Case No. S 205889

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 & INDEMNITY COMPANY,
Real Party In Interest.

**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. S 196592

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

REPLY IN SUPPORT OF PETITION FOR REVIEW

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TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

I. INTRODUCTION

Fluor's Petition for Review asks the straightforward question of whether "anti-assignment clauses in third-party liability policies are unenforceable after a 'loss has happened,' as provided by Insurance Code section 520, or . . . remain enforceable even after 'loss' if the insured's claim against the insurer has not yet matured into a 'chose in action,' as this Court ruled in *Henkel*?"[1] The Court of Appeal answered by ruling that section 520 does not govern liability policies:

> [Section 520] can have no bearing as a "clear" or "controlling" legislative expression on the assignability of liability insurance for the simple reason that liability insurance did not exist in 1872.

(See *Fluor Corp. v. Super. Ct.* ["*Fluor*"] (2012) 208 Cal.App.4th 1506, 1520.)

Unable to defend that holding, Hartford fashions two new rulings that the Court of Appeal never made. First, Hartford contends that the Court of Appeal did ***not*** "reject[] [] the application of Section 520 to third-party liability policies." (Answer at p. 9.) Second, Hartford invents an "alternative ruling" suggesting that the Court refused to apply section 520 in light of a belatedly raised factual dispute. (*Id.* at pp. 1, 14.)

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[1] (*Henkel Corp. v. Hartford Accident & Indemnity Co.* (2003) 29 Cal.4th 934.)

In doing so, Hartford mischaracterizes both the Court of Appeal's opinion and the proceedings below. Neither tactic should prevent this Court from granting review to answer the important question of law at the heart of Fluor's Petition, and resolve the apparent conflict between the "loss" rule articulated by section 520 and the "chose in action" rule announced by *Henkel*.

II. REPLY STATEMENT OF THE CASE

The dispute arises from denial of Fluor's motion for summary adjudication in the Superior Court, which targeted two causes of action asserted in Hartford's 2009 cross-complaint—the sole pleading at issue here. Critically, Hartford's cross-complaint did not dispute that there was an assignment. Instead, Hartford ***pleaded*** that the Reverse Spinoff was an "assignment of insurance rights" to Fluor made without Hartford's consent. (App. Ex. 1, at p. 8 [¶ 44].) Hartford alleged that, although Fluor and its predecessor had agreed to "transfer the assets and liabilities" relating to the historic EPC business, including "all assets and liabilities related to any insurance policies" which covered the EPC liabilities, Fluor "[n]ever sought or obtained Hartford's consent to the purported assignment of insurance rights[.]" (*Id.* at pp. 7-8 [¶¶ 40-44].)

Based on the facts alleged by Hartford, Fluor moved to summarily adjudicate Hartford's causes of action on the ground that the anti-assignment clauses are void as a matter of law under section 520, and therefore unenforceable.[2]

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[2] Hartford mischaracterizes Fluor's motion for summary adjudication and petition for writ of mandate as seeking "a ruling that [Fluor] is an insured under the Hartford policies." (Answer at p. 4.) Notably, Hartford offers no citation for this point -- because it is flatly untrue. In

In turn, Hartford argued both in the trial court and the initial appellate proceedings that its First and Second Causes of Action, which seek to enforce the Policies' anti-assignment provisions against Fluor, remain valid. Apparently, Hartford was eager to test the scope of its anti-assignment provisions when it was confident that *Henkel* governed the issue. It was only after Fluor's first Petition for Review was granted by this Court and the issue transferred to the Court of Appeal for consideration that Hartford abruptly changed course.[3]

Despite predicating its causes of action upon an assignment and filing multiple briefs before three courts arguing that *Henkel* resolved the dispute as a matter of law, Hartford attempted to pull the rip-cord by challenging (without withdrawing) its own allegation concerning the allegedly unenforceable assignment. At this late stage, Hartford cannot ignore its own pleading and terminate the legal debate about the enforceability of its anti-assignment clauses simply because review was granted and *Henkel* was opened to question in light of section 520.

Fluor's motion for summary adjudication and pending Petition target Hartford's causes of action based on the facts as alleged by Hartford. If Fluor's interpretation of section 520 is correct, Hartford's causes of action fail as a matter of law. This will not only decide an issue of great

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fact, Fluor's motion for summary adjudication, Petition for Writ of Mandate to the Court of Appeal, and prior Petition for Review granted by this Court, all sought the same relief: an order summarily adjudicating Hartford's First and Second Causes of Action on the ground that section 520 voids the Policies' anti-assignment provisions. (See App. Ex. 3, at p. 1411; App. Ex. 8, at p. 2753; Petition for Peremptory Writ of Mandate, at p. 61; Petition for Review, at p. 1 .)

[3] (See *Fluor Corp. v. Super. Ct.*, Case No. S 196592 [Petition for Review, Attachment A].)

importance to policyholders and the insurance industry, but will spare the parties and the Superior Court considerable time and expense litigating a series of other issues that would be rendered moot. For example, if Fluor prevails, there will be no need to litigate whether Fluor "legally retained an interest in the Hartford policies as a 'mere continuation' of" its predecessor (Answer, at p. 16),[4] whether Hartford consented to Fluor as an insured, or the laches or estoppel effect of Hartford's acknowledgement of Fluor as an insured for nearly a decade after the Reverse Spinoff, while Hartford continued to collect millions of dollars from Fluor in retrospective premiums under the Policies.

In granting Fluor's original Petition for Review, this Court opted to re-examine *Henkel* in light of section 520 before the parties incur costs litigating these avoidable issues. That rationale applies with more urgency now. After entering a stay over eight months ago pending resolution of these appellate proceedings (see Fluor's Request for Judicial Notice in support of Reply to Answer to Petition for Peremptory Writ of Mandate, Ex. E[5]), the Superior Court recently directed the parties to identify the issues that would remain ***if*** the Court of Appeal's latest decision stands. At a case management conference on November 5, the Superior Court

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[4] The "mere continuation" issue, which Fluor argued to the Superior Court as basis for denying ***Hartford's separate*** motion for summary adjudication seeking to enforce the Hartford anti-assignment clauses, is not before this Court. As the Court of Appeal recognized, that issue is a "mixed question[] of law and fact [that] remain[s] with the trial court" (See *Fluor*, *supra*, 208 Cal.App.4th at p. 1520), but need not be litigated at all if the clauses are void under section 520.

[5] The Court of Appeal granted Fluor's Request. (*Fluor*, *supra*, 208 Cal.App.4th at p. 1511].)

indicated that it would now press forward ***unless*** this Court "interrupt[s]" the proceedings by granting Fluor's Petition:

> I don't want to rely on statistical evidence, but certainly petitions to the Supreme Court for review don't often succeed. This one may have more chance of success because it's a case of proven interest in the Supreme Court; but I think this Court is going to rely on the overall statistical likelihood of success, and that means we've got to get going and assume that we're not going to be interrupted. So, for that purpose, maybe we need to start preparation for the resolution of these issues.

(See Fluor Supp. RJN, Ex. 2 at p. 21:17-26.)

Therefore, guidance from this Court remains essential to resolve the important legal questions presented by Fluor's original Petition, and to ensure the parties and the Superior Court do not waste effort deciding claims and issues that should be mooted by section 520. More importantly, as explained below, deciding this critical legal issue now will resolve the significant uncertainty and confusion that has been sown by a published Court of Appeal decision introducing new legal error, on top of the already problematic conflict between section 520 and *Henkel*.

III. LEGAL DISCUSSION

A. Hartford Distorts the Court of Appeal's Ruling

1. The Court of Appeal Erroneously Ruled that Section 520 Does Not Apply to Liability Policies

Hartford does not attempt to defend the Court of Appeal's holding that section 520:

> can have no bearing as a "clear" or "controlling" legislative expression on the assignability of liability insurance for the simple reason that liability insurance did not exist in 1872.

(*Fluor*, *supra*, 208 Cal.App.4th at p. 1509.)

Instead, attempting to downplay the error, Hartford recasts the Court of Appeal's opinion by selectively omitting and distorting key language from the decision. The Court of Appeal's reasoning could not have been clearer. In its view, section 520 does not govern the assignment 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.

(*Id.* at p. 1518 [emphasis added].) Rather than acknowledging this holding, Hartford attempts to obscure it by replacing the critical language concerning the "assignment of liability policies" with an ellipsis. (See Answer at p. 10 ["There is nothing . . . in section 520 that articulates legislative policy pertaining to . . . at what stage the right to policy proceeds were freely assignable."].) Through this sleight of hand, Hartford incredibly then argues that the Court of Appeal ***did not*** rule that section 520 is inapplicable to liability policies. (Answer at pp. 9-10.)

Hartford's reluctance to confront the Court of Appeal's actual ruling stems from the fact that Hartford itself readily has acknowledged that section 520 ***does*** apply to the assignment of liability policies. In contrast to the Court's sua sponte conclusion that section 520 is limited to first-party policies, Hartford's counsel conceded during oral argument that section 520 governs the ***liability policies*** at issue in this case:

> 520 says we can't prevent the transfer of a claim of the insured after the loss. ***Hartford doesn't disagree with that.***

(Fluor Corporation's Request for Judicial Notice in Support of Petition for Review ("Fluor RJN") Ex. 1, p. 42:7-9.)

Notwithstanding the parties' expressed agreement that section 520 necessarily controls all policies (including liability policies), the Court of Appeal ruled otherwise. Emphasizing that "the concept of 'loss,' to which the 1872 statute referred, is easily identifiable for first party property damage coverage" (*Fluor*, *supra*, 208 Cal.App.4th at p. 1516), the Court opined that "[t]hird-party policies present more problematic concepts of 'loss.'" (*Id.* at p. 1517.) Rather than relying on the well-established meaning of "loss" articulated by this Court in *Montrose* and *Continental* to determine how section 520 must apply in the context of liability policies,[6] the Court of Appeal circumvented the statute altogether: "[T]he 1872 Legislature cared not a whit" about the "definitional question" of what "loss" means in the context of liability policies since "the idea of third party liability insurance was [ ] alien . . . ." (*Ibid.*)

There can be no legitimate dispute that the Court of Appeal concluded that section 520, despite being a "General Rule Governing Insurance," is applicable only to first-party policies that were in effect more than 125 years ago. Indeed, the Court repeatedly emphasized that section 520 does not govern the assignment of liability policies:

> The 1872 Statute Does Not Constitute an Express Legislative Pronouncement Regarding the Assignability of Liability Insurance Policies . . . .[7]
>
> . . . .
>
> Insurance Code section 520, as we have noted, was first adopted in 1872 . . . . At the time, liability insurance did not even exist as a concept.[8]

---

[6] (*Montrose Chemical Corp. of Cal. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645; *State of California v. Continental Insurance Co.* (2012) 55 Cal.4th 186.)

[7] (*Id.* at p. 1514.)

. . . .

> 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.[9]

As detailed in Fluor's Petition, imposing an artificial limitation on section 520's reach because of its origination is unprecedented and wrong. (See Petition, at pp. 5, 11-15.) The Court of Appeal's published opinion inadvertently undermines longstanding jurisprudence establishing that the "General Rules Governing Insurance" apply to ***all*** policies, including forms of insurance developed after the 19th-century Legislature first enacted the precursors to these rules. This includes section 533, which has the same history as section 520 and has been applied consistently to liability policies for more than fifty years. (See *Arenson v. Nat. Auto. & Casualty Ins. Co.* (1955) 45 Cal.2d 81, 84 ["Section 533 of the Insurance Code . . . codifies the general rule that an insurance policy indemnifying the insured against liability due to his own wilful wrong is void as against public policy . . . ."]; *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18 ["[B]y statute, and as a matter of public policy, the insurer may not provide coverage for willful injuries by the insured against a third party. (Ins. Code, § 533.)"].)[10]

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[8] (*Id.* at p. 1516.)

[9] (*Id.* at p. 1519.)

[10] The Court of Appeal in *Evans v. Pacific Indemnity* (1975) 49 Cal.App.3d 537, expressly considered and ***rejected*** the proposition that a provision derived from the original Civil Code, then "placed into the Insurance Code unchanged in 1935," would not "apply to liability policies at all." (*Id.* at p. 541 ["In this long span of time, many changes have taken place in types and forms of insurance and the Legislature was aware of these. Having made no changes in the law in question, the Legislature obviously intended it to continue to apply in accordance with its clear and unambiguous wording."].)

In addition to resolving the fundamental question of assignability raised by section 520, this Court should grant review to correct the Court of Appeal's erroneous conclusion that statutes tracing their lineage to the Civil Code are frozen in time and do not apply to future disputes.

2. The Court of Appeal Properly Declined to "Enmesh" Itself in a Factual Dispute That Was Not Placed In Issue by Fluor's Motion for Summary Adjudication

Unable to justify the Court of Appeal's actual holding that section 520 does not apply to liability policies, Hartford invents an "alternative ruling" that the Court never made. (Answer, at p. 1.) The Court of Appeal correctly declined Hartford's invitation to weigh in on certain factual disputes that were not before it (such as the "mere continuation" issue), and would not need to be litigated in any case if section 520 "voids" the anti-assignment provisions of the Hartford Policies. (*Fluor*, *supra*, 208 Cal.App.4th at p. 1520). Rather than relying on an ellipsis to confuse this straightforward point, Hartford simply writes its own ruling, insisting that the Court held "there are triable issues of material fact on the fundamental question of whether Fluor-1 assigned . . . the policies to Fluor-2." (Answer, at p. 14.)

The Court of Appeal held no such thing. After noting that Fluor's motion targeted the causes of action and allegations ***pleaded*** by Hartford, the Court found no need to debate Hartford's "factual" Hail Mary because the pleadings "have not properly placed into issue whether Fluor-1 assigned the policies to Fluor-2." (*Fluor*, *supra*, 208 Cal.App.4th at p. 1520.)

This is precisely why Fluor's motion for summary adjudication, which is the sole subject of this appellate proceeding, does not turn on any

factual disputes regarding assignment: Fluor targets Hartford's causes of action which ***allege there was an assignment***. Fluor was under no obligation to prove an assignment because Hartford's causes of action did not put that question at issue. "The pleadings define the issues to be considered on a motion for summary judgment." (*Benedek v. PLC Santa Monica* (2002) 104 Cal.App.4th 1351, 1355; accord *Fortier v. Los Rios Community College Dist.* (1996) 45 Cal.App.4th 430, 433 ["The function of the pleadings in a motion for summary judgment is to delimit the scope of the issues."]; *Danieley v. Goldmine Ski Associates, Inc.* (1990) 218 Cal.App.3d 111, 119 ["Whenever a court must rule on a motion for summary judgment, the factual issue guidelines for such motion are fixed by reference solely to the pleadings."].)

Indeed, as the moving party, Fluor's "burden on its motion for summary [adjudication] was only to negate the existence of triable issues of fact in a fashion that entitled it to judgment on ***the issues raised by the pleadings***. It was not required to refute liability on some theoretical possibility not included in the pleadings." (*IT Corp. v. Super. Ct.* (1978) 83 Cal.App.3d 443, 451-52 [emphasis added].) "***[S]ummary judgment cannot be denied on a ground not raised by the pleadings***." (*Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1663 [emphasis added].)[11]

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[11] Fluor's counsel made this point at oral argument, in a passage that Hartford conspicuously omitted from its "quotation" of the transcript:

> Under Fluor's motion to adjudicate Hartford's claim, whether or not we could prove an assignment was not a burden that we had to bear.

(Fluor RJN Ex. 1, at p. 53:7-10; compare Answer, at p. 15.)

Revealingly, Hartford never raised its last-ditch procedural argument until ***after*** this Court granted Fluor's first Petition for Review and ordered the Court of Appeal to consider the merits of Fluor's legal argument that section 520 bars Hartford from relying on anti-assignment provisions. Instead, Hartford initially told the Court of Appeal that an assignment occurred, and argued it was barred by the anti-assignment clauses. (See Informal Answer, at p. 23 ["Old Fluor [ ] Purported to Transfer . . . Its Entire Interest in the Policies"]; *id.* p. 26 ["The 'Loss' Happened ***After the Transfer of Interest***" (emphasis added)].)

Hartford made the same admission to this Court, as part of its argument concerning when "loss happens" under section 520:

> [I]t is undisputed that the purported assignment took place . . . .

(Answer to First Petition for Review, at p. 26 [emphasis added].)

These concessions were not an accident, nor a surprise. Rather, they mirror the allegations in the causes of action targeted by Fluor's motion for summary adjudication, and therefore frame the pure legal issue presented.

B. Section 520 Mandates a "Loss" Test That Neither the Court of Appeal Nor *Henkel* Applied

Having failed to bring section 520 to this Court's attention as a party to *Henkel*, Hartford now compounds its misdirection by inaccurately suggesting that *Henkel* "rejected extrapolation" of the well-established meaning of "loss" discussed in *Montrose* and *Continental* "to the assignment context." (See Answer at p. 13.) *Henkel* did no such thing.

Although the time of "loss" is dispositive under section 520, the word "loss" does not appear once in the *Henkel* majority opinion. (See *Henkel*, *supra*, 29 Cal.4th at pp. 938-944.) This is unsurprising in light of

the majority's decision to reject the common law rule urged by Justice Moreno (in dissent) and Justice Croskey (at the Court of Appeal) -- that "loss" is the proper benchmark for measuring the enforceability of anti-assignment clauses. The majority declined to analyze the question of when anti-assignment clauses become invalid in terms of "loss" because it concluded that when a "loss happens" was immaterial to when a "chose in action" later arises.[12]

The Legislature mandated a different test in section 520, which establishes the time that "loss happens" as the critical point when anti-assignment clauses become "void" as a matter of law. (See Ins. Code, § 520; cf. *California Bank v. Schelsinger* (1958) 159 Cal.App.2d Supp. 854, 865 ["[S]tatute law must control whether [] cases are in harmony therewith or not."].) That is the test this Court should grant review to apply.

The fundamental concept of "loss" is the same in all policies: "Loss" is the underlying event that triggers coverage. (See, e.g., *Montrose*, *supra*, 10 Cal.4th at pp. 654-655; *Continental*, *supra*, 55 Cal.4th at p. 200.) However, "loss" may happen at different times under different types of insurance policies.

As this Court, the Courts of Appeal, other states' courts and the insurance industry itself have repeatedly confirmed, "loss" happens in the context of ***liability*** policies at the time of the "occurrence" of bodily injury or property damage. (See, e.g., *Montrose*, *supra*, 10 Cal.4th at pp. 654-655; *Continental*, *supra*, 55 Cal.4th at p. 200; *Westoil Terminals Co. v. Harbor*

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[12] Even Hartford eventually conceded the crucial point that *Henkel* chose not to apply the "loss" test mandated by section 520. (See Answer-Writ, at p. 6 ["The dissent put the 'loss' issue front and center, as had the earlier decision of the Court of Appeal. The majority adopted a different analysis."].)

Ins. Co. (1999) 73 Cal.App.4th 634, 641-642; *Employers Ins. Co. of Wausau v. Travelers Indemnity Co.* (2006) 141 Cal.App.4th 398, 405; *Illinois Tool Works, Inc. v. Commerce & Industry Ins. Co.* (2011 Ill. App. Ct.) 962 N.E.2d 1042, 1053-1055; *In re Ambassador Ins. Co.* (2008) 184 Vt. 408, 416; *Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.* (2006) 112 Ohio St. 3d 482, 486; Elliott, The New Comprehensive General Liability Policy (Schreiber ed. 1968) Practicing Law Institute, Liability Insurance Disputes, 12-5.)

Despite multiple opportunities in this Court, the Court of Appeal and the Superior Court, Hartford has never cited a single case or commentator to cast doubt on the settled meaning of "loss" in third-party liability policies. Rather, Hartford resorts to a misreading of section 108 of the Insurance Code, purportedly based on "grammar and common sense." (See Answer at pp. 11-12.) In fact, section 108 is perfectly consistent with the longstanding jurisprudence that "loss" happens at the moment of "injury." (See Petition at p. 20, fn. 16.)

Section 108 defines the commercial instrument (liability insurance) that is used to protect policyholders against the risk that their acts will cause injury for which the policyholder is responsible. (Ins. Code, § 108(a).) That is the fundamental risk underlying all liability insurance. (See L. Russ & T. Segalla, 3 COUCH ON INSURANCE (2011) § 41:28.)

Put simply, liability insurance is the vehicle policyholders use to protect themselves against the tort system. The tort system is predicated on shifting the risk of "injury" from claimant to tortfeasor. "Liability" – i.e., "legal responsibility to another" (Black's Law Dict. (9th ed. 2009) – is the legal structure by which that transfer occurs. Since a claimant's "injury"

cannot ***literally*** be transferred to the tortfeasor, "loss" is the expression of the risk that is shifted from claimant to tortfeasor through "liability."

"'Loss' result[s] from 'liability' for 'injury'" because it is through liability that the claimant's "injury" is transferred to the tortfeasor, as "loss." (Ins. Code, § 108.) That transfer necessarily happens at the moment the insured event happens, because it is then that "liability" attaches.

Hartford's contrary interpretation of section 108 depends on conflating the term "liability" in the statute with a subsequent judgment quantifying that liability as a sum certain. (See Answer to First Petition for Review, at p. 5 ["Under a third-party liability policy, there is no 'loss' until the insured is ***held*** liable." (emphasis added)]; accord Answer at pp. 11-13.) But "liability" is not the same as a judgment. Liability is "legal responsibility to another." When a third party is injured by a tortfeasor's act or omission, the tortfeasor/policyholder is liable (or not) as of that moment, regardless of whether liability is clear (in which case it can be promptly resolved) or disputed (in which case a court may have to resolve the issue), or whether the scope of liability is not immediately ascertainable (as in the case of continuous damage). "Loss" necessarily occurs at the moment a third party is "injured" by a tortfeasor/policyholder's act or omission.

The contention that "liability" is not established until an injured party brings suit, tries it through the legal system, and ultimately obtains a judgment against the tortfeasor is plainly wrong. When liability is challenged in court, the judgment simply resolves the dispute, and declares whether the tortfeasor was responsible for damages caused from the moment the claimant was injured.

Indeed, if Hartford were correct that liability does not happen until judgment, the wheels of commerce and justice would grind to a halt. Instead of settling when liability is clear, every injury caused by another's act or omission would result in the claimant filing a lawsuit. The illogical consequence of Hartford's attempt to distort section 108 simply cannot be reconciled with the overwhelming consensus of courts, commentators and the insurance industry concerning the meaning of "loss" in a liability policy.

IV. CONCLUSION

This Petition presents a question of great importance to insurers, insureds, and tort claimants concerning the applicability of section 520 to the assignment of insurance rights. Unless this Court resolves this question in light of *Henkel*, lower courts will remain hesitant to apply the statute and litigants like Fluor will continue to incur substantial costs attempting to enforce it.

For the foregoing reasons, Fluor respectfully requests that review be granted.

DATED: November 8, 2012

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CERTIFICATION OF COMPLIANCE WITH RULES OF COURT

Petitioner's counsel certifies that this brief meets the requirements of the California Rules of Court. It has been prepared in 13-point Times New Roman typeface and consists of a total of 4,125 words, as counted by the word-processing program (Microsoft Word) used to generate this Petition, exclusive of the Tables and Certification.

DATED: November 8, 2012

LATHAM & WATKINS LLP
Brook B. Roberts
John M. Wilson

By: _____
John M. Wilson

Attorneys for Petitioner
Fluor Corporation

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 600 West Broadway, Suite 1800, San Diego, CA 92101-3375.

On November 8, 2012, I served the following document described as:

REPLY IN SUPPORT OF PETITION FOR REVIEW

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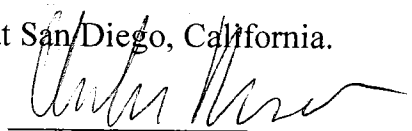

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