Case No. S205889

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

FLUOR CORPORATION,
Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE,
Respondent,

HARTFORD ACCIDENT AND INDEMNITY COMPANY,
Real Party in Interest.

Answer of Real Party in Interest Hartford Accident and Indemnity Company to Petition for Review Filed by Fluor Corporation After a Decision by the Court of Appeal, Fourth Appellate District, Division Three
Civil Case No. G045579

Following a Grant of Review and Transfer by the Supreme Court of California, Case No. S196592

Petition from the Superior Court of the State of California for the County of Orange, Case No. 06CC00016, The Honorable Ronald L. Bauer, Presiding

ANSWER TO PETITION FOR REVIEW

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WHY THE COURT SHOULD DECLINE REVIEW

Plaintiff and Petitioner Fluor Corporation ("Fluor-2")[1] petitions the Court to review the Court of Appeal's August 30, 2012 opinion. (*Fluor Corp. v. Superior Ct.* (2012) 208 Cal.App.4th 1506 ["*Fluor Corp.*"].) Fluor-2 contends that review should be granted in order to resolve an alleged conflict between this Court's decision in *Henkel Corporation v. Hartford Accident and Indemnity Company* (2003) 29 Cal.4th 934 ("*Henkel*") and Section 520 of the Insurance Code. However, the Court of Appeal's opinion makes it clear that Fluor-2's asserted conflict is not real and that any further appellate proceedings now would be premature. In denying the petition for writ of mandate, the Court of Appeal made two alternative rulings, both of which support its disposition and render further review inappropriate: (1) Section 520 of the Insurance Code does not abrogate this Court's decision in *Henkel* or void the assignment conditions in the Hartford policies; and (2) the Superior Court has yet to resolve undecided questions of fact or mixed questions of fact and law that preclude summary adjudication on Counts I and II of Hartford's Second Amended Cross-Complaint, including whether Fluor-1 purported to assign to Fluor-2 rights under the Hartford policies.

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[1] Hartford Accident and Indemnity Company ("Hartford") adopts here the nomenclature used by the Court of Appeal to distinguish between the "Fluor Corporation" to which Hartford issued its policies from 1971-1986 ("Fluor-1") and the "Fluor Corporation" that was created in 2000 ("Fluor-2").

In petitioning this Court, Fluor-2 paints an unfair picture of the Court of Appeal's ruling. According to Fluor-2, the Court of Appeal "did not substantively address the issues in Fluor's petition," "refuse[d] to question the applicability of *Henkel* in light of section 520," and left it to this Court to consider Fluor-2's substantive arguments. (Petition for Review [Oct. 9, 2012] ["Petition"] at pp. 4, 5.) Nothing could be further from the truth. The Court of Appeal carefully considered Fluor's substantive arguments over 18 pages, explained why they lacked merit, and observed that Fluor-2 intended to petition this Court if, as the Court of Appeal previewed, it denied Fluor-2's petition for writ of mandate. Nothing in the Court of Appeal's opinion suggests the Court of Appeal believed this Petition warrants review under California Rules of Court Rule 8.500(b). Far from it, the Court of Appeal's ruling was decisive against Fluor-2 on the merits.

The lynchpin of Fluor-2's Petition is that the Supreme Court, aided and abetted by the parties and *amici*, whiffed in *Henkel* because the Court overlooked Section 520, a statute born in 1872 that before this case was cited once in the history of California law. According to Fluor-2, Section 520 voids assignment conditions in third-party liability policies where, as here, the occurrence (but not the insured's loss resulting from liability) precedes the purported assignment. This argument lacks merit for many reasons, including (1) as the Court of Appeal observed, Section 520

was created decades before third-party liability coverage was ever created and (2) Fluor-2 concedes that Section 520 would not have affected the result in *Henkel* because there the Court found that the parties did not intend to assign the insurance rights at issue. Section 520 did not warrant a different result in *Henkel* and it does not warrant a different result here.

In petitioning this Court, Fluor-2 tellingly never mentions the Court of Appeal's second independent ruling, which by itself defeats Fluor-2's Petition. Instead, Fluor-2 tries to create a misimpression that "[w]hile this appeal was wending its way through the appellate courts, every issue that was not dependent on the outcome of this Petition was resolved through a bench trial, and the underlying case is awaiting resolution of the appellate process." (Petition at p. 10.) This statement is inaccurate because two weeks before Fluor-2 filed its Petition, the Superior Court declined Fluor-2's request to stay proceedings pending disposition of its Petition and noted "we have a lot more topics" to resolve. (*See* Hartford Accident and Indemnity Company's Request for Judicial Notice in Support of Answer to Petition for Review ["Hartford RJN"], Ex. 1 at p. 15:6-12 [Sept. 26, 2012 Reporter's Transcript in *Fluor Corp. v. Hartford Acc. and Indem. Co.*, Case No. 06CC00016 (Sup. Ct., Orange Cty.)].) The Court of Appeal correctly concluded the Superior Court has yet to complete its work on Counts I and II of Hartford's Second Amended Cross-Complaint and the myriad issues that remain unresolved, including whether Fluor-1 purported to assign to

Fluor-2 rights under the Hartford policies. This Court should decline the Petition for this reason as well.

STATEMENT OF THE CASE

Fluor moved for summary adjudication on Counts I and II of Hartford's Second Amended Cross-Complaint which seek, respectively, (1) a declaration that Hartford has no obligation to provide coverage to Fluor-2 for suits against Fluor-2 under the policies Hartford issued to Fluor-1 (First Cause of Action) and (2) a ruling that Hartford is entitled to reimbursement from Fluor-2 for defense and indemnity costs paid on account of asbestos suits against Fluor-2 (Second Cause of Action). (App. Ex. 10, at pp. 02788-02789.)[2] Fluor-2's motion made two arguments: first, Hartford's claims were time-barred; second, Section 520 of the Insurance Code precluded enforcement of the assignment provisions in the Hartford policies.

The Superior Court denied Fluor-2's motion on June 27, 2011. (App. Ex. 37, at pp. 10939-10942.) After the court denied its motion, Fluor-2 sought a writ of mandate seeking entry of summary adjudication on Counts I and II of Hartford's Second Amended Cross-Complaint, and a ruling that it is an insured under the Hartford policies.

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[2] The term "App. Ex. __, at p. __" refers to the consecutively paginated exhibits submitted to the Court of Appeal with Fluor's Petition for Peremptory Writ of Mandate ["Writ Petition"], filed August 1, 2011, and Hartford's Answer to Petition for Peremptory Writ of Mandate, filed February 8, 2012.

The Court of Appeal denied Fluor-2's writ petition on September 8, 2011. (*See Fluor Corp.*, *supra*, 208 Cal.App.4th at 1511.) Fluor-2 pursued its claim for extraordinary relief to this Court, which on November 16, 2011 directed the Court of Appeal to vacate the order denying mandate and to issue an order to show cause why the relief should not be granted. (*See id.*)

Following briefing and oral argument, the Court of Appeal, on August 30, 2012 issued a published decision denying Fluor-2's Writ Petition on the grounds that (1) Section 520 does not bar enforcement of the assignment conditions in the Hartford policies as set forth in *Henkel*; and (2) in any event, mixed questions of fact and law remain to be resolved precluding summary adjudication on Courts I and II of Hartford's Second Amended Cross-Complaint. (*See generally*, *Fluor Corp.*, *supra*, 208 Cal.App.4th 1506.)

ARGUMENT

I. THE COURT OF APPEAL PROPERLY DENIED THE WRIT OF MANDATE.

A. The Court of Appeal Addressed Fluor-2's Substantive Arguments Under Section 520.

Fluor-2 makes the remarkable claim that "the Court of Appeal did not substantively address the issues presented in Fluor's Petition." (Petition at p. 4.) Fluor-2 is mistaken.

Fluor-2 asked the Court of Appeal to disregard this Court's ruling in *Henkel* on the ground that Section 520 is "squarely controlling"

and represents an "expressed legislative will" to invalidate assignment clauses after an "occurrence" by means of a "bright line rule." (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1515.) Fluor-2 sharply criticized the parties, *amici* and this Court for failing to address Section 520 by name, a statute, Fluor asserted, "squarely controlling the legal issue" in *Henkel*. (Writ Petition at p. 42.)

The Court of Appeal directly considered these arguments and criticisms and found them unconvincing, concluding there was a more reasonable explanation for the lack of prior citation to Section 520, namely, that there is "less to the statute's supposed significance regarding assignability of liability insurance than meets the eye." (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1515.) Finding that liability insurance did not exist when the statute was enacted in 1872, the Court of Appeal held that the Legislature could not have had any understanding concerning the meaning of "loss" or the intended scope of restrictions regarding the assignability of liability policies:

> There is nothing . . . in section 520 that articulates legislative policy pertaining to the assignment of liability policies or at what stage the right to policy proceeds were freely assignable notwithstanding a consent-to-assignment provision in the policy.

(*Id.* at 1518.)

In other words, the Court of Appeal recognized that Section

520 does not answer the question of when "loss" occurs in the liability context, nor does it state whether assignment conditions such as those at issue here (or in *Henkel*) are enforceable. The Court therefore considered -- and rejected -- Fluor-2's argument that Section 520 creates an independent rule of decision. The Court of Appeal then rebutted Fluor-2's argument that "[t]he concept of loss is the same under all circumstances," Fluor RJN,[3] Ex. 1 at p. 28:22-23, with references both to common law decisions explaining the differences in "loss" in the first- and third-party context and to Section 108 of the Insurance Code, which makes clear that, in contrast to first-party insurance, "loss" in the liability insurance context "results from" liability for injury or damage. (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1517-1518.)

Moreover, the Court of Appeal also considered -- and properly rejected -- Fluor-2's contention that this Court's decisions in *Montrose* and *Continental* stand for the proposition that a "loss" under Section 520 arises under third-party liability policies when underlying injury first occurs. (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1519; *see Montrose Chem. Corp. v. Admiral Ins. Co.* ("*Montrose*") (1995) 10 Cal.4th 645, 655; *State of California v. Continental Ins. Co.* ("*Continental*") (2012)

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[3] The term "Fluor RJN" refers to Petitioner Fluor Corporation's Request for Judicial Notice in Support of Petition for Review.

55 Cal.4th 186, 191.)[4] The Court of Appeal, after quoting Fluor-2's argument directly, noted that this was the precise argument that the dissent offered in *Henkel*, and that the majority "disagreed about *Montrose*'s relevancy to consent-to-assignment provisions." (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1519.) Rather, in *Henkel*, this Court concluded that the defining event was when the insured acquires a cause for breach of the insurance contract. The Court of Appeal found this conclusion to be completely compatible with the origins and intent of Section 520:

> Here is the nub. The 1872 Legislature drew no bright lines and made no controlling pronouncements about liability insurance, or about how "loss" in the context of such policies is to be defined. We see nothing in Insurance Code section 520 or in *Henkel* to support Fluor-2's assumption that the Supreme Court would have reached a different result had the parties in that appeal briefed or argued the statute's applicability. In the absence of an express legislative directive, stare decisis controls.

(*Id.* at 1519-1520.)

Ultimately, the Court of Appeal determined that *Henkel* "is on point." (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1512.) Observing that "*Henkel* is not the 'outlier' that Fluor-2 characterizes," the Court noted, for example, that the case has been followed by the Supreme Court of Indiana,

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[4] This Court published its decision in *Continental* on August 9, 2012, two weeks after oral argument. On August 14, Fluor-2 submitted a letter regarding new authority. (*See* Hartford RJN, Ex. 2.) That the Court of Appeal addressed this decision is further evidence of the thoroughness with which the Court of Appeal considered Fluor-2's substantive arguments.

which concluded that "[t]he California Supreme Court's logic in *Henkel* seems about right." (*Id.* at 1513 [citing *Travelers Cas. & Sur. Co. v. United States Filter Corp.* (Ind. 2008) 895 N.E.2d 1172, 1180].) But the soundness of Fluor-2 criticism's of *Henkel* was "beside the point," the Court continued, because "despite its rhetoric," Fluor-2 did not ask the Court to "revisit or limit" *Henkel*. (*Id.*) Nor could it do so.

In short, despite Fluor-2's contentions to the contrary, the Court "substantively addressed" each of Fluor-2's substantive arguments offered in support of its Petition, and properly rejected them.

B. The Court of Appeal Correctly Decided the Issues Relating to Section 520.

Fluor-2 makes a series of misguided attacks on the well-reasoned opinion of the Court of Appeal. Faced with the Court of Appeal's thorough and detailed disposition of each of the arguments raised in the original Writ Petition, Fluor-2's Petition to this Court relies principally on a wholly new argument. Fluor-2 misreads the opinion as a sweeping rejection of the application of Section 520 to third-party liability policies, and then summarily denounces the strawman it has created as "flatly contradicted by decades of California jurisprudence." (Petition at p. 12.)[5]

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[5] "Decades of jurisprudence" turns out to mean one Court of Appeal decision, *Evans v. Pacific Indemnity Company* (1975) 49 Cal.App.3d 537, which stands for modest proposition that Insurance Code section 533, which prohibits an insured from insuring against the consequence of its own "willful act." But that proposition applies equally to all types of

The Court of Appeal's opinion says no such thing. What the opinion says is that Section 520 does not answer the question that Fluor-2 says it answers. According to Fluor-2, "the issue is *when* loss happens," and "Section 520 provides the answer." (Petition at p. 11 [emphasis in original].) But that is exactly what Section 520 does *not* do. It contains no definition of "loss" and no explanation of when it occurs.[6] Section 520 says nothing at all about when "loss" happens in the third-party context, as the Court stated, "[a]bout this definitional question, the 1872 Legislature cared not a whit." (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1517; *id.* at 1518 ["There is nothing . . . in section 520 that articulates legislative policy pertaining to . . . at what stage the right to policy proceeds were freely assignable"].)

Rather, in responding to Fluor-2's sweeping claim that Section 520 embodies a "bright line rule" in conflict with *Henkel*, the Court of Appeal simply held that the statute, as enacted in 1872, could not have contemplated such a result. The Court found that the statute was written

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insurance. (*See Waller v. Truck Insurance Exchange, Inc.* (1995) 11 Cal.4th 1, 17 ["This concept of fortuity is basic to insurance law. Insurance typically is designed to protect against contingent or unknown risks of harm, not to protect against harm that is certain or expected."].)

[6] Indeed, Fluor-2 carefully refrains from resting its discussion on the words of the statute. The statute is useful to Fluor-2 only for containing the word "loss"; Fluor-2's argument on *when* loss happens ignores the words of Section 520 (as well as Section 108) and tracks the arguments made in the dissent in *Henkel*.

against a historical backdrop in which insurance provided protection for first-party fire, marine and property damage losses, in which the concept of "loss" was easily identifiable. (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1516.) The Court of Appeal's opinion, therefore, simply held that the 1872 Legislature, not being familiar with the concept of liability insurance, could not have intended to create any rule as to when "loss" occurs in the third-party context.

But the Court of Appeal also points to the statute that *does* answer Fluor-2's question: Section 108 of the Insurance Code, which defines "liability insurance." In the Court of Appeal's words:

> [T]he Insurance Code itself defined "loss," in the context of liability insurance, as loss resulting from the insured's liability to the injured person, *not* the injury or harm to the underlying claimant.

(*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1518 [citing Ins. Code § 108] [emphasis in original].) Section 108 appears to be the only statute in which the Legislature expressed its intention as to when loss occurs for purposes of liability insurance. It provides that loss *results from* -- and therefore logically must come after -- the underlying injury that gives rise to liability.

That, of course, is Hartford's position: "loss" for purposes of liability policies "result[s] from liability," and therefore loss cannot precede liability, as Fluor-2 contends. Section 108 is therefore sufficient, standing alone, to resolve the issue of the meaning of "loss" under Section 520.

Fluor-2 offers no other plausible meaning for Section 108 in its Petition, and does not even mention Section 108 aside from a single footnote, where it offers an "interpretation" of the statute that is inconsistent with rules of construction, grammar and common sense.

Unable to explain how its proffered definition of "loss" can be squared with Section 108 of the Insurance Code, Fluor-2's petition to this Court is forced back to its familiar refrain that "loss" is defined as injury to the third party in *Montrose* and *Continental*. (*See Continental*, *supra*, 55 Cal.4th at 186; *Montrose*, *supra*, 10 Cal.4th at 645 [cited in Petition at pp. 55-57].) As the Court of Appeal recognized, however, neither case involves the assignment of policy benefits, choses in action or any other issue raised in *Henkel*. *Continental* dealt with "complex questions of liability insurance coverage for long-tail claims . . . over multiple consecutive policy periods." (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1519.) In that case, like *Montrose*, this Court looked to when the damage "occurred" to determine whether insurers should be held liable for those damages. (*See id.*) But that says nothing about when "loss" occurs in the assignment context. Neither *Continental* nor *Montrose* ever consider the meaning of "loss" in any context, let alone in the context of the assignment of policy benefits. The context of those cases is entirely different, and the meaning of words depends on their context. (*See Lakin v.*

Watkins Assoc. Indus. (2008) 6 Cal.4th 644, 659 ["words must be construed in context"].)

Moreover, as the Court of Appeal noted, the six-justice majority in *Henkel* expressly *rejected* the argument that "policy benefits can be assigned without consent once the event giving rise to . . . liability [against the insured] has occurred." (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1519 [quoting *Henkel*, *supra*, 29 Cal.4th at 944].) To the extent cases such as *Montrose* use the term "loss" as shorthand for injury or damage, this Court has rejected extrapolation of that term to the assignment context. *Henkel* accepts that common-law post-loss restrictions on assignment provisions may apply to liability policies, and examines the purpose of that exception to determine its appropriate breadth in that context. The post-loss exception exists for first-party policies because after a loss on a first-party policy, the insurer is not exposed to any additional risk. *Henkel* asks: at what point is the insurer under a third-party policy not exposed to additional risk? *Henkel*'s answer is: when the insured's rights has been reduced to a chose in action. That answer is consistent with the purpose of the post-loss exception and the language of Section 108 of the Insurance Code.

C. The Court of Appeal Correctly Concluded that the Parties Have Not Properly Placed into Issue Whether Fluor-1 Purported to Assign the Policies to Fluor-2.

The extraordinary relief that Fluor-2 seeks is a peremptory writ entering summary adjudication in its favor on Hartford's claims for relief seeking declarations that Fluor-2 is not an insured, and seeking reimbursement of amounts paid to Fluor-2 under Hartford's policies (Counts I and II of Hartford's Second Amended Cross-Complaint). (App. Ex. 10, pp. 02788-02789.) The Court of Appeal held that "the issuance of a peremptory writ is premature at this stage" because there are triable issues of material fact on the fundamental question of whether Fluor-1 assigned, or even attempted to assign, the policies to Fluor-2. (*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1520.) Fluor-2 has no response to this independent ground for denying its petition. This failure alone is reason enough to deny Fluor-2's petition.

To be entitled to the relief it seeks, Fluor-2 must demonstrate the absence of triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Fluor-2 concedes that Section 520 cannot change the result in the absence of intent "to assign the insurance rights at issue." (Petition at p. 3.) Fluor-2 not only failed to demonstrate that any purported assignment took place between Fluor-1 and Fluor-2, it failed even to *allege* such an assignment. On the contrary, Fluor-2 originally argued that no assignment was necessary, and that Fluor-2 simply

"retained," rather than obtained by assignment, rights under the Hartford policies. Indeed, counsel for Fluor-2 conceded at oral argument that Fluor-2 itself had not alleged, much less proven, the absence of a material dispute regarding a purported assignment of interests under the Hartford policies:

> Justice Rylaarsdam: You did contend there was an assignment?
>
> Mr. Wilson: We contended. We used the same words, that the policy rights were retained.
>
> Justice Rylaarsdam: Well, there's a difference. You agree there's a difference between retention and assignment?
>
> Mr. Wilson: I do.
>
> * * *
>
> Mr. Wilson: . . . Hartford's claim . . . proceeds on the basis there was an assignment.
>
> Justice Rylaarsdam: You've told me that about seven times now. But you never used that term. You used "retention" instead.
>
> Mr. Wilson: What we said was, in our separate statement, was retention.

(Fluor RJN, Ex. 1 at pp. 52:20-53:1, 53:10-18.) Only upon filing its original Writ Petition with the Court of Appeal did Fluor-2 begin to allege an intended assignment of insurance rights from Fluor-1.

The existence of a purported assignment (to the extent Fluor-2 now believes there was one) is only one disputed fact that the trial court

has yet to decide. The Court of Appeal recognized that other factual issues remained unresolved, even unaddressed:

> There remains, in Fluor-2's words, a "fact intensive inquiry" whether Fluor-2 legally retained an interest in the Hartford policies as a "mere continuation" of Fluor-1 or otherwise.

(*Fluor Corp.*, *supra*, 208 Cal.App.4th at 1520.) To this, Fluor-2 weakly responds in a footnote that, when it used the phrase "fact intensive," it had other issues in mind. (Petition at p. 9, fn. 7.) Perhaps it did, but the Court of Appeal used the phrase aptly here: there are fact issues as to whether any assignment occurred that preclude summary judgment on the assignment issue present here, and Fluor-2 is unable to claim otherwise.

Assuming that the Superior Court will allow Fluor-2 to change tack at this stage and assert that it received rights by an assignment from Fluor-1, there is at a minimum a triable issue of fact as to whether such an assignment actually occurred. Hartford has demonstrated the existence of factual issues, the Court of Appeal has agreed while citing Fluor-2's own words, and Fluor-2 has not responded either to Hartford's showing or to the holding of the Court of Appeal.

Fluor-2's nearest approach to addressing the factual issues barring summary judgment is the assertion that "every issue that was not dependent on the outcome of this Petition was resolved through a bench

trial, and the underlying case is awaiting resolution of the appellate process." (Petition at 10.) This is mistaken.

First, the question underlying this Petition is whether Fluor-2 is a named insured under the Hartford policies, and this question turns on, among other things, whether Fluor-2 received rights through an assignment. The bench trial to which Fluor-2 alludes did not address any aspect of this question, and, to the extent that Fluor-2 may be implying that the bench trial resolved the very factual issues cited by the Court of Appeal, that implication is incorrect. The trial was limited to four specific questions: number of occurrences, allocation among policies with retrospective premiums, the right to independent counsel and the application of the completed-operations hazard to certain types of asbestos suits. Tellingly, Fluor-2 offers no record evidence to support its erroneous statement that last year's bench trial resolved all other issues in the case or that the Superior Court has stayed its hand. In fact, Fluor-2 is wrong on both counts. (*See* Hartford RJN, Ex. 1 at p. 15:6-12.)

Second, even with respect to those four questions, the bench trial did not resolve all issues. The Superior Court determined, for example, that there was more than one occurrence, but it did not determine the specific number of occurrences. Nor did the Superior Court address the issue of allocation to policies without open retrospective premiums, or the application of the completed operations hazard to other types of asbestos

suits. The transcript of a recent case management conference casts light on the abundance of open issues. The court referred to "four or five issues that you [*i.e.*, Fluor-2] think are lurking somewhere here in the background." (Hartford RJN, Ex. 1 at p. 5:19-21.) Counsel for Fluor mentioned "a certain amount of discovery that would need to be conducted for those issues, probably fact and likely expert discovery, and we haven't yet conferred at all about what the timing or scope of that would look like." (*Id.*, Ex. 1 at pp. 5:24 - 6:2.) And this was not all: at one point the trial court commented: "We have a lot more topics after these." (*Id.*, Ex. 1 at p. 15:11-12.) In view of all this, Fluor-2's assertion that "the underlying case is awaiting resolution of the appellate process" suggests a state of completeness in the case that is at variance with the facts. (Petition at p. 10.)

CONCLUSION

For the reasons set forth above, Hartford respectfully submits that the Court should deny the Petition for Review.

Dated: October 29, 2012

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify, pursuant to Rule 8.204(c)(1), Cal. Rules of Court, that the attached Answer to Petition for Review contains 4,203 words, including footnotes, as measured by the word count of the computer program (Microsoft Word) used to prepare this brief.

Dated: October 29, 2012

GAIMS, WEIL, WEST & EPSTEIN LLP

By: _____
Alan Jay Weil

Attorney for Real Party in Interest Hartford Accident and Indemnity Company

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over eighteen years of age and not a party to the within action; my business address is 400 Second Street, Suite 425, San Francisco, California 94107; I am employed in San Francisco County, California.

On October 29, 2012, I served the foregoing document(s) described as ANSWER TO PETITION FOR REVIEW and REAL PARTY IN INTEREST HARTFORD ACCIDENT AND INDEMNITY COMPANY'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS ANSWER TO PETITION FOR REVIEW on the interested parties to this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

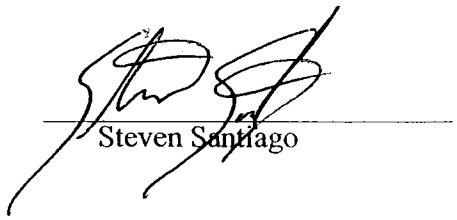
SEE ATTACHED SERVICE LIST

( ) BY OVERNIGHT COURIER, Code Civ. Proc., §§ 1013, 2015.5

By placing copies of the above document(s) in a box or other facility regularly maintained by FEDERAL EXPRESS in an envelope or package designated by the FEDERAL EXPRESS with delivery fees paid or provided.

Executed on October 29, 2012 at San Francisco, California.

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



Steven Santiago

***Fluor Corporation v. Superior Court/Hartford Accident and Indemnity Company*, Case No. S205889**

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