2025 WL 3191693 (Cal.App. 6 Dist.) (Appellate Brief)
Court of Appeal, Sixth District, California

American Abalone Farms, LLC, Plaintiff and Appellants,
v.
Star Insurance Company and Ameritrust Group, Inc., Defendants and Respondents.

No. H052643
November 06, 2025.

Appeal from the Superior Court of the State of California for the County of Santa Cruz,
Case No. 22CV02083
Honorable Timothy Schmal, Judge Presiding

Respondents' Brief of Star Insurance Company and Ameritrust Group, Inc.

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INTRODUCTION AND BRIEF SUMMARY OF FACTS

This is an appeal from a summary judgment in favor of Defendants/Respondents Star Insurance Company and AmeriTrust Group, Inc. The appealed decision concerns insurance coverage for farm products – in this case, abalone – which were grown at an abalone farm in Davenport, California. The farm was owned by Plaintiff/Appellant American Abalone LLC.

Appellant was raising abalone in tanks on the farm. Each tank was attached to a device or devices that fed oxygen and sea water into the tank. The abalone could only survive for about eight hours without fresh oxygen. During the CZU Lightening Complex fire in August of 2020, road closures and power outages prevented the insured from tending to the abalone tanks and keeping the mechanized pumps in operation, and as a result most of the abalone died.

Respondent Star Insurance Company issued an Agricultural Property and Agricultural Liability policy to Appellant. During and after the time of the CZU fire in 2020, Appellant submitted two insurance claims: the first was for loss of business income while the roads were closed; the second was for the loss of abalone. Respondents asked Appellant for all facts and supporting documents as part of their investigation. Appellant informed Respondents that the abalone died due to lack of power, a cause of loss that is not covered and specifically excluded by the Star policy. Accordingly, Star denied coverage under the portion of the policy that applies to damage to farm products but determined that three other coverages applied. Appellant disagreed with the partial denial and filed suit.

After the lawsuit was filed, Appellant's owner testified under oath that the information provided to Respondents during the claim handling was accurate, and that the abalone did indeed die due to lack of oxygen. No other competent evidence was offered by Appellant during the litigation. So Respondent Star and Respondent AmeriTrust Group, Inc. (collectively "Respondents") filed a Motion for Summary Judgment, seeking a coverage determination based on the undisputed facts.

Appellant's opposition to Respondents' Motion for Summary Judgment was deficient in many ways. Appellant had to be instructed by the trial court – twice – to file a separate statement in compliance with California Rules of Court, rule 3.1350. (3AA 586, 3AA 738.) [1] Papers were filed late in almost every instance, supplemental briefs or evidence were repeatedly filed without permission of the court, declarations were legally inadequate and evidence was not authenticated. (6AA 1572). Appellant's opposition briefs, prepared by a licensed California attorney, cited no case law. (2AA 312-332, 6AA 1521-1533.) The trial court correctly determined that Respondents met their burden of proving they had fulfilled their obligations under the policy, and Appellant failed to raise a triable issue of fact to overcome that proof. (6AA 1575:19-1577:13.)

Like Appellant's opposition to the MSJ, the arguments in this appeal are mostly accusations of wrongdoing without supporting evidence or case law. The policy is a contract, however, and like all contracts, the provisions must be interpreted in a way that an ordinary insured would have understood them. Because the insured's evidence failed to raise a triable issue of fact and because, as a matter of law, Star does not owe further coverage under the policy, the trial court's judgment must be affirmed.

APPELLANT'S CONTENTIONS

Appellant's Opening Brief ("AOB") asserts that the trial court erred in the following ways:
I. It was error to find Respondents had met their burden of proving that no coverage was available under Coverage F of the Policy for the abalone's demise (AOB 14-23);

II. It was error to find that the Off-Premises Power exclusion applies (AOB 24-46);

III. The trial court should have declared coverage was available under Policy coverage partes other than Coverage F for the damaged abalone (AOB 47-53);

IV. It was error to find that Respondents' evidence was admissible and Appellant's was not (AOB 54-57);

V. It was error to dismiss the bad faith cause of action (AOB 57-63).

Appellant does not contest the dismissal of the Equity cause of action, which sought a ruling that, even if coverage was not available, Respondents should have to pay benefits in the interests of fairness (6AA 1576:16-21.) Appellant also does not contest the dismissal of its punitive damages claim. (6AA 1576:22-1577:3.)

FACTUAL AND PROCEDURAL BACKGROUND

I. FACTUAL HISTORY

A. The Star Insurance Company Policy

Respondent Star Insurance Company [2] issued Agricultural Business Policy No. CP0218437 to "American Abalone LLC dba American Abalone Farms and Silverking Oceanic Farms", covering the period November 20, 2019 to November 20, 2020 ("the Policy"). (1AA 070-071.)

Appellant fails to cite significant portions of the Policy language it is arguing about. However, a review of such language is essential in understanding this contract dispute.

The Policy provides several coverages for different aspects of the farm business, including property and liability. (See entire Policy at 1AA 064–0192; see Common Policy Declarations at 1AA 070.)

The Agricultural Business Property Coverage Form (No. 2694 FP 0516) contains this general insuring agreement application to all property coverages:

We will pay for direct physical loss of or damage to Covered Property at the "insured location" described in the Declarations . . . . caused by or resulting from any Covered Cause of Loss.

(1AA 084, under the heading "A. Coverage".) The main policy form then divides property coverages into parts A through G:

Coverage A - physical loss to dwellings and structures at the insured property (1AA 084).

Coverage B – physical loss to other structures appurtenant to dwellings, such as garages, fences, etc. (1AA 084).

Coverage C – Household Personal Property- this applies to personal items owned by the insured and family members while it is located at the "insured property." (1AA 086).

Coverage D - Loss of Use – Section c. applies to Loss and Expense due to Emergency Prohibition Against Occupancy. (1AA 091).

Coverage E – Other Farm Structures and Equipment – this coverage applies to Business Personal Property. It specifically excludes "Farm Products", which is the abalone, as follows: "Business Personal Property does not include any farm products described in Coverage F...." (1AA 091.)

Coverage F – Farm Products – This coverage part provides insurance for the insured's stock (abalone) up to $1 million, which is shown on page two of the Coverage F declarations. (1AA 094.)

Coverage G – Mobile Agricultural Machinery Coverage Form – for tools and equipment. (1AA 097.)

The insuring agreements for Coverages A through G are followed by section "B. Covered Causes of Loss" (1AA 099-107). Most people are familiar with "all risk" or "open peril" policies, which cover all "perils" or "causes of loss" except for those specifically enumerated. (*Garvey v. State Farm Fire & Cas. Co.* (1989) 48 Cal. 3d 395, 399; *Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal. 4th 747, 758 ("*Julian*").) Portions of the Star Policy provide coverage on a "named peril" basis. (*11640 Woodbridge Condo. Homeowners' Assn. v. Farmers Ins. Exch.* (2025) 110 Cal. App. 5th 211, 222 ["'Named perils' or 'specific perils' policies provide coverage only for the specific risks enumerated in the policy and exclude all other risks].) There are three categories of Covered Causes of Loss in the Star Policy: Basic, Broad, or Special. (1AA 099-107). The Declarations pages for each coverage part provides the applicable category. For example, the Coverage E Declarations state that "Special" covered causes of loss apply (1AA 117) and the Coverage F Declarations state that "Basic" applies (1AA 118-119).

After section "B. Covered Causes of Loss" is section 'C. Exclusions." (1AA 107-108). Section C. exclusions are expressly applicable to Coverages A through G ("The following Exclusions apply when any or all of the Covered Causes of Loss, BASIC, BROAD OR SPECIAL, are specified in the Declarations.") (1AA 107.) One of the exclusions is the Off-Premises Services Exclusion (referred to in this brief as "the Exclusion"), which provides in pertinent part as follows:

C. Exclusions

....

We will not pay for loss or damage caused directly or indirectly by any of the following. *Such loss or damage is excluded regardless of any other cause or event that contributed concurrently or in any sequence to the loss.*

....

6. Off-Premises Services

The failure of power or other utility service supplied to the "insured location", however caused, if the failure occurs away from the "insured location", except as provided under Coverage C.

But, if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.

(1AA 107-108.)

Attached to and a part of the Policy, but not part of the main policy form, is a separate endorsement entitled Disruption of Farming Operations, form no. 27 04 FP 11 05. (1AA 122-126.) Policy benefits were paid to Appellant under this provision for lost income during road closures. (1AA 209-234 [coverage position letter]; 1AA 268.)

Another separate endorsement entitled Property Special Broadening Endorsement limited first party coverage for 25 enumerated situations (form no. 39 45 FP 08 02). (See index at 1AA 127.) Star provided coverage to Appellant under two of those enumerated coverages, "20. Utility Services" for loss of use due to an interruption of power support (1AA 221) and "23. Change in Temperature, Electrical Injury, Utility Services..." for damage to property caused by the interruption of utility service. (1AA 221.) Star paid $75,000 to the insured, the maximum amount allowed. (1AA 223; 1AA 268.)

The only coverage sought by Appellant in this appeal is for the loss of the abalone, also sometimes referred to in the Star Policy as "stock" or "farm products." (1AA 272.) That coverage is only available under Coverage F – Farm Products. As explained on the Coverage F declarations page, the insured purchased "Basic" coverage for the abalone, making this coverage part a "named peril" policy rather than an "all risk" policy[3] (1AA 119.) The "Basic" causes of loss covered under Coverage F are: fire and lightening, windstorm and hail, explosion, riot, aircraft, vehicles, smoke, vandalism, theft, sinkhole collapse, volcanic action, and collision. (1AA 099-102.)

Description	Causes of Loss	Deductible	Limit
STOCK	Basic	$2,500	$1,000,000

B. The Insurance Claim

On August 24, 2020, the claim was first reported to Respondents by Appellant's broker. The first notice of loss stated:

The insured was under mandatory evacuation since last Wednesday the 19th of August. The road to get to the insured's business has been closed due to the fire ever since. The insured has not been able to get to his business to assess any damage or run the business. No date has been given yet to when they might open the HWY 1 so the insured can get to his business.

(1AA 200.)

The owner of the insured business, Ocean Xie, does not speak English, so he authorized a prior owner of the business and friend named Tsu Wei "David" Weng to assist Respondents with the investigation of the claim. (1AA 203; 1AA 267.) On September 28, 2020, Respondents received this notification:

Hello, this is Tsu Wei Weng from American Abalone, LLC and I would like to file a claim for "Disruption of Farming Operation" due to extended power outage for the farm. . . .

(1AA 199.)

In a separate email also sent on September 28, 2020, Mr. Weng informed Star:

We had 25 days of consecutive power outage, and since our abalone need power to pump air into the tank, and without power, the abalone will just die!

(1AA 196.)

Appellant and its agents never told Respondents the abalone died for any reason other than because of the power outage. (1AA 271.)

After investigating the loss, Respondents found coverages for Appellant under three separate provisions of the Policy: (1) Special Broadening Endorsement – 20. Utility Services (limit of liability $25,000) (1AA 135-136); (2) Special Broadening Endorsement – 23. Changes in Utility Services (limit of liability $50,000) (1AA 136-137); and (3) Disruption In Farming Operations endorsement at section "C. Additional Coverages", section 1, "Loss and Expenses due to Emergency Prohibition Against Occupancy," calculated at $8,616 (1AA 122-123). Appellant received those policy benefits. (1AA 209-234; 1AA 268.) Star paid a total of $83,616 to Appellant for the covered parts of the claim.

However, there was no coverage provided for the damaged abalone stock under Coverage F because the abalone were not directly damaged by one of the enumerated "Basic" perils. (1AA 209-234.) Respondents' final coverage decisions were explained to Appellant in a letter dated March 1, 2021. (1AA 209-234.) Appellant did not object to the coverage position until January 20, 2022, when Appellant's attorney informed Star that Appellant disagreed with the outcome letter, but did not offer any new or different information or a legal basis for the disagreement. (1AA 239-240.) Thereafter Appellant filed this suit.

II. PROCEDURAL HISTORY

On September 26, 2022, Appellate filed a lawsuit, which was amended on November 23, 2022. (1AA 009, 019.) On June 1, 2023, Respondents' counsel took the deposition of Ocean Xie, the owner of the insured business. (1AA 246-275.) On October 17, 2023, Respondents filed a Motion for Summary Judgment, set for hearing on February 2, 2024. (1AA 029.) The hearing ultimately had to be continued four times due to the Appellant's failure to comply with filing requirements.

Although represented by a licensed California attorney, Appellant filed three rounds of opposition documents, and had to be ordered by the court, twice, to submit a Code-compliant Separate Statement. (6AA 1572.) The trial court considered other documents even though they were filed untimely, in order to give Appellant every opportunity to fully respond. (6AA 1572.) The trial court was unable to accept Mr. Xie's declarations because they were uncertified translations and did not signify that they were signed under oath. The court sustained objections to Appellant's evidence due to lack of authentication. (6AA 1572.)

The trial court ruled that Respondents had met their burden of proving that no further coverage was owed under the Star policy, that there was insufficient evidence to support the bad faith cause of action, and there was no evidence supporting a punitive damage claim. (6AA1576 - 1577.) That shifted the burden of proof to Appellant to produce sufficient evidence to create a triable issue that prevents summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850.) The trial court explained

in its order after hearing the MSJ that responses to a separate statement are required to determine whether there is a triable issue of fact. However, "[n]one of the [Appellant's] responses are supported by admissible evidence and therefore none establish any disputed fact." (6AA 1578; see also 6AA 1577-2578.) Accordingly, Respondents' Motion for Summary Judgment was granted.

Two relevant documents from the trial court were omitted from the Appellant's Transcript: Respondents' reply brief filed after Appellant submitted late opposition papers in the first round of briefing; and Respondents' Objections to Late-Filed Documents by Plaintiff. (See Respondents' Appendix ["RA] 01-44; Cal. Rules of Court 8.124(b)(5); *Jade Fashion & Co., Inc. v. Harkham Indus., Inc.* (2014) 229 Cal. App. 4th 635, 643-644 [It is appellant's responsibility to include all essential documents in the appellant's appendix—even those that might be relied on by respondent].)

STANDARD OF APPEAL

Appellate review of an order granting summary judgment is de novo. (*Maksimow v. City of South Lake Tahoe* (2024) 106 Cal. App. 5th 514, 521-522.) "[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal. 5th 594, 608–09.) Courts of Appeal "review the trial court's ruling, not its reasoning." (*Meridian Fin. Servs., Inc. v. Phan* (2021) 67 Cal. App. 5th 657, 705.)

Appellant's Opening Brief does not raise any legal issues that were erroneously decided by the trial. Accordingly, the record on appeal supports the trial court's order granting Respondents' Motion for Summary Judgment.

LEGAL ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN ITS INTERPRETATION OF THE RELEVANT INSURING CLAUSE

Appellant argues that the trial court failed to correctly determine what the "efficient proximate cause" of the loss was. (AOB at 43.) Because this is contractual matter, the trial court made the simple determination that there was a contract (the Policy) and Respondents performed under it, fulfilling their obligations. (6AA 1576:6-15; *Brodkin v. State Farm Fire & Cas. Co.* (1989) 217 Cal. App. 3d 210, 217 [When all of the potential causes of a loss are excluded or not covered causes of loss, summary judgment is appropriate.].)

The trial court also found that, even though Appellant was given ample opportunities, it failed to offer any competent evidence to counter Respondents' evidence. (6AA 1578:116-18, 1578:20-22, 1579:12-16, 1570:26-28, 1580:1-2, 1580:7-9.) Because it offered no evidence, Appellant cannot demonstrate error by the trial court.

A. Rules of Policy Interpretation

Ordinary rules of contract interpretation apply to policy interpretation. "While insurance contracts have special features, they are still contracts to which the ordinary rules of contractual interpretation apply." (*Bank of the West v. Superior Court* (1992) 2 Cal. 4th 1254, 1264.) Policy interpretation requires courts "to give effect to the parties' mutual intentions." (*Minkler v. Safeco Ins. Co. of America* (2010) 49 Cal. 4th 315, 321.) "Such intent is to be inferred, if possible, solely from the written provisions of the contract." (Cal. Civ. Code, § 1639.) Words used in a policy must be interpreted in their "ordinary and popular sense," unless "used by the parties in a technical sense or a special meaning is given to them by usage." (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal .4th 1, 18; Cal. Civ. Code, §§ 1644 and 1638.) "'If contractual language is clear and explicit, it governs.'" (*Minkler v.Safeco, supra,* 40 Cal. 4th at p. 321.)

Moreover, courts have declined to use public policy as an interpretive aid as Appellant seems to suggest. (*Ward Gen. Ins. Servs., Inc. v. Emps. Fire Ins. Co.* (2003) 114 Cal. App. 4th 548, 553 [principles of contract interpretation "do not include using public policy to redefine the scope of coverage"].)

Under "named perils" coverage such as Coverage F, the insured has the threshold burden of proving the loss was caused by a specifically-enumerated peril. Only then does the burden shift to the insurer to prove that the claim is specifically excluded. (*Strubble v. United Services Auto. Ass'n* (1973) 35 Cal. App. 3d 498, 504; *Central Nat'l Ins. Co. v. Superior Court* (1992) 2 Cal. App. 4th 926, 932.) When coverage is provided only for certain "named perils", the initial focus is on whether the cause of loss was a named peril (e.g., fire); and only if it was, do the exclusions become relevant. (*Garvey v. State Farm Fire & Cas. Co.* (1989) 48 Cal. 3d 395, 406.)

B. Appellant's Focus on the Phrase "Caused By or Resulting From" Is Erroneous for Two Reasons

Appellant asks this Court to analyze coverage by focusing on the policy provision "caused by or resulting from any covered cause of loss" and deciding whether it applies to any peril in a chain of events. (AOB 14-15.)

Appellant's concentration on the "resulting from" phrase is erroneous, however, for two reasons. First, Appellant has not offered evidence that a covered cause of loss directly damaged the abalone. (6AA 1578-1582.) Second, even if there were evidence of multiple covered causes of loss, in California the Efficient Proximate Cause doctrine is "the preferred method for resolving first party insurance disputes involving losses caused by multiple risks or perils, at least one of which is covered by insurance and one of which is not." (*Julian* at p. 753; Cal. Ins. Code, § 530.[4]) In fact, Appellant admits that the Efficient Proximate Cause doctrine must be applied. (AOB at 42.)

Pursuant to the Efficient Proximate Cause doctrine, "When a loss is caused by a combination of a covered and specifically excluded risks, the loss is covered if the covered risk was the efficient proximate cause of the loss," but "the loss is not covered if the covered risk was only a remote cause of the loss, or the excluded risk was the efficient proximate, or predominate cause." (*State Farm Fire & Casualty Co. v. Von Der Lieth* (1991) 54 Cal. 3d 1123, 1131–1132.) If an excluded risk is the "efficient proximate" or predominant cause of the loss, there is no coverage. (*Julian,* 35 Cal.4th at p. 761.) When the damage is not caused by two distinct causes, but rather by a "single cause, albeit one susceptible to various characterizations," the efficient proximate cause analysis has no application. (*Chadwick v. Fire Ins. Exchange* (1993) 17 Cal. App. 4th 1112, 1117.)

Coverage F of the Star Policy, the only portion of the Policy that covers damage to the abalone farm stock, provides coverage solely when the abalone has been damaged by one of the enumerated Covered Cause of Losses: fire and lightening, windstorm and hail, explosion, riot, aircraft, vehicles, smoke, vandalism, theft, sinkhole collapse, volcanic action, and collision. (1AA 099-102.) Appellant bears the burden of proving that one of those perils was the cause of its damage. (*Aydin Corp. v. First State Ins. Co.* (1998) 18 Cal. 4th 1183, 1188.) Appellant has not met that burden because it offere.

Peiper v. Commercial Underwriters Ins. Co. (1997) 59 Cal. App. 4th 1008, is instructive, although that case concerned an "all risk" policy. The policy in *Peiper* contained a brush fire exclusion. When the home was destroyed by a wildfire, the insurer denied coverage. (*Id.* at p. 1012.) The *Peiper* court rejected the argument that the damage was caused by "arson", a non-excluded risk. *Peiper* held that it was the fire itself, which was clearly a brush fire (an excluded loss), that destroyed the Peipers' fine art collection. (*Id.* at pp. 1020-1021.)

Similarly, here Appellant is mischaracterizing the cause of loss to be fire, even though it admits that the flames never touched the insured farm. (AOB at 17 [loss of abalone."].) The evidence cited by Appellant is that during the CZU fire, PG&E performed an emergency shut off of power in the area, including at the abalone farm. (6AA 1480.) Appellant has testified that the power was off for more than 12 days, or as many as 25 days. (1AA 260, 1AA 265.) For a while, Appellant was able to utilize generators to keep oxygen and fresh water flowing into the abalone tanks. (1AA 265.) But then, Highway 1, the access road into the farm,

was closed, and farm employees could not get to the farm to keep the generators running. (1AA 201.) Without oxygen, the abalone quickly died. (1AA 196.)

In light of the evidence presented in the trial court, there was only one conclusion that could have been reached: PG&E's decision to shut the power down, and road closures due to a governmental decision to issue mandatory evacuations and shut down Highway 1, were the perils that left the abalone without oxygen. These two distinct events, shutting off power and closing off Highway 1, are two separate perils, each with their own sources (PG&E on one hand and the CHP on the other). While they happened here because of the fire, road closures and power outages also can happen in the absence of a fire; they are separate perils. Unfortunately, as Mr. Xie testified, both the road closures and the power outages happened at once, and after eight hours without air, the abalone began to die. (1AA 263.)

C. Appellant Admits It Lacks Admissible Evidence

Appellant states that it is relying solely on the evidence submitted by Respondents with their Motion for Summary Judgment. (AOB 11-12 ["Insurer's Own Evidence Creates Triable Issues of Fact, Coverage, Causation"].) But Appellant then proceeds to reference the "orange bucket" photo as proof that the abalone died from a covered cause of loss. (AOB at 6; 4AA 877.) The "orange bucket" photo was (correctly) never considered by the trial court because it was not authenticated or explained in any way.

The "orange bucket photo" is a key example of Appellant's failure to authenticate evidence in the motion filings, leaving no possible basis for the trial court to find that there was a cause of loss other than the power outage or the road closure.

II. THE OFF-PREMISES SERVICES EXCLUSION APPLIES

Whether the Off-Premises Services Exclusion (sometimes referred to herein as "the Exclusion") is applicable to Coverage F in this instance does not affect the final coverage determination because Appellant did not sustain its burden of proving coverage under the applicable insuring agreement, Coverage F. Appellant has admitted that the abalone died because they did not have oxygen, and that the lack of oxygen was caused by a lack of electricity. (See Section C. above.) Neither lack of oxygen nor lack of electricity are "Covered Causes of Loss" under Coverage F. (1AA 099-102 ["Causes of Loss" and 1AA 118-119 [Coverage F declarations].)

There is no need to apply an exclusion when coverage is not available under the insuring agreement. (*Inns-by-the-Sea v. California Mut. Ins. Co.* (2021) 71 Cal. App. 5th 688, 709 ["the absence of an available exclusion does not imply the existence of coverage."].) (1AA 242 ["Loss of power or other utilities is not one of the 12 causes of loss in the BASIC form ..."].) But to the extent Appellant seeks coverage under any other coverage part, the Off-Premises Services Exclusion applies to Coverages A through G.

A. The Failure of Power Occurred Away From the "Insured Location"

Appellant contends the trial court misinterpreted or misapplied the Off-Premises Services Exclusion, which excludes coverage for damages caused by or resulting from "[t]he failure of power or other utility service supplied to the 'insured location', however caused, if the failure occurs away from the "insured location." Appellant also contends that Respondents did not sustain their burden of proving that an "off-premises" power failure took place. (AOB at 24-46.) In fact, the trial court did not even discuss the Off-Premises Services Exclusion in its ruling. Instead, it determined that Respondents "performed under [their contract] ... meeting their obligations." (6AA 1575-1576.) Appellant failed to offer evidence that Respondents did not perform their obligations under the Policy. (*Id.*)

Appellant has admitted repeatedly, including in its AOB brief and in the lawsuit it filed against PG&E, that PG&E withheld power to the abalone farm and the surrounding areas. (AOB at 26; 6AA 1480.) Appellant now contends in its AOB, without evidence, that "the farm is the logical location for that turn-off". (AOB at 26.) Appellant's contradictory argument in the AOB, not based on evidence, cannot overcome prior admissions.[5] (*Kurinij v. Hanna & Morton* (1997) 55 Cal. App. 4th 853, 871 [judicial admissions in a complaint overcome evidence even if the opposing party seeks to contradict the prior admission]; *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003) 111 Cal. App. 4th 1234, 1248 [judicial admissions are conclusive concessions of the truth of those matters and are removed as issues from the litigation].)

Other jurisdictions that have interpreted this policy language have looked at the cause of the power outage. In *Lakes' Byron Store, Inc. v. Auto-Owners Ins. Co.* (1999) 1999 S.D. 25, 11, 589 N.W.2d 608, 610, a severe snow and ice storm hit the area and power poles and lines were broken across much of South Dakota. In *Gies v. City of Gering* (2005) 13 Neb. App. 424, 426, 695 N.W.2d 180, 184, a transformer substation situated several blocks away from the meatpacking business property caused the outage. In *Mapletown Foods, Inc. v. Motorists Mut. Ins. Co.* (1995) 104 Ohio App. 3d 345, 346, 662 N.E.2d 48, 48, the cause of the outage was a downed wire away from their premises due to severe wind and storms. In each case, the power exclusion clearly applied because there was an event that damaged the off-premises power source.

In this instance, Appellant admits the abalone farm had no utility service because PG&E made the decision to shut down power in and around the abalone farm during the CZU fire. Appellant alleges in its suit against PG&E:

PG&E's decisions and actions *kept electrical service from the Farm* for an extended length of time far beyond what was needed... and failed to expeditiously restore service to the farm

....

(6AA 1478-1479 [emphasis added].) Similarly, in its AOB, Appellant compares the PG&E power outage to the turning off of a functioning light bulb with a switch. (AOB at 27.)

The Exclusion applies whenever there is a "failure of power or other utility service supplied to the 'insured location'" unless the failure was caused by an occurrence on the insured property. There is no evidence of an occurrence on the farm that caused a power blackout, and ample evidence that PG&E turned off the power. The cutting off of services by PG&E, however it is accomplished, kept power from being supplied to the "insured location." When this fact is compared to the language of the Off-Premises Services Exclusion, it must be concluded that the Exclusion applies. *Torres v. Am. Econ. Ins. Co.* (S.D. Tex. June 8, 2010) No. CIV.A.H-09-3038, 2010 WL 2305608, at *3 ["Based on Torres' October 29, 2008 statement that his building lost power for six to seven days, and his December 4, 2008 statement about electrical outages damaging the compressor, the power failure exclusion applies"].)

B. There Was a "Failure" of Utility Services to the Farm

Appellant argued in the trial court that the terms "failure" in the Off-Premises Services Exclusion was ambiguous and therefore the Exclusion cannot be applied in this situation. Now Appellant argues that virtually every material term in the Exclusion, including the title of the provision, is "ambiguous," but fails to explain how it could be interpreted so as to provide coverage. (AOB at 32-33.)

"An insurance policy provision is ambiguous when it is capable of two or more constructions both of which are reasonable." (*Suarez v. Life Ins. Co. of North America* (1988) 206 Cal. App. 3d 1396, 1402.) "Courts will not adopt a strained or absurd interpretation in order to create an ambiguity where none exists." (*Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal. 3d 800, 807.) "There cannot be an ambiguity per se, i.e. an ambiguity unrelated to an application." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1986) 177 Cal. App. 3d 855, 859, fn. 1.) Furthermore, the mere absence of a definition does not render a policy term ambiguous. (*Bay Cities Paving & Grading, Inc. v. Lawyers' Mut. Ins. Co.* (1993) 5 Cal. 4th 854, 866.)

In light of facts presented here, it is not possible to reasonably interpret the Exclusion in any manner other than the way it has been interpreted by Respondents. The term "failure," while not defined by the Policy, is commonly understood and defined as "a state of inability to perform a normal function," "an abrupt cessation of normal functioning" (Merriam-Webster Online Dictionary), "nonperformance of something due, required or expected" or "a subnormal quality or quality; an insufficiency" (Dictionary.com). Using any one of these definitions, PG&E emergency shut down of power to the area is a "failure ... however caused."

Appellant acknowledges that the electricity supplied PG&E to the farm was cut off, but argues stubbornly that this is not a "failure," even as it agrees that a shutdown across the electrical grid (which is precisely what happened) would be a failure. (AOB at 27.) Appellant's admissions that PG&E refused to supply electricity to the power grid in the entire area, including the farm, constitutes a "failure ... however caused" in the ordinary and popular sense as that term would be understood by an objective person.

Similarly, the term "Off-Premises Services" cannot be understood to mean anything other than utility services (such as PG&E's electricity) that the insured receives from a source other than its own premises. Appellant admits the electricity was supplied by PG&E, and it admits that the supply to the farm was withheld by PG&E for longer than necessary. (6AA 1478-1480.) Moreover, "Off-Premises Services" is merely the title of the Exclusion; the Exclusion itself states that it applies to "the failure of power or other utility services supplied to the 'insured location', however caused...." Those words must be considered in context and must be given effect. *Palmer v. Truck Ins. Exch., supra,* 21 Cal. 4th at p. 1115.

Appellant also now asserts for the first time that the term "insured location" is ambiguous. It is a defined term in the Policy, meaning "any location, including its private approaches, described in the Declarations..." (1AA 116.) The Policy Declarations describe the covered premises as 245 Davenport Landing Road, Davenport, CA 95017. (1AA 074.) Appellant reported to Respondents that 245 Davenport Landing Road was the location of the abalone loss. (1AA 196.) The term "insured location" is repeatedly used throughout the Policy to explain the coverages available under the Policy. (1AA 084-116.) When the Policy is read as a whole, with each part of the Policy giving effect to every other part and with "each clause helping to interpret the other," the term "insured location" is not confusing or ambiguous.

Additionally, the term "away from the 'insured location'" has been interpreted by several jurisdictions in this context, and the majority have found it to be unambiguous. (*Mapletown Foods v. Motorists Mut. Ins., supra,* 662 N.E.2d at 48 [coverage barred when power outage was caused by a downed wire away from the insured premises, resulting in food spoilage]; *Lakes' Byron Store, Inc. v. Auto-Owners Ins. Co., supra,* 589 N.W.2d at 610 [no coverage when ice storm caused power outage at resort for a week]; and *Red Bird Egg Farms, Inc. v. Pennsylvania Mfrs. Indem. Co.* (4th Cir. 2001) 15 Fed. App'x 149, 152 [under Delaware law, off-premises power exclusion is not ambiguous and applies to loss of 500,000 eggs due to power issues].)

Appellant also argues that the Exclusion is ambiguous because it is possible that the abalone farm manufactured and supplied its own electricity. (AOB at 31-32.) But Respondent's coverage investigation, information obtained in this lawsuit and Appellant's own admissions have consistently showed the power was supplied by PG&E and PG&E withheld the power supply during the CZU fire, which is why Appellant filed suit against PG&E. (6AA 1477-1487.)

C. The "Resulting Loss" Clause In the Exclusion Does Not Change the Outcome Under These Facts

Appellant relies upon a South Carolina decision, *Brooklyn Bridge, Inc. v. S.C. Ins. Co.* (1992) 309 S.C. 141, 144-145, 420 S.E. 2d 511, 512-513, for the proposition that the Off-Premises Services Exclusion does not apply to this case because the "resulting loss or damage" clause of the Exclusion is ambiguous. That clause provides: "But, if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage." (1AA 108.)

The Off-Premises Services Exclusion is nearly identical to the Utility Services Exclusion in the ISO form CP 10 10 06 95, and is not an uncommon provision in commercial property policies. [6] It has been interpreted in a number of states, although there is no California decision on point.

In *Brooklyn Bridge,* a hurricane caused a power outage which in turn caused food spoilage at the insured restaurant. (*Id.* at 512.) The Court of Appeal found that the power exclusion as a whole was ambiguous and must be interpreted most favorably to the insured. Based on that finding, *Brooklyn Bridge* found that food spoilage because of a power outage was caused by Hurricane Hugo, a covered cause of loss, and that the power failure exclusion did not apply. (*Id.*)

However, the *Brooklyn Bridge* decision has been disapproved in other jurisdictions. In *Gies v. City of Gering, supra,* 13 Neb. App. at 439, 695 N.W.2d at 192, where weather caused a power failure at a substation, the court criticized *Brooklyn Bridge's* finding that the power exclusion was ambiguous before concluding:

To summarize, we find no ambiguity in the exclusionary language under section B.1.e. Section B.1. is a general exclusionary clause that eliminates coverage based upon certain listed causes of loss. Some of these listed causes of loss, including power failure, provide an exception to the exclusion that would restore coverage. The exception is not applicable in this case. We must therefore reverse the decision of the trial court.

(*Id.* at p. 443.) Other decisions that have found the exclusion unambiguous are *Mapletown Foods v. Motorists Mut. Ins., supra,* 104 Ohio App. 3d 345 at p. 349; *Lakes' Byron Store, Inc. v. Auto-Owners Ins. Co., supra,* 589 N.W.2d at p. 610; and *Red Bird Egg Farms, Inc. v. Pennsylvania Mfrs. Indem. Co., supra,* 15 Fed. Appx. at 153-154.

In California, similar clauses have been referred to as "ensuing loss" or "resulting loss" provisions and "apply to the situation where there is a 'peril,' i.e., a hazard or occurrence which causes a loss or injury, separate and independent but resulting from the original excluded peril, and this new peril is not an excluded one, from which loss ensues." (*Acme Galvanizing Co. v. Fireman's Fund Ins. Co.* (1990) 221 Cal. App. 3d 170, 179-180.) In *Acme,* the plaintiff was insured under an all-risk commercial insurance policy when a steel kettle at its plant ruptured, causing several tons of molten zinc to spill onto surrounding equipment. (*Id.* at p. 173.) The insurer denied coverage because the loss was not caused by some external peril, but rather by a latent defect or inherent vice in the kettle itself, which was excluded from coverage. (*Ibid.*) The insured sought coverage under the "ensuing loss" clause for those situations where "a loss by a peril not otherwise excluded ensues." (*Id.* at p. 179.) *Acme* rejected the insured's argument, explaining:

We interpret the ensuing loss provision to apply to the situation where there is a "peril," i.e., a hazard or occurrence which causes a loss or injury, *separate and independent* but resulting from the original excluded peril, and this new peril is not an excluded one, from which loss ensues. . . .

Here, there was no peril separate from and in addition to the initial excluded peril of the welding failure and kettle rupture. The spillage of molten zinc was part of the loss directly caused by such peril, not a new hazard or phenomenon. If the molten zinc had ignited a fire or caused an explosion which destroyed the plant, then the fire or explosion would have been a new covered peril with the ensuing loss covered. That did not occur."

Acme Galvanizing Co. v. Fireman's Fund Ins. Co., supra, 221 Cal. App. 3d at pp. 179-180 [emphasis in original].

Under the reasoning in *Acme Galvanizing,* the loss of the abalone was caused directly, and admittedly, because PG&E turned off power in the area. If the loss of power had caused a Covered Cause of Loss, such as a fire, the portion of the loss caused by the resulting fire would be covered under the exception. However, Appellant offered no such evidence. Accordingly, the Off-Premises Services Exclusion applies.

Appellant cites *Julian* and California Insurance Code section 530, for the proposition that an insurer is liable if a covered peril sets the causal chain in motion, even if an excluded peril contributes. This argument misstates the holding in *Julian.*

In *Julian,* the slope behind the insured property was subjected to heavy rains, which caused a slope failure and landslide, which in turn pushed a tree into the insured's home. (*Julian,* 35 Cal. 4th at p. 751.) The insureds had an "all-risk" policy with exclusions for earth movement, water damage and weather conditions, but the weather conditions exclusion applied "only if weather conditions contribute in any way with a cause or event excluded in paragraph 1 above ...." (*Id.* at p. 752.) The California Supreme Court held:

The weather conditions clause purports to exclude coverage for a loss caused by weather conditions that "contribute[d] in any way with" earth movement, including a landslide. Particularly given the direct and well-known relationship between rain and landslide, a reasonable insured would understand that the words "contribute in any way with" connote an intention to exclude rain that induces a landslide.

(*Julian,* 35 Cal. 4th at p. 761; see also *Sabella v. Wisler* (1963) 59 Cal. 2d 21, 31-33 ["[i]n determining whether a loss is within an exception in a policy, where there is a concurrence of different causes, the efficient cause ... is the cause to which the loss is to be attributed...."].)

Julian is entirely distinguishable because the Off-Premises Services Exclusion in the Star Policy is not similar to the weather conditions exclusion in *Julian.* The Star Policy's Exclusion provides that coverage under all of the main coverage parts is excluded if a loss is "caused directly or indirectly" by the "failure of utility service supplied to the 'insured location'" and that "[s]uch loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss." (1AA 107-108.) Conversely, the "weather conditions" exclusion in *Julian* only applied "if weather conditions contribute in any way with a cause or event excluded in paragraph 1." *Julian* at 752. Nevertheless, *Julian* is instructive for the proposition that a property policy may "leave intact coverage for some, but not all, manifestations of a particular peril" without violating section 530. (*Julian,* 35 Cal. 4th at p. 759.)

More on point is *De Bruyn v. Superior Court* (2008) 158 Cal. App. 4th 1213, 1223, where the Court of Appeal, while applying the holding of *Julian,* held that a mold exclusion is enforceable and does not violate section 530:

Farmers is correct that the efficient proximate cause doctrine applies only when there are two or more distinct perils that cause a loss. (See, e.g., *Finn v. Continental Ins. Co.* (1990) 218 Cal. App. 3d 69, 72, 267 Cal. Rptr. 22.) In other words, the perils must be such that "they could each, under some circumstances, have occurred independently of the other and caused damage." (*Ibid.,* italics added.) But it is not necessary that those two or more perils did in fact occur independently to cause the loss for which coverage is sought. Indeed, the Supreme Court explained in *Garvey* that section 530 and the efficient proximate cause doctrine applies "whenever there exists a causal or dependent relationship between covered and excluded perils."

De Bruyn, 158 Cal. App. 4th at p. 1223.

In this case, power outages happen without fire, and it is not necessary that a power outage happen where there is no wildfire for the Exclusion to apply. Because fire did not burn the farm stock, and because the farm stock was lost due to the lack of power to the farm, the Exclusion applies.

III. COVERAGES D AND G CANNOT APPLY TO THE ABALONE

Appellant argues that coverages should have been available under parts of the Policy other than Coverage F. [7] (AOB at 48-51.) Essentially, Appellant proffers two bases for this argument: (1) benefits for abalone loses should be provided under Coverage E (mistakenly referred to in the AOB as Coverage D); and (2) Respondents should have paid benefits under Coverage G for farm supplies, equipment and machinery. (AOB at 50.) Neither argument has merit.

A. No Coverage is Available Under Coverage G

Coverage is not available for the abalone under Coverage G for four reasons.

First, as Appellant admits, this argument is made in the AOB for the first time and should be rejected on that basis alone. (AOB at 53; *Pulver v. Avco Fin. Services* (1986) 182 Cal. App. 3d 622, 632 ["documents not before the trial court cannot be included as part of the record on appeal and thus must be disregarded as beyond the scope of appellate review"].)

Second, Mr. Xie clearly testified on behalf of Appellant that he only submitted claims for lost business income during the road closures and for the lost abalone, not for damaged business personal property or farm supplies. (1AA 252, 264 and 272.)

Third, to the extent Appellant is trying to argue that Coverage G provides coverage for the abalone, the plain language of the Policy demonstrates otherwise. The Insuring Agreement of Coverage G lists items such as machinery and tools. (1AA 097.) The Coverage G – Declarations described covered "unscheduled property" as "MISCELLANEOUS MOBILE AGRICULTURAL MACHINERY AND IMPLEMENTS Including TOOLS, EQUIPMENT AND SUPPLIES (any one item not to exceed $2,500)." (1AA 120.)

Fourth, and most importantly, the Off-Premises Services Exclusion applies to Coverage G. Any property damage that happened as a result of the power outage is barred from coverage.

B. Coverage E Does Not Apply to This Loss

Appellant asserts that the abalone should be covered under Coverage D (Loss of Use), but quotes Coverage E – Other Farm Structures and Fixed Equipment. (AOB at 48; see Policy at 1AA 91.) This appears to be a typographical error in the AOB.

The plain language of the Policy, with its separate coverage parts and limits of liability, demonstrates that Coverage F is the only part intended to apply to the farm products being raised at the abalone farm, that is, the abalone. (*John's Grill, Inc. v. The Hartford Fin. Servs. Grp., Inc.* (2024) 16 Cal. 5th 1003, 1013 ["If possible, we infer this intent solely from the written provisions of the insurance policy"].) Coverage F expressly applies to farm products, and the covered farm products are listed on the Coverage F declaration page as "abalone." Other coverages (A, B, C, D, E and G) are expressly for buildings, farm equipment, business personal property, agricultural machinery, and other items relevant to operating an abalone farm and business income loss for the abalone farm. *Palmer v. Truck Ins. Exch.* (1999) 21 Cal. 4th 1109, 1115 [policy terms must be interpreted "in context" with "each clause helping to interpret the other."].)

Appellant apparently makes this argument because the "special" covered causes of loss apply to Coverage E, similar to "all-risk" policies, giving Appellant a wider range of covered perils. Even if this argument had merit, which it doesn't, Appellant fails to explain what the cause of loss would be under a different coverage part, or what evidence Appellant offered that the abalone were damaged by a covered cause of loss under one of these coverage parts.

More importantly, as discussed in Section II above, the abalone loss was caused by PG&E's shutting down of the power grid, a cause of loss that is clearly excluded. Again, the Off-Premises Services Exclusion applies to all of the main coverage parts.

C. The Court Did Not Overlook the Disruption of Farming Operations Coverage Because Appellant Received Benefits Under that Provision

Appellant asserts that the trial court erred in failing to find a triable issue of fact with regard to the calculation of benefits under the Disruption of Farming Operations (DFO) and Emergency Prohibition against Occupancy (EPO) endorsements. (AOB

at 51-52.) Again, this issue is raised for the first time on appeal and should not be considered. Additionally, it is particularly confusing because there was no such finding in the trial court's decision and Respondents paid benefits under that coverage part.

Disruption of Farming Operations is a business income loss benefit provided under a separate endorsement in the Policy, form number 27 04 FP 11 05. (1AA 215, 219, 122-127.) This endorsement expressly applies when the business has to be closed because it is damaged. (1AA 122.) Mr. Xie testified that the property and equipment were not damaged, they just needed to be cleaned. (1AA 252, 264 and 272.) But the endorsement includes an Additional Coverage section that pays benefits when there is an Emergency Prohibition Against Occupancy, such as the mandatory evacuation that happened at the farm during the CZU fire. Since the endorsement is not part of the main policy form, the Off-Premises Services Exclusion does not apply to this endorsement.

For these reasons, Respondents paid benefits to Appellant under the Disruption of Farming Operations endorsement. Based on Appellant's own income records, Respondents calculated that loss to be $8,616 for 22 days while the roads were closed. [8] (1AA 219, 226-234.) Appellant received that payment. (1AA 268.)

Appellant admits it was paid benefits under this endorsement, and argues that payment under this provision constitutes some sort of waiver. (AOB at 52.) Since Respondents informed Appellant that coverage was available under this provision (1AA 215, 219), clearly any waiver argument is superfluous.

Appellant further argues, for the first time, that the amount of the payment for Disruption of Farming Operations was improperly calculated, and that the sufficiency of the payment should not have been decided on summary judgment. (AOB at 52-53.) While a new theory raising a pure question of law on undisputed facts can be raised for the first time on appeal, the calculation of benefits is an issue of fact. (*Ward v. Taggart* (1959) 51 Cal. 2d 736, 742.) This argument has been waived.

Even if it were not waived, there is no evidence that the payment was incorrect. The evidence in the record shows that Respondents provided Appellant with a lengthy calculation, prepared by an accountant and based on Appellant's own records. (1AA 226-234.) Appellant never challenged those calculations, during the handling of the claim or at any time before this appeal was filed. Appellant's references to "net loss" are incomprehensible, misquote the Disruption of Farming Operations endorsement, and do not cite to the accountant's calculation to point out any error. (AOB at 52; 1AA 122 at A.1 to A.4 [Policy terms] and 1AA 226-234 [calculations].) Thus, this claim of error clearly lacks any merit.

IV. THE TRIAL COURT DID NOT ERR IN ADMITTING RESPONDENTS' EVIDENCE AND REJECTING APPELLANT'S DECLARATIONS

Appellant challenges the decisions made by the trial court in admitting evidence in support of Respondents' summary judgment motion.

The standard of review of any ruling by a trial court on the admissibility of evidence is abuse of discretion. (*City of Ripon v. Sweetin* (2002) 100 Cal. App. 4th 887, 900; *Gordon v. Nissan Motor Co.* (2009) 170 Cal. App. 4th 1103, 1111.)

A. Respondents' Evidence

Appellant ignores California law when it argues that Mr. Xie's deposition testimony was improperly submitted by Respondents and admitted by the trial court. Respondents complied with California Rules of Court, Rule 3.1116, by submitting only the relevant pages of Mr. Xie's unsigned deposition transcript in support of their summary judgment motion. (See also Cal. Civ. Proc. Code § 2025.520(b) and (g) [deponents have 30 days to correct deposition transcripts, after which time the transcript becomes final as if it were signed].) Appellant could have, but did not, offer additional excerpts of the deposition for context.

B. Appellant's Evidence

The trial court considered and ruled upon all of the Evidentiary Objections asserted by Respondents, sustaining each of them. (6AA 1581-1682.) With the exception of the declarations of Mr. Xie, Appellant does not suggest that the trial court abused its discretion by sustaining objections to unauthenticated evidence. The only error cited in the AOB is the trial court's refusal to consider Mr. Xie's declarations. (AOB at 57.)

The trial court gave Appellant many opportunities to submit a properly prepared declaration of the business owner, Mr. Xie. Initially, the trial could not find Mr. Xie's declarations in the record, apparently because they were obscured among the many unauthenticated exhibits. (6AA 1569:17-18.) At the May 17, 2024 MSJ hearing, the trial court told Appellant it could submit "something showing that he had previously filed three declarations of his client" before the continued May 30, 2024 MSJ hearing, but cautioned Appellant not to file anything new. (6AA 1569 at 17-18.) Instead, however, on May 22, 2024, Appellant filed three new declarations of Ocean Xie without translation certificates. (6AA 1569:19-24.) On May 24, 2024, Respondents objected to the late filing, submitted after the court said absolutely nothing new would be accepted. (6AA 1569:20-21; RA at 041.) The day before the MSJ hearing on May 30, 2024, after objections had been filed, Appellant filed another new item, translation certificates for the inadmissible, late-filed, revised declarations. (6AA 1569:22-23.) The court's order noted that Appellant was required under California law to submit the declaration in English, with certification by a qualified interpreter under oath. Neither of these requirements was complied with. (6AA 1575:9-18.) Also, the declarations failed to use the proper form by stating they were true and correct under penalty of perjury. (6AA 1572:17-22.) The trial court did not err in deciding that they were not admissible.

V. THERE IS NO EVIDENTIARY SUPPORT FOR A BAD FAITH FINDING

Appellant argues that "[e]ven if coverage under one or more policy provisions were reasonably disputed, the trial court erred in granting summary judgment on Plaintiff's bad faith claim" (AOB at 57) and "[a] genuine dispute over coverage does not immunize the insurer...." (AOB at 58.) These statements are contrary to California law. Perhaps that is the reason that Appellant fails to cite a single case in support of its bad faith argument.

A mistake or disagreement in the handling of an insurance claim is not "bad faith." (*California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal. App. 3d 1, 54 ["Declining to perform a contractual duty under the policy with proper cause is not a breach of the implied covenant 'because [bad] faith implies unfair dealing rather than mistaken judgment.'"]; *Opsal v. United Servs. Auto. Assn.* (1991) 2 Cal. App. 4th 1197, 1205 ["It is now clear under California law that an insurer's erroneous failure to pay benefits under a policy does not necessarily constitute bad faith entitling the insured to recover tort damages."]; *Chateau Chamberay Homeowners Ass'n v. Associated Int'l Ins. Co* (2001) 90 Cal. App. 4th 335, 347 ["where there is a genuine issue as to the insurer's liability under the policy for the claim asserted by the insured, there can be no bad faith liability imposed on the insurer for advancing its side of that dispute."].)

Moreover, as noted in Respondents' reply brief, Appellant submitted no evidence regarding claim handling (no discovery responses, no deposition transcripts, and no claim documents, except those submitted by Respondents). (RA 012:19-25 and 13:1-11.) Thus, there is no evidence tending to demonstrate the existence of a triable issue as to whether Respondents engaged in unfair dealing.

Finally, where there is no breach of contract, there cannot be a finding of bad faith. (*Waller v. Truck Ins. Exch., Inc., supra,* 11 Cal. 4th at 36; *Love v. Fire Ins. Exchange* (1990) 221 Cal. App. 3d 1136, 1151-1153.) Since the trial court found there was no breach of contract, it necessarily and correctly ruled that the bad faith cause of action had no merit. (6AA 1576:11-15.)

CONCLUSION

Appellant failed to demonstrate that the trial court erred in finding that Respondents have no further obligations under the Star Policy. Additionally, Appellant failed to demonstrate that the trial court abused its discretion in admitting or not admitting evidence. Accordingly, the decision of the trial court must be affirmed.

WOOLLS PEER DOLLINGER & SCHER

A Professional Corporation

By

<<signature>>

Katy A. Nelson

Attorneys for STAR INSURANCE COMPANY and AMERITRUST GROUP, INC.

Footnotes

1 "AA" refers to "Appellant's Appendix" and the preceding number refers to the volume. These citations reflect the Bates numbers on the pages of the Appellant's Appendix.

2 The Policy was issued by Star Insurance Company. (1AA 070 [only Star's name appears on the declaration pages] and 1AA 192 [only Star signed the Policy].) The name AmeriTrust Group, Inc. only appears on the Privacy Statement, in which it explains that the Privacy Statement applies to all of AmeriTrust's insurer subsidiaries. (1AA 064.) However, AmeriTrust is not the contracting party that signed the Policy. The trial court did not conclude that AmeriTrust was not the insurer, but it did conclude that further coverage was not available under the Policy, regardless of which party issued it.

3 The SCHEDULE of coverages in the Declarations of Coverage F provides in pertinent part:

4 Insurance Code section 530 provides: "An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause."

5 To support this argument in the AOB, Appellant refers to its own "Additional Undisputed Material Fact" No. 7, which states that "A variety of PG&E electrical equipment is located on the premises." The only evidence offered for that purported fact is an inadmissible declaration of Ocean Xie, which was never considered by the trial court. (6AA 1572, 1579, 1581.)

6 ISO form CP 10 10 06 95 applies to "The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss." (Scott G. Johnson, Amy M. Churan, *The August 2003 Blackout and Insurance Coverage for Power Outage Losses* (2004) 39 Tort Trial & Ins. Prac. L.J. 813, 820.)

7 Appellant was paid under other coverages, namely Loss and Expense due to Emergency Prohibition Against Occupancy ($8,616), Interruption of Utility Services ($50,000) and business income loss caused by interruption of power services ($25,000). (1AA 223, 268.)

8 Star retained Mr. Ken Brown of the accounting firm of Buchanan, Clarke & Schlader, who contacted Appellant to obtain the information needed and prepared this calculation for Respondents. (1AA 206.)

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