

*Nos. 07-15326, 07-15356, 07-15541*

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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AMERICAN COLOR GRAPHICS, INC.,

*Plaintiff-Appellee-Cross-Appellant,*

vs.

TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY,

*Defendant-Appellant-Cross-Appellee.*

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On Appeal from the United States District Court  
for the Northern District of California, Oakland Division  
Case No. CV-04-03518-SBA  
Hon. Sandra Brown Armstrong, Presiding

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**OPENING BRIEF OF APPELLANT**

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**CORPORATE DISCLOSURE STATEMENT**  
**(FED. R. APP. P. 26.1)**

Travelers Property Casualty Company of America is a wholly owned subsidiary of The Phoenix Insurance Company, which in turn is a wholly owned subsidiary of The Travelers Indemnity Company. The Travelers Indemnity Company is a wholly owned subsidiary of Travelers Insurance Group Holdings, Inc., which in turn is a wholly owned subsidiary of Travelers Property Casualty Corp. Travelers Property Casualty Corp. is a wholly owned subsidiary of The Travelers Companies, Inc.

No individual or corporation owns 10% or more of the stock of The Travelers Companies, Inc.

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## **I. JURISDICTIONAL STATEMENT**

The amount in controversy is more than \$75,000 and there is diversity of citizenship between the parties. 28 U.S.C. § 1332. Appellee American Color Graphics, Inc. (“ACG”) is incorporated in New York and has its principal place of business in Tennessee. Appellant Travelers Property Casualty Company of America (“Travelers”) is incorporated and has its principal place of business in Connecticut.

This appeal is timely. 28 U.S.C. § 2107(a); Fed. R. App. Proc. 4(a)(1)(A). Judgment was entered on October 24, 2006. The order on post-trial motions was filed on January 22, 2007. Travelers’ notice of appeal was filed on February 21, 2007.

## **II. ISSUES PRESENTED**

1) Was ACG improperly allowed to claim tort damages for breach of the implied covenant of good faith and fair dealing where Travelers paid for and defended ACG against the claim and the only harm is ACG’s deductible payment?

2) Did the district court err in finding ACG’s deductible payment was caused by Travelers’ breach of the implied duty to investigate where there is no evidence that, had Travelers conducted a more thorough investigation, ACG would have paid less?

3) Did the district court err in finding the evidence supports a compensatory damages award of \$140,000 where the evidence of monies paid by Travelers is \$42,506.12 and there is no evidence ACG reimbursed Travelers?

4) Did the district court improperly submit punitive damages to the jury because a deductible payment only constitutes contract damages and ACG did not prove tort damages?

