	7	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (esa) (Entered: 01/16/2018)
01/17/2018	8	STANDING ORDER upon filing of the complaint by Judge Jesus G. Bernal. (ima) (Entered: 01/17/2018)
01/18/2018	9	ANSWER to Complaint - (Discovery) with JURY DEMAND filed by Defendant United Financial Casualty Company.(Howe, Patrick) (Entered: 01/18/2018)
01/18/2018	10	PROOF OF SERVICE filed by Defendant United Financial Casualty Company, re Answer to Complaint (Discovery) 9 , Initial Order upon Filing of Complaint - form only 8 , Notice of Assignment to United States Judges(CV-18) - optional html form 6 , Notice to Parties of Court-Directed ADR Program (ADR-8) - optional html form 7 , Intradistrict Transfer - Clerical Error (G-73) - optional html form, 5 served on 1/18/2018. (Howe, Patrick) (Entered: 01/18/2018)
01/22/2018	11	ORDER SETTING SCHEDULING CONFERENCE by Judge Jesus G. Bernal. Scheduling Conference set for 3/26/2018 at 11:00 AM before Judge Jesus G. Bernal. (ima) (Entered: 01/22/2018)
03/09/2018	12	JOINT REPORT Rule 26(f) Discovery Plan ; estimated length of trial 3-5 days, filed by Plaintiff Allied Premier Insurance, a Risk Retention Group.. (Attachments: # 1 Exhibit A: Schedule of Pretrial and Trial Dates Worksheet)(Culver, Ian) (Entered: 03/09/2018)
03/26/2018	13	MINUTES OF SCHEDULING CONFERENCE held before Judge Jesus G. Bernal: A trial schedule was set. See separate trial scheduling order for more details. Pursuant to L.R. 16-15.4, the parties have selected the following settlement procedure: ADR Settlement Choice: Private Mediation. IT IS SO ORDERED. Court Reporter: Adele C Frazier. (ad) (Entered: 03/28/2018)

03/26/2018	14	ORDER/REFERRAL to ADR Procedure No 3 by Judge Jesus G. Bernal. Case ordered to a private mediator based upon a stipulation of the parties or by the court order. ADR Proceeding to be held no later than 12/17/2018. (ad) (Entered: 03/28/2018)
03/28/2018	15	CIVIL TRIAL SCHEDULING ORDER by Judge Jesus G. Bernal. Amended Pleadings due by 4/27/2018. Discovery cut-off (last day to hear discovery motions) 11/26/2018. Dispositive Motions cut-off (last day to hear) is 1/28/2019. Last date to conduct settlement conference is 12/17/2018. Final Pretrial Conference set for 3/11/2019 11:00 AM before Judge Jesus G. Bernal. Jury Trial set for 3/26/2019 09:00 AM before Judge Jesus G. Bernal. (jlo) (Entered: 03/28/2018)
12/19/2018	16	PRETRIAL STIPULATION regarding Exhibits <i>and Facts for Cross-Motions for Summary Judgment</i> filed by defendant United Financial Casualty Company.(Howe, Patrick) (Entered: 12/19/2018)
12/20/2018	17	First STIPULATION to Continue Settlement Conference Deadline from 12/17/2018 to 03/15/2019 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Attachments: # 1 Proposed Order on Joint Stipulation to Continue Last Day to Conduct Settlement Conference)(Culver, Ian) (Entered: 12/20/2018)
12/21/2018	18	ORDER by Judge Jesus G. Bernal, Granting Stipulation to Continue Last Day to Conduct Settlement Conference 17 . Last date to conduct settlement conference is 3/11/2019. (twdb) (Entered: 12/26/2018)
12/31/2018	19	NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Complaint filed by defendant United Financial Casualty Company. Motion set for hearing on 1/28/2019 at 09:00 AM before Judge Jesus G. Bernal. (Attachments: # 1 Separate Statement of Undisputed Material Facts, # 2 Memorandum of Points and Authorities, # 3 Declaration of Patrick Howe, # 4 Request for Judicial Notice, # 5 Proposed Statement of Uncontroverted Facts and Conclusions of Law, # 6 Proposed Judgment) (Howe, Patrick) (Entered: 12/31/2018)
12/31/2018	20	NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. Motion set for hearing on 1/28/2019 at 09:00 AM before Judge Jesus G. Bernal. (Attachments: # 1 Declaration of Ian P. Culver, # 2 Statement of Undisputed Facts) (Culver, Ian) (Entered: 12/31/2018)
01/02/2019	21	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 . The following error(s) was/were found: Proposed Document was not submitted as separate attachment. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (twdb) (Entered: 01/02/2019)
01/07/2019	22	OPPOSITION to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 filed by Defendant United Financial Casualty Company. (Attachments: # 1 Statement of Genuine Disputes of Material Fact, # 2 Supplemental Request for Judicial Notice, # 3 Objections to Evidence)(Howe, Patrick) (Entered: 01/07/2019)
01/07/2019	23	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Complaint 19 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Attachments: # 1 Statement of Genuine Disputes of Material Fact, # 2 Declaration of Ian P. Culver, # 3 Objections to Evidence)(Culver, Ian) (Entered: 01/07/2019)

01/14/2019	24	REPLY in Support NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Complaint 19 filed by Defendant United Financial Casualty Company. (Attachments: # 1 Objection to Allied Evidence in Opposition to Motion)(Howe, Patrick) (Entered: 01/14/2019)
01/14/2019	25	REPLY in Opposition NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Attachments: # 1 Objections to Evidence, # 2 Declaration of Ian P. Culver (Further), # 3 Exhibit 1 to Culver Declaration)(Culver, Ian) (Entered: 01/14/2019)
01/23/2019	26	SCHEDULING NOTICE and ORDER by Judge Jesus G. Bernal. MOTION for Summary Judgment as to Plaintiff's Complaint 19 ; MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 previously scheduled for 1/28/19 9:00 am has been rescheduled to 3/4/2019 at 9:00 AM before Judge Jesus G. Bernal. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (jlo) TEXT ONLY ENTRY (Entered: 01/23/2019)
01/25/2019	27	STIPULATION to Continue Hearing on Summary Judgment Motions and Trial-Related Dates from 03/04/2019 to 03/11/2019 Re: Text Only Scheduling Notice, 26 , NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 , NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Complaint 19 filed by defendant United Financial Casualty Company. (Attachments: # 1 Proposed Order)(Howe, Patrick) (Entered: 01/25/2019)
01/29/2019	28	ORDER by Judge Jesus G. Bernal, Granting Joint Stipulation to Continue Hearings on Cross Motions for Summary Judgment and Trial Related Dates 27 . Cross-Motions hearing continued to 3/11/2019 at 09:00 AM before Judge Jesus G. Bernal 19 , 20 . Mediation deadline is 4/26/2019; Pretrial conference is continued to 5/20/19, at 11:00 a.m.; Trial is continued to 6/4/19 at 9:00 a.m. All other matters set forth in the court's March 28, 2018 scheduling order remain in place. (twdb) (Entered: 01/30/2019)
03/04/2019	29	NOTICE of Change of Attorney Business or Contact Information: for attorney Ian P Culver counsel for Plaintiff Allied Premier Insurance, a Risk Retention Group. Changing address to 11835 W. Olympic Blvd., Suite 600E, Los Angeles, CA 90064. Filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Culver, Ian) (Entered: 03/04/2019)
03/11/2019	30	MINUTES OF Motion Hearing held before Judge Jesus G. Bernal: Hearing on Cross-Motions for Summary Judgment 19 , 20 . The Court orders supplemental briefing to address the following issue: The parties shall file their supplemental briefs, not exceeding seven pages, no later than Monday, March 18, 2019. Thereafter, the motions will stand submitted. Court Reporter: Adele C. Frazier. (twdb) (Entered: 03/15/2019)
03/18/2019	31	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Complaint 19 filed by Defendant United Financial Casualty Company. (Howe, Patrick) (Entered: 03/18/2019)
03/18/2019	32	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Culver, Ian) (Entered: 03/18/2019)
04/17/2019	33	Second STIPULATION to Continue Settlement Conference Deadline from 04/26/2019 to 06/04/2019 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Attachments: # 1 Proposed Order on Joint Stipulation to Continue Dates and Deadlines) (Culver, Ian) (Entered: 04/17/2019)
04/29/2019	34	ORDER by Judge Jesus G. Bernal, Granting Joint Stipulation to Continue Dates and Deadlines 33 . Last date to conduct settlement conference is 7/12/2019., Pretrial Conference continued to 8/12/2019 at 11:00 AM before Judge Jesus G. Bernal., Jury Trial

		continued to 8/27/2019 at 09:00 AM before Judge Jesus G. Bernal. All other matters set forth in the court's March 28, 2018 scheduling order remain in place. (twdb) (Entered: 04/30/2019)
05/02/2019	35	SCHEDULING NOTICE by Judge Jesus G. Bernal The Court sua sponte sets a Status Conference for 5/13/2019 at 11:00 AM before Judge Jesus G. Bernal. IT IS SO ORDERED.THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mga) TEXT ONLY ENTRY (Entered: 05/02/2019)
05/13/2019	38	MINUTES OF Status Conference held before Judge Jesus G. Bernal: The Court orders counsel to submit a stipulation continuing the trial schedule to accommodate discovery Court Reporter: Adele C. Frazier. (mga) (Entered: 06/06/2019)
05/28/2019	36	STIPULATION to Continue Dates and Deadlines, Re-Open Discovery from 05/13/2019 to 07/12/2019 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Attachments: # 1 Proposed Order on Joint Stipulation to Continue Dates and Deadlines) (Culver, Ian) (Entered: 05/28/2019)
05/29/2019	37	ORDER ON JOINT STIPULATION TO CONTINUE DATES AND DEADLINES 36 by Judge Jesus G. Bernal. The Pretrial Conference is continued from August 12, 2019, to October 28, 2019, at 11:00 a.m. The Trial is continued from August 27, 2019, to November 12, 2019, at 9:00 a.m. All other matters set forth in the court's March 28, 2018 scheduling order remain in place. (lom) (Entered: 05/30/2019)
08/20/2019	39	DECLARATION of Ian P. Culver Motion for Summary Judgment NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 <i>Further Declaration</i> filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Attachments: # 1 Exhibit Exhibits 1-5)(Culver, Ian) (Entered: 08/20/2019)
08/27/2019	40	MINUTE ORDER IN CHAMBERS by Judge Jesus G. Bernal: Setting Supplemental Briefing Schedule and Setting the Cross-Motions for Summary Judgment (Dkt. Nos. 19 , 20) for Hearing on September 23, 2019. In light of the foregoing, the Court ORDERS Plaintiff and Defendant to file concurrent supplemental briefs advancing arguments as to the impact of the newly propounded evidence no later than September 9, 2019. Motion hearing set for 9/23/2019 at 09:00 AM before Judge Jesus G. Bernal. (twdb) (Entered: 08/27/2019)
09/09/2019	41	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 , NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Complaint 19 filed by Defendant United Financial Casualty Company. (Howe, Patrick) (Entered: 09/09/2019)
09/09/2019	42	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 <i>Supplemental Supplemental Brief</i> filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Culver, Ian) (Entered: 09/09/2019)
09/16/2019	43	OPPOSITION to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 filed by Defendant United Financial Casualty Company. (Howe, Patrick) (Entered: 09/16/2019)
09/16/2019	44	SUPPLEMENT to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 <i>Response to Second Supplemental Memorandum by Defendant</i> filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Culver, Ian) (Entered: 09/16/2019)
09/20/2019	45	SCHEDULING NOTICE and ORDER by Judge Jesus G. Bernal. The Court finds the cross Motions for Summary Judgment (Doc. Nos. 19 and 20) are appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. Accordingly, the Court vacates the

		hearing set on September 23, 2019. The motions stand submitted. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mga) TEXT ONLY ENTRY (Entered: 09/20/2019)
10/17/2019	46	STIPULATION to Continue Trial from November 12, 2019 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Attachments: # 1 Proposed Order)(Culver, Ian) (Entered: 10/17/2019)
10/23/2019	47	ORDER by Judge Jesus G. Bernal, Granting Joint Stipulation to Continue Dates and Deadlines 46 . Final Pretrial Conference continued to 1/13/2020 at 09:00 AM before Judge Jesus G. Bernal. Trial continued to 1/28/2020 at 9:00 AM. Discovery is closed. All other matters set forth in the Court's 3/28/18 Scheduling Order remain in place. (twdb) (Entered: 10/24/2019)
12/26/2019	48	NOTICE OF CLERICAL ERROR: The correct hearing time is 11:00 AM. Final Pretrial Conference 1/13/2020 at 11:00 AM. Re: Order 47 . (twdb) (Entered: 12/26/2019)
12/30/2019	49	MINUTES (IN CHAMBERS) by Judge Jesus G. Bernal: Order (1) DENYING Defendants Motion for Summary Judgment (Dkt. No. 19); and (2) GRANTING Plaintiffs Motion for Summary Judgment (Dkt. No. 20). SEE DOCUMENT FOR FURTHER INFORMATION. (twdb) (Entered: 12/30/2019)
12/30/2019	50	JUDGMENT by Judge Jesus G. Bernal. The parties agree that, if they are coprimary, they each share equally the \$1 million paid by Allied to settle the underlying Lawsuit. Plaintiff has thus shown it is entitled to equitable contribution in the amount of \$ 500,000. Related to: NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Operative Complaint 20 , NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Complaint 19 . SEE DOCUMENT FOR FURTHER INFORMATION. (MD JS-6, Case Terminated). (twdb) (Entered: 12/30/2019)
01/28/2020	51	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Defendant United Financial Casualty Company. Appeal of Judgment,, 50 . (Appeal Fee - \$505 Fee Paid, Receipt No. 0973-25204772.) (Howe, Patrick) (Entered: 01/28/2020)
01/28/2020	52	NOTICE OF MOTION AND MOTION for Bond Stay of Enforcement of Judgment During Appeal , NOTICE OF MOTION AND MOTION to Stay pending Appeal filed by Defendant United Financial Casualty Company. Motion set for hearing on 3/2/2020 at 09:00 AM before Judge Jesus G. Bernal. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Patrick Howe, # 3 Proposed Order) (Howe, Patrick) (Entered: 01/28/2020)
01/29/2020	53	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: NOTICE OF MOTION AND MOTION for Bond Stay of Enforcement of Judgment During Appeal NOTICE OF MOTION AND MOTION to Stay pending Appeal 52 . The following error(s) was/were found: Case number is incorrect or missing. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (ad) (Entered: 01/29/2020)
01/29/2020	54	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 20-55099 assigned to Notice of Appeal to 9th Circuit Court of Appeals 51 as to defendant United Financial Casualty Company. (twdb) (Entered: 01/30/2020)
01/30/2020	55	TRANSCRIPT ORDER re: Court of Appeals case number 20-55099, as to Defendant United Financial Casualty Company for Court Reporter. Court will contact Patrick Howe at pat@patrickhowelaw.com with further instructions regarding this order. Transcript

		preparation will not begin until payment has been satisfied with the court reporter. (Howe, Patrick) (Entered: 01/30/2020)
01/30/2020	56	DESIGNATION of Record on Appeal by Defendant United Financial Casualty Company re 51 (Howe, Patrick) (Entered: 01/30/2020)
02/10/2020	57	NOTICE OF NON-OPPOSITION to NOTICE OF MOTION AND MOTION for Bond Stay of Enforcement of Judgment During Appeal NOTICE OF MOTION AND MOTION to Stay pending Appeal 52 filed by Plaintiff Allied Premier Insurance, a Risk Retention Group. (Culver, Ian) (Entered: 02/10/2020)
02/27/2020	58	MINUTES (IN CHAMBERS) by Judge Jesus G. Bernal: Order (1) GRANTING Defendant United Financial Casualty Companys Motion to Stay Enforcement of the Judgment Pending Appeal on Condition that Defendant Posts Bond of At Least \$550,000 Within 30 Days (Dkt. No. 52); and (2) VACATING the March 2, 2020 Hearing. In the event Defendant does not post a bond in the amount of \$550,000 within 30 days of the issuance of this order, Defendants Motion for a stay will be DENIED. (twdb) (Entered: 02/27/2020)
03/06/2020	60	Surety BOND RE Bond No 10112497, in the amount of \$ 550,000. Progressive Casualty Insurance Company as surety. (twdb) (Entered: 03/09/2020)
03/09/2020	59	Supercedeas- Appeal BOND in the amount of \$ \$550,000 posted by Defendant United Financial Casualty Company (Howe, Patrick) (Entered: 03/09/2020)
04/10/2020	61	TRANSCRIPT for proceedings held on 3-11-19 11:00 A.M. Court Reporter: ADELE FRAZIER, email adelefraziercsr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/1/2020. Redacted Transcript Deadline set for 5/11/2020. Release of Transcript Restriction set for 7/9/2020. (jlo) (Entered: 04/10/2020)
04/10/2020	62	TRANSCRIPT for proceedings held on 5-13-19 9:00 a.m. Court Reporter: ADELE FRAZIER, email adelefraziercsr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/1/2020. Redacted Transcript Deadline set for 5/11/2020. Release of Transcript Restriction set for 7/9/2020. (jlo) (Entered: 04/10/2020)
04/10/2020	63	NOTICE OF FILING TRANSCRIPT filed for proceedings 3-11-19; 5-13-19 re Transcript 62 , 61 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (jlo) TEXT ONLY ENTRY (Entered: 04/10/2020)

PACER Service Center			
Transaction Receipt			
06/11/2020 16:34:44			
PACER Login:	patrickmhowe2495	Client Code:	
Description:	Docket Report	Search Criteria:	5:18-cv-00088-JGB-KK End date: 6/11/2020
Billable Pages:	8	Cost:	0.80

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form15instructions.pdf>

9th Cir. Case Number(s)

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is
 submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Description of Document(s) (*required for all documents*):

EXCERPTS OF RECORD
VOLUME 2 OF 2 • PAGES 33–123

Signature

Date

(*use "s/[typed name]" to sign electronically-filed documents*)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

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.
2. My email address used to e-serve: **CA09_Records@ca9.uscourts.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
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
ADDITIONAL DOCUMENTS	20-55099_Appellee_EOR
ADDITIONAL DOCUMENTS	20-55099_reply_brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Opinions Clerk United States Court of Appeals for the Ninth Circuit	Clerk_opinions@ca9.uscourts.gov	e-Serve	3/22/2021 9:48:59 AM
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

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.

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