No. S273179

IN THE SUPREME COURT OF

THE STATE OF CALIFORNIA

TRUCK INSURANCE EXCHANGE,

Plaintiff, Cross-Defendant, Appellant,
Respondent, and Cross-Respondent,

v.

KAISER CEMENT AND GYPSUM CORP., et al.

Defendant, Cross-Complainants,
Appellants, and Respondents.

California Court of Appeal, Second District,
Division Four, No. B278091
Los Angeles Superior Court No. BC249550

REPLY BRIEF

PIA ANDERSON MOSS HOYT, LLC
* Scott R. Hoyt, SBN 92723
shoyt@pamhlaw.com
Adam L. Hoyt, SBN 296094
ahoyt@pamhlaw.com
136 East South Temple Street
Suite 1900
Salt Lake City, Utah 84111
Telephone: (801) 350-9000
Facsimile: (801) 350-9010

GREINES, MARTIN, STEIN & RICHLAND LLP
* Robert A. Olson, SBN 109374
rolson@gmsr.com
Edward L. Xanders, SBN 145779
exanders@gmsr.com
5900 Wilshire Boulevard
12th Floor
Los Angeles, California 90036
Telephone: (310) 859-7811
Facsimile: (310) 276-5261

Attorneys for TRUCK INSURANCE EXCHANGE

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INTRODUCTION

No one disputes that if *Montrose Chemical Corporation v. Superior Court* (2020) 9 Cal.5th 215 (*Montrose III*) applies here, Truck Insurance Exchange is entitled to seek equitable contribution from respondent carriers.[1] Rather, the Answer Briefs ask for special exceptions inconsistent with *Montrose III*.

Respondent carriers assert that equitable contribution claims between insurance carriers are unique and subject to special rules for interpreting insurance policy language. Not so. The same contract-interpretation rules should govern every context, whether a claim by an insured against a carrier or one by a carrier seeking contribution from other carriers. There should not be separate rules for interpreting the same language depending on who the parties are.

And the starting point for equitable contribution has to be the parties' various obligations to the insured—obligations measured by each insurance policy's content.

Prominently, respondent carriers promised to "continue in force as underlying insurance" upon exhaustion of *just* scheduled, same-policy-period underlying insurance. But even without that promise, excess policies that promise to indemnify upon

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[1] Respondent carriers call themselves "excess" carriers. But they actually are *hybrid* carriers—excess *until scheduled, same-policy-period underlying policies exhaust* (as has happened), whereupon they become primary carriers. The only exception is the older London Market policies (1953-1958), the only ones even titled excess policies. (See OB 16-17.) To avoid semantic debates, we refer to them collectively as "respondent carriers."

exhaustion of scheduled, same-policy-period underlying insurance, such as the older London Market policies, should be held to answer when that event occurs. Upon exhaustion of that scheduled insurance, all respondent carriers' policies occupy the first position to respond to any covered losses in their policy periods.

Montrose III held that the policies' various "other insurance" provisions only apply to same-policy-period insurance, *not* in the multi-policy-period context, as here. That is a general across-the-board rule, not just one applying only to that case's facts. And the Answer Briefs ignore that Truck's policy also has an "other insurance" provision, as most policies do.

Respondent carriers' position reduces to: (1) the same policy provisions—which are interpreted as a matter of law—should have entirely different meanings in the equitable-contribution context than when read in other contexts simply because the parties are different; (2) this Court should follow a pre-*Montrose III* Court of Appeal decision, *Community Redevelopment Agency v. Aetna Casualty & Surety Co.* (1996) 50 Cal.App.4th 329 (*Community Redevelopment*) that conflicts with *Montrose III*'s reasoning; and (3) respondent carriers, and others similarly situated, are entitled to special preferential treatment—treatment that means a trial court can *never* balance the equities between them and Truck or other carriers covering different policy periods. Each of these positions fails. *All* of the cases that respondent carriers cite for these propositions pre-date *Montrose III* and its reasoning, and either rest on assumptions that

Montrose III rejected or involve inapposite factual contexts that respondent carriers twist out of context, such as cases involving *same* policy-period, unexhausted primary and excess policies (i.e., not even vertical exhaustion).

The trial court never weighed the equities between Truck and respondent carriers. Rather, it held that *as a matter of law* Truck could *never* obtain equitable contribution of any shape or form from respondent carriers. It did so based on the pre-*Montrose III* decision in *Community Redevelopment*, which rests on an assumption at odds with *Montrose III*.

Community Redevelopment cannot be resurrected without doing violence to *Montrose III*'s rationale. There is no legitimate reason that respondent carriers are not bound to their policy promises the same way as Truck.

Finally, respondent carriers and the insured, Kaiser Cement, team up to argue that an insured is empowered to preclude a carrier from seeking equitable contribution from other carriers. But equitable contribution is the carrier's right, not the insured's. The majority rule across the country is that the insured cannot bar a particular carrier from seeking equitable contribution. That is because the insured's reasonable expectation when it obtains insurance coverage for a particular policy period is that the carrier will be obligated to pay for that period's losses. And that should be the rule here. The underlying premise to this Court's decisions making a carrier liable for losses that occur across multiple policy periods is that the initially

responding carrier *can obtain equitable contribution from other carriers.*

The Court of Appeal's opinion and the trial court's pre-*Montrose III* rejection of even the possibility of equitable contribution must be reversed.

ARGUMENT

I. Equity Between Insurance Carriers In Sharing A Mutually Covered Risk Is Measured By Their Underlying Contractual Obligations To The Insured.

A. There Is Nothing Unique About Insurance Company Equitable Contribution.

Equitable contribution applies in a variety of areas, including among tortfeasors who cause a unitary injury and strangers who guarantee the same debt. No special party-status rules apply in those contexts. Tortfeasors' equitable contributions are measured by their respective fault in causing the injury, that is, their individual relationship to the plaintiff's harm. Contract guarantors' contribution obligations are measured by their underlying guarantee obligations.

There is no reason why insurance equitable contribution should be any different. Although the contribution is equitably imposed, it should be measured by each contributor's obligation to the insured.

B. The Starting Point Of Any Equitable Contribution Determination Has To Be The Various Carriers' Policy Language.

The respondent carriers claim that Truck's equitable contribution rights are founded on principles of equity, rather than any direct contractual relationship between them, and therefore the language in the various policies is irrelevant. That's half right. It is certainly true that the carriers are not in contract with each other and that the contribution between them is a function of equity. But that does not make irrelevant the various carriers' policy language.

Equity does not operate in the abstract. It is not "an unregulated power of administering abstract justice" without regard to fundamental legal and equitable principles. (*Kansas v. Nebraska* (2015) 574 U.S. 445, 476 (conc. opn. of Thomas, J.), cleaned up,[2] quoting *Heine v. Board of Levee Com'rs* (1873) 86 U.S. 655, 658.)

In the equitable contribution context, those principles start with measuring each party's independent obligations. Those obligations are not abstract principles but are founded on each carrier's policy language obligations to the insured. Thus, the starting point for any equitable contribution analysis necessarily

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[2] By "cleaned up" we mean citations or internal quotation marks omitted or both. (See Metzler, Cleaning Up Quotations (2017) 18 Journal of Appellate Practice and Process 143, cited in *PPL Electric Utilities Corporation v. City of Lancaster* (Pa. 2019) 214 A.3d 639, 649, fn. 19; *Cardosi v. State* (Ind. 2019) 128 N.E.3d 1277, 1286, fn. 5.)

is "the relation of the insured to the insurers" and "the particular policies of insurance." (*Signal Companies, Inc. v. Harbor Ins. Co.* (1980) 27 Cal.3d 359, 369 (*Signal*).)

Without knowing each carrier's obligation to the insured in the first instance, it is impossible to determine the equities between the carriers. That has to be the starting point for any equitable contribution analysis. Cases suggesting policy language does not constrain equitable contribution obligations typically involve courts disregarding "other insurance" formulations to obtain equitable contribution by multiple carriers, *not* relieving triggered policies of responsibility. (E.g., *Certain Underwriters at Lloyds, London v. Arch Specialty Ins. Co.* (2016) 246 Cal.App.4th 418 (*Arch Specialty Ins.*); *Travelers Casualty & Surety Co. v. Century Surety Co.* (2004) 118 Cal.App.4th 1156, 1161-1162.)

Respondent carriers argue that identical insurance policy language should mean one thing when interpreted between insured and carrier and something completely different when interpreted in an equitable contribution action between carriers. No principle of law or equity supports such a dichotomous approach to construing identical language in the same document. Interpreting policy language is a question of law. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 288 (*Hartford*).) Yet, respondent carriers argue that the law should mean different things depending on the parties' identities and the cause of action. That is the antithesis of equal justice.

Signal, *supra*, 27 Cal.3d 359, on which respondent carriers rely, is not contrary. In *Signal*, a primary carrier settled a claim for more than its policy limits with a contribution from the same-policy-period excess carrier. (*Id.* at p. 371.) The moment of settlement was the moment that the underlying primary policy limits were paid/exhausted. (*Id.* at pp. 363-364.) The primary carrier then sought to have the excess carrier contribute to pre-settlement defense fees. (*Id.* at p. 364.) This Court "expressly decline[d] to formulate a definitive rule applicable in every case in light of varying equitable considerations which may arise, and which affect the insured and the primary and excess carriers." (*Id.* at p. 369.) Rather, it enforced the excess policy's express provision precluding any obligation to contribute to defense costs unless the carrier specifically *consented* to do so upon a *continuation* of the defense *after* exhaustion of the primary policy limits. (See *id.* at pp. 370-371.) In *Signal*, there was no consent and no continuing defense after primary policy limits exhausted.

Signal is clear. There is no definitive, one-size-fits-all, equitable contribution rule. *Signal* did not involve carriers in different policy periods. Nor did it involve carriers that promised to "continue in force as underlying insurance" upon the (now long ago) exhaustion of only *scheduled*, same-policy-period policies.

C. Respondent Carriers Give Short Shrift To Their "Continue In Force *As Underlying Insurance*" Promises Which Are Uniquely Tied To Exhausting Only *Scheduled* Underlying Insurance.

Respondent carriers attempt to bury their promises to "continue in force as underlying insurance" upon exhaustion of just the *scheduled* underlying insurance. They don't mention those promises until page 59 of their 68-page brief. The promises are not just "three words" (AB 59) but more substantial phrasings—"continue in force" "as underlying insurance" upon exhaustion of policies listed in the "schedule of underlying insurance" or "underlying policies listed in Schedule A" or "said insurances" referencing "the underlying insurances as set out in the attached schedule" (OB 18-20).

Respondent carriers *never* acknowledge that their "continue in force as underlying insurance" promises are trigged upon exhausting just *scheduled*, same-policy-period underlying insurance. The policies elsewhere reference other insurance generally, but *this* promise is uniquely tied just to *scheduled* underlying insurance. (See *Queen Villas Homeowners Assn. v. TCB Property Management* (2007) 149 Cal.App.4th 1, 9 ["When two words are used in a contract, the rule of construction is that the words have different meanings."].)

There is no possible argument that the promises require exhausting policies in *other* policy periods, because any such policies are not the referenced scheduled policies. So, there is no issue regarding "attachment" points. (See AB 31.) Once the

scheduled underlying policies are no longer available, i.e., their aggregate limits have been met, respondent carriers' policies are obligated from the first dollar.

Referencing generic language that their promises are subject to all other policy terms and conditions, respondent carriers argue that their continue-in-force promises do not spring into effect until all other insurance in all other policy periods first exhausts. But that reading makes no sense. It completely negates that the continue-in-force promise is tied to exhausting just *scheduled* insurance policies, which all cover the same policy period. Scheduled same-policy-period policies are a subset of insurance policies in *all* policy periods. If *all* primary-level policies in *all* policy periods have to exhaust before even reaching the continue-in-force promise then the smaller subset of scheduled, same-policy-period underlying policies will necessarily have already exhausted. The reading makes surplusage the reference to exhausting just scheduled policies as triggering the continue-in-force promise. The rules of construction reject such nonsensical surplusage. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495, 503 ["constructions of contractual provisions that would render other provisions surplusage" are disfavored]; *ACL Technologies, Inc. v. Northbrook Property & Casualty Ins. Co.* (1993) 17 Cal.App.4th 1773, 1785 ["In California, however, contracts—even insurance contracts—are construed to avoid rendering terms surplusage."].)

Respondent carriers posit that "the function of the 'continue in force' phrase is much more basic—it operates to fill a potential

gap that might open between the excess policy and the underlying policies as the underlying policies pay claims and erode or exhaust their aggregate limits." (AB 61.) But they ignore that the way the policies "fill a potential gap" is to act as "underlying insurance." This includes *all* that the underlying insurance covers—"the umbrella should 'drop down' to become the primary insurance for defense, indemnity and related expenses." (Robertson, The Umbrella Book (2d ed., Warren, McVeigh & Griffin 1980) p. 12.)

"[C]los[ing] that gap, protecting the policyholder" (AB 61) can mean nothing else. The policies specifically cover "defense costs" (8JA-3027), "defense of any claim" (8JA-3080), or expenses of "lawyers" "for litigation" (3JA-1077).[3] (Cf. *Newmont USA Ltd. v. American Home Assur. Co.* (E.D. Wa. 2009) 676 F.Supp.2d 1146, 1155 [unlike here, policy promised to "continue in force as underlying insurance" but expressly *not* to assume defense of claims].) It is inconceivable how "closing the gap" can be anything other than acting as primary insurance. "From the perspective of the insured, one would reasonably expect the excess insurer to contribute to the defense once the scheduled primary policies have been exhausted and the attachment points reached." (*SantaFe Braun, Inc. v. Insurance Company of North America* (2020) 52 Cal.App.5th 19, 29 (*SantaFe Braun*).) There is no reason why that same perspective would not apply in the equitable contribution context.

[3] The exception is the 1953-1958 London T.P. 7 form.

Flintkote Co. v. General Acc. Assur. Co. of Canada (N.D. Cal., Aug. 6, 2008, No. C04-01827 MHP) 2008 WL 3270922 at *26 (*Flintkote*), cited by respondent carriers (AB 62-63), is instructive. "Whether the excess policy 'drops down' to the level of primary insurer, whereby the excess insurer assumes the obligations of the primary insurer, including defense obligations, *depends on the provisions of the excess policy*." (*Ibid.*, italics added.) In *Flintkote*, "the court ma[d]e[] no determination as to which excess policies 'drop down'—an obligation distinct from and greater than the obligation to provide coverage—and act in the shoes of primary insurers in case the primary policies are unavailable." (*Ibid.*) But "[i]f an excess insurer is required to 'drop down' and *assume the responsibilities of a particular primary insurer*, then the excess insurer would be considered a *substitute* primary insurer." (*Ibid.*, first italics added.)

That's the situation here. Given the specific "continue in force as underlying insurance" language, based on scheduled same-policy-period insurance exhausting (which occurred long ago), respondent carriers became "substitute primary insurers."

D. Respondent Carriers' Myopic Focus On Their Policies' "Other Insurance" Provisions Does Not Change The Outcome.

Respondent carriers devote much attention to the "other insurance" provisions in their policies. Nowhere do they acknowledge, however, that Truck's policy also contains an "other insurance" provision: "If the insured has other insurance against a loss covered by this policy, the insurance under this policy shall

be excess insurance over all such other valid and collectible insurance ...." (See, e.g., 1JA-153.) Truck's "other insurance" language is entitled to as much force and effect as respondent carriers' "other insurance" provisions.

Montrose III, *supra*, held that "other insurance" provisions are limited *to the same policy period*. (9 Cal.5th at pp. 232-233.) Respondent carriers claim that that this holding cannot apply to claims between carriers. But *Montrose III* says otherwise: "'[O]ther insurance' clauses are *not* aimed at governing the proper *allocation of liability among successive insurers* in cases of long-tail injury." (*Id.* at p. 232, italics added.) Two of the cases *Montrose III* cites in support are *insurer equitable contribution claims*. (See *id.* at p. 233, citing *Steadfast Insurance Company v. Greenwich Insurance Company* (Wis. 2019) 922 N.W.2d 71; *Ohio Cas. Ins. Co. v. Unigard Ins. Co.* (Utah 2012) 268 P.3d 180.)

Although the two relied-on cases involve two primary carriers, there is no reason why the temporal scope of identical policy language should change depending on whether the policy is written as initially primary or initially excess coverage. These authorities reject respondent carriers' claim that the same-policy-period-only rule does not apply to equitable contribution claims. And *Montrose III* holds that "other insurance" provisions have no special status in excess policies. That leaves respondent carriers' theory as "other insurance" language uniquely has special meaning (1) in equitable contribution claims (2) but only against no-longer excess carriers in other policy periods where vertical exhaustion has occurred. There is *no* support for reading

otherwise uniformly understood policy language differently for this one-off circumstance.

Nor does *Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, support respondent carriers. *Dart* was a lost-policy case. (*Id.* at p. 1064.) A carrier seeking to fend off an insured's claim argued that it could not know the precise "other insurance" provision in the lost policy. (*Id.* at pp. 1078-1081.) *Dart* said that the missing language was irrelevant because the provision would not prevent covering the insured no matter its formulation. (*Id.* at pp. 1079-1080.) In doing so, *Dart* did not discuss whether such language applies only to the same policy period or not, either for claims by an insured or for equitable contribution. That was not at issue in *Dart*.

Respondent carriers also argue that primary policies' "other insurance" provisions are subordinated to excess policies' "other insurance" provisions. (AB at 46.) That misses the point. Once the scheduled primary policies in the same policy period exhausted, the so-called "excess" (actually hybrid) policies *were no longer excess*. Respondent carriers *assume* that "other insurance" provisions are enforced *before* the "continue in force as underlying insurance" promise (or in the case of the older London Market policies, exhaustion of the scheduled underlying insurance triggering their obligations). But as demonstrated above, that assumption is nonsensical. Upon the scheduled primary policies in the same policy period exhausting, respondent carriers were the same level as Truck's primary policy—the first insurance level in their policy period with an obligation to

respond. At that point, the supposedly "excess" policies are no longer excess of anything. They become first-position policies for that policy period. And, in most cases, the policies expressly promise to carry on *as* underlying *primary* policies.

Nor does respondent carriers' "other insurance" language have precedence over Truck's because of *where* that language appears in the policy. That has never been the law. *Montrose III*, *supra*, treated such language the same in various policies no matter where it appeared. (9 Cal.5th at pp. 224-225.) And, *Arch Specialty Ins.*, *supra,* 246 Cal.App.4th at p. 429, expressly rejected the argument: "Arch maintains its policy did not afford 'coverage' for defense costs related to this risk, because Arch included the 'other insurance' language in the 'coverage' section of its policy. We conclude that Underwriters [as the insurer seeking equitable contribution] has the better [contrary] argument." (See *id.* at p. 423 ["other insurance" language appeared in *both* the limitations and coverage sections of the Arch policy].)

That makes sense. Identical policy language cannot mean different things just because it appears in different places. Likewise, language cannot magically gain superior force by repetition.

Next, respondent carriers seek to dismiss *Montrose III*'s holding that "other insurance" language essentially identical to that in their policies (including in "ultimate net loss," "loss payable," and "limits" wording as well as traditional other insurance conditions) means only insurance in the same policy

period. (See *Montrose III*, *supra*, 9 Cal.5th at pp. 224-225, 230-232.) They argue that the holding only applies to an insured seeking coverage but that the identical language must mean something different when "the party making the claim" is another insurer. (AB 25.) But there is no reason why the same language in the same policy should mean different things depending on who makes the claim. No principle of law or equity supports reading the same contract language differently depending on litigants' identity or status. Equal protection suggests otherwise.

The cases that respondent carriers cite (AB 48) all discuss interpreting policy language in the context of other language in the policy, *not who is asserting the interpretation* (see *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1265 (*Bank of the West*) ["language in a contract must be construed *in the context of that instrument as a whole*," italics added and omitted, cleaned up]; *Galanty v. Paul Revere Life Ins. Co.* (2000) 23 Cal.4th 368, 374 ["reading the policy's 'language in context with regard to its intended function *in the policy*,'" italics added]; *Hartford*, *supra*, 59 Cal.4th at p. 288 [interpreting language "in the context of an insurance policy, in light of its proximity to [other] terms" *in the policy*].) *No* case, in California or elsewhere, holds that the same language in the same document means diametrically different things depending on the party proffering the interpretation.

E. Respondent Carriers Cannot Rehabilitate Or Reinvent *Community Redevelopment*.

Ultimately, the crux of respondent carriers' position is that *Community Redevelopment* remains good law after *Montrose III* and *SantaFe Braun*. (See AB 50-52.) They posit that *Community Redevelopment* was "built on" prior California precedent. (AB 50.) But that precedent all involved unexhausted same-policy-year underlying insurance—that is, no vertical exhaustion. (See, e.g., *Olympic Ins. Co. v. Employers Surplus Lines Ins. Co.* (1981) 126 Cal.App.3d 593, 600-601; *North River Ins. Co. v. American Home Assur. Co.* (1989) 210 Cal.App.3d 108, 113-116 [primary carrier invoking "other insurance" clause with no indication *any* underlying insurance had exhausted].) The only cases respondent carriers cite that involve multiple policy years are pre-*Montrose III* and simply cite *Community Redevelopment* without analysis.[4]

The other rationales that the Answer Brief proffers for the *Community Redevelopment* decision are made up and appear nowhere in the decision, which is why the brief provides no citations to the *Community Redevelopment* opinion. (See AB 51-52.) *Community Redevelopment*'s *only* rationales are: (1) that if exhaustion of same policy-period insurance is required, then

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[4] See *Padilla Construction Co. v. Transportation Ins. Co.* (2007) 150 Cal.App.4th 984, 986; *Pacific Coast Building Products, Inc. v. AIU Ins. Co.* (9th Cir. 2008) 300 F. App'x 546, 548; *Lafarge Corp. v. Travelers Indem.* Co. (9th Cir. 2002) 32 F. App'x 851, 852; *Stonewall Insurance Co. v. City of Palos Verdes Estates* (1996) 46 Cal.App.4th 1810, 1852-1153.

exhaustion of multi-policy-period insurance should be required; (2) the "drop down" (i.e., "continue in force as underlying insurance") provision in the Scottsdale policy at issue appears in a "Limits of Liability" section; and (3) various "other insurance" provisions made Scottsdale's policy only effective upon exhaustion of "any other underlying insurance collectible by" the insured. (See *Community Redevelopment*, *supra*, 50 Cal.App.4th at pp. 335-336, 339-340.)

None of these rationales work here.

To begin with, the Scottsdale policy's "continue in force as underlying insurance" provision was linked to exhaustion of *all* underlying insurance, not, as here, just *scheduled*, same-policy-period underlying insurance.

Second, both *Montrose III* and *Arch Specialty Ins.* reject the idea that provisions are read differently depending on their policy location.

Third, "*Community Redevelopment* relied on a reading "that 'other insurance' clauses preclude attachment of coverage until there has been horizontal exhaustion" but "*Montrose III* holds otherwise." (*SantaFe Braun, supra*, 52 Cal.App.5th at p. 30.) *Community Redevelopment* is inconsistent with *Montrose III* and *SantaFe Braun*. Period.

Respondent carriers try to side-step the inconsistency, arguing that *Community Redevelopment* is limited to a special rule just benefiting self-proclaimed excess carriers in equitable contribution actions. But *Community Development* doesn't say

that. It doesn't purport to announce a limited rule; it involved an insured's claim, not an equitable contribution action. No legitimate reason exists to read a case decided on a generic basis, with reasoning negated by this Court's later decision, as though it were based on different rationales in order to benefit a special class of litigants (respondent carriers here).

II. Equity Does Not Afford Respondent Carriers Special Status.

A. The Trial Court Abused Its Discretion By Not Exercising It And Instead Following Incorrect, Per Se No-Contribution Precedent.

Respondent carriers urge this Court to defer to the trial court's exercise of equitable discretion. (AB 41-42.) But the trial court here did not exercise discretion. Rather, it ruled—relying primarily on *Community Redevelopment*—that Truck *categorically* could not even *seek* equitable contribution from respondent carriers. (3JA-1147-1148.) Per the trial court, "it is apparent *under California law* that the excess obligations of the carriers in this case are not triggered until all of the primary policies horizontally exhaust." (3JA-1152, italics added; see 3JA-1146-1147.) This is a *legal* ruling, not an exercise of discretion. "Although equitable contribution may call for judicial discretion, here the trial court expressly stated it decided the matter as a question of law, and … review is de novo." (*Arch Specialty Ins.*, *supra*, 246 Cal.App.4th at p. 429.)

The trial court may have had equitable discretion to allocate contributions between Truck and respondent carriers,

but it did not exercise it. That, in itself, is an abuse of discretion: "A trial court's failure to exercise discretion is itself an abuse of discretion." (*Fadeeff v. State Farm General Insurance Co.* (2020) 50 Cal.App.5th 94, 104; see *Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 782 [discretion abused "in acting on a mistaken view about the scope of its discretion"]; *Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 767-768 ["If the record clearly shows that the court failed to exercise its discretion, as here, we can neither defer to an exercise of discretion that never occurred nor substitute our discretion for that of the trial court."].)

Discretion also has to be exercised within the confines of correctly understanding the governing law. A court abuses its discretion if "it rests on improper criteria, or it rests on erroneous legal assumptions." (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 530, cleaned up.) The trial court mistakenly thought that *Community Redevelopment*'s rule controlled, barring the court from even considering equitable contribution. That, too, abused its discretion.

Here, the trial court did not exercise equitable contribution discretion; it held equitable contribution to be unavailable as a matter of law. The court erred in concluding that equitable contribution could *never* be available to Truck in this circumstance. That error requires reversing the judgment.!

B. Insurers That Start Out As Excess Carriers Are Not Entitled To Special, Preferential Treatment.

Respondent carriers' arguments essentially reduce to: (1) excess insurers are entitled to special privileges; and (2) once an excess carrier, always an excess carrier. Neither proposition holds.

No special status. No statute affords excess carriers special status or privileges. The Answer Briefs cite none. Rather, carriers' obligations are judged and determined by their policies' specific language, as any contract should be. This Court has never held that excess carriers are special and subject to different rules.

Respondent carriers rely on *Signal, supra,* 27 Cal.3d 359, for their proposition, but *Signal* doesn't say that. *Signal* turned on the excess carrier's policy language: The carrier would contribute to defense costs only if it gave its written consent and the proceedings continued. (*Id.* at pp. 362-363.) The underlying policy (in the same policy year) did not exhaust until the moment of settlement. This Court held that under those circumstances the excess carrier need not contribute to defense expenses.

Signal did not establish a general rule that excess carriers can *never* contribute once the insurance underlying their policies exhausts. To the contrary, it "expressly decline[d]" to do so. (*Signal*, *supra*, 27 Cal.3d at p. 369.) It did not proclaim excess carriers entitled to special rules and privileges; *SantaFe Braun*, *supra,* 52 Cal.App.5th at pp. 28-29, rejects the proposition. Truck

is not disputing the rules applying between excess carriers and primary carriers covering the same policy period. This case is about coverage for and equitable contribution to *multi*-policy-period losses.

Excess is not forever. Nor is there any "once an excess carrier, always an excess carrier" rule. Policy language matters. Respondent carriers promised to continue in force as underlying insurance, explicitly covering defense expenses, in place of scheduled same-period primary policies once those policies exhausted. Upon exhaustion, the respondent carrier is no longer an excess carrier. It is now the primary carrier on the risk for that policy period. That is exactly what *Flintkote*, *supra*, 2008 WL 3270922, at *26—misconstrued by respondent carriers (AB 62-63)—holds: "If an excess insurer is required to 'drop down' and assume the responsibilities of *a particular primary insurer*, then the excess insurer would be considered a *substitute* primary insurer." (First italics added.) Outside of *Community Redevelopment*'s progeny, see fn. 4, above, *none* of the cases that respondent carriers cite about excess carriers not contributing along with primary carriers—*all* of which pre-date *Montrose III* and *SantaFe Braun*—involve an instance where *same*-policy-period, specified scheduled underlying insurance had exhausted.[5] (AB 27-28).

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[5] *Transcontinental Ins. Co. v. Insurance Co. of the State of Pennsylvania* (2007) 148 Cal.App.4th 1296 (AB 27-28) is not otherwise. There, one primary insurance carrier covered only liability from the subcontractors' work, while the other policy was

Respondent carriers do not simultaneously act in excess and primary roles. Respondent carriers next argue that holding them to their policy language and to equitably contribute to Truck will mean that they have to act as primary carriers and excess carriers at the same time. To the extent that they are hybrid primary/excess carriers, that is what their policy language provides, not the result of Truck's equitable contribution claim.

That respondent carriers' "continue in force as underlying insurance" language "closes th[e] gap" (AB 61) left by exhausted same-policy-period scheduled insurance means that they can operate, at different times, both as excess and primary insurance. In "closing the gap" they become primary carriers but retain their policy limits. Respondent carriers argue that if a claim exceeds Truck's $500,000 policy limit, they would contribute both to the amount within Truck's policy limit and the amount exceeding Truck's policy limit. But that is no different than if there are two primary carriers, one with a $500,000 policy limit and the other with a $1 million policy limit. The second carrier would both contribute to claims under $500,000 *and* cover claims over

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an excess policy covering the developer for the developer's own conduct. (*Id.* at pp. 1300-1301.) Equitable contribution did not apply because the policies covered different parties and different *risks*. (*Id.* at p. 1304.) *Transcontinetal* decided the issue based on equitable *subrogation*, expressly "not address[ing] [the] extensive discussion of the horizontal exhaustion rule as those cases invoke the doctrine of equitable contribution *which are not controlling in this case*." (*Id.* at p. 1305, fn. 4, italics added.) Cases do not stand for propositions not considered. (*People v. Delgado* (2017) 2 Cal.5th 544, 590.)

$500,000. That is a function of policy limits, not of being or not being an excess carrier. There is nothing unfair about having carriers with greater policy limits contribute at each stage of a high value claim, rather than just covering the marginal additional expense of such claims. To the extent that they "fill the gap" as primary carriers and then switch to being excess carriers, that's a function of their policy language.[6]

Policy premiums cannot be the lodestar. Respondent carriers argue that supposed premium differences place them on a different legal footing than Truck. (AB 39-40.) To begin with, their premium comparisons are deceptive. They compare premiums per dollar insured. But that number will *always* decrease as policy limits increase whether a policy is primary, excess, hybrid, umbrella, or something else. That's because far fewer claims reach into the upper policy limits. Respondent carriers also do not factor in that their policies do not "continue in

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[6] The *Budd v. Kaiser Gypsum Company, Inc.* (Wash.Ct.App. 2022) 505 P.3d 120 (see AB 36, 40) example does not change matters. Even if contributing 50% to Truck's $495,000 indemnity obligation in *Budd*, respondent carriers' share would not differ noticeably—98% instead of 96%. And the *Budd* example ignores defense costs which Truck has borne *100%*. In any event, even respondent carriers recognize that large indemnity matters like *Budd* are the exception, not the rule. (See AB 33.) Most cases involve smaller claims, which is why Truck's overall coverage payments have been exponentially higher than respondent carriers'. The higher share to respondent carriers in *Budd* results from their higher policy limits, which is hardly unfair. And their higher share is not the result of excess versus primary coverage; it results from differing policy limits.

force as underlying insurance" immediately. They, in fact, have lesser exposure for some time.

More importantly, premium differences cannot dictate a result at odds with policy language. (*SantaFe Braun*, *supra*, 52 Cal.App.5th at pp. 28-29.) That's even more so in the context of multi-policy-period coverage. (*Id.* at p. 29 ["The evaluation of risk based on the assumption of vertical exhaustion is straightforward and can be made based on known parameters. However, if the risk assessment were to be made based on the assumption of horizontal exhaustion, the evaluation would be speculative and unpredictable."].) Comparing policy premiums between different years is comparing apples and oranges as premiums fluctuate greatly due to market factors. (See https://treadstonerisk.com/blog/8-factors-that-affect-your-business-liability-insurance-cost/ [last visited Nov. 15, 2022] ["Bull markets, bear markets, inflation, interest rates, natural disasters, tax law, and a host of other financial factors can dramatically change how much your insurance costs…. The insurance market goes through periods where prices and availability are scarce, plentiful, stable, chaotic, and everything in between."].)

This Court has never held that the premium paid either determines or can completely bar equitable contribution. And for good reason. Premiums are unilateral business decisions by carriers. They do not always match up with the risk that the carrier ends up undertaking per its policy language. Indeed, the hundreds of millions of dollars paid out by Truck here (as a result of this Court's eventual adoption of a "continuous trigger"

approach for long-tail claims) are orders of magnitude greater than any premiums Truck received, yet Truck understands that the pay-out-versus-premium disparity provides no basis to avoid its coverage obligation. Respondent carriers complain that they have paid "tens of millions of dollars" in Kaiser Cement asbestos claims. (AB 21.) But that pales in comparison to the *hundreds* of millions of dollars that Truck has paid.

Other carriers cannot simply agree to foist the sole payment obligation on one, non-assenting, insurer. Respondent carriers argue that Truck alone should bear the burden of claims that their policies cover because they agreed among themselves (with Kaiser Cement but without Truck) that Truck should do so and how, thereafter, they would share any remaining liabilities. But Truck was not a party to that agreement. A cabal of carriers does not get to dictate that another carrier alone should bear the burden of all primary-level insurance obligations without other carriers contributing. Equitable contribution is a *judicial* function based on equitable considerations, not something to be imposed or negated by an agreement to which the burdened party has not assented.

III. There Is Nothing Inequitable To The Insured In Enforcing Insurance Policies As Written.

Respondent carriers, absent equitable contribution, will profit at Truck's expense. Truck will be left holding the bag for 100 percent of defense expenses that properly should be shared. And Truck will be solely responsible for 100 percent of the first $500,000 of per claim liability that should be shared.

Respondent carriers and Kaiser Cement treat these inequities as irrelevant, claiming equitable contribution is barred, as a matter of law, because such contribution might not be in Kaiser Cement's current interest. The insured, they argue, has veto power over equitable contribution. But both the law and logic are otherwise.

Equitable contribution is the adjustment of rights *between the carriers* so that one does not bear an unfair burden. The insured cannot be the unilateral arbiter of fairness among carriers. "The purpose of this rule of equity is to accomplish substantial justice by equalizing the common burden shared by coinsurers, and to prevent one insurer from profiting at the expense of others." (*Fireman's Fund Ins. Co. v. Maryland Cas. Co.* (1998) 65 Cal.App.4th 1279, 1293.) Equitable contribution involves "[t]he reciprocal rights and duties of several insurers who have covered the same event"; the insured is not a party. (*Signal, supra,* 27 Cal.3d at p. 369.) Equitable contribution embodies Civil Code section 1432's mandate that "a party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him." That mandate has nothing to do with an insured's post-contracting interests.

Case law rejects the insured unilaterally choosing one among several available policies to ultimately bear the entire loss: "[W]here multiple insurers ... share equal contractual liability for the primary indemnification of a loss or the discharge of an obligation, the selection of which indemnitor is to bear the

loss should *not be left to the often arbitrary choice of the loss claimant.*" (*American States Ins. Co. v. National Fire Ins. Co. of Hartford* (2011) 202 Cal.App.4th 692, 706, fn. 8, cleaned up.) The so-called "selective tender" rule is "inconsistent with California law." (*Ibid.*)

A majority of jurisdictions agree, rejecting empowering an insured to selectively tender to or target a particular carrier, depriving that carrier of its equitable contribution right, especially, as here, in multi-policy-period circumstances. (E.g., *Insurance Co. of State v. Great Northern Ins. Co.* (Mass. 2016) 45 N.E.3d 1283, 1285-1286, 1288-1289 [policyholder cannot foreclose the targeted insurer's from seeking contribution from other insurers; workers compensation insurance context but recognizing more generally that "[t]he selective tender exception also does not accord with Massachusetts law governing general liability insurance"]; *Workers Compensation Fund v. Utah Business Ins. Co.* (Utah 2013) 296 P.3d 734, 736 [workers compensation insurance]; *Pennsylvania Gen. Ins. Co. v. Park-Ohio Industries* (Ohio 2010) 930 N.E.2d 800, 802 [progressive injury liability claim with "all sums" coverage approach]; see *Illinois School Dist. Agency v. St. Charles Community Unit School Dist. 303* (Ill.Ct.App. 2012) 971 N.E.2d 1099, 1108-1109 (*Illinois School*) [Illinois is one of the "*very small minority* of states that employ the targeted tender doctrine," italics added].)[7]

[7] See also *Cargill, Inc. v. Ace American Ins. Co.* (Minn.Ct.App. 2009) 766 N.W.2d 58, 61, 65, aff'd on other grounds (Minn. 2010)

Even the small minority of states recognizing a selective/targeted tender rule *don't* apply the rule to *consecutive* period insurance policies—and thus wouldn't apply it here. (*Federal Ins. Co. v. Binney & Smith, Inc.* (Ill. 2009) 913 N.E.2d 43, 58-60 [refusing to extend the targeted-tender doctrine to consecutive period insurance policies]; *Illinois School*, *supra*, 971 N.E.2d at pp. 1109-1110 [selective tender rule doesn't apply to chronologically consecutive policies]; Plitt et. al., Couch on Insurance (3d ed. 2022) § 200, p. 38 ["Insured's choice among multiple insurers," the selective tender rule, only adopted in "[a] minority of jurisdictions" and doesn't apply to consecutive policies].)

Armstrong World Industries, Inc. v. Aetna Casualty & Surety Co. (1996) 45 Cal.App.4th 1, does not hold otherwise. It welds the principle that the insured *initially* may select a carrier to hold liable "in full" (*id.* at pp. 48-50) to ultimately allocating the loss among all triggered policies: "[T]he policyholder must be indemnified by one insurer for the full extent of the loss up to the policy's limits, *but with liability ultimately being apportioned*

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784 N.W.2d 341 (court could impose "constructive loan receipt agreement"—equivalent to equitable contribution—even if seeking contribution from other carriers might make insured "responsible for additional deductible payments and retentions"; "'[w]ho should pay the insured's defense costs should not depend on the whim or caprice of the insured, when, at the time the defense was needed, [numerous] insurers arguably had a duty to defend'"); *Matter of Crum & Forster Org. v. Morgan* (N.Y.App.Div. 1993) 596 N.Y.S.2d 472 (absent prejudice to carrier, insured's failure to give notice to that carrier does not bar contribution).

among all insurers." (*Id.* at p. 49, italics added; see *id.* at pp. 51-55 [discussing apportionment in that case].)

Montrose III, *supra*, agrees: "[T]he critical difference between a rule of vertical exhaustion and horizontal exhaustion thus *is not whether a single disfavored* excess *insurer* will be made to carry a disproportionate burden of indemnification, but instead whether *the administrative task of spreading the loss* among insurers is one that must be borne by the insurer instead of the insured." (9 Cal.5th at p. 236, italics added.)[8] So does *State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186: "When the entire loss is within the limits of one policy, the insured can recover from that insurer, *which may then seek contribution from the other insurers on the risk during the same loss*." (*Id.* at p. 200, italics added.)

An insured's objectively reasonable expectations at the time of contracting support a targeted carrier's right to seek equitable contribution. (See Civ. Code, §§ 1636, 1649; *Safeco Ins. Co. of America v. Robert S.* (2001) 26 Cal.4th 758, 766 [insured's relevant reasonable expectations are those at time of contracting].) When an insured obtains insurance covering a

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[8] See also: "[N]othing about the rule of vertical exhaustion requires a single insurer to shoulder the burden of indemnification alone. As we explained in the context of primary insurance, 'the obligation of successive primary insurers to cover a continuously manifesting injury is a separate issue from the obligations of the insurers to each other.' [Citation.]… The exhaustion rule does not alter the usual rules of equitable contribution between insurers." (*Montrose III*, *supra*, 9 Cal.5th at p. 236.)

particular policy period, the insured expects that policy to cover losses occurring during that policy period. Equitable contribution is entirely consistent with that expectation. The insured receives exactly what it reasonably expected when it obtained each policy—full coverage from that policy for that policy period on the terms promised. Allowing a carrier to escape its fair share (even if that is after-the-fact what the insured desires) contradicts those contracting-time reasonable expectations.

An insured's reasonable expectations at the time of contracting often differ from the result that subsequently might best promote the insured's interests. (See *Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 873 [insured would not reasonably expect two related errors to constitute two claims under the policy]; *Bank of the West*, 2 Cal.4th at pp. 1265-1266, 1270 [insured's reasonable expectations would not include coverage for Unfair Competition Act claims which are limited to restitution].) This is true even when the insured may be less well off as a result of enforcing policy provisions. (E.g., *Western Polymer Technology, Inc. v. Reliance Ins. Co.* (1995) 32 Cal.App.4th 14, 26-27 [carrier's exercise of its right to settlement injured insured's business reputation]; *New Hampshire Ins. Co. v. Ridout Roofing Co.* (1998) 68 Cal.App.4th 495, 504-505 [carrier's settlement of claims using insured's deductibles].)

Here, Kaiser Cement's objectively reasonable expectations at the time of contracting with each of the carriers were that each carrier would be responsible for losses that occurred in that

carrier's policy period, including as primary insurance once scheduled underlying insurance exhausted. Its reasonable expectations even as to the older London Market policies—not containing the continue-in-force language—was that those carriers would stand in the first position as to indemnity for claims once the scheduled underlying insurance exhausted. Equitable contribution rules do not and cannot depend on an insured's often-varying post-contracting perceptions of its interests.

The rule that Kaiser Cement and respondent carriers seek—a rule that lets the insured, after the fact, dictate equitable contribution—is a recipe for guaranteed chaos. Equitable contribution would vary, despite identical coverage circumstances and identical policy language, depending on the after-the-fact desires of particular insureds. Identical language could yield different results. There are myriad reasons why an insured might want a particular allocation, e.g., differing aggregate policy limits (as here); retroactive premium calculations; seeking to placate a current carrier; allocating losses to dates outside of loss runs used to calculate premiums. No carrier can know in advance what might ultimately motivate the insured. The proposed rule would discourage carriers from resolving equitable contribution claims informally and would almost always require court intervention.

And what happens under the proffered rule if the insured's interests change?[9] For example, as asbestos claims age and only trigger Truck policies with aggregate limits, will Kaiser Cement change its views? The proposed approach would prevent a rational legal framework because equitable contribution obligations would become ever malleable and ever shifting.

And what about the other equitable contribution contexts? If a passenger-wife is injured in a vehicle accident caused, in part, by her husband's driving and sues only the other driver, may the plaintiff-wife bar the other driver from seeking equitable contribution from her partially at-fault driver-husband? The answer, of course, is no. But if third parties cannot dictate equitable contribution in this context, the same should be true in the insurance-coverage context. Respondents do not and cannot offer any precedent or legitimate reason to differentiate between the various equitable contribution contexts.

Lastly, the proposed approach would hurt insureds' interests in the long run. Under the current, majority rule, the carrier tagged to initially cover the insured's loss has every incentive to comply, as it knows it can obtain equitable contribution from other carriers. But if that initially tagged carrier can be denied contribution depending on the insured's

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[9] For example, Kaiser Cement initially chose to treat each policy period as a single asbestos claim. (See *London Market Insurers v. Superior Court* (2007) 146 Cal.App.4th 648.)

perhaps variable views, that carrier will have every incentive to avoid paying full coverage and to fight tooth and nail in court.

IV. Law Of The Case And Judicial Estoppel Are Irrelevant Here.

Tucked away at the end of respondent carriers' brief (AB 64-67) is a cursory argument that the Court of Appeal's nearly decade-old decision in *Kaiser Cement and Gypsum Corp. v. Insurance Co. of State of Pennsylvania* (2013) 155 Cal.Rptr.3d 283 (*ICSOP*) bars Truck's equitable contribution claim as law of the case and judicial estoppel. If these doctrines were truly determinative, they would have been the lead argument. The argument is last because it is spurious.

Respondent carriers mistake that the Court of Appeal here applied law of the case to "Truck's current [Supreme Court] arguments." (AB 65, citing *Truck Insurance Exchange v. Kaiser Cement* (Cal.Ct.App. Jan. 7, 2022, No. B278091) 2022 WL 71771 at *20 (*Truck*).) The Court of Appeal only mentioned law of the case in rejecting Truck's "Phase II" argument regarding apportioning losses among *its own* primary policies, which was "not a theory of equitable contribution." (See *id.* at *16-20.) It did *not* mention law of the case in resolving "Truck's current argument" before this Court, the "Phase III-A" equitable contribution issue. (See *id.* at *22-29 [Phase III-A analysis].) Nor did the Court of Appeal mention "judicial estoppel."

That the Court of Appeal did not rely on either doctrine in its Phase III-A analysis speaks volumes. For starters, both doctrines are *discretionary*. (See *Clemente v. State of California*

(1985) 40 Cal.3d 202, 212 (*Clemente*) [law of the case doctrine]; *Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986 (*Aguilar*) [judicial estoppel doctrine].) If the Court of Appeal did not see fit to rely on either doctrine, this Court shouldn't either. In granting review, this Court presumably viewed the issues as having broader impact that just what a prior, unpublished opinion might dictate.

Regardless, respondent carriers' argument fails on the merits: Neither doctrine applies because *ICSOP* did not address the current equitable-contribution issue. (See *Di Genova v. State Bd. of Ed.* (1962) 57 Cal.2d 167, 179 ["[t]he doctrine of the law of the case does not extend to points of law which might have been but *were not presented and determined* on a prior appeal," italics added]; *Kowis v. Howard* (1992) 3 Cal.4th 888, 892-893 [law of the case doctrine only applies to principles "necessary to the decision"]; *Aguilar*, *supra*, 32 Cal.4th at pp. 986-987 [judicial estoppel only applies where party took two "totally inconsistent" positions].

ICSOP, *supra*, only concerned whether primary coverage under Truck's nineteen years of policies was mutually exclusive such that only one Truck primary policy would be triggered before the excess carrier over Truck's policies had to contribute. (See 155 Cal.Rptr.3d 283.) Nothing in that decision *necessarily* implicates whether *Truck* can obtain equitable contribution from other carriers, outside of its 19-year coverage period—carriers that promised to "continue in force as underlying insurance" as soon as same-policy-year scheduled underlying insurance

exhausted. Nowhere does *ICSOP* discuss Truck's equitable contribution rights against carriers in policy years outside of its 19 years of coverage. The term "equitable contribution" appears just once in *ICSOP*—in describing a cause of action that Truck added in an amended complaint. (155 Cal.Rptr.3d at p. 287.) Nowhere does *ICSOP* mention, let alone analyze, *Community Redevelopment* or *any* of the other cases that the Court of Appeal relied on here and that respondents now tout.

Both doctrines also are inapplicable in light of intervening decisions, i.e., *Montrose III* and *Santa Fe Braun*. The doctrines do not apply where the "controlling rules of law have been altered or clarified by a decision intervening between the first and second appellate determinations." (*People v. Stanley* (1995) 10 Cal.4th 764, 787 [law of the case]; see *Clemente*, *supra*, 40 Cal.3d at p. 212 ["The principal ground for making an exception to the doctrine of law of the case is an intervening or contemporaneous change in the law."]; *Saleh v. Bush* (9th Cir. 2017) 848 F.3d 880, 887, fn. 5 [judicial estoppel inapplicable where "new position rests on an intervening change in law"].)[10]

This Court decided *Montrose III* seven years after *ICSOP*. Between the two, *Montrose III*'s principles govern, especially

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[10] Judicial estoppel is also irrelevant because Truck "lost the [purportedly estopping] horizontal exhaustion issue in *ICSOP*." (AB 65.) Judicial estoppel only estops a party *victorious* in the first proceeding which later posits an incompatibly contrary position. (*Aguilar*, *supra*, 32 Cal.4th at p. 986.)

measured against, at most, off-hand *ICSOP* language in deciding a *different* issue.

CONCLUSION

Having paid hundreds of millions of dollars defending, settling, and indemnifying decades of asbestos-liability claims, Truck Insurance Exchange may seek equitable contribution from other carriers whose policies equally have been triggered. *Montrose III*'s reading of "other insurance" provisions and the "continue in force as underlying insurance" promises triggered upon exhausting only specific, scheduled, same-policy-period underlying insurance leave no doubt that respondent carriers owe shared obligations with Truck.

The Court of Appeal's and the trial court's categorical bar on equitable contribution must be reversed. The matter should be remanded to the trial court to exercise its equitable powers in the first instance.

Date: November 18, 2022

PIA ANDERSON MOSS HOYT, LLC
Scott R. Hoyt
Adam L. Hoyt

GREINES, MARTIN, STEIN & RICHLAND LLP
Robert A. Olson
Edward L. Xanders

By: */s/ Robert A. Olson*
Robert A. Olson

Attorneys for TRUCK INSURANCE EXCHANGE

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this **REPLY BRIEF** contains **8,393** words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: November 18, 2022 *\/s\/ Robert A. Olson*
Robert A. Olson

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036, my email address is gwest@gmsr.com.

On November 18, 2022, I served the foregoing document(s) described as: **REPLY BRIEF** on the interested party(ies) in this action, addressed as follows:

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Executed this November 18, 2022 at Los Angeles, California.

(X) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Gwendolyn West
Gwendolyn West

Truck Insurance Exchange v. Kaiser Cement and Gypsum Corp.
Supreme Court Case No. S273179

SERVICE LIST

THE COOK LAW FIRM, P.C.
*Philip E. Cook, Esq.
pcook@cooklawfirm.la
Brian J. Wright, Esq.
bwright@cooklawfirm.la
601 South Figueroa Street, Suite 2050
Los Angeles, California 90017
Attorneys for Defendant, Cross-Complainant, Appellant, and Respondent *KAISER CEMENT* and *GYPSUM CORPORATION*

Deborah A. Aiwasian, Esq.
Deborah.Aiwasian@mclolaw.com
AIWASIAN & ASSOCIATES
725 South Figueroa Street, Suite 1050
Los Angeles, California 90017
Attorneys for Defendant and Respondent *WESTCHESTER FIRE INSURANCE COMPANY* (With Respect To International Insurance Company Policy No. 5233172273)

Wendy E. Schultz, Esq.
wschultz@spcclaw.com
SINNOTT, PUEBLA, CAMPAGNE & CURET, APLC
515 S. Figueroa St., Ste. 1460
Los Angeles, CA 90071
Attorneys for Defendant, Respondent and Cross-Appellant *THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA (ICSOP)*; and Defendant and Respondent *GRANITE STATE INSURANCE COMPANY*

Everett W. Jack, Jr., Esq.
everettjack@dwt.com
Lawrence B. Burke, Esq.
larryburke@dwt.com
DAVIS WRIGHT TREMAINE LLP
1300 SW Fifth Avenue, Suite 2400
Portland, Oregon 97201-5630
Attorneys for Defendant and
Respondent *TRANSPORT INSURANCE COMPANY* (as
successor-in-interest to *TRANSPORT INDEMNITY COMPANY*)

Giuseppe Castaldi, Esq.
gcastaldi@tlsslaw.com
TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP
11770 U.S. Highway One, Suite 402E
Palm Beach Gardens, Florida 33408
Attorneys for Defendant and Respondent *EVANSTON INSURANCE COMPANY* as successor by merger with *ASSOCIATED INTERNATIONAL INSURANCE COMPANY* and *TIG INSURANCE COMPANY* (formerly known as *TRANSAMERICA INSURANCE COMPANY* and as successor by merger to *INTERNATIONAL INSURANCE COMPANY*

Brian A. Kelly, Esq.
bakelly@duanemorris.com
*Paul J. Killion, Esq.
pjkillion@duanemorris.com
Kathryn T.K. Schultz, Esq.
kkschultz@duanemorris.com
DUANE MORRIS LLP
Spear Tower One Market Plaza, Suite 2200
San Francisco, California 94105-1127
Attorneys for Defendants, Respondents, and Cross-Appellants, *LONDON MARKET INSURERS*

Elizabeth M. Brockman, Esq.
ebrockman@selmanlaw.com
Calvin S. Whang, Esq.
SELMAN BREITMAN LLP
11766 Wilshire Blvd., 6th Floor
Los Angeles, California 90025
Attorneys for Defendants and Respondents *NATIONAL CASUALTY COMPANY* and *SENTRY INSURANCE* a Mutual Company, as assumptive reinsurer of *GREAT SOUTHWEST FIRE*

G. David Godwin, Esq.
david.godwin@squirepb.com
Tania L. Rice, Esq.
tania.rice@squirepb.com
SQUIRE PATTON BOGGS (US) LLP
275 Battery Street, Suite 2600
San Francisco, California 94111
Attorneys for Cross-Defendant and Respondent *CONTINENTAL INSURANCE COMPANY* (for itself and its successor to certain policies issued by *LONDON GUARANTEE & ACCIDENT COMPANY OF NEW YORK*

Mark D. Plevin, Esq.
mplevin@crowell.com
Christine E. Cwiertny, Esq.
ccwiertny@crowell.com
CROWELL & MORING LLP
Three Embarcadero Center, 26th Floor
San Francisco, CA 94111
Attorneys for Defendants and Respondents *FIREMAN'S FUND INSURANCE COMPANY* and *ALLIANZ UNDERWRITERS INSURANCE COMPANY* f/k/a *ALLIANZ UNDERWRITERS*

Alan J. Weil, Esq.
aweil@kbkfirm.com
KENDALL, BRILL & KELLY LLP
10100 Santa Monica Boulevard, Suite 1725
Los Angeles, California 90067-2513
Defendants and Respondents *FIRST STATE INSURANCE COMPANY* et al.

Edward B. Parks, II, Esq.
eparks@ruggerilaw.com
RUGGERI PARKS WEINBERG, LLP
1875 K Street NW, Suite 600
Washington, DC 20006
Defendants and Respondents *FIRST STATE INSURANCE COMPANY* et al.

VIA U.S. MAIL AND TRUEFILING:

The Honorable Kenneth Freeman
c/o Court Counsel, Frederick Raymond Bennett III
Los Angeles Superior Court
111 North Hill Street
Los Angeles, California 90012-3117
T: (213) 633-8597
E: fbennett@lacourt.org
E: pnguyen1@lacourt.org
[Superior Court Case No. BC249550]

CA Supreme Court Court Name	**PROOF OF SERVICE**	S273179 Case Number

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Duane Morris		2b6da9c9-880f-4a71-b2ef-7a3f0e83a139	
Wendy E. Schultz	wschultz@spcclaw.com	e-Serve	11-18-2022 1:43:08 PM
Sinnott, Puebla, Campagne & Curet		54b7f6e1-cc59-4630-860b-60fac7333b9d	
Brian Wright	bwright@cooklawfirm.la	e-Serve	11-18-2022 1:43:08 PM
The Cook Law Firm, P.C.		632ca92d-3905-4653-9638-5e0513aaba50	
Geoffrey Godwin	david.godwin@squirepb.com	e-Serve	11-18-2022 1:43:08 PM
Squire Patton Boggs (US) LLP		cde27c72-78ed-4074-ba53-9ef4e6e99652	
Rosemary Clough	rosemary.clough@mclolaw.com	e-Serve	11-18-2022 1:43:08 PM
Aiwasian & Associates		21c813fa-f078-480d-ba25-11f149c78b67	
Elizabeth Brockman	ebrockman@selmanlaw.com	e-Serve	11-18-2022 1:43:08 PM
Selman Breitman LLP		90f7a192-5567-4b67-8239-1c2ed6a792ab	
Philip Cook	pcook@cooklawfirm.la	e-Serve	11-18-2022 1:43:08 PM
The Cook Law Firm, P.C.		65fbe981-5aea-42e9-a6e8-c4b3eb31db7b	
Calvin Whang	cwhang@selmanlaw.com	e-Serve	11-18-2022 1:43:08 PM
Selman Breitman LLP		7a8af309-6a04-4e72-ae59-990f5000f9a4	
Victoria Domantay	VCDomantay@duanemorris.com	e-Serve	11-18-2022 1:43:08 PM

Duane Morris		d9ea7428-8e43-4b35-a193-601f0da21e0d	
Deborah Aiwasian	Deborah.Aiwasian@mclolaw.com	e-Serve	11-18-2022 1:43:08 PM
Aiwasian & Associates		a99c5db3-bedb-4181-b740-f82446be3490	
Robert Olson	rolson@gmsr.com	e-Serve	11-18-2022 1:43:08 PM
Greines, Martin, Stein & Richland LLP		c6dace3b-4c44-41d8-89b6-5e28d6ca5a06	
Paul Killion	PJKillion@duanemorris.com	e-Serve	11-18-2022 1:43:08 PM
Duane Morris		5bd66f92-c0a3-4670-a410-8f38e6069032	
Giuseppe Castaldi	gcastaldi@tlsslaw.com	e-Serve	11-18-2022 1:43:08 PM
Traub Lieberman Straus & Shrewsberry, LLP		27d1d918-7060-43c0-9905-e11263d4bc03	
Marsha Conte	marsha.conte@mclolaw.com	e-Serve	11-18-2022 1:43:08 PM
Aiwasian & Associates		8acee9ff-89e4-4e32-8375-662c1295659a	
Mark Plevin	mplevin@crowell.com	e-Serve	11-18-2022 1:43:08 PM
Crowell & Moring, LLP		9b993162-daf1-49cc-89ad-81cdde5c5bda	
Edward L. Xanders	exanders@gmsr.com	e-Serve	11-18-2022 1:43:08 PM
Greines, Martin, Stein & Richland, LLP		e754b47d-dff4-41ae-91c4-4c535cdc7335	
Alan Weil	ajweil@kbkfirm.com	e-Serve	11-18-2022 1:43:08 PM
Kendall, Brill & Kelly LLP		63122ee2-7b14-4596-a1a1-7890643115d7	
Scott Hoyt	shoyt@pamhlaw.com	e-Serve	11-18-2022 1:43:08 PM
Pia Anderson Moss Hoyt		e4b95385-baa9-4585-81b8-3e7890fb72d8	
Gwendolyn West	Gwest@gmsr.com	e-Serve	11-18-2022 1:43:08 PM
		0ed25522-d7c1-4983-9ec9-39145c368463	
Tania L. Rice	tania.rice@squirepb.com	e-Serve	11-18-2022 1:43:08 PM
		ce021da6-568e-4f14-b0cc-c6f2daec2ce2	
Edward B. Parks, II, Esq.	eparks@ruggerilaw.com	e-Serve	11-18-2022 1:43:08 PM
		7615efd4-139d-45a2-a898-6065bd768a9b	
Los Angeles Superior Court	fbennett@lacourt.org	e-Serve	11-18-2022 1:43:08 PM
		9ca22923-4645-4331-baf4-e4740b282366	
Los Angeles Superior Court	pnguyen1@lacourt.org	e-Serve	11-18-2022 1:43:08 PM
		c3f8e9b9-70a6-4530-8ef6-53e4467f4cb5	

TrueFiling created, submitted and signed this proof of service on my behalf through my agreements with TrueFiling.
The contents of this proof of service are true to the best of my information, knowledge, and belief.

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

11-18-2022
Date

/s/Gwendolyn West

Signature

Olson, Robert (109374)

Last Name, First Name (Attorney Number)

Greines Martin Stein & Richland LLP

Firm Name