G057326

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

PACIFIC PIONEER INSURANCE COMPANY on behalf of its named insured Defendant Jonathan Johnson,

Petitioner,

v.

SUPERIOR COURT OF ORANGE COUNTY,

Respondent,

VANESSA GONZALEZ,

Real Party in Interest.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL'S AMICUS CURIAE LETTER BRIEF IN SUPPORT OF PETITIONER [CAL. R. CT. 8.487(e)]

Petition From an Order of the Orange County Superior Court
Hon. Carmen Luege (Super. Ct. No. 30-2018-00987364-SC-SC-CJC)

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL'S AMICUS CURIAE LETTER BRIEF IN SUPPORT OF PETITIONER [CAL. R. CT. 8.487(e)]

Hon. Justices William W. Bedsworth,
Richard D. Fybel and Thomas M. Goethals
California Court of Appeal
Fourth Appellate District, Division Three

Honorable Justices:

On March 4, 2019, Association of Southern California Defense Counsel (ASCDC or Association) electronically submitted by True Filing an amicus curiae letter brief pursuant to California Rules of Court rule 8.487 in support of the petition for writ of mandate, certiorari and/or other appropriate relief filed by Petitioner Pacific Pioneer Insurance Company (hereafter Pacific Pioneer or petitioner). Because the California Judicial Council only recently clarified that the rule 8.487 letter brief procedure also applies to a pending writ petition (where an alternative writ or order to show cause has not yet been granted), ASCDC asked the Court in the introduction to treat its letter as a formal application to file an amicus brief in support of the petition. Yesterday, counsel for ASCDC received a message from the Clerk's office advising that the Court and its staff prefer to have rule 8.487 amicus curiae letters formally submitted with a separate application for leave to file in the same manner as other amicus curiae briefs.

This application follows.

Authority for Amicus Curiae's Support of a Writ Petition

Rule 8.487(e) of the California Rules of Court expressly permits the filing of amicus briefs by interested persons after an appellate court grants a writ petition seeking an alternative writ or order to show cause. (Cal. Rules of Court, rule 8.487(e)(1).) Moreover, the Judicial Council's Advisory Committee Comment to Rule 8.487(e) (Jan. 1, 2017) clarifies that amicus curie letters are also permissible to support a petition before the alternative writ or order to show cause is issued: The rule extends authority to consider such letters "*before the court has determined whether to issue an alternative writ or order to show cause* or when it notifies the parties that it is considering issuing a peremptory writ in the first instance." (Comments to rule 8.487(e), italics added.) (ASCDC was among interested commenters who asked the Judicial Council for this clarification in 2016.) ASCDC well understands that the ability to submit amicus letters—like the extraordinary nature of the relief sought by an original writ petition itself—will be used sparingly. To address issues of significant importance and concern to the public and to legal community. As in this case.

Divisions of the Second Appellate District have stated in a published opinions that amicus letters filed in connection with writ petitions were among the factors considered in deciding whether to issue an order to show cause. (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557-558 [Second Dist., Div. Seven: noting that amicus letters were filed in support of a writ petition and that "based on the amici curiae submissions

we have received" the matter "appears to be of widespread interest" such that writ review was appropriate]; see also *Los Angeles County Bd. Of Supervisors v. Superior Court of Los Angeles County* (2015) 235 Cal.App.4th 114 [Second Dist., Div. Three: "The Association of Southern California Defense Counsel, as amicus curiae, filed a letter in support of issuance of the writ"], *rev'd* (2016) 2 Cal.5th 282, *opn. after remand* (2017) 12 Cal.App.5th 1264.)

Therefore, ASCDC asks the Court to consider its accompanying amicus curiae letter brief in deciding whether an alternative writ or order to show cause should issue so that the Court can address the important question of statutory interpretation raised by Pacific Pioneer's petition and that issue can ultimately be resolved on its merits.

Identity and Interest of Amicus Curiae ASCDC

ASCDC is among the nation's largest and preeminent regional organizations of trial and appellate lawyers devoted to defending civil actions, comprised of approximately 1,100 attorneys in Southern and Central California. ASCDC is actively involved in assisting the courts and organized bar in addressing legal issues of interest to its members and the public.

ASCDC is actively involved in assisting courts in addressing legal issues of interest to its members and the public. In addition to writ proceedings identified above, ASCDC has appeared as amicus curiae on numerous occasions in cases of interest to the legal community. (E.g, *Parrish v. Latham & Watkins* (2017) 3

Cal.5th 767; *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536; 3 Cal.5th 767; and *Lee v. Hanley* (2016) 61 Cal.4th 1225.)

ASCDC is substantially interested in the proper development of California law concerning the procedural rights afforded to parties and interested participants in all phases of civil litigation, including the statutory right of insurers to appeal in small claims actions at issue in this case.

Request for Leave to File Amicus Curiae Letter Brief

Review on the merits is necessary because the petition raises an important issue regarding the statutory right of an insurance company to appeal from a small claims court decision under Code of Civil Procedure section 161.710, subdivision (c)—when the insurer's policyholder (the defendant named in the small claims action) fails to notify the insurer, fails to defend the claim and a default judgment is entered that the small claims plaintiff thereafter attempts to enforce directly against the insurer.

As explained more fully in the amicus letter, the plain language of section 161.701, particularly when read in the context of the 1990 amendments of the Small Claims Act, clearly extends a separate right in favor of an insurance company in the position of Pacific Pioneer to appeal from a small claims court judgment against its insured. Legislative history submitted by petitioner independently supports that conclusion. (See Petition Ex. K [R. p. 141]; Ex. L [R. at p. 143]; ASCDC Letter at pp. 7-9.) Contrary to the

trial court's decision, section 161.710(c) contemplates the specific circumstances a defendant who is insured by an automobile liability carrier, and who "defaults" by failing to appear at trial in the small claims case. The Small Claims Act conveys a statutory right of appeal in favor of the insurance company (which cannot intervene or appear at the small claims hearing when its insured defaults); and that right to appeal is counterbalanced by sanctions that that were also enacted by the 1990 amendments of the Act which may be imposed against any appellant (including an insurer) if the Superior Court ultimately finds the appeal to be frivolous.

Accordingly, the Association requests leave pursuant to rule 8.487(e) to file its amicus curiae letter brief in support of Pacific Pioneer's petition for extraordinary relief.[1] A [Proposed] Order granting leave to file the letter is submitted herewith.

Dated: March 6, 2019

Respectfully submitted,

BUCHALTER
A PROFESSIONAL CORPORATION

By:_____

Attorneys for Amicus Curiae
ASSOCIATION OF SOUTHERN
CALIFORNIA DEFENSE COUNSEL

[1] ASCDC's amicus letter that was submitted electronically on March 4, 2019 accompanies this application. Typographical errors that appeared on Page 7 at lines 5 and 6 of the quoted legislative history materials have been corrected.

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FOURTH APPELLATE DISTRICT, DIVISION THREE

PACIFIC PIONEER INSURANCE COMPANY on behalf of its named insured Defendant Jonathan Johnson,

Petitioner,

v.

SUPERIOR COURT OF ORANGE COUNTY,

Respondent,

VANESSA GONZALEZ,

Real Party in Interest.

[PROPOSED] ORDER GRANTING LEAVE TO FILE ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL'S AMICUS CURIAE LETTER BRIEF IN SUPPORT OF PETITIONER [CAL. R. CT. 8.487(e)]

The Application of the Association of Southern California Defense Counsel for leave to file its amicus curiae letter brief in support of Petitioner has been considered by the Court, and good cause appearing, that application is hereby GRANTED.

IT IS SO ORDERED.

Dated:_____

_____
(ACTING) PRESIDING JUSTICE

ASCDC
ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

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March 4, 2019

Hon. Justices William W. Bedsworth,
Richard D. Fybel and Thomas M. Goethals
California Court of Appeal
Fourth Appellate District, Division Three
601 W. Santa Ana Boulevard
Santa Ana, California 92701

Re: *Pacific Pioneer Ins. Co. v. Superior Court of Orange County* No. G057326—Letter Brief in Support of Petition for Writ of Mandate and/or Other Relief (Cal. Rules of Court, rule 8.487)

Honorable Justices:

The Association of Southern California Defense Counsel (ASCDC or Association) submits this letter pursuant to California Rules of Court rule 8.487 in support of the petition for writ of mandate, certiorari and/or other appropriate relief filed by Petitioner Pacific Pioneer Insurance Company on behalf of its named insured Jonathan Johnson (hereafter Pacific Pioneer or petitioner). ASCDC requests that the Court issue an alternative writ or order to show cause in order to address the pending writ petition on its merits, and to the extent necessary, we ask the Court to treat this letter as a formal application to file this letter as an amicus brief in support of the petition.

Review on the merits is necessary because the petition raises an important issue regarding the statutory right of an insurance company to appeal from a small claims court decision under Code of Civil Procedure section 161.710, subdivision (c)—when the insurer's policyholder (the defendant named in the small claims action) fails to notify the insurer, fails to defend the claim and a default judgment is entered that the small claims plaintiff attempts to enforce directly against the insurer. (Unless stated otherwise, all statutory references are to the Code of Civil Procedure.) Contrary to the trial court's decision, section 161.710(c) contemplates these specific circumstances, and conveys a statutory right of appeal in favor of the insurance company.

Authority for Amicus Curiae Support for Pending Writ Petition

Rule 8.487 of the California Rules of Court expressly permits the filing of amicus briefs after an appellate court issues an alternative writ or order to show cause. (Cal. Rules of Court, rule 8.487(e)(1).) Moreover, the Judicial Council's Advisory Committee Comment to Rule 8.487 clarifies that amicus letters are also permissible before a court issues an alternative writ or order to show cause. Courts retain authority to permit such filings "*before the court has determined whether to issue an alternative writ or order to show cause* or when it notifies the parties that it is considering issuing a peremptory writ in the first instance." (Cal. Rules of Court, rule 8.487, italics added.)

Divisions of the Second Appellate District have stated in a published opinions that the filing of amicus letters in connection with writ petitions were among the factors those courts considered in deciding whether to issue an order to show cause. (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557-558 [Second Dist., Div. Seven: noting that amicus letters were filed in support of a writ petition and that "based on the amici curiae submissions we have received" the matter "appears to be of widespread interest" such that writ review was appropriate]; see also *Los Angeles County Bd. Of Supervisors v. Superior Court of Los Angeles County* (2015) 235 Cal.App.4th 114 [Second Dist., Div. Three: "The Association of Southern California Defense Counsel, as amicus curiae, filed a letter in support of issuance of the writ"], *rev'd* (2016) 2 Cal.5th 282, *opn. after remand* (2017) 12 Cal.App.5th 1264.)

Therefore, ASCDC asks the Court to consider this amicus letter in deciding whether an alternative writ or order to show cause should issue so that the Court can address the important question of statutory interpretation raised by Pacific Pioneer's petition can be determined on its merits.

Identity and Interest of Amicus Curiae ASCDC

ASCDC is among the nation's largest and preeminent regional organizations of trial and appellate lawyers devoted to defending civil actions, comprised of approximately 1,100 attorneys in Southern and Central California. ASCDC is actively involved in assisting the courts and organized bar in addressing legal issues of interest to its members and the public.

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ASCDC is substantially interested in the proper development of California law concerning the procedural rights afforded to parties and interested participants in all phases of civil litigation, including the statutory right of insurers to appeal in small claims actions at issue in this case.

Accordingly, the Association requests leave to file this amicus curiae letter brief in support of Pacific Pioneer's petition for extraordinary relief.

This Court Should Address Pacific Pioneer's Petition on the Merits

1. Published Authority is Necessary to Address the Insurer's Statutory Right to Appeal Under Section 161.710, subd. (c)

The statutory right of de novo appeal extended by the Legislature in favor of insurance companies is explicit when a small claims judgment is rendered against the named defendant, the insurer's policyholder—however, since the enactment of section 161.710, subdivision (c) in 1990 (AB 3916) various Superior Courts have applied that statutory right of appeal in an inconsistent and haphazard manner. Examination of the issue is warranted.

This is a question that is likely to recur and avoid meaningful appellate review on the merits. After de novo appeal of the small claim decision to the Superior Court, ordinarily the judgment is not subject to further appeal. (Code Civil Proc., § 116.780.) As such, "due to the informal nature of small claims proceedings, no precedential decision can ever be rendered in proceedings governed by the act. Thus, if law is to be made settling significant issues of small claims law or procedure, the appellate courts must have jurisdiction to entertain petitions for extraordinary review in these instances." (See *Houghtaling v. Superior Court* (1993) 17 Cal.App.4th 1128, 1131, citing *Davis v. Superior Court* (1980) 102 Cal.App.3d 164, 168.) As illustrated by this case.

2. Background and Procedural History

In April 2016, Pacific Pioneer's insured Jonathan Johnson was involved in a three-car accident with plaintiff Vanessa Gonzalez. The accident allegedly resulted in minor property damage and personal injuries, later resulting in Gonzalez filing a small claims action against Johnson. Johnson initially notified his insurer Pacific Pioneer of the accident. A dialogue began with Gonzalez' then-attorney and AFA Claims Services, a third party claims administrator for Pioneer. After approximately eighteen months, AFA told Sean Bauman, a new attorney representing Gonzalez, that Pacific Pioneer denied Gonzalez' claimed losses, concluding that Ruiz (the third driver) had admitted to making an unsafe lane change. (Petition at pp. 13-14.)

Mr. Bauman did not advise AFA that, on the eve of the expiration of the two-year statute of limitations, Gonzalez commenced a Small Claims Action against both Ruiz and Johnson. Johnson was apparently served with the small claims complaint; however, the insured likewise did not notify Pacific Pioneer or its agent that action was pending or of the June 1, 2018 hearing date. Johnson did not appear for trial on June 1, 2018, and judgment was taken against him by default for the amount of $10,140 in damages and costs. Attorney Bauman notified AFA of the small claims judgment by mail on or about June 27. (Petition at p. 14.)

Pacific Pioneer timely filed a notice of appeal from the judgment on July 6, but the Superior Court ordered the appeal stricken. (Petition at p. 14, Exs. G-H.) The trial court erroneously concluded that Johnson's failure to appear for trial negated the insurer's separate statutory right of appeal. (*Ibid.*)

The insurer petitioned for writ review on February 7, 2019. This Court granted an immediate stay of proceedings on February 8, and invited Real Party's informal response to the petition which Gonzalez filed on February 25.

3. The Legislature Counterbalanced the Limited Right of Insurance Companies to Participate in Small Claims Actions Against Their Policyholders by Affording Insurers the Statutory Right to Appeal De Novo to the Superior Court

Unlike other types of civil litigation, in small claims actions, an insurer is restricted from participating "at the hearing" on behalf of its insured—no attorneys may appear for either side at trial. (Code Civil Proc., § 116.531.)

This restriction is counterbalanced by the 1990 amendment of the Small Claims Act (AB 3916; Code Civil Proc. §§ 116.110 et seq.) affording the insurer its own right of appeal from an adverse decision that exceeds $2,500. In this regard, section 116.710, subdivision (c) provides:

> With respect to the plaintiff's claim, ***the insurer of the defendant may appeal the judgment to the superior court*** in the county in which the matter was heard if the judgment exceeds two thousand five hundred dollars ($2,500) and the insurer stipulates that its policy with the defendant covers the matter to which the judgment applies. (Emphasis added.)

The Legislature thus recognizes that an insurance company may ultimately bear the financial responsibility for lawsuits, including small claims actions, in which the insurer received notice and had the opportunity to defend. (*Jamestown Builders, Inc. v. General Star Indem. Co.* (1999) 77 Cal.App.4th 341, 345-450.) The insurer's ability to participate in litigation, and its ultimate duty to pay a judgment is dependent upon notice of the action. (*Ibid*; see also *Low v. Golden Eagle Ins. Co*. (2003) 110 Cal. App. 4th 1532, 1545-1546.)

"'An insurer ***that has been notified of an action*** and refuses to defend on the ground that the alleged claim is not within the policy coverage is bound by a judgment in the action, in the absence of fraud or collusion, as to all material findings of fact essential to the judgment of liability of the insured.'" (*Garamendi v. Golden Eagle Ins. Co.* (2004) 116 Cal.App.4th 694, 717–718 (*Garamendi*), emphasis added.) By virtue of California's post-judgment "direct action" statute, Insurance Code section 11580, subdivision (b)(2), "a judgment creditor who has prevailed in a lawsuit against an insured party may bring a direct action against the insurer subject to the terms and limitations of the policy." (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2006) 136 Cal.App.4th 212, 223 (*Kaufman & Broad*), citing *Garamendi*, *supra*, 116 Cal.App.4th at p. 709; Ins. Code, §11580, subd. (b)(2)].)

This exposure to such direct liability after judgment is entered against its insured has been repeatedly held sufficient to create a basis for an insurer's intervention in a third party action against the insured-defendant: "Intervention may ... be allowed in the insurance context, where third party claimants are involved, when ***the insurer is allowed to take over in litigation if its insured is not defending an action, to avoid harm to the insurer***." (*Royal Indemnity Co. v. United Enterprises, Inc.* (2008) 162 Cal.App.4th 194, 206, emphasis added; *Western Heritage Ins. Co. v. Superior Court* (2011)199 Cal.App.4th 1196, 1205 & fn.13 (*Western Heritage*).)

Consistent with the Legislature's acknowledgement of its ultimate financial interests in the outcome of a lawsuit, the courts have upheld an insurer's right to intervene in actions when the policyholder is unable or unwilling to defend. For example, insurers are permitted to intervene when the claimant has obtained a default against the insured. (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 884–885 (*Clemmer*); *Nasongkhla v. Gonzalez* (1994) 29 Cal.App.4th Supp. 1, 3–4.) Similarly, an insurer may intervene when its insured's answer has been stricken because its corporate status is suspended. (*Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 385–387 (*Reliance*).) As *Reliance* explained, "intervention by an insurer is permitted where the insurer remains [potentially] liable for any default judgment against the insured, and it has no means other than intervention to litigate liability or damage issues." (*Reliance, supra,* 84 Cal.App.4th at p. 385.) However, insurers cannot simply "intervene" in a small claims action.

Gonzalez' informal response suggests that the trial court was correct in refusing to consider the insurance company's separate right to appeal the small claims judgment because Johnson defaulted by failing to appear for trial. (Resp. to Petition at pp. 7-8.) Not so. The limitation on Johnson's right to appeal involves ***his non-appearance***, not the conduct of his insurer which was precluded by statute from appearing at the hearing. Accordingly, with respect to the non-appearing defendant, section 116.710, subdivision (d) states:

> A defendant who did not appear at the hearing has no right to appeal the judgment, but may file a motion to vacate the judgment in accordance with Section 116.730 or 116.740 and also may appeal the denial of that motion.

Appeals are creatures of statute; in other words, a person can only appeal if the appeal is authorized by statute. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 89-90; see, e.g., Code Civil Proc., § 904.1; Cal. Const., Art. IV, § 11.)

The separate subject matter—delineating the insurance company's independent right to appeal from the adverse judgment enumerated in subdivision (c), from the non-appearing defendant's waiver of his/her personal right under subdivision (d)—clearly articulates the Legislature's intent. The insurer's separate right of appeal is unaffected by an insured's non-appearance at trial in small claims court. If the law were otherwise, the Legislature could easily provide that a subdivision (c) appeal is similarly affected. It did not.

4. The Plain Meaning of Section 116.710(c) and the Legislative History of the 1990 Amendment of the Small Claims Act Make Clear That an Insurer's Right to Appeal Exists Separately From the Right of a Non-Appearing Insured Defendant

The "foremost task" of California courts when resolving questions of statutory interpretation is to "give effect to the Legislature's purpose." (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 293 Both Pacific Pioneer and Gonzalez maintain that their interpretation is only one that reflects the "true" meaning of the statute.

While the plain and objective meaning is, of course, the primary tool of judicial construction, the "plain language" of a particular statute may not always readily accomplish that task. (See *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1385; see also *id.* at p. 1392 (conc. opn. of Cuéllar, J.) ["understanding whether that meaning is plain is not a project well served by reading statutory provisions as isolated fragments. … 'To seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results.' … Instead our task is to consider the words of the text as part of a larger statutory project ….", internal citations omitted].)

Here, the clear language extending the separate right of Pacific Pioneer to appeal in the face of its insured's default is bolstered by reference to the 1990 legislative history of Assembly Bill 3916 that enacted section 116.710(c). (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 471 ["the legislative history of [the statute further] supports this conclusion"]; Petition, Exs. J-M [legislative history of AB 3916].) Pacific Pioneer's interpretation is also supported by contemporaneous enactments under the Small Claims Act placing the insurer's right to appeal in context of the statutory scheme "as a whole." (*Bay Cities Paving & Grading, Inc. v. Lawyers' Mut. Ins. Co.* (1992) 5 Cal.4th 854, 867.)

Gonzalez complains that the Legislature could not have reasonably intended that an automobile liability insurer should have standing to file its own appeal following a default judgment against its insured. According to her informal response, instead of simply "paying-up" when presented with Johnson's default judgment, petitioner "essentially asks this Court to allow the insurer an open-ended right of appeal. This is not what the legislature intended." (Resp. to Petition at p. 6.) Contrary to her arguments, the language of section 116.710(c) does exactly that, and the Legislature contemplated this very scenario when enacting the 1990 amendments of the Small Claims Act.

The Assembly Judiciary Committee's final report adopting the Senate's final amendments to AB 3916 spells out Real Party's stated concern. Balancing these competing interests, an insurer's right to separately appeal in the face of the insured's default was expressly adopted:

> The Senate amendments permit insurers to appeal small claims judgment against their insureds. Insurance companies argued that ***the right to appeal is necessary because their insureds might be either unable or not motivated to competently defend*** what is ultimately the insurer's interest. Concern has been raised, however, that the insurer's right to appeal is subject to abuse. Specifically, ***it is argued that insurers might use the appeal right as a means to intimidate or wear down a plaintiff who was prevailed in the small claims trial*** so that he or she will abandon the claim rather than relitigating at the superior court trial de novo.
>
> Petition, Ex. K, Assembly Comm. on Judiciary Report (Concurrence in Senate Amendments) A.B. 3916 (Aug. 28, 1990) (emphasis added).

Plainly and unequivocally, both in the text of section 116.710(c) and AB 3916's final Concurrence Report, the Legislature opted for the insurer's right to appeal under these specific circumstances—where plaintiff seeks payment of the small claims judgment not by the defaulted insured, *but by his insurer*.

In the final analysis, whether Johnson's default was the product of benign neglect or his total indifference to the outcome, Gonzalez fares no better or worse when attempting to collect her "default judgment" in the face of the insured's failure to notify Pacific Pioneer that a small claims action was pending. That is so because in plaintiff's direct action to collect on the judgment, under Insurance Code section 11580 (b)(2) any policy defenses (e.g., the policyholder's failure to provide timely notice) or other breaches of the contract may be raised by the insurer. (*Low v. Golden Eagle Ins. Co.*, *supra*, 110 Cal. App. 4th at pp. 1545-1546; *Reliance, supra,* 84 Cal.App.4th at p. 385; *Western Heritage*, *supra*, 199 Cal.App.4th at pp. 1205-1208.) Pacific Pioneer would have no right to intervene in a small claims case to prevent that outcome even if it had been notified. In such circumstances, the insurer is ***not bound*** procedurally by the outcome of issues that its defendant-insured was unable or unwilling to competently defend. When that right does accrue, as Due Process requires, an intervening insurer may proceed to address the merits of *any* liability or damages issues raised in plaintiff's action for which it might be obligated to pay a judgment. (*Id.* at pp. 1206-1208, digesting cases.)

On the other hand, the Legislature has enacted financial disincentives against the exercise of any de novo appeal taken simply for the purpose of "dragging out" or delaying the inevitable payment of the judgment. Under the existing version of the Small Claims Act, an unsuccessful appellant (here Pacific Pioneer) may be liable to pay an additional $2,000 for attorney fees and plaintiff's personal expenses should the Superior Court eventually determine the de novo appeal was pursued without substantial merit. (Code of Civil Proc., § 116.790; Petition at p. 27.) If plaintiff ultimately prevails, the Superior Court judgment is enforceable against both the insured-defendant *and* the insurer.

The proper focus remains on addressing *the merits* of the claims alleged, after affording meaningful notice and opportunity to contest the action.

Conclusion

This Court should grant an alternative writ or order to show cause, and resolve the important question of whether an insurer has an independent right of appeal under section 116.710, subdivision (c) when its insured defaults in a small claims action by failing to appear for trial.

Respectfully submitted,

BUCHALTER
A Professional Corporation

By: _____

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Attorneys for Association of
Southern California Defense Counsel

cc: See attached Service List

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, State of California. I am over 18 years of age and not a party to this action. My business address is BUCHALTER, A Professional Corporation, 500 Capitol Mall, Suite 1900, Sacramento, CA 95814.

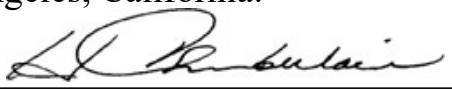
I served the document described as **Application for Leave to File Amicus Curiae Brief and ASCDC Letter Brief in Support of Petition for Writ of Mandate, Certiorari and/or Other Relief (Cal. Rules of Court, rule 8.487)** by the following means:

[X] (BY ELECTRONIC SERVICE VIA TRUEFILING) Based on court order or statutory procedure, I caused the above-entitled document to be served through TrueFiling, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited, or maintained with the original documents in this office. **To the Addressees identified on the attached SERVICE LIST.**

[X] (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid. **To the Addressees identified on the attached SERVICE LIST.**

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

Executed March 6, 2019 at Los Angeles, California.



Harry W.R. Chamberlain II

SERVICE LIST

Party	Attorney
Attorneys for Plaintiff and Real Party in Interest VANESSA GONZALEZ By Electronic Service and U.S Mail	Shaun Bauman (SBN 277067) Thanos Simoudis (SBN 314930) 6800 Owensmouth Avenue, Suite 410 Canoga Park, CA 91303 Telephone: (818) 285-0222 Email: info@thela-lawyer.com
Attorneys for Petitioner PACIFIC PIONEER INSURANCE COMPANY, on behalf of its named insured Defendant Jonathan Johnson By Electronic Service and U.S. Mail	Dwayne S. Beck (SBN 160917) James S. Colfer (SBN138155) DWAYNE S. BECK & ASSOCIATES, APC 6830 Palm Avenue Riverside, CA 92506 Telephone: (951) 779-6030 Email: dbeck@dbecklaw.com jcolfer@dbecklaw.com

Case No.	Court Address
Court of Appeal No. G057326 By Electronic Filing/Service + 4 copies by U.S. Mail	Clerk, California Court of Appeal Fourth Appellate District, Division Three 601 W. Santa Ana Boulevard Santa Ana, California 92701
Respondent Superior Court of Orange County Case No. 30-2018-00987364-SC-SC-CJC By U.S. Mail Only	Clerk, Superior Court of Orange County For Hon. Carmen Luege, Commissioner Department C61 700 Civic Center Drive West Santa Ana, CA 92701 Telephone: (657) 622-5261