IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. 29,092

UNITED NUCLEAR CORPORATION,

Defendant/Third-Party Plaintiff/Appellant,

vs.

ALLSTATE INSURANCE COMPANY,

Third-Party Defendants/Appellee.

APPEAL FROM THE ELEVENTH JUDICIAL DISTRICT COURT
MCKINLEY COUNTY
HONORABLE LOUIS E. DEPAULI, JR., District Judge

UNITED NUCLEAR CORPORATION'S REPLY BRIEF IN OPPOSITION TO APPELLEE ALLSTATE INSURANCE COMPANY'S ANSWER BRIEF

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TABLE OF CONTENTS

STATEMENT REGARDING CITATIONS TO THE RECORD PROPER

All citations to the Record Proper submitted to the Court on December 15, 2008, by the Eleventh Judicial District Court Clerk are referenced as, for example, SRP 18622. All citations to the Supplemental Record Proper submitted by stipulation of the parties and accepted by the Court shall be by volume number and page reference, i.e., 1 SRP-A0001.

STATEMENT OF COMPLIANCE

Pursuant to Rule 12-213(G) NMRA 2009, the undersigned counsel certifies that the body of the Brief complies with the type-volume limitations of subsection (F). The Brief was prepared in Times New Roman proportionally-spaced typeface and contains 4,036 words, based upon the word-count tool of the Microsoft Windows XP Professional software.

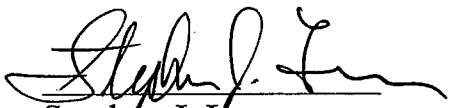

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TABLE OF AUTHORITIES

NEW MEXICO CASES

CASES FROM OTHER JURISDICTIONS

OTHER AUTHORITY

INTRODUCTION

United Nuclear Corporation ("UNC") files this Reply to Allstate Insurance Company's ("Allstate") Answer Brief ("Allstate Br."). Allstate's arguments can be reduced to three propositions, each of which is fallacious. These principles are:

1. Allstate maintains that the term sudden "can never be applied to a process that takes place gradually and routinely over an extended period of time." Allstate Br. at 1. Many state and federal courts have held to the contrary. Allstate itself (and its policy drafters) have stated otherwise. Allstate's argument improperly presupposes the conclusion that "sudden" can only mean pollution events that are temporally abrupt. If, however, "sudden" can also mean "unexpected" (as it can), then, the term can apply to permit coverage for pollution that takes place "unexpectedly" over an extended period of time.

2. Allstate next argues that "extrinsic evidence is never admissible to contradict the terms of a contract." *Id.* at 2. UNC has not, however, offered extrinsic evidence to "contradict" the terms of Allstate's Policies. In fact, the Policies expressly cover "continuous and repeated exposure to conditions" and specifically extend to "seepage . . . caused by accident." Allstate's interpretation of the pollution exclusion would render that coverage illusory, because, under Allstate's (incorrect) premise, there could never be "sudden accidental seepage."

Rather than contradicting Policy terms, UNC's extrinsic evidence harmonizes them.

3. Allstate posits that UNC invited the *sua sponte* grant of summary judgment by "insist[ing] that the court consider the entire policy and the broader issue of coverage." *Id.* at 3. To the contrary, the only provisions of the Policies UNC cited below were those directly at variance with Allstate's current construction of the pollution exclusion. UNC cited those provisions to make clear that, when all pertinent policy terms are construed *in pari material*, the term "sudden" should be interpreted to mean "unexpected." Because Allstate requested only an interpretation of the term "sudden," the district court, by entering summary judgment, granted Allstate relief that it did not request and that UNC was not afforded full and fair opportunity to address.

ARGUMENT

I. ALTHOUGH UNC'S PROOFS ARE NOT INADMISSIBLE HEARSAY, THE MATTER IS MOOT BECAUSE ALLSTATE FAILED TO CROSS-APPEAL.

Allstate objects to certain evidence submitted by UNC. *See* Allstate Br. at 23-26, 38-39. Allstate acknowledges that it filed a motion to strike this evidence, *id.* at 23-24 n.3, but fails to advise the Court that its motion was *denied* and that it failed to appeal the trial court's ruling. *See* Order (Oct. 2, 2008) (SRP-A1117-20) ("The objections and motion to strike filed by Northbrook . . . are not well taken

and the Court will consider all pleadings filed by both parties on the pending motion."). Allstate improperly attempts to resurrect its forgone appeal by contending in its response here that the evidence UNC submitted is inadmissible. *See Brownlee v. Lincoln County Livestock Co.*, 76 N.M. 137, 412 P.2d 562 (N.M. 1966); *see also Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 1, 145 N.M. 650, 203 P.3d 865.[1]

Even ignoring this (dispositive) procedural flaw, Allstate contends that the industry records cited by UNC are inadmissible. Contrary to Allstate's contention, these records constitute insurance industry documents that courts have not only acknowledged but have found to be highly probative concerning the intention of the pollution exclusion. *See Am. States Ins. Co. v. Koloms*, 687 N.E.2d 72, 79 (Ill. 1997) ("[E]vents leading up to the insurance industry's adoption of the pollution exclusion are 'well-documented and relatively uncontroverted'."); *see also* Rule 11-807 NMRA 2009 (allowing consideration of out-of-court statements with

[1] In any event, the Insurance Services Organization ("ISO") documents referred to in *Morton International, Inc. v. General Accident Insurance Co. of America*, 629 A.2d 831, 876 (N.J. 1993), and presented to the trial court, were made available in this case pursuant to a duly authorized subpoena issued to the document custodian of the ISO, who was deposed in this case. The documents presented to the West Virginia Insurance Commissioner cited in Morton were also produced in this case and relied on by UNC's expert, Richard Stewart. *See* United Nuclear Corporations Memorandum of Law in Opposition to Northbrook's Motion For Partial Summary Judgment on the "Sudden and Accidental" Pollution Exclusion ("UNC Summary Judgment Brief"), at 9-11 (¶¶ 22, 23, 25, 26, 29, 31) (SRP-A0137-39), and references cited therein. This is undoubtedly the reason the trial court denied Allstate's motion to strike.

"circumstantial guarantees of trustworthiness"). Allstate failed even to discuss *Koloms* or its rationale.

Moreover, Allstate seeks to have it both ways by first objecting to UNC's reference to widely (and judicially) recognized insurance industry records regarding the genesis and marketing of the sudden and accidental pollution exclusion, while at the same time attempting to rely on purported "affidavits" appended to a 1993 law review article. *See* Allstate Br. at 26-29. Allstate's citation to purported "affidavits" of state insurance regulators is an improper attempt to supplement the record on appeal, and should be stricken and disregarded. *See Baca v. Swift & Co.*, 74 N.M. 211, 215, 392 P.2d 407 (1964); *Fugere v. Motor Vehicle Div.*, 120 N.M. 29, 32, 897 P.2d 216 (Ct. App. 1995); *see also Hinkle Corp. v. Great Am. Ins. Co.*, 102 N.M. 766, 701 P.2d 365 (1985).

II. THE "SUDDEN AND ACCIDENTAL" POLLUTION EXCLUSION IS A NON-TEMPORAL TERM AND MUST BE CONSTRUED IN FAVOR OF UNC.

New Mexico applies a "standard approach to interpretation of insurance contracts." *Berry v. Federal Kemper Life Assurance Co.*, 2004-NMCA-116, ¶ 80, 136 N.M. 454, 99 P.3d 1166. A court begins by examining the plain language of the policy and then proceeds to consider rules of grammar, context and extrinsic evidence and ends, "if necessary, with construction favoring the insured, if other approaches fail." *Id.* (citing *Rummel v. Lexington Ins. Co.*, 1997-NMSC-041, ¶ 19,

123 N.M. 752, 945 P.2d 970). UNC set forth *Rummel*'s three-step process for determining issues of policy construction and for resolving ambiguities (language, context, extrinsic evidence) in its Brief-in-Chief (at 20-21), and Allstate does not dispute that this approach is the correct one. Application of this straightforward approach here leads ineluctably to the conclusion that the term "sudden" is ambiguous.

Allstate argues that dictionaries define almost all words in several ways and that, standing alone, dictionary definitions do not demonstrate ambiguity. Allstate Br. at 6. However, as UNC acknowledged in its Brief-in-Chief (at 21), although dictionary definitions may be an "imperfect yardstick" for determining whether a term is ambiguous, such definitions provide an appropriate starting point for interpretation. *E.g.*, *Battishill v. Farmers Alliance Ins. Co.*, 2004 NMCA 109 ¶13, 136 N.M. 288, 97 P.3d 620.

Significantly, Allstate does concede in its Answer Brief (Allstate Br. at 1, *see id.* at 7-8) that "'sudden' may connote mere unexpectedness . . . in some contexts . . . ." Given that concession alone, it is apparent that *Rummel* requires the court to undertake additional steps to arrive at the proper interpretation. In this regard, UNC offered factual and legal support for the proposition that the term "sudden," as used in Allstate's policies, includes gradual but unexpected pollution events. For example, UNC cited (i) conflicting court decisions; (ii) other relevant

text of Allstate's Policies (which affirmatively cover "seepage," an event which Allstate does not dispute is gradual); (iii) the statements of the drafters of the pollution exclusion concerning the intended meaning of the terms; and (iv) notably, Allstate's own statements in the case of *Allstate Insurance Co. v. Quinn Construction Co.*, 713 F. Supp. 35 (D. Mass. 1989), *settled on appeal*, 784 F. Supp. 927 (D. Mass. 1990), where it advocated exactly the same position that UNC now advances.[2]

1. The Split of Authority in Applying the Term "Sudden" Provides Additional Evidence of Ambiguity.

Also contrary to Allstate's claim, UNC has not suggested that a split of authority, by itself, establishes ambiguity. However, a split in authority is "indicative of an ambiguity in the policy." *E.g.*, *Davis v. Farmers Ins. Co. of Ariz.*, 2006-NMCA-99 ¶ 7, 140 N.M. 249, 142 P.3d 17.

Allstate does not contest that there is a split in authority. *See* Allstate Br. at 15-16. Instead, Allstate attempts to distinguish cases cited in our Brief in Chief (at 21-26), holding that the word "sudden" as used in the pollution exclusion is ambiguous. In each of these cases, however, such as *Hecla Mining Co. v. New*

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[2] Indeed, amicus Travelers' submission to the New York Department of Insurance cited dictionary definitions and concluded that "[t]here is *nothing* in the term "sudden and accidental" which requires the elimination of gradually occurring events from the collective." SRP-A0847-48.

Hampshire Insurance Co., 811 P.2d 1083 (Colo. 1991), the court employed the very same process adopted by the courts of New Mexico.

In *Hecla*, the court relied on the rule that "[t]erms used in a contract are ambiguous when they are susceptible to more than one reasonable interpretation." 811 P.2d at 1091. Dictionary definitions were appropriately considered. *Id.* And, the *Hecla* court applied the universal principle that ambiguous language must be construed in favor of the policyholder and against the insurer who drafted the policy. *Id.* at 1092. These are precisely the same well-established principles followed by the Supreme Court of New Mexico. *See Berry*, 2004-NMCA-116, ¶80; *Battishill*, 2004-NMCA-109, ¶13; *Rummel*, 1997-NMSC-041, ¶20.

Allstate's response to another decision applying Colorado law—*Blackhawk-Central City Sanitation Dist. v. Am. Guar. & Liab. Ins. Co.*, 214 F.3d 1183 (10th Cir. 2000) (Allstate Br. at 17-18 and n.2)—is that this Court should ignore Colorado jurisprudence and instead follow Utah, Oklahoma and Kansas law—underscores UNC's point that court decisions are divided on this basic issue. Therefore, the Court must proceed to the second *Rummel* element: the context in which the word "sudden" occurs. *See Rummel*, 1997-NMSC-041, ¶ 20.

2. Other Policy Provisions Are Consistent with a Finding That "Sudden" Means "Unexpected" and Inconsistent with a Meaning of "Not Gradual."

"An insurance policy should be construed as a complete and harmonious instrument designed to accomplish a reasonable end." *N.M. Physicians Mut. Liab. Co. v. LaMure*, 116 N.M. 92, 95, 860 P.2d 734, 737 (1993) (citation omitted). [3] Other provisions of the Allstate policies—the relevant context—provide additional evidence that the term "sudden" is used in its non-temporal sense.

i. The term "occurrence" is consistent with a non-temporal meaning of "sudden."

Allstate contends that it makes no difference that the definition of "occurrence" includes "a continuous or repeated exposure to conditions." Allstate Br. at 10. On the contrary, a "coordination of meaning" between the policy definition of occurrence and the pollution exclusion sheds light on the meaning of the term "sudden." Based on the drafting history of the sudden and accidental pollution exclusion, the court in *Queen City Farms, Inc. v. Central Nat'l Ins. Co. of Omaha*, 882 P.2d 703, 721-23 (Wash. 1994)) determined that the occurrence clause "clarified coverage." Therefore, the court concluded, "'sudden and accidental' means 'unexpected or unintended'," not abrupt. *Id.* at 721.

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[3] On this point, Allstate's corporate designee witness on underwriting agreed. *See* UNC Summary Judgment Brief at 11-12 (¶ 35) (SRP-A0139-40), and references cited therein.

ii. The term "sudden" is not surplusage.

Allstate argues that if "sudden" means "unexpected, it would have no independent meaning," and contends that UNC concedes this point. Allstate Br. at 11. Allstate's argument is erroneous, and UNC has made no such concession. UNC cited to *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 607 N.E.2d 1204, 1218 (Ill. 1992), where the court correctly ruled that a "surplusage" argument was meritless because words in a policy are intended to complement and be consistent with other terms. *Id.* at 1220. Further, the court found that "when the policy is viewed as a whole, these clauses work together to convey the intent of the parties that the policy's coverage would protect the insured from unexpected or unintended releases, including those that may have been continuous." *Id.*

iii. The 1978 Endorsement Provides Additional Evidence of Coverage.

The touchstone of insurance policy interpretation is the reasonable expectation of the policyholder. *E.g.*, *Azar v. Prudential Ins. Co. of Am.*, 2003-NMCA-62, ¶ 42, 133 N.M. 669, 68 P.3d 909. The 1978 Allstate policy endorsement provides coverage for seepage—a term connoting a gradual movement. Therefore, the endorsement is consistent with and complements the non-temporal use of the term "sudden."

Citing *American Family Mutual Ins. Co. v. American Girl, Inc.*, 673 N.W.2d 65, 73 (Wis. 2004), and other cases, Allstate argues that an exception applies only

to the exclusion clause within which it appears and cannot be used to create coverage. Allstate Br. at 13. This argument is unfounded. UNC did not cite the express coverage for accidental seepage in order to create coverage under the sudden and accidental pollution exclusion. Rather, the coverage for seepage demonstrates that, if the policy is to be read as a whole (as it must be, see *Rummel*, 1997-NMSC-041, ¶ 20), and if terms are not to be rendered superfluous (as is required, *see Truck Ins. Exchange v. Gagnon*, 2001-NMCA-92, ¶ 20, 133 N.M. 151, 33 P.3d 901), then "sudden" must be interpreted as meaning "unexpected." Otherwise there would be no circumstances under which accidental seepage would *ever* be covered.

3. Courts Construing the Term "Sudden and Accidental" in the Context of Boiler & Machinery Coverage Have Held That the Term Is Non-Temporal.

Allstate fails to respond to the fact that the insurance industry adopted the meaning of "sudden and accidental" as it was understood in the boiler and machinery insurance context. *See* Brief-in-Chief at 34-35. Accordingly, the Court should find that "sudden and accidental" reasonably applies to gradual releases of materials, just as it did to gradual breakdowns of insured equipment in the boiler and machinery context, notwithstanding the use of the term "sudden."

4. Allstate's Contention in *Quinn* That "Sudden" Has a Non-Temporal Meaning Is a Further Indication of Ambiguity.

This Court must consider Allstate's assertion in *Quinn* of the same interpretation of the word "sudden" that UNC advances here. To demonstrate ambiguity, UNC only needs to show that there are two "reasonabl[e]" constructions of the language at issue. *Alvarez v. Southwestern Life Ins. Co.*, 86 N.M. 300, 302, 523 P.2d 544, 546 (1974). Since Allstate does not deny it told the *Quinn* court that "[t]he [qualified] pollution exclusion does not prevent recovery where the release . . . was not intended by the insured," it rings particularly hollow for Allstate now to argue that its prior interpretation of "sudden" is unreasonable.

5. Regulatory and Drafting History Is Admissible and Relevant to Establish the Ambiguity of the Term "Sudden."

Allstate contends that regulatory and drafting history cannot be considered in establishing the meaning of the sudden and accidental pollution exclusion, even in the face of all of the foregoing indications of ambiguity. Allstate Br. at 21-22. As acknowledged by the Tenth Circuit, however, "New Mexico courts generally allow a party to introduce extrinsic evidence of a contract's meaning to determine *whether an ambiguity exists and how that ambiguity should be resolved.*" *Mesa Oil, Inc. v. Ins. Co. of N. Am.*, 123 F.3d 1333, 1340-41 (10th Cir. 1997) (emphasis added). The *Mesa Oil* court did not rule that such extrinsic evidence is irrelevant or inadmissible; it simply did not find the evidence

advanced in that case persuasive. *Id.* Given the showing summarized above, *Rummel* mandates that available extrinsic evidence bearing upon the meaning of "sudden" be considered. Allstate's contention that this Court should ignore available evidence of the meaning ascribed to a policy term *by the drafters of that term* is meritless.

To summarize, where dictionary definitions, conflicting court decisions, the context of the Policies, the insurer's own statements and the statements of the drafters of the language at issue *collectively* point toward ambiguity, summary judgment is improper.

III. REGULATORY ESTOPPEL APPLIES.

In our Brief-in-Chief (at 32-38), UNC cited decisions which used the evidence of drafting history to confirm the industry's public position that "sudden" means "unexpected." *E.g.*, *Morton Int'l, Inc. v. Gen. Acc. Ins. Co. of Am.*, 629 A.2d 831, 876 (N.J. 1993); *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1189, 1195-96 (Pa. 2001); *Joy Techs., Inc. v. Liberty Mut. Ins. Co.*, 421 S.E.2d 493 (W. Va. 1992); *see also King v. Travelers Ins. Co.*, 84 N.M. 550, 556, 505 P.2d 1226 (1973) (making "logical inference" that insurer's agents' "doubt as to the applicability of the pertinent policy provisions" is persuasive evidence of ambiguity, and suggesting that waiver or estoppel argument would apply, if it had

been raised). These courts held that insurers are estopped from asserting that the clause precludes coverage of gradually-occurring environmental losses.

Against these cases Allstate simply juxtaposes *Snyder General Corp. v. Great American Insurance Co.*, 928 F. Supp. 674, 682 (N.D. Tex. 1996), and the "numerous cases" cited therein. (*See* Allstate Br. at 31). Allstate appears to argue that the number of courts deciding one way or the other is dispositive. If that is true, the Court need not even reach the regulatory estoppel issue because the numerous cases establishing that "sudden" is ambiguous resolve this matter. Otherwise, the Court must consider the issue on the merits, and, UNC respectfully submits, should adopt the view set out by the highest courts in New Jersey, Pennsylvania and West Virginia.

Allstate further contends that estoppel cannot apply here because UNC offers no evidence of any representations made by Allstate concerning the pollution exclusion. Allstate misconstrues the effect of regulatory estoppel. As the *Morton International* court explained:

> [T]he IRB misled the state's insurance regulatory authority in its review of the clause, and avoided disapproval of the proposed endorsement as well as a reduction in rates. As a matter of equity and fairness, the insurance industry should be bound by the representations of the IRB, its designated agent, in presenting the pollution-exclusion clause to state regulators. 629 A.2d at 874.

Moreover, in our Brief-in-Chief (at 15-17), we cited *New Castle County v. Hartford Accident & Indemnity Co.*, 933 F.2d 1162, 1196 (3d Cir. 1991); *Koloms*, 687 N.E.2d at 79; *Queen City Farms*, 822 P.2d at 721-23; *Sunbeam*, 781 A.2d at 1194; and *Textron, Inc. v. Aetna Casualty & Surety Co.*, 754 A.2d 742, 750 (R.I. 2000), for the general proposition that the drafting history is binding upon those insurers that choose to use the qualified pollution exclusion. Allstate does not rebut the reasoning of these cases. (Allstate Br. at 31.)

IV. ENTRY OF SUMMARY JUDGMENT VIOLATED UNC'S DUE PROCESS RIGHTS.

Allstate does not dispute that it moved solely for a declaration on the meaning of "sudden," and that Allstate did not ask for and the parties did not brief the merits of coverage on summary judgment. Nor can it dispute that the court below made factual findings regarding UNC's business practices without any support in the record and without providing UNC an opportunity to be heard on the issue. Yet Allstate claims that UNC has received due process, even though the court below summarily adjudicated, without a hearing, the meaning of the entire UNC-Allstate contract when significant parts of that contract were not before it. Allstate's claim contradicts well established law that it is inappropriate for a trial court to grant summary judgment on issues when the parties have not been provided notice and an opportunity to respond to those issues. *See* Brief-in-Chief at 39-45 and cases cited therein.

As set forth in UNC's Brief-in-Chief, insurers adopted the sudden and accidental pollution exclusion to preclude coverage for only intentional polluters, or, as the district court put it, companies engaged in "bad" business practices. Accordingly, the lower court's finding that UNC employed "bad" business practices improperly lumps UNC into the category of entities for whom coverage allegedly should not be found. The district court's ruling prejudices UNC and is a violation of UNC's due process rights. As noted, the motion before the trial court was as to the meaning of the word "sudden." There was no issue of UNC's business practices ("bad" or otherwise), nor was UNC permitted to brief this issue or to present any evidence. As discussed in UNC's Brief-in-Chief, at 40-42, the available evidence would actually have rebutted any contention that UNC's business practices were "bad."

The trial court's decision dismissing UNC's claims was based on a purported factual finding that was not before the court (and for which UNC was not permitted to produce evidence) and failed to take account of documents (the underlying policies) that are essential for determining coverage under the Allstate policies.[4] These circumstances, at the very least, raise substantial questions of fact that require reversal of the court's decision.

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[4] Allstate makes much of the fact that the Travelers policies are not part of this record. Allstate's contentions on this point are misguided. UNC, in its Memorandum of Law in Opposition to [Allstate's] Motion for Partial Summary

V. ALLSTATE HAS A DUTY TO DEFEND.

Under the Allstate Policies, Allstate is required to defend claims within its coverage that are not covered by the Travelers policies:

> It is agreed that with respect to any Occurrence covered only by the terms and conditions of this policy except for the amount of the retained limit, [Allstate] shall . . . defend any suit . . . alleging such injury, sickness, disease or destruction and seeking damages on account thereof[.] 2 SRP-A0276.

Allstate's answer to this point is simply to beg the question by asserting that Allstate's lack of a duty to defend was established when the district court improperly adjudicated all coverage issues against UNC. Allstate Br. at 42.

The issue of whether Allstate owes a defense to UNC hinges on, among other facts, the fact that UNC leased the mine sites, and did not own them. Thus, under Travelers more restrictive "care, custody or control" exclusion, there may by

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Judgment on the "Sudden and Accidental Pollution Exclusion, at page 9, asserted in its counterstatement of facts (¶ 21) (SRP-A0137) the existence of the Travelers policies underlying the Allstate policies and the fact that the Travelers policies did not contain a sudden and accidental pollution exclusion. UNC's statement is supported by an affidavit of Jordan Stanzler, an expert on the historical development of pollution exclusions, and the business records of Travelers' appended to Mr. Stanzler's report. The Stanzler report discussed the provisions of the Travelers' policies. The trial court did not strike the Stanzler report, and the contents of that report are part of the record. Moreover, it is proper to refer to the Travelers policies to the extent they are necessary for an adjudication of the issues in dispute. *See Kleeman v. Fogerson*, 74 N.M. 688, 397 P.2d 716 (1964); *Jacobson v. Desert Book Co.*, 287 F.3d 936, 941-42 (10th Cir. 2002). *See* Reply Brief in Support of Northbrook's Motion for Partial Summary Judgment on the "Sudden and Accidental" Pollution Exclusion, at 4.

no duty to defend, while under Allstate's less restrictive "owned property" exclusion, Allstate is obligated to defend UNC. UNC was entitled to a determination of this issue.

Allstate also seeks to convince the Court that it has no duty to defend because an administrative proceeding is not a suit seeking damages, a point which it did not raise below. Allstate Br. at 46. Once again, Allstate is wrong. The rule in New Mexico (and the rule applicable nearly everywhere else) is that remediation costs constitute damages within the meaning of a liability insurance policy. *City of Farmington v. L.R. Foy Constr. Co.*, 112 N.M. 404, 816 P.2d 473 (1991). As noted, the overwhelming majority rule is that administrative proceedings are suits. *See R.T. Vanderbilt Co., Inc.. v. Cont'l Cas. Co.*, 870 A.2d 1048, 1058 (Conn. 2005) (enumerating cases). Accordingly, to the extent there are claims by state or federal agencies seeking remediation of property that was part of UNC's leasehold, Allstate has a duty to defend all such claims and dismissal was improper.[5]

CONCLUSION

For the reasons stated above, in its Brief-in-Chief, and in its opposition to the amicus brief filed by Travelers Insurance Company, UNC requests that the decision dismissing its claim against Allstate be reversed, and that the Court find that the word "sudden" is ambiguous and must be construed to mean "unexpected."

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October 2009, I caused a true and correct copy of the foregoing *Reply Brief* to be deposited in the United States Mail at Santa Fe, New Mexico, first class mail, postage prepaid, to the following:

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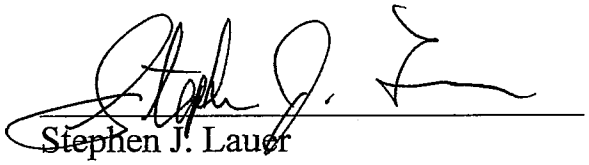

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