

**CERTIFIED FOR PARTIAL PUBLICATION**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

STATE OF CALIFORNIA,

Plaintiff, Cross-Defendant and  
Appellant,

v.

CONTINENTAL INSURANCE  
COMPANY et al.,

Defendants, Cross-Complainants  
and Appellants;

EMPLOYERS INSURANCE OF  
WAUSAU,

Defendant, Cross-Complainant and  
Respondent.

E041425

(Super.Ct.No. 239784)

**ORDER MODIFYING  
OPINION**

[NO CHANGE IN JUDGMENT]

**THE COURT**

It is ordered that the opinion filed herein on January 5, 2009, be modified as follows:

1. On page 9, in the second paragraph, the words "to remediate" are added so that the sentence reads:

In April 2002, the trial court (per Judge Waters) ruled that the State's negligence in failing to remediate and delaying remediation at the site did not breach any duty to mitigate the defendant insurers' damages (no-mitigation ruling).

2. On page 34, the second paragraph of footnote 10, the parenthetical citation to *O'Brien v. Camisasca Automotive Mfg., Inc.* (2008) 161 Cal.App.4th 388, 401 is deleted and replaced with *People v. Weeks* (2008) 165 Cal.App.4th 882, 888.

3. On page 59, the last paragraph, the parenthetical citation to California Rules of Court, rule 8.204(1)(C) is changed to read: (Cal. Rules of Court, rule 8.204(a)(1)(C).)

4. On page 67, in the second full paragraph, commencing with "In their reply brief," the parenthetical citation to *Buell-Wilson v. Ford Motor Co.* (2008) 160 Cal.App.4th 1107, 1160 is deleted and replaced with *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685.

Other than this modification, the opinion remains unchanged. This modification does not effect a change in the judgment.

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RICHLI  
J.

We concur:

RAMIREZ  
P.J.

HOLLENHORST  
J.