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Supreme Court of California
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Civil No. S293914

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA,
Petitioner,

v.

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

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

After an Order Granting Review (No. S285083), and an Opinion by the Court of Appeal, Second Appellate District, Division Three Civil Case No. B335073

Superior Court of the State of California for the County of Los Angeles Case No. BC 005158, Honorable Lawrence P. Riff, Presiding

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA'S BRIEF IN REPLY

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TABLE OF CONTENTS

Page

I. INTRODUCTION AND ARGUMENT SUMMARY 4

II. REPLY STATEMENT OF THE CASE 16

A. The QPEs at Issue 16

B. The Trial Court Proceedings 18

C. Montrose's Interpretation of "Sudden" 19

D. Insurers' Election to Forego Evidence 19

III. REPLY STANDARD OF REVIEW 20

IV. LEGAL ARGUMENT 21

A. The DCA Erred by Refusing Montrose's Extrinsic Evidence and Rejecting Montrose's Reasonable QPE Interpretation 21

1. The Extrinsic Evidence Itself—Not the Court's Abstract Reading—Determines Which Contract Meanings May Be Reasonable 21

2. Insurers Disregard *Drayage*'s First Step: Preliminarily Examining Proffered Extrinsic Evidence to Determine Potential Reasonable Meanings 25

3. Insurers' Authority Requires Consideration of Extrinsic Evidence ***Before*** Determining Meaning 27

4. Montrose's Reasonable Reading Explains, Coincides With, and Does Not Contradict the QPEs' Language....32

5. Insurers' QPE Interpretation Is Unreasonable and Demonstrates the QPEs' Ambiguity....38

6. Montrose's Reasonable Reading Controls Over Insurers' Vague and Ambiguous Exclusion....42

B. The DCA Erred by Following the Flawed *ACL* Precedent....46

V. CONCLUSION....48

CERTIFICATE OF WORD COUNT....50

TABLE OF AUTHORITIES

Page(s)

CASES

ACL Technologies, Inc. v. Northbrook Property & Casualty Ins. Co.
(1993) 17 Cal.App.4th 1773 ..... *passim*

AIU Ins. Co. v. Superior Court
(1990) 51 Cal.3d 807 45

Allianz Global Risks v. Ace Prop. & Cas.
(Or. 2021) 483 P.3d 1124 ..... 15, 42

Another Planet Entertainment, LLC v. Vigilant Ins. Co.
(2024) 15 Cal.5th 1106 ..... *passim*

Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.
(1996) 45 Cal.App.4th 1 42

Casa Herrera, Inc. v. Beydoun
(2004) 32 Cal.4th 336 32

Circle Star Center Associates, L.P. v. Liberate Technologies
(2007) 147 Cal.App.4th 1203 27

Curry v. Moody
(1995) 40 Cal.App.4th 1547 31

Delta Dynamics, Inc. v. Arioto
(1968) 69 Cal.2d 525 ..... 21, 28

Dore v. Arnold Worldwide, Inc.
(2006) 39 Cal.4th 384 29

E.M.M.I., Inc. v. Zurich American Ins. Co.
(2004) 32 Cal.4th 465 42

Essex Ins. Co. v. City of Bakersfield
(2007) 154 Cal.App.4th 696 43

Estate of Stevenson
(1992) 11 Cal.App.4th 852 20

Fireman's Fund Ins. Companies v. Atlantic Richfield Co.
(2001) 94 Cal.App.4th 842 43

Fluor Corp. v. Superior Court
(2015) 61 Cal.4th 1175 ..... 26, 47

Glassman v. Safeco Ins. Co. of America
(2023) 90 Cal.App.5th 1281 19

Golden Eagle Ins. Co. v. Ins. Co. of the West
(2002) 99 Cal.App.4th 837 ..... 25, 45

Grande v. Eisenhower Medical Center
(2020) 44 Cal.App.5th 1147 47

Haynes v. Farmers Ins. Exch.
(2004) 32 Cal.4th 1198 43

Hudson v. Farm Family Mutual Ins. Co.
(N.H. 1997) 697 A.2d 501 ..... 15, 40, 42

Just v. Land Reclamation, Ltd.
(Wis. 1990) 456 N.W.2d 570 37

Lemm v. Stillwater Land & Cattle Co.
(1933) 217 Cal. 474 ..... 30, 31

London Market Insurers v. Superior Court
(2007) 146 Cal.App.4th 648 47

MacKinnon v. Truck Ins. Exchange
(2003) 31 Cal.4th 635 ..... *passim*

Matea v. Workers' Comp. Appeals Bd.
(2006) 144 Cal.App.4th 1435 34

Montrose Chem. Corp. v. Superior Court
(2020) 9 Cal.5th 215 45

Montrose Chem. Corp. v. Admiral Ins. Co.
(1995) 10 Cal.4th 645 ..... 25, 47

Nedlloyd Lines B.V. v. Superior Court
(1992) 3 Cal.4th 459 ..... 28, 29

New Castle County v. Hartford Acc. & Indem. Co.
(3d Cir. 1991) 933 F.2d 1162 42

Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.
(1968) 69 Cal.2d 33 ..... *passim*

People v. Franz
(2001) 88 Cal.App.4th 1426 36

Pitzer College v. Indian Harbor Ins. Co.
(2019) 8 Cal.5th 93 29

Providence J. Co. v. Travelers Indem. Co.
(D.R.I. 1996) 938 F.Supp. 1066 38

Public Service Co. v. Wallis & Companies
(Colo. 1989) 986 P.2d 924 39

Reid v. Google, Inc.
(2010) 50 Cal.4th 512 20

Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.
(2013) 55 Cal.4th 1169 47

Safeco Ins. Co. of Am. v. Robert S.
(2001) 26 Cal.4th 758 41

San Pasqual Band of Mission Indians v. California
(2015) 241 Cal.App.4th 746 28

Shell Oil Co. v. Winterthur Swiss Ins. Co.
(1993) 12 Cal.App.4th 715 ..... 12, 41

Siskyou Co. Farm Bureau v. Dept. of Fish and Wildlife
(2015) 237 Cal.App.4th 411 35

Skilstaf, Inc. v. CVS Caremark Corp.
(9th Cir. 2012) 669 F.3d 1005..... 30

Staefa Control-Sys. Inc. v. St. Paul Fire & Marine Ins. Co.
(N.D. Cal. 1994) 847 F.Supp. 1460..... 40

State of California v. Allstate Ins. Co.
(2009) 45 Cal.4th 1008..... 40, 41, 43

State of California v. Continental Ins. Co.
(2012) 55 Cal.4th 186..... 44

Tahoe National Bank v. Phillips
(1971) 4 Cal.3d 11 ..... 31, 32

Travelers Indem. Co. v. Dingwell
(Me. 1980) 414 A.2d 220 38

Trident Center v. Connecticut General Life Ins.
(9th Cir. 1988) 847 F.2d 564..... 29, 30

Truck Ins. Exch. v. Pozzuoli
(1993) 17 Cal.App.4th 856 44

United Nuclear Corp. v. Allstate Ins. Co.
(N.M. 2012) 285 P.3d 644 ..... 36, 42

Wagner v. Columbia Pictures Indus., Inc.
(2007) 146 Cal.App.4th 586 24

Winet v. Price
(1992) 4 Cal.App.4th 1159 ..... 22, 24

Wolf v. Superior Court
(2004) 114 Cal.App.4th 1343 25

Yahoo v. National Union Fire Ins. Co.
(2022) 14 Cal.5th 58 46

STATUTES

Cal. R. Ct., Rule 8.500 19

Civ. Code, § 1641 39

Code Civ. Proc., § 1856 ..... 21, 23

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(5th ed. 2022), https://www.ahdictionary.com 33

Merriam-Webster, *Dictionary*,
https://www.merriam-webster.com/dictionary 39

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Roget's International Thesaurus (8th ed. 2019) 34

I. INTRODUCTION AND ARGUMENT SUMMARY[1]

> "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances …."
>
> --Oliver Wendell Holmes Jr., *Towne v. Eisner* (1918) 245 U.S. 418, 425.

Insurers' Answer asserts the District Court of Appeal ("DCA") Opinion[2] should be affirmed because it correctly follows intermediate appellate court precedent holding that the word "sudden" in some standard-form Qualified Pollution Exclusions ("QPEs") "plainly" excludes all "gradual" pollution. Insurers contend that two (of the three) versions of the QPE are not "reasonably susceptible" of Montrose's proposed interpretation, and therefore the DCA properly refused to consider Montrose's proffered extrinsic evidence of the QPEs' meaning. Insurers' argument would turn back the clock on over 50 years of this Court's contract interpretation law, which embraces extrinsic evidence of context and circumstances to show intent, meaning, and ambiguity.

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[1] Unless otherwise noted, all emphasis is added and citations and internal quotations are omitted.

[2] (*Montrose Chemical Corp. v. Superior Court* (2025) 114 Cal.App.5th 889 ["Opinion"].)

Under this Court's modern *Drayage* approach,[3] recently reaffirmed in *Another Planet*,[4] because words' meanings may vary, courts ***must*** provisionally consider a party's proffered extrinsic evidence to determine whether it supports a meaning to which the contract language is "reasonably susceptible." The possible reasonable interpretations—and the ultimate admissibility of extrinsic evidence—cannot be known until after the evidence is examined and juxtaposed with the contract language. (Montrose's Opening Brief ("OB") at pp. 35–37.)

This does not suggest—as Insurers and their superseded authority, *ACL* and *Shell*,[5] would have it—that words are thereby rendered meaningless and contract certainty threatened; the contract language always provides the framework and limit of obligation. *Drayage* merely accounts for the reality that language alone may be imprecise, and intent depends upon context and trade usage as shown by extrinsic evidence.

Violating *Drayage*, the DCA refused to examine—even preliminarily—the extrinsic evidence proffered by Montrose. Insurers argue that the DCA properly shortcut the

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[3] (*Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 39–40.)

[4] (*Another Planet Entertainment, LLC v. Vigilant Ins. Co.* (2024) 15 Cal.5th 1106.)

[5] (*ACL Technologies, Inc. v. Northbrook Property & Casualty Ins. Co.* (1993) 17 Cal.App.4th 1773; *Shell Oil Co. v. Winterthur Swiss Ins. Co.* (1993) 12 Cal.App.4th 715.)

Drayage/Another Planet inquiry because Montrose's proposed QPE meaning—preserving coverage for unexpected and unintended pollution—contradicts the "sudden" word in some QPE versions, and therefore is untenable. Insurers' Answer rests entirely on the proposition that, despite *Drayage* and its progeny, a court may refuse to consider any extrinsic evidence of intent based upon the court's own view that the contract language is unambiguous and clearly defeats a proposed interpretation. (E.g., Answer at pp. 12–14, 19, 23, 33, 44.)

The DCA's and Insurers' approach eviscerates *Drayage/Another Planet*, the essence of which is that ***the evidence—not the court's abstract reading—informs the language's reasonable meaning.*** (*Another Planet, supra*, 15 Cal.5th at p. 1144 [consideration of extrinsic evidence does ***not*** depend on whether the contract "appears to the court to be plain and unambiguous on its face," but whether, in ***"light of all of the offered evidence***, the item objected to will turn out to be admissible as tending to prove a meaning of which the language … is reasonably susceptible …."].)

Here, ***both*** the QPEs' language ***and*** the uncontroverted extrinsic evidence confirm Montrose's reasonable interpretation: All standard-form QPEs preserve coverage for pollution that is unexpected and unintended, regardless of its timing.

Most fundamentally, none of the three QPEs in issue use time-limiting language, *e.g.*, "immediate," "quick," "instantaneous," "rapid," or "gradual." Rather, Insurers seek to

imply limiting temporal language, relying solely on the word "sudden" to exclude "occurrence" coverage for all "gradual" pollution. That is too much weight for "sudden" to carry.

First, although Insurers' Answer omits the Travelers' QPE language and falsely argues that only ***two*** QPE versions are at issue (e.g., pp. 12, 16, 50), ***not all the QPEs contain the "sudden" word***. The Travelers QPE (also not addressed in *ACL* and *Shell*) instead uses language ***which precisely mirrors the interpretation proffered by Montrose***, expressly preserving coverage for pollution not "expected or intended" by the insured and omitting the term "sudden" altogether. (OB at pp. 19–21, 30, 50, 70.)

Second, consistent with the Travelers QPE formulation, the word "sudden" in the Domestic and London QPEs does not "plainly" mandate a temporal limitation: Respected dictionaries (such as Merriam-Webster) and seminal insurance authorities (such as *Couch on Insurance*) define "sudden" as ***primarily*** meaning "unexpected" or "unforeseen," ***not*** with a temporal component of rapidity. (OB at p. 51 & fn. 16; see also Merriam-Webster's Collegiate Dictionary (12th ed. 2026) p. 1574 ["sudden" defined as "1.a. happening or coming unexpectedly"].) Indeed, ***even Insurers concede that one reasonable meaning of "sudden" is "unexpected."*** (Answer at pp. 52–53, 55.)

Likewise, the industry term of art "sudden and accidental" historically meant "unexpected and unintended" and covered gradual events. (OB at p. 71; see also *Hudson v. Farm Family*

Mut. Ins. Co. (N.H. 1997) 697 A.2d 501, 504 [industry term "sudden and accidental" in farm package policy means "unexpected and unintended"].)

"Sudden" as used in the Domestic and London QPEs simply does not provide a "clear" and express temporal coverage limitation. (E.g., *Allianz Global Risks v. Ace Prop. & Cas.* (Or. 2021) 483 P.3d 1124, 1146–51 [agreeing with ***insurer*** that the Domestic and London QPEs do "not hav[e] a temporal element" and are ambiguous].)

The extrinsic evidence confirms Montrose's reading: Consistent with the standard-form comprehensive general liability ("CGL") "occurrence" coverage, ***which expressly extends to "continuous" events***, the insurance industry adopted the QPEs to "clarify, not restrict" that coverage, and to maintain coverage for unexpected and unintended pollution. (OB at pp. 70–76.) Insurers intentionally did ***not*** exclude gradual pollution. (*Id*. at pp. 74, 76.) Despite asserting the importance of reading the Policies as a whole, Insurers fail to address the express "occurrence" coverage for "continuous" events, which is not referenced, much less withdrawn in the QPEs.

Although exalted by Insurers and the DCA, the 1993 lower court cases *ACL* and *Shell* are not binding, persuasive, or "presumptive" authority under prior judicial construction ("PJC") or *stare decisis*. Those cases: (1) post-dated the Policies at issue; (2) did not consider the Travelers QPE language; (3) overlook the "primary" dictionary meanings of "sudden" ("unexpected" or

"unforeseen"), instead adopting the courts' own contrary "plain" temporal reading; (4) erroneously fail to consider extrinsic evidence of intent, including insurance industry drafting and regulatory history and trade usage; and (5) have been discredited by this Court's cases, including *MacKinnon*, as well as many other states' supreme court cases. (See *MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 643–47 [examining drafting history to interpret CGL pollution exclusion and observing that the "sudden and accidental" QPE has been held by many courts to cover "gradual" unexpected pollution]; OB at pp. 38–41 [contrary to *ACL*, this Court embraces drafting history], 64–69 & fn. 22 [*ACL* and progeny are flawed under recent cases].)

As suggested by *MacKinnon* and confirmed by thirteen other supreme courts, both the QPEs' language and Montrose's proffered extrinsic evidence—including dictionary definitions, trade usage, and the insurance industry's own regulatory and drafting history—show that Montrose's QPE reading (preserving coverage for all unexpected and unintended pollution regardless of timing) is reasonable. Under *MacKinnon*, that reasonable reading controls as a matter of law. (31 Cal.4th at pp. 655–56.)

II. REPLY STATEMENT OF THE CASE

A. The QPEs at Issue

There are in fact ***three QPE versions at issue in this appeal***: the Domestic QPE, the London QPE, ***and*** the Travelers QPE. (6PA130 at pp. PA01877–78; 1PA1 at PA00256:9–11; 6PA134 at pp. PA02105–14; OB at pp. 18–21.) Insurers only

address the language of the first two versions. (Answer at pp. 12, 16, 50 [discussing only "two categories" at issue].) Insurers ***completely omit the Travelers QPE language,*** which preserves coverage for unexpected and unintended pollution and does not use the word "sudden." (OB at p. 20; 7PA152 at PA02531–33 [Insurers' Supplement to Joint Trial Plan recognizing the Travelers QPE retains coverage for pollution "neither 'expected [n]or intended'" by insured].)

Trying to backdoor the "sudden" term into the Travelers QPE, Insurers strenuously argued below that all three QPE versions provide the "same result," and should be given the same judicial interpretation under *ACL*'s "prior judicial construction." (OB at p. 21 & fn. 5, 50, 70–71.) Insurers' equivalency assertion backfired, however: By admitting that the Domestic and London QPEs should be read the "same" as the "clearer" Travelers' version, Insurers necessarily conceded that "unexpected and unintended" is one reasonable reading of ***all*** QPE versions, consistent with Montrose's interpretation. (*Ibid.*)

Insurers now abandon PJC as controlling. (Answer at p. 63 [PJC is merely a "presumption"].) Instead, Insurers argue for a decimated "*Drayage* rule," returning to the archaic "plain meaning" approach, and allowing courts to ignore extrinsic evidence when, in the court's own view, the proposed interpretation is one to which the language is not reasonably susceptible. (E.g., *id.* at pp. 19–20.) Insurers cannot conceivably argue that the Travelers QPE—expressly preserving coverage for

unexpected and unintended pollution—is not reasonably susceptible of Montrose's reading that unexpected and unintended pollution is covered. Accordingly, Insurers drop any discussion of the Travelers QPE language, and disavow their concession that all the QPEs are alike and should be interpreted equivalently. (*Id*. at pp. 19–21, 56.)[6]

In reality, all three QPE versions were developed in tandem by the insurance industry in 1970, with the same purpose and intent (OB at pp. 70–76; *MacKinnon, supra*, 31 Cal.4th at pp. 643–47), and ***all three QPE versions are at issue***. (OB at pp. 18–21.)

B. The Trial Court Proceedings

Insurers' recitation of the proceedings below is also flawed. Insurers assert the trial court found that the QPEs were not reasonably susceptible of Montrose's interpretation under *ACL* and *Shell*. (Answer at pp. 16–17, 57.) In reality, that court concluded it was bound to adhere to those cases, but concomitantly observed those cases "may no longer be good law" given subsequent decisions by this Court. (OB at p. 24.) Recognizing that Montrose's extrinsic evidence could affect the

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[6] Insurers cite the DCA's inexplicable conclusion that Insurers only argued "the term 'discharge'—not 'sudden'—had an equivalent meaning in all QPEs" (Answer at p. 56), but the record plainly belies this revisionist claim. (OB at pp. 21 & fn. 5, 50, 70–71.)

QPEs' meaning, the court certified the matter for immediate appeal, without interpreting the QPEs. (*Id.* at pp. 24–25)

C. Montrose's Interpretation of "Sudden"

Insurers contend that Montrose "waived" the point that the DCA (and Insurers) misrepresented Montrose's argument as defining "sudden" to mean "gradual" when Montrose actually defines "sudden" as "unexpected" or "unforeseen." (Answer at p. 55, fn. 8.) To the contrary, Montrose asserted its argument vociferously in the trial court and DCA (including appellate oral argument). (OB at pp. 22, 49–50 & fn. 14.) Montrose was not required to seek rehearing after the DCA rejected Montrose's argument. (Cal. Rules of Court, rule 8.500(c)(1), (2).)

D. Insurers' Election to Forego Evidence

The only "waiver" that has occurred is by Insurers, who expressly declined to introduce their own competing extrinsic evidence in the trial court, instead standing exclusively on "prior judicial construction" and *ACL*. (OB at pp. 75–76.) Insurers' tactical choice to forego evidence forecloses their current request to delay the legal interpretation of the QPEs and instead relitigate the evidence on remand. (E.g., *Glassman v. Safeco Ins. Co. of America* (2023) 90 Cal.App.5th 1281, 1307 [documents not presented at trial generally cannot be included as part of the record on appeal and must be disregarded as beyond the scope of

appellate review]; *Estate of Stevenson* (1992) 11 Cal.App.4th 852, 864–65 [party cannot change theory on appeal].)[7]

III. REPLY STANDARD OF REVIEW

Montrose's Writ Petition and the issues specified for review present purely legal questions, reviewed *de novo*. (OB at pp. 27–30.) Despite their prior "abuse of discretion" standard (Insurers' Opposition to Montrose's Petition ["Writ Opp."] Case No. B335073, at pp. 26–27), Insurers now concede this appeal presents pure questions of law. (Answer at p. 23.)

This Court may decide all legal questions presented, including interpretation of the QPEs aided by extrinsic evidence. (OB at pp. 69–70 & fn. 23; see also *Another Planet, supra*, 15 Cal.5th at pp. 1144–47 [considering extrinsic evidence (including ISO circulars and statements by industry groups and executives) to interpret disputed policy terms *de novo*].)[8]

Whether the DCA erred in excluding Montrose's extrinsic evidence, and whether the QPEs are "reasonably susceptible" of Montrose's interpretation, are directly implicated by the Court's first question for review and by Insurers' Answer, which argues

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[7] While Insurers belatedly and improperly interjected their evidence before the DCA, that evidence supports Montrose. (OB at pp. 75–76.)

[8] This review includes overruling Insurers' boilerplate evidentiary objections. (1PA1 at p. PA00262:9–18; see *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 534–35] [appellate court properly rules *de novo* on evidentiary objections, including those made but not decided below].)

as a matter of law that the DCA properly excluded Montrose's extrinsic evidence because Montrose's QPE interpretation is unreasonable.

IV. LEGAL ARGUMENT

A. The DCA Erred by Refusing Montrose's Extrinsic Evidence and Rejecting Montrose's Reasonable QPE Interpretation

1. The Extrinsic Evidence Itself—Not the Court's Abstract Reading—Determines Which Contract Meanings May Be Reasonable

Over 50 years ago, California abandoned the "plain meaning" or "four corners" approach to ascertaining contractual intent. (*Drayage, supra*, 69 Cal.2d at pp. 36–38; *Delta Dynamics, Inc. v. Arioto* (1968) 69 Cal.2d 525, 528.) Rather than focusing exclusively on contract language, or what the abstract words mean to a judge, modern decisions glean the parties' intent from the language ***and*** surrounding circumstances (or context) to determine the intended meaning. (*Another Planet, supra,* 15 Cal.5th at p. 1144.) This approach has been codified in the state's statutes. (See Code Civ. Proc., § 1856, subd. (g) [courts may consider evidence to "explain an extrinsic ambiguity" or "otherwise interpret the terms of the agreement"].)

Under *Drayage,* recently reaffirmed in *Another Planet* (15 Cal.5th at pp. 1144–47), even if a contract appears clear on its face, courts will interpret disputed language by preliminarily examining a party's proffered extrinsic evidence of intent to assess whether that evidence shows a meaning to which the

contract language is "reasonably susceptible." (OB at pp. 35–37, 42–48.) The possible meanings of contract language are thus determined not based upon the language alone, but by examining the offered extrinsic evidence, which in turn informs which meanings of the language might be reasonable. (*Drayage, supra*, 69 Cal.2d at p. 40 [reasonable susceptibility decided "***after considering this evidence***," "in the light of all the circumstances"]; *Another Planet, supra*, 15 Cal.5th at p. 1144 [meaning to which the contract is "reasonably susceptible" is determined not based upon the court's reading of the contract language alone, but "***in the light of all of the offered evidence***"].) Only a preliminary examination of extrinsic evidence can determine whether the contract is "reasonably susceptible" of the party's proffered interpretation warranting actual admission of the evidence. (*Drayage, supra,* 69 Cal.2d at p. 40 & fn. 7.)

This is a two-step process, in which the evidence preliminarily is examined to assess proposed alternative meanings; then, if the evidence shows a proposed meaning which is reasonable ***given the language***, the evidence is admitted to interpret the contract. (E.g., *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165–66; OB at pp. 36–37.) *Drayage*'s point is that the extrinsic evidence must preliminarily be considered to elucidate potential reasonable meanings of disputed terms before deciding admissibility. (*Drayage, supra*, 69 Cal.2d at pp. 39–41 & fns. 6–9.)

The contract need not be ambiguous before the evidence is considered; ambiguity can be demonstrated by the evidence. (*Another Planet*, *supra*, 15 Cal.5th at p. 1144; *MacKinnon*, *supra*, 31 Cal.4th at pp. 649–53; *Drayage, supra*, 69 Cal.2d at pp. 40–41, fns. 8 & 9; Code Civ. Proc., § 1856, subd. (g).)

A rudimentary hypothetical demonstrates the pivotal role of extrinsic evidence: Suppose a contract provides for "Delivery of 100 widgets, fast." A judge might read that language as capable of only one interpretation—that delivery must be "speedy." Extrinsic evidence, however, might show that in the custom of that industry, "fast" means that the widgets are delivered "firmly secured" to a backing (rather than loose)—***not*** quickly. The court's plain language reading would be incorrect, and at odds with the parties' intent. *Drayage* prevents such errors by expanding the lens to look at the entire picture. (*Drayage*, *supra*, 69 Cal.2d at pp. 39–40 & fns. 6–8.)

Rather than imposing an intolerable burden on the courts, or disrupting commercial transactions, the *Drayage* approach has flourished for over half a century and states the accepted rule. (OB at pp. 35–36 [citing Rest.2d, Contracts (1981)].)

Drayage does not support "linguistic nihilism," nor does it render contract language meaningless, as *ACL* and Insurers suggest. (*ACL*, *supra*, 17 Cal.App.4th at pp. 1790–93.) Under the second step of the *Drayage* analysis, after comparing "the proffered evidence" with the contract language, courts ***admit*** only evidence of a meaning to which the language is "reasonably

susceptible." (*Winet, supra,* 4 Cal.App.4th at pp. 1165–66.) Accordingly, the contract language still provides the outer boundary beyond which the meaning cannot stretch. (E.g. *Wagner v. Columbia Pictures Industries, Inc.* (2007) 146 Cal.App.4th 586, 592 [extrinsic evidence is not admissible to show a measurement in "feet" should be interpreted to mean "inches"].)

Despite this Court's long-standing authority recognizing that extrinsic evidence must be considered ***before*** determining reasonable susceptibility, Insurers argue the DCA properly refused to consider all of Montrose's extrinsic evidence of intent (including industry drafting history, trade usage, and dictionary definitions), instead interpreting the QPEs to impose a temporal limitation on coverage based upon language alone. (Opinion at pp. 904–905 & fn. 2 ["*no* extrinsic evidence *of any sort* is relevant or admissible"] (original italics); cf. 7PA159 at pp. PA02735–57 [Montrose's Summary of Evidence].)

Insurers assert that: (1) *Drayage* and its progeny do not require ***any*** consideration of extrinsic evidence where the court summarily finds a party's proffered meaning is not one to which the language is reasonably susceptible; and (2) Montrose's reading is facially unreasonable because it contradicts the QPEs' language, and evidence therefore need not be considered to support such an interpretation. These arguments are wrong, as shown below.

2. Insurers Disregard *Drayage*'s First Step: Preliminarily Examining Proffered Extrinsic Evidence to Determine Potential Reasonable Meanings

The Insurers' and DCA's approach rewrites *Drayage* by shortcutting the critical inquiry. Under their flawed approach, the court compares ***only*** the language with the proposed meaning, completely skipping the step of examining the evidence. That misses the key point of *Drayage*—which is that extrinsic evidence of context, ***such as drafting and regulatory history, and custom and usage***, may show a different, and more accurate meaning of the same words—even words a judge thinks are clear. (*MacKinnon*, *supra*, 31 Cal.4th at pp. 649–53; *Drayage*, *supra*, 69 Cal.2d at pp. 39–40 & fns. 6–8.)

This evidence of ***context*** is essential to elucidate the language's possible reasonable meanings. (*Ibid.*; see also, e.g., *Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1355, 1357 [extrinsic evidence shows contract's "context"].)

Insurers grudgingly recognize this concept by repeatedly referring to text ***and "context***" (e.g., Answer at pp. 13–14, 23, 25–27, 32), but they refuse to acknowledge this Court's extensive reliance on drafting history as evidence of the parties' objective intent and a contextual source "of considerable assistance" in interpreting CGL policies. (*Montrose Chem. Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 670–71 ["*Montrose II*"]; OB at pp. 38–41; see also *Golden Eagle Ins. Co. v. Ins. Co. of the West* (2002) 99 Cal.App.4th 837, 848 ["[i]nsurance industry publications are

particularly persuasive" to determine objective understanding of form provisions].) In the case of standard-form CGL insurance policies, context is ***best illustrated*** by the drafting and regulatory history, as this Court's decisions in *Montrose II*, *MacKinnon*, *Fluor*[9] and *Another Planet* show. (OB at pp. 38–41.)

Insurers simply ignore this Court's extensive drafting history authority (which supersedes *ACL*) (OB at pp. 38–41), and instead assert drafting history is improper extrinsic evidence for construing "plain" language. (Answer at p. 44, fn. 5.)[10]

Instead of examining context, Insurers ravage the *Drayage* approach by asserting the court may decide—solely in its own reading—that disputed language is not reasonably susceptible of a proposed interpretation, and all extrinsic evidence explaining meaning may be ignored. Insurers justify their approach by jumping directly to the ***second step*** of the *Drayage* test—stating that evidence is not ultimately ***admissible*** where it offers an interpretation contrary to the language. (Answer at pp. 26, 33 [extrinsic evidence contrary to agreement is "inadmissible"].) Admissibility is the ***final*** inquiry, however, and takes place ***only after the court preliminarily examines the proffered evidence to glean potential meanings***. (*Drayage*, *supra*, 69

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[9] (*Fluor Corp. v. Superior Court* (2015) 61 Cal.4th 1175, 1217, fn. 47.)

[10] The DCA Opinion takes it a step further—imposing unprecedented new limits on the use of drafting history to explain form policy meaning. (OB at p. 54.)

Cal.2d at pp. 39–40 ["[R]ational interpretation requires at least a preliminary consideration of all credible evidence offered to prove the intention of the parties."]; *Another Planet, supra*, 15 Cal.5th at p. 1144.)

The DCA's refusal to consider Montrose's extrinsic evidence is precisely what *Drayage* and subsequent cases forbid, and requires reversal. (OB at pp. 36, 43–44, 48; *Drayage*, 69 Cal.2d at p. 41, fn. 9 ["exclusion of extrinsic evidence … would be error"]; *Circle Star Center Associates, L.P. v. Liberate Technologies* (2007) 147 Cal.App.4th 1203, 1211 ["reversible error" to refuse to consider extrinsic evidence].)

3. Insurers' Authority Requires Consideration of Extrinsic Evidence ***Before*** Determining Meaning

Insurers argue that the two-step *Drayage* approach has been undercut by this Court's later decisions and is no longer authoritative. Not so. Insurers' truncated "*Drayage*" test finds no support in modern California law and is merely a disguised return to the obsolete "plain language" approach rejected by *Drayage* and its progeny.

Insurers first argue that *Delta Dynamics* limited the *Drayage* approach of examining extrinsic evidence to decide contract meaning. (Answer at p. 36.) To the contrary, issued only four months after *Drayage*, *Delta Dynamics* extensively and approvingly quoted *Drayage* and held that extrinsic evidence "must" be considered. (69 Cal.2d at pp. 528–29 ["The test of

admissibility of extrinsic evidence to explain the [contract's] meaning … is ***not whether it appears to the court to be plain and unambiguous on its face***," but whether it is offered to prove a reasonable meaning; "To determine whether offered evidence is relevant to prove such a meaning ***the court must consider all credible evidence offered***"].) "If the court decides, ***after considering this evidence***, that the language of a contract, ***in the light of all the circumstances***, is fairly susceptible of either one of the two interpretations contended for … extrinsic evidence to prove either of such meanings is admissible." (*Ibid*.) The notion that *Delta Dynamics* limits *Drayage* is indefensible.[11]

Insurers' later Supreme Court (and Ninth Circuit) cases also do not suggest a retreat from *Drayage*.

This Court's 4-3 decision in *Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 462, concerned the state's strong public policy of enforcing express choice-of-law provisions and was decided at the demurrer stage with no extrinsic evidence at

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[11] Insurers highlight Justice Mosk's ***dissent***, but that concerned extrinsic evidence of prior negotiations and subjective understanding, which California courts consistently hold irrelevant to contract interpretation (see, e.g., *San Pasqual Band of Mission Indians v. California* (2015) 241 Cal.App.4th 746, 757), not the evidence of objective intent (such as drafting history) repeatedly embraced by this Court. (OB at pp. 38–41.)

issue. **Drayage *was not even mentioned in the majority opinion***; it was discussed only in one of the two concurring and dissenting opinions, which urged that *Drayage* warranted consideration of potential alternative meanings of the choice-of-law provision. (*Id*. at p. 493) (conc. & dis. opn. of Kennard, J.) This Court has not cited *Nedlloyd* in any subsequent extrinsic evidence case, and has even restricted its choice-of law-analysis. (E.g., *Pitzer College v. Indian Harbor Ins. Co.* (2019) 8 Cal.5th 93, 105.)

In *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 390–93, the Court again followed *Drayage* and examined extrinsic evidence (Dore's testimony) to decide ambiguity even though the contract language was unambiguous. (*Ibid.* [stating that even if a contract is unambiguous on its face, extrinsic evidence may expose latent ambiguity; test for consideration of extrinsic evidence is not whether language appears clear to court].) Insurers concede that *Dore* recognized latent ambiguity may be exposed by extrinsic evidence (Answer at pp. 18–19), but they rely upon *Dore*'s concurrence. (*Id.* at p. 42.) The concurrence states that extrinsic evidence is only ***admissible*** to prove a meaning the language will reasonably accommodate—precisely the inquiry in the second step of *Drayage*. (*Dore*, 39 Cal.4th at p. 396 (conc. opn. of Baxter, J).)

Insurers' ***Ninth Circuit*** decision, *Trident Center v. Connecticut General Life Ins.* (9th Cir. 1988) 847 F.2d 564, also fails to show ***this Court*** departing from *Drayage*. *Trident*

followed *Drayage*, but expressed concern that *Drayage* could be read to permit extrinsic evidence of subjective intent to contradict the language of an agreement (*id*. at p. 569 ["intention [might] be divined from self-serving testimony offered by partisan witnesses"])—not the issue here, where the proffered evidence is of ***objective context*** (drafting history). Subsequent Ninth Circuit cases routinely apply this Court's *Drayage* rule. (E.g., *Skilstaf, Inc. v. CVS Caremark Corp*. (9th Cir. 2012) 669 F.3d 1005, 1014–15 ["Because California law recognizes that the words of a written instrument often lack a clear meaning apart from the context in which the words are written, courts may preliminarily consider any extrinsic evidence offered by the parties."].)

Any suggestion that this Court has abrogated *Drayage* is demolished by the 2024 decision, *Another Planet*, which not only approvingly quoted the *Drayage* approach, but applied that rule, examining insurance industry drafting history to interpret a policy provision even ***after determining the provision's "plain meaning."*** (*Another Planet, supra*, 15 Cal.5th at pp. 1144–46 [ISO "publishes circulars designed to explain the intent, purpose and effect of its standard form provisions" which "are useful in analyzing coverage issues" including "standard form exclusions"].)

Reflecting their desire to turn back the jurisprudential clock on *Drayage*, Insurers revert to *Lemm v. Stillwater Land & Cattle Co.* (1933) 217 Cal. 474, 481. Even *Lemm* does not support Insurers' narrow "plain language" approach, however,

recognizing instead that "the court may look to the circumstances surrounding the parties at the time they contracted … including the object, nature and subject matter of the agreement …." (*Id.* at p. 480.)

Finally, Insurers attempt to bolster the DCA's authority supposedly allowing the court's own "plain meaning" to exclude extrinsic evidence. *Tahoe National* instead recognizes that "extrinsic evidence ***must*** be admitted provisionally in order that the court may determine ***if that evidence*** is relevant to establish an interpretation of the instrument to which it is reasonably susceptible." (*Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 22.) *Curry* states "the court is not limited to the contract language itself but provisionally receives … any extrinsic evidence offered … to show … a particular meaning." (*Curry v. Moody* (1995) 40 Cal.App.4th 1547, 1554; see also OB at pp. 46–47 & fn. 12.)

Despite reciting the *Drayage* rule, these cases declined to admit extrinsic evidence because the offered interpretations flatly contradicted the contracts. (See *Tahoe National*, 4 Cal.3d at pp. 16–18, 22–23 [assignment of rents could not possibly be construed as a traditional mortgage because the two products are contradictory lending instruments]; *Curry*, 40 Cal.App.4th at p. 1555 [construing "thereafter" as meaning "theretofore" would be contradictory].) *Tahoe National* and *Curry* thus demonstrate the second *Drayage* step that—despite extrinsic evidence—contract language provides the outer limits of interpretation and

precludes admission of extrinsic evidence to prove a meaning that contradicts the terms of the written instrument. (E.g., *Tahoe National* at pp. 16–18, 22–23 ["We agree … that the assignment cannot reasonably be construed as a mortgage and thus that extrinsic evidence … is legally irrelevant"].) These cases do not undermine the *Drayage* rule that extrinsic evidence should be preliminarily considered, and as shown next, these cases are inapplicable because Montrose's reasonable interpretation does ***not*** contradict the QPEs' language.

4. Montrose's Reasonable Reading Explains, Coincides With, and Does Not Contradict the QPEs' Language

To circumvent *Drayage*, Insurers argue that the DCA properly excluded Montrose's evidence under the parol evidence rule. Insurers contend that Montrose's interpretation is not one to which the language is "reasonably susceptible" (hence, extrinsic evidence is irrelevant) because Montrose seeks to "contradict" the QPEs' language by (purportedly) asserting that the QPE term "sudden" means "gradual." (Answer at pp. 12, 21, 46, 67.) There are multiple defects in this argument.

First, the parol evidence rule does not apply where, as here, a party seeks to ***explain*** contract language (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343), and the substantive parol evidence rule is relevant only after the reasonable contract meanings are determined by examining the proffered evidence. (OB at pp. 52–53.)

Second, just because "gradual" pollution would remain covered under Montrose's interpretation does not mean Montrose equates "sudden" with "gradual." Montrose made clear that it does ***not*** define "sudden" as "gradual." (OB at pp. 49–50 & fn. 14.) Rather, Montrose's interpretation is that "sudden" means "unexpected" or "unforeseen," and pollution is covered irrespective of timing, so long as it is unexpected and unintended by the insured. (*Id.* at pp. 49–52; § II.C, *supra*.)

Third, Insurers' argument ignores that ***not all of the QPEs have the word "sudden."*** Because the Travelers QPE omits "sudden," and excludes only expected or intended pollution, Montrose's ***identical*** interpretation (excluding only expected or intended pollution) cannot possibly contradict the Travelers QPE, which apparently is why Insurers declined to quote or address that QPE version. (E.g., Answer at pp. 12, 16, 50; § II.A, *supra*.)

Fourth, as to those Policies that do contain the "sudden" word, Montrose argues the ***primary*** meaning of "sudden," not a contradictory one. The primary dictionary definition of "sudden" (both current and contemporaneous) is "unexpected," precisely Montrose's interpretation. (OB at pp. 51 & fn. 16, 67–68 & fn. 22, 71–72; see also Merriam-Webster's Collegiate Dictionary (12th ed. 2026) p. 1574 ["sudden" defined as "1.a. happening or coming unexpectedly"]; *American Heritage Dictionary of the English Language* (5th ed. 2022) <https://www.ahdictionary.com/word/search.html?q=sudden> [as of May 20, 2026] ["1. Happening without warning; unforeseen: *a sudden* storm]; *Matea v. Workers'*

Comp. Appeals Bd. (2006) 144 Cal.App.4th 1435, 1448 [defining "sudden" as "unexpected" because "Webster's Third International Dictionary … defines 'sudden' as 'happening without previous notice or with very brief notice: coming or occurring unexpectedly: not foreseen or prepared for.'"].)

The Insurers' and DCA's incantation that "sudden" is the opposite of "gradual" simply ignores the word's primary "unexpected" meaning—the opposite of which is "expected." (Merriam-Webster, *Thesaurus* <https://www.merriam-webster.com/thesaurus/sudden> [as of Apr. 24, 2026].) While Insurers cite the Merriam-Webster *Thesaurus* for the proposition that "gradual" is an antonym of "sudden" (Answer at p. 53), "gradual" is ***not*** an antonym of "sudden" in the "unexpected" sense—that would be "expected." (See Roget's International Thesaurus (8th ed. 2019) pp. 121–23.)

Montrose does not argue the contradictory meaning that "expected" pollution is covered; Montrose offers the ordinary (and principal) meaning of "sudden" as "unexpected." (OB at pp. 50–52 & fns. 14, 16.)

Critically, Insurers ***admit*** that one meaning of "sudden" is "unexpected." (Answer at pp. 52–55.) Indeed, ***all*** of Insurers' dictionary sources ***lead with the "unexpected" definition***: "happening without notice"; "taking place without warning" or "unforeseen." (*Ibid.*)

Insurers ***agree*** that dictionary definitions of a term are helpful to determine meaning, and that multiple dictionary

definitions should be considered. (Answer at pp. 26–27, 52, 54.) They incorrectly argue that Montrose relies on only one dictionary (Answer at p. 54), completely disregarding that Montrose's extrinsic evidence consists of multiple current and contemporaneous dictionary definitions of "sudden"—which are precisely what the DCA refused to consider. (OB at pp. 51 & fn. 16, 53–54, 71–72.) The DCA's exclusion of that evidence—showing the leading definition of "sudden" is "unexpected"—is erroneous under the Insurers' own analysis.[12]

To salvage their reading, Insurers proffer ***alternative*** or ***secondary*** definitions (as well as Biblical, literary, and popular cultural references) that they argue show "sudden" has a temporal component. That there are ***other*** definitions of "sudden" besides the primary definition of "unexpected" does not mean that Montrose's reading is unreasonable or that Montrose seeks to contradict the QPEs. Indeed, Montrose's interpretation of "sudden and accidental" is so reasonable that Travelers

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[12] Insurers try to thread this needle by saying that although they are external to the contract, dictionary definitions are not "extrinsic evidence." (Answer at p. 26, fn. 1.) That is incorrect. (*Siskyou Co. Farm Bureau v. Dept. of Fish and Wildlife* (2015) 237 Cal.App.4th 411, 432–35 [dictionary definitions are a persuasive source of extrinsic evidence to determine the ordinary meaning of language].)

actually drafted its "clearer" QPE to say exactly what Montrose contends the phrase means. (OB at pp. 20–21.)

Differing definitions ***confirm*** the importance of extrinsic evidence to show which meaning was intended, and the ambiguity of the word the Insurers chose to use in some of their Policies. (E.g., *People v. Franz* (2001) 88 Cal.App.4th 1426, 1440 [finding "verbal" ambiguous "[i]n light of these differing dictionary definitions"]; *United Nuclear Corp. v. Allstate Ins. Co.* (N.M. 2012) 285 P.3d 644, 651 ["This [definitional] diversity proves … that ['sudden'] is legitimately subject to different interpretations—in other words, that it is ambiguous."].)

Insurers' citations to secondary definitions, "Star Wars" and the like do not overcome the dictionaries' leading definition of "sudden," nor do they support a refusal to consider extrinsic evidence of the insurance industry's own drafting history and express intent when adopting the QPEs using this word. (OB at pp. 64–65 [*MacKinnon* considered dictionary definitions and pollution exclusions' drafting history and observed "sudden" has been interpreted by multiple courts to include "gradual" pollution]; *id*. at pp. 68–69 & fn. 22 [considering extrinsic evidence, thirteen state supreme courts have found "sudden" means "unexpected" or is ambiguous and does not add a temporal restriction].)

Fifth, and finally, Insurers' argument that "sudden" and "gradual" are inconsistent (or "opposites") not only ignores the primary definition of "sudden" (*i.e.*, "unexpected" or

"unforeseen"), it is factually inaccurate. Like Hemingway's bankruptcy, there are many common examples of "sudden" (*i.e.*, "unexpected") events that develop gradually or are long-lasting: Cancer generally is unexpected, but incremental in development. An earthquake is unexpected, but its consequences may be enduring. A broken pipe is unexpected, but typically it leaks progressively. A ruptured waste containment facility is unexpected, but pollution disseminates gradationally.

That an event is "unexpected" ***does not limit its timing or duration***, which is recognized in standard-form CGL "occurrence" coverage, expressly extending to "continuous" events not "expected" by the insured. (OB at pp. 73–74; *Just v. Land Reclamation, Ltd.* (Wis. 1990) 456 N.W.2d 570, 573 ["even in its popular usage, 'sudden' does not usually describe the duration of an event, but rather its unexpectedness"].)

In sum, Montrose's "unexpected" meaning seeks to explain, not contradict, the QPEs' "sudden" language, and Montrose's proposed meaning is ***the same as*** the Travelers QPE language and the primary definition of the word "sudden" used in the Domestic and London QPEs. Montrose's interpretation unquestionably is one to which the language is "reasonably susceptible."

5. Insurers' QPE Interpretation Is Unreasonable and Demonstrates the QPEs' Ambiguity

In contrast to Montrose's reasonable reading, Insurers' proposed reading is untenable, or, at a minimum, demonstrates the QPEs are ambiguous.

As to the Travelers QPE, Insurers have not offered a specific meaning of the not "expected or intended" language, choosing to ignore that language at this stage. (See § II.A., *supra*.) Obviously, the Travelers QPE does not have even a purported temporal limitation based upon the word "sudden"—which is not included in that QPE. (See, e.g., *Travelers Indem. Co. v. Dingwell* (Me. 1980) 414 A.2d 220, 223 ["it was error to read 'sudden and accidental' into the Travelers policy …. ***The plain meaning of the Travelers exclusion is that it applies only to 'expected or intended' releases of pollutants***."]; *Providence J. Co. v. Travelers Indem. Co.* (D.R.I. 1996) 938 F.Supp. 1066, 1075 [same].) The Travelers QPE cannot reasonably be read to include a temporal limitation. (OB at pp. 50, 70–71.)

As to the Domestic and London QPEs, Insurers assert a temporal limit relying ***solely*** on the word "sudden." According to Insurers, "sudden" means the QPEs preserve coverage only for pollution that is ***"abrupt," "quick"*** or ***"immediate."*** (See 7PA152 at PA02530–32 ["sudden and accidental" means "quick or abrupt"; same meaning for London QPE]; Answer at pp. 50–51, 55.)

Critically, however, ***the words "abrupt," "quick," and "immediate" are completely absent from these QPE forms***.[13]

Insurers' proposed meanings are legally untenable: (1) They impermissibly imply coverage-limiting terms into the exclusion (e.g., *MacKinnon*, *supra*, 31 Cal.4th at pp. 655–56); and (2) they improperly conflict with the Policies' express coverage for "continuous or repeated" "occurrences" (*id*. at pp. 648–49), thereby violating the interpretative principle that contracts are to be read as a whole, with parts read consistently giving effect to each provision. (Civ. Code, § 1641; *Another Planet, supra*, 15 Cal.5th at p. 1136; *Public Service Co. v. Wallis and Companies* (Colo. 1999) 986 P.2d 924, 931–33 ["sudden" must be construed consistent with "occurrence" coverage].)

Interpreting "sudden" to include a temporal limit also would be inherently ambiguous in the environmental pollution

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[13] Notably, "abrupt" is defined as "1.a: characterized by or involving action or change without preparation or warning: sudden and unexpected," and ***lacks a temporal limitation*** in its primary definition. (Merriam-Webster, *Dictionary* <https://www.merriam-webster.com/dictionary/abrupt> & *Thesaurus* < https://www.merriam-webster.com/thesaurus/abrupt> [as of May 20, 2026].) As for Insurers' alternative proposed readings of "quick" or "immediate" (which are also ***not*** included in the QPE language), they ***are not included in the leading American dictionary's common definitions or synonyms of "sudden."*** (Merriam-Webster, *Dictionary* and *Thesaurus* <https://www.merriam-webster.com/dictionary/sudden> & <https://www.merriam-webster.com/thesaurus/sudden> [as of May 20, 2026].)

context. (Accord *State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1020 ["discharge" language of "sudden and accidental" QPE is ambiguous "as to its exact scope of application"].) Do "quick" or "immediate" mean "instantaneous" or their slower cousins, "fast" or "rapid"? (Merriam-Webster, *Thesaurus* <https://www.merriam-webster.com/thesaurus/quick> [as of May 20, 2026].) Which aspect of the "discharge" must be "quick"? (*Hudson, supra*, 697 A.2d at p. 504 ["sudden" is ambiguous as to whether it focuses on time of onset or aggregate effect of harm]; see also *Staefa Control-System Inc. v. St. Paul Fire & Marine* (N.D. Cal. 1994) 847 F.Supp. 1460, 1469 ["it is simply not clear from the [QPE] language … whether damages must be caused all at once by a sudden accident … or whether the gradual results of a sudden accident are sufficient"].)

Specifically, what "quick" or "immediate" pollution would remain covered under the Insurers' reading: Pollution that results from an explosion, which expands and migrates? Pollution emanating from a ruptured pipe or breached waste containment facility, which spreads? Pollution from a government-sanctioned disposal site, which disperses after an extraordinary storm or earthquake?

The variation and vagueness of the Insurers' proposed Domestic and London QPE definitions, and the difficulty in applying them to pollution, prove the ambiguity of the "sudden" QPE forms. (E.g., *Another Planet*, *supra*, 15 Cal.5th at pp. 1144–47 ["the meaning of language is to be found in its applications.

An indeterminacy in the application of language signals its vagueness or ambiguity….”].)

Given the myriad ways pollution can occur, and its progressive nature (see generally *MacKinnon*, *supra*, 31 Cal.4th at pp. 650–52 [describing incremental dispersal of pollutants]; *Allstate, supra*, 45 Cal.4th at pp. 1025–27 [same]), Insurers’ interpretation covertly eliminates coverage for virtually all environmental contamination, improperly transforming this “***qualified***” exclusion into its successor, the “absolute” pollution exclusion. (See *MacKinnon, supra*, 31 Cal.4th at p. 644 [comparing the two forms]; see also *Safeco Ins. Co. of America v. Robert S.* (2001) 26 Cal.4th 758, 764–65 [rejecting interpretation rendering coverage illusory].)

Insurers’ case authority highlights the ambiguity resulting from their proposed meaning: Like the DCA and Insurers, those cases concede “sudden” has “multiple shades of meaning” (*ACL*, *supra*, 17 Cal.App.4th at p. 1783; see also Opinion at p. 917; Answer at pp. 52, 55), but then define the QPEs’ “sudden” term by selecting ***one*** purported meaning—according to the courts’ own reading—without considering extrinsic evidence. (OB at p. 38.) In preemptively defining “sudden,” the cases erroneously overlook its primary definition (“unexpected”), and imply vague, unwritten terms. (*ACL*, *supra*, 17 Cal.App.4th at pp. 1787, 1791; *Shell, supra*, 12 Cal.App.4th at pp. 754–55.)

While *ACL* asserts that “sudden” must have a temporal component to avoid redundancy with “accidental” (*ACL*, *supra*, 17

Cal.App.4th at p. 1787), Montrose's interpretation—following the Travelers QPE's express language, the primary definition of "sudden," and prior industry usage—***does not create redundancy***: "Sudden" means "unexpected" and "accidental" means "unintended." (OB at pp. 70–73 & fn. 24.) "Unexpected" and "unintended" have separate, ***not*** redundant meanings. (E.g., *New Castle County v. Hartford Acc. & Indem. Co.* (3d Cir. 1991) 933 F.2d 1162, 1194; *United Nuclear*, *supra*, 285 P.3d at p. 652; *Hudson, supra*, 697 A.2d at p. 504; accord *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.* (1996) 45 Cal.App.4th 1, 73 [unexpected and unintended have different meanings in CGL "occurrence" policies].) The other primary definitions of "sudden" as "unforeseen" or "not … prepared for" (§ IV.A.4, *supra*) similarly lack a temporal restriction and create no redundancy in the London QPE, which preserves coverage for "sudden, unintended and unexpected" pollution. (*Allianz, supra,* 483 P.3d at pp. 1146–51.)

6. Montrose's Reasonable Reading Controls Over Insurers' Vague and Ambiguous Exclusion

To prevail, Insurers must show their QPEs are "***plain and clear***" (*MacKinnon*, *supra*, 31 Cal.4th at p. 639), and Insurers cannot avoid coverage through an uncertain or vague exclusion. (*Id.* at p. 648; see also *E.M.M.I., Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 482 [same].)

Coverage-granting exceptions to exclusions, like the QPEs, must be "construed broadly in favor of the insured." (*Allstate,*

supra, 45 Cal.4th at p. 1018.) The burden rests on Insurers to phrase policy terms in "***clear and unmistakable***" language, and Insurers bear the burden of establishing a claim is specifically excluded. (*MacKinnon*, 31 Cal.4th at p. 648.) "This rule applies with particular force when the coverage portion of the insurance policy [such as the 'continuous' 'occurrence' language] would lead an insured to reasonably expect coverage for the claim purportedly excluded." (*Ibid*.)

California law vehemently rejects stealth exclusions:

> In the insurance context, 'we begin with the fundamental principle that an insurer cannot escape its basic duty to insure by means of an exclusionary clause that is unclear.... "[A]ny exception to the performance of the basic underlying obligation must be so stated as clearly to apprise the insured of its effect."'... [T]o be enforceable, any provision that takes away or limits coverage reasonably expected by an insured must be 'conspicuous, plain and clear.' ... The burden of making coverage exceptions and limitations conspicuous, plain and clear rests with the insurer.

Haynes v. Farmers Ins. Exchange (2004) 32 Cal.4th 1198, 1204; see also *Essex Ins. Co. v. City of Bakersfield* (2007) 154 Cal.App.4th 696, 705 [insurer could not enforce vaguely worded exclusion]; *Fireman's Fund Ins. Companies v. Atlantic Richfield Co.* (2001) 94 Cal.App.4th 842, 852 ["insurance company's failure to use available language to exclude certain types of liability gives rise to the inference that the parties intended not to so limit coverage"].)

Insurers easily could have written an exclusion for gradual pollution (see *Truck Ins. Exchange v. Pozzuoli* (1993) 17 Cal.App.4th 856, 860 [policy contained "language expressly *precluding* coverage for pollution which was *continuous*"] (original italics)), or even used their absolute exclusion (*MacKinnon*, *supra*, 31 Cal.4th at p. 644), but instead they adopted "qualified" exclusions omitting any limit on "continuous" pollution. If Insurers intended to exclude "gradual" pollution, they were required to do so explicitly. (*Safeco, supra*, 26 Cal.4th at pp. 763–65 ["courts are not to insert what has been omitted"].)

Given Insurers' burden to frame exclusions "plainly," "clearly," and "unmistakabl[y]," they cannot avoid coverage with their vague QPEs. (*MacKinnon*, *supra*, 31 Cal.4th at pp. 639, 648, 655.) By law, Montrose's reasonable interpretation prevails over Insurers' unspecified "temporal" limitation, implied based upon the secondary or unsupported meanings of the word "sudden" in only two of three QPEs. (*Id*. at pp. 639, 648, 655–56 [for insurer to prevail, it must prove that its interpretation "is the ***only*** reasonable one"].)

At an absolute minimum, the QPEs are ambiguous, *i.e.*, reasonably susceptible of multiple readings. (See, e.g., *State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195.) To interpret ambiguous policy language, courts first examine the "objectively reasonable expectations" of the insured, which are assessed by considering how the promisor (insurer) would have believed the promisee (insured) understood the contract. (E.g.,

AIU Ins. Co. v. Superior Court (1990) 51 Cal.3d 807, 822.) If the "reasonable expectations" inquiry does not resolve the ambiguity, policy language is interpreted in favor of coverage. (See *Montrose Chemical Corp. v. Superior Court* (2020) 9 Cal.5th 215, 230.)

The best evidence of Montrose's objectively reasonable expectations regarding QPE coverage is the industry's drafting history surrounding the QPEs' adoption, as well as dictionary definitions and prior trade usage. (E.g., *MacKinnon*, *supra*, 31 Cal.4th at pp. 643–54 & fn. 3; *Another Planet, supra*, 15 Cal.5th at pp. 1144–46; *Golden Eagle*, *supra*, 99 Cal.App.4th at pp. 847–48 ["[I]nsurance industry publications are particularly persuasive as interpretive aids where they support coverage on behalf of the insured"; bulletin from ISO predecessor demonstrated that standard provision intended to clarify, not change existing coverage]; OB at pp. 38–41 & fn. 10.)

The evidence overwhelmingly demonstrates that, following prior trade usage and judicial interpretation of the term of art "sudden and accidental," the industry understood and represented to regulators that "occurrence" coverage for "continuous" events would be preserved, and the QPEs merely clarified "occurrence" coverage for unexpected and unintended ***damage*** to maintain coverage for unexpected and unintended ***discharges*** to the environment. (OB at pp. 73–75.) Consistent with "continuous" "occurrence" coverage, there was no intent to impose a temporal limit on the pollution covered. (*Id.* at 74, 76.)

In sum, under *Drayage/Another Planet*, the DCA erred in failing to consider Montrose's extrinsic evidence, which confirms Montrose's reasonable reading of all QPEs—that unexpected and unintended pollution is covered, regardless of its timing. Insurers cannot meet their legal burden to show that their alternative reading—*i.e.*, implying a temporal exclusion based solely on "sudden"—is the "only" reasonable reading. (*MacKinnon, supra*, 31 Cal.4th at p. 655.) Montrose's reasonable reading controls. (*Id.* at pp. 655–56.) Any lingering ambiguity is resolved in favor of coverage. (E.g., *Yahoo Inc. v. National Union Fire Ins. Co.* (2022) 14 Cal.5th 58, 67, 73.)

B. The DCA Erred by Following the Flawed *ACL* Precedent

Insurers now retreat from their vociferous assertion that *ACL*'s "prior judicial construction" renders the QPEs unambiguous as a matter of law. (E.g., Writ Opp. at pp. 21, 23–24, 28–36.) Insurers instead substitute a new twist—that PJC merely creates a "presumption" as to contract interpretation, while *stare decisis* controls. (Answer at p. 63.)

The upshot of Insurers' exposition on PJC and *stare decisis* is that the trial court supposedly was bound to follow *ACL*, while the DCA properly found those cases persuasive. (Answer at pp. 20–21, 62–64.) Both points are incorrect.

The trial court and DCA were bound to follow this Court's superseding law in *Montrose II*, *MacKinnon*, and *Another Planet*—not outdated, erroneous precedent in *ACL*. (OB at p. 57,

fn. 18; see also *Grande v. Eisenhower Medical Center* (2020) 44 Cal.App.5th 1147, 1162 [affd. (2022) 13 Cal.5th 313] [*stare decisis* allowed departure from precedent failing to apply analytic framework used by Supreme Court].)

ACL and its progeny:

- Post-date the Policies (*London Market Insurers v. Superior Court* (2007) 146 Cal.App.4th 648, 666 [post-contract judicial decision "could not have informed the parties' understanding" of policy when issued]);
- Violate *Drayage* by relying solely on the court's reading and refusing extrinsic evidence; and violate *Montrose II* (10 Cal.4th at pp. 670–71) and this Court's other cases by excluding evidence of industry and regulatory intent and usage; and
- Contravene accumulating authority, including this Court's pollution exclusion decisions in *MacKinnon* and *Allstate*, and a host of out-of-state cases. (OB at pp. 38–41, 64–68 & fn. 22.)

It is better to rectify an error later, rather than not at all. (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn*. (2013) 55 Cal.4th 1169, 1180 & fn. 9.) *Stare decisis* invites correction of erroneous precedent, including reassessment based upon subsequent legal developments in- and out-of-state. (E.g. *Fluor, supra,* 61 Cal.4th at pp. 1223–24; OB at pp. 58–60.)

V. CONCLUSION

Under modern interpretative rules, the DCA erred in refusing to consider Montrose's extrinsic evidence of the QPEs' meaning, following *ACL*, and finding the phrase "sudden and accidental" plainly and unambiguously engrafts a temporal limitation on covered pollution in all QPEs. The DCA ignores that: (i) the primary definition of "sudden" does not contain a temporal component; (ii) one QPE version omits the term "sudden" and precisely mirrors Montrose's reading; and (iii) industry usage and intent show an "unexpected and unintended" meaning. Given the QPEs' language and the evidence, the DCA's "plain" reading is flawed: The QPEs are "reasonably susceptible" of Montrose's interpretation, which therefore controls.

To foster legal certainty and sustain environmental remediation, this Court should interpret the QPEs as a matter of law and hold that they preserve coverage for unexpected and unintended pollution without a temporal restriction.

Dated: May 21, 2026

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

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5/21/2026

Date

/s/Khadijah Fields

Signature

Wilson, John (229484)

Last Name, First Name (PNum)

Latham & Watkins - San Diego

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