

Case No. S 205889

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

SUPREME COURT
FILED

NOV 09 2012

FLUOR CORPORATION,
Petitioner,

Frank A. McGuire Clerk

Deputy

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**

**PETITIONER FLUOR CORPORATION'S
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN
SUPPORT PETITION FOR REVIEW**

LATHAM & WATKINS LLP
BROOK B. ROBERTS (STATE BAR NO. 214794)
JOHN M. WILSON (STATE BAR NO. 229484)
600 WEST BROADWAY, SUITE 1800
SAN DIEGO, CALIFORNIA 92101-3375
(619) 236-1234 • FAX: (619) 696-7419
Counsel for Petitioner Fluor Corporation

Pursuant to California Rules of Court, rule 8.252, and Evidence Code sections 452 and 459, Petitioner Fluor Corporation (hereinafter, "Fluor") respectfully requests that this Court take judicial notice of the following document:

Exhibit 2: Reporter's Certified Transcript of Proceeding on November 5, 2012, in the underlying action, *Fluor Corporation v. Hartford Accident & Indemnity Company*, Superior Court of California Court, Orange County, Case No. 06CC00016, the Honorable Ronald L. Bauer, Judge Presiding. A copy of the hearing transcript is attached hereto as Exhibit 2 and authenticated by the Declaration of John M. Wilson ("Wilson Declaration"), filed concurrently herewith in support of Fluor's Reply in support Petition for Review.

MEMORANDUM OF POINTS AND AUTHORITIES

California courts may take judicial notice of the records of any court of this state. (Evid. Code, § 452, subd. (d)(1); *id.*, § 459, subd. (a).) This includes judicial notice of pleadings and motions filed in connection with related actions, as well as transcripts of those proceedings. (See, e.g., *Hotels NV, LLC v. L.A. Pac. Center, Inc.* (2012) 203 Cal.App.4th 336, 346, fn. 4 [taking judicial notice of pleadings and transcripts from prior bankruptcy filing]; *Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 210, fn. 3 [taking judicial notice of trial court hearing transcript after finding the transcript was a “proper subject” of judicial notice and relevant to the court’s determination on appeal]; *Aaronoff v. Martinez-Senftner* (2006) 136 Cal.App.4th 910, 914, fn. 1 [taking judicial notice of clerk’s transcript from prior appeal]; *Alexander v. Super. Ct.* (1994) 22 Cal.App.4th 901, 905, fn. 1 [taking judicial notice of municipal and superior court files, including transcripts of proceedings].)

Pursuant to its authority, this Court should judicially notice the Reporter’s Transcript of the status conference before the Honorable Ronald L. Bauer, judge presiding, on November 5, 2012, in the underlying Superior Court action. This status conference was held subsequent to the issuance of the order that is the subject matter of Fluor Corporation’s Petition for Writ of Mandate and the instant Petition for Review. (Cal.

Rules of Court, rule 252(a)(2)(C); Evid. Code, § 452; Evid. Code, § 459, subd. (a) [“The reviewing court may take judicial notice of any matter specified in Section 452.”]; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881.) The transcript of the status conference in the underlying action addresses positions taken by Real Party in Interest Hartford Accident & Indemnity Company (“Hartford”) in its Answer with respect to the current status of the underlying action, and supports Fluor’s Petition for Review by confirming that guidance from this Court is essential to resolve the important legal issue presented while ensuring the parties and the Superior Court do not waste effort deciding claims and issues that should be mooted by section 520.

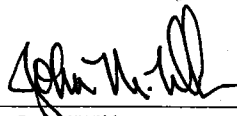
Fluor has given notice of this request, which is sufficient to enable Hartford to prepare to meet this request (see Proof of Service, concurrently filed herewith), and has furnished this Court with sufficient information to enable it to take judicial notice of the items requested. Consequently, this Court should take judicial notice of the document requested under Evidence Code section 452, subdivision (d).

STATEMENT OF RELIEF SOUGHT

For the foregoing reasons, Fluor requests that the Court take judicial notice of Exhibit 2 to Fluor's Supplemental Request for Judicial Notice in support of its Petition for Review, and consider this document in ruling on said Petition.

DATED: November 8, 2012

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

By: 

John M. Wilson
Attorneys for Petitioner
Fluor Corporation

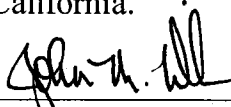
DECLARATION OF JOHN M. WILSON

I, John M. Wilson, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and a partner in the law firm of Latham & Watkins LLP, counsel for Plaintiff and Petitioner Fluor Corporation in the above-entitled case. As such, I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would testify as follows.

2. Attached hereto as Exhibit 2 is a true and correct copy of the Reporter's Certified Transcript of Proceedings on November 5, 2012, in *Fluor Corporation v. Hartford Accident & Indemnity Company*, Superior Court of California Court, Orange County, Case No. 06CC00016, the Honorable Ronald L. Bauer, Judge Presiding.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed on November 8, 2012, at San Diego, California.



John M. Wilson

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, COMPLEX JUSTICE CENTER
DEPARTMENT CX103

FLUOR CORPORATION, ET AL.,)
)
 PLAINTIFF,)
)
 VS.) NO. 06CC00016
)
 HARTFORD ACCIDENT AND INDEMNITY)
 COMPANY,)
)
 DEFENDANT.)
)
 _____)
 AND RELATED CROSS-ACTIONS.)
 _____)

HONORABLE RONALD L. BAUER, JUDGE PRESIDING
REPORTER'S TRANSCRIPT
NOVEMBER 5, 2012

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS: LATHAM & WATKINS
BY: JOHN M. WILSON, ESQ.

FOR THE DEFENDANT: SHIPMAN & GOODWIN
BY: JAMES P. RUGGERI, ESQ.

FOR CONTINENTAL CASUALTY CO.: TROUTMAN SANDERS
BY: DANIEL RASHTIAN, ESQ.

FOR PACIFIC INDEMNITY: CHAMBERLIN, KEASTER &
BROCKMAN
BY: MICHAEL MILLER, ESQ.

JENNIFER L. SCOTT, CSR #9218, RMR, CRR
OFFICIAL COURT REPORTER

1 SANTA ANA, CALIFORNIA - MONDAY, NOVEMBER 5, 2012

2 MORNING SESSION

3 * * * * *

4 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN
5 COURT:)

6 THE COURT: NUMBER EIGHT ON THE CALENDAR IS FLUOR AND
7 HARTFORD.

8 MR. WILSON: GOOD MORNING, YOUR HONOR.

9 JOHN WILSON ON BEHALF OF THE FLUOR PLAINTIFFS.

10 THE COURT: GOING IT ALONE TODAY?

11 MR. WILSON: I AM. MR. ROBERTS WAS HOPING TO DIAL IN
12 BY COURTCALL, BUT HE COULD ONLY GET ACCESS TO A CELL
13 PHONE. AND, IN LIGHT OF THE COURT'S PREFERENCE, HE MADE
14 THE PRUDENT DECISION NOT TO DIAL IN FROM SOMETHING OTHER
15 THAN A LANDLINE.

16 THE COURT: IT IS THE COURT'S PREFERENCE. THERE IS
17 NO DOUBT ABOUT THAT. BUT IT'S ALSO A REQUIREMENT OF THE
18 COURTCALL SYSTEM.

19 MR. WILSON: EVEN MORE REASON.

20 THE COURT: THE INSTRUCTIONS GIVEN BY COURTCALL
21 DEMAND IT NOT BE A CELL PHONE OR TWEET OR ANYTHING ELSE,
22 BUT IT HAS TO BE A REAL PHONE. SO I DON'T DENY THAT I
23 PREFER IT THAT WAY; BUT, IN FACT, IT'S ONE OF THE RULES
24 OF COURTCALL.

25 AND WHO IS HERE FOR HARTFORD?

26 MR. RUGGERI: GOOD MORNING, YOUR HONOR.

1 JAMES RUGGERI FOR HARTFORD.

2 MR. MILLER: GOOD MORNING, YOUR HONOR.

3 MICHAEL MILLER FOR PACIFIC INDEMNITY COMPANY.

4 MR. RASHTIAN: GOOD MORNING, YOUR HONOR.

5 DANIEL RASHTIAN FOR CONTINENTAL CASUALTY
6 COMPANY.

7 THE COURT: THESE ARE THE TWO GENTLEMEN THAT ARE
8 NEVER NERVOUS ABOUT THESE HEARINGS. THEY KNOW THAT
9 THEY'RE GOING TO BE WAITING FOR A LONG TIME, I THINK,
10 UNTIL WE HAVE RESOLVED THE PRELIMINARY BOUTS HERE.

11 THANK YOU. YOU HAVE EXCHANGED SOME MATERIALS.

12 I WANT TO TELL YOU, MR. WILSON, THAT FOUR WORDS
13 IN YOUR REPORT WERE AMONG THE MOST AMUSING THAT I'VE READ
14 IN ALL THE TIME. YOU MIGHT EVEN REMEMBER WHICH FOUR
15 WORDS.

16 DOES IT COME TO MIND WHAT I MIGHT BE THINKING
17 ABOUT?

18 MR. WILSON: IT DOESN'T IMMEDIATELY, YOUR HONOR.

19 THE COURT: OKAY. WELL, AFTER A PAGE AND A HALF OF
20 PUTTING FORTH YOUR OWN POINT OF VIEW, SHALL WE SAY, AND
21 PERHAPS DENIGRATING THE HARTFORD POINT OF VIEW, WE COME
22 TO THESE FOUR WORDS: "SETTING ASIDE THE POSTURING," I
23 CAN NOW GET DOWN TO BUSINESS.

24 SO I THOUGHT THOSE FOUR WORDS WERE KIND OF
25 CHARMING IN THEIR OWN WAY. AFTER POSTURING FOR A PAGE
26 AND A HALF, THE NEXT PHRASE WAS "SETTING ASIDE THE

1 POSTURING." I'M SORRY TO ENJOY YOUR LANGUAGE SO MUCH
2 BEYOND WHAT YOU INTENDED, BUT I FOUND THAT TO BE A LITTLE
3 BIT CHARMING.

4 LET ME ASK ABOUT YOUR SEQUENCE OF EVENTS HERE
5 NOW. WE HAVE YOUR COMPLAINT, WHICH, OF COURSE, IS WHAT
6 STARTED THE WHOLE THING; AND WE NOW HAVE A
7 CROSS-COMPLAINT OF VARIOUS CLAIMS, AND SO FORTH.

8 READING BETWEEN THE LINES, AND MAYBE TRYING TO
9 INTERPRET YOUR COMMENTS, I GET A SENSE, MR. WILSON, THAT
10 YOUR THOUGHT IS THAT, IN SOME MEASURE, AT THIS POINT THE
11 CROSS-COMPLAINT IS NEXT IN LINE.

12 IS THAT YOUR POINT OF VIEW?

13 MR. WILSON: I THINK THAT'S PROBABLY RIGHT, YOUR
14 HONOR. I THINK THE WORDS YOU JUST CHOSE, PRELIMINARY
15 BOUTS FOR HOW WE MOVE FORWARD IN THE CASE, ARE PROBABLY
16 THE MOST APPROPRIATE TO DESCRIBE WHERE WE ARE IN THE
17 PROCESS.

18 IN LIGHT OF THE TRIAL THAT WE HELD LAST
19 DECEMBER, I THINK THAT ALL, IF NOT -- CERTAINLY, THE VAST
20 MAJORITY, IF NOT ALL, OF THE ISSUES THAT WERE RAISED BY
21 FLUOR'S COMPLAINT THAT WAS FILED BACK IN 2006 WERE
22 RESOLVED. THE POLICY INTERPRETATION DISPUTES, IF YOU
23 WILL, THAT WE HAD WANTED TO TEE UP IN THE BATTLE WERE THE
24 SUBJECT OF THAT BENCH TRIAL WE HELD LAST DECEMBER AND WE
25 BELIEVE THOSE WERE RESOLVED.

26 THE ISSUES THAT REMAIN PRIMARILY ARISE FROM

1 HARTFORD'S CROSS-COMPLAINT THAT WAS FILED IN 2009. AND
2 THAT'S IMPORTANT BECAUSE, FROM FLUOR'S PERSPECTIVE, IS WE
3 HAVE CONSISTENTLY TOLD YOUR HONOR WE BELIEVE THAT ALL OF
4 THOSE ISSUES COULD BE RENDERED MOOT IF WE'RE RIGHT IN THE
5 CURRENT APPELLATE PROCEEDINGS THAT ARE PENDING IN OUR NOW
6 PETITION FOR REVIEW TO THE SUPREME COURT.

7 AND IT WAS A LITTLE DISAPPOINTING FROM FLUOR'S
8 PERSPECTIVE TO READ THE ANSWER THAT HARTFORD JUST FILED
9 IN THE SUPREME COURT WHERE THEY APPEARED TO TRY TO TAKE
10 PROCEDURAL ADVANTAGE OF THIS PROCESS THAT WE'VE HAD OVER
11 THE LAST COUPLE OF STATUS CONFERENCES WHERE, AFTER YOUR
12 HONOR IN FEBRUARY ENTERED A STAY OF DISCOVERY IN ALL
13 SUBSTANTIVE PROCEEDINGS IN THIS CASE, PENDING RESOLUTION
14 OF THAT APPELLATE PROCESS, WE CAME BACK AND HAD A
15 DISCUSSION AT THE LAST STATUS CONFERENCE ABOUT THE
16 PRELIMINARY ISSUES WE MIGHT BE ABLE TO RESOLVE WHILE WE
17 AWAIT FURTHER DIRECTION FROM THE SUPREME COURT.

18 AND YOUR HONOR SUGGESTED, RIGHTLY SO, THAT ONE
19 OF THE THINGS WE COULD DO IS TALK ABOUT WHAT MECHANISM WE
20 WOULD USE TO LITIGATE THESE ISSUES IN PHASE II, IF THAT
21 WERE TO BECOME NECESSARY, DEPENDING ON HOW THE SUPREME
22 COURT RULES.

23 AND YOUR HONOR DIDN'T ENTER ANY ORDER THAT
24 LIFTED THE STAY. FLUOR AGREED THAT IT MADE SENSE TO
25 ADDRESS WHATEVER PROCEDURAL ISSUES THAT WE COULD IN THE
26 MEANTIME WHILE WE WERE WAITING FOR FURTHER WORD FROM THE

1 SUPREME COURT. AND WE THOUGHT THAT'S WHAT THE PARTIES
2 DID SINCE THE LAST STATUS CONFERENCE. HARTFORD
3 IDENTIFIED FACTUAL ISSUES THAT IT BELIEVED WERE EITHER
4 UNDISPUTED OR NEEDED TO BE RESOLVED IN A SUBSEQUENT
5 TRIAL. FLUOR DID THE SAME. IT'S CLEAR BETWEEN THE
6 PARTIES THAT VIRTUALLY ALL OF THE FACTS THAT ONE SIDE OR
7 THE OTHER BELIEVES WILL NEED TO BE LITIGATED ARE
8 DISPUTED.

9 AND SO WHEN WE DO GO FORWARD, IF WE NEED TO GO
10 FORWARD, DEPENDING UPON HOW THE SUPREME COURT RULES,
11 WHAT'S LEFT IS HARTFORD'S CROSS-COMPLAINT AND THEIR
12 ALLEGATION THAT FLUOR IS NOT ENTITLED TO BENEFITS UNDER
13 THE POLICIES, PRIMARILY RELYING ON THEIR ANTI-ASSIGNMENT
14 CONDITIONS, WHICH, IF FLUOR IS ULTIMATELY DEEMED TO BE
15 CORRECT, THOSE ANTI-ASSIGNMENT CONDITIONS WERE RENDERED
16 VOID AS SOON AS THE UNDERLYING LOSS HAPPENED. AND,
17 OBVIOUSLY, THAT'S AN ISSUE THAT'S CURRENTLY PENDING
18 BEFORE THE APPELLATE COURTS. BUT ONCE IT IS RESOLVED,
19 WE'LL HAVE A BETTER INDICATION OF WHAT WE NEED TO GO
20 FORWARD TO ACTUALLY LITIGATE.

21 IN OUR VIEW, HOPEFULLY, WE'RE NOT GOING TO HAVE
22 TO LITIGATE ANY OF THESE CONTENTIOUS, HOTLY DISPUTED
23 ISSUES ABOUT WHETHER FLUOR IS ENTITLED TO BENEFITS UNDER
24 THE POLICIES. IF HARTFORD'S POSITION THAT THE COURT OF
25 APPEAL AGREED WITH ULTIMATELY PREVAILS, THEN WE WILL NEED
26 TO LITIGATE THOSE THINGS. AND WE THINK IT'S WORTHWHILE

1 TO DISCUSS HOW WE DO SO; BUT IN THE MEANTIME, HARTFORD
2 SHOULDN'T TRY TO TAKE PROCEDURAL ADVANTAGE OF THE
3 PRELIMINARY DISCUSSIONS THAT WE'VE BEEN HAVING WITH THE
4 COURT TO MISLEAD OR TO MISCONSTRUE THIS PROCESS BEFORE
5 THE SUPREME COURT.

6 THE COURT: LET ME JUST PICK OUT ONE.

7 MR. WILSON: SURE.

8 THE COURT: AND I'VE KIND OF OPENED THE PAGE WITHOUT
9 ANY MALICE AFORETHOUGHT AND RANDOMLY FOCUSED ON NUMBER 36
10 OF THE FACTS LISTED BY HARTFORD. IT'S JUST BECAUSE
11 THAT'S WHERE MY EYES LANDED. AND BECAUSE YOU HAVE THE
12 FLOOR, I'LL PICK ON YOU FIRST, MR. WILSON.

13 MAYBE YOU CAN TELL US WHAT THE CONTRARY
14 EVIDENCE IS THAT WOULD DISPUTE THIS STATEMENT:
15 "FLUOR II HAS KNOWN SINCE AT LEAST 2009 THAT HARTFORD
16 BELIEVES FLUOR II IS NOT AN INSURED UNDER THE HARTFORD
17 POLICIES."

18 WHAT WOULD WE LITIGATE THERE?

19 MR. WILSON: YOUR HONOR, I THINK -- AS WE MENTIONED,
20 I THINK, IN A FOOTNOTE, THERE ARE SOME OF THE ISSUES
21 HARTFORD IDENTIFIED, THREE OR FOUR OF THEM --

22 THE COURT: DID I JUST LUCK INTO THEM?

23 MR. WILSON: -- THAT WE PROBABLY WOULD AGREE ARE
24 UNDISPUTED OR COULD BE UNDISPUTED WITH SOME MINOR
25 TWEAKING.

26 WE WOULD TAKE -- I THINK WE WOULD TAKE A

1 DISAGREEMENT WITH THE REFERENCE TO FLUOR CORPORATION AS
2 FLUOR II. BUT BESIDES THAT, BESIDES THAT KIND OF
3 DEMONIKER [SIC] THAT'S BEING USED, IT IS TRUE THAT
4 HARTFORD INFORMED FLUOR IN 2009 THAT IT BELIEVED IT WAS
5 NO LONGER AN INSURED UNDER THE POLICY. SO WE WOULDN'T
6 DISPUTE THAT FACT.

7 THE COURT: I CAN PROMISE YOU THAT I DID NOT SCOUR
8 THIS AND REALLY DIG DEEPLY TO TRY AND FIND ONE THAT I
9 THOUGHT WAS BEYOND DISPUTE. BY OPENING A PAGE RANDOMLY
10 AND GLANCING DOWN, I PICKED ONE.

11 WOULD I CONTINUE WITH THAT SAME RESULT?

12 MR. WILSON: I WENT BACK AND LOOKED, YOUR HONOR,
13 AGAIN THIS MORNING, AND THERE ARE A COUPLE OF OTHERS
14 PRIMARILY FOCUSED ON THE LANGUAGE OF THE POLICIES THAT,
15 AS WE SAID, WITH MINOR A BIT OF TWEAKING WE PROBABLY
16 WOULD AGREE ARE UNDISPUTED.

17 FOR EXAMPLE, HARTFORD'S FACT NUMBER ONE. IT IS
18 TRUE THAT HARTFORD ISSUED 11 LIABILITY POLICIES FROM THE
19 PERIOD FROM MAY 1ST, 1971, TO JULY 1ST, 1986, AND THAT
20 THOSE ENTITIES DESCRIBE THE NAMED INSURED. WE DISAGREE
21 WITH THE REMAINDER OF THAT CLAUSE AND THE
22 CHARACTERIZATION OF WHETHER FLUOR IS THE SAME COMPANY OR
23 A DIFFERENT COMPANY. BUT IT IS TRUE THAT HARTFORD ISSUED
24 THOSE 11 POLICIES AND THEY ALL CONTAIN NAMED INSURED
25 LANGUAGE THAT WE CAN AGREE ON. THERE IS NO DISPUTE ABOUT
26 THAT.

1 SO THERE ARE TWO OR THREE OTHER FACTS IN
2 HARTFORD'S STATEMENT, AS I SAID, PRIMARILY FOCUSED ON THE
3 LANGUAGE OF THE POLICIES THAT WE WOULD AGREE ARE NOT
4 DISPUTED.

5 THE COURT: WOULD I HAVE THE SAME LUCK, MR. RUGGERI,
6 IF I KIND OF GLANCED DOWN AND PICKED UP ONE OR TWO OR
7 THREE OR TEN OR TWENTY OF THE FLUOR STATEMENTS?

8 MR. RUGGERI: YOUR HONOR, YOU WOULD HAVE THE SAME
9 LUCK IF YOU PICKED OUT PERHAPS 15, BECAUSE THAT'S WHAT I
10 DID ON THE WAY OUT HERE LAST NIGHT.

11 THE COURT: YOU COUNTED 15?

12 MR. RUGGERI: I COUNTED 15. I'M HAPPY TO GO THROUGH
13 THOSE FROM THEIR LIST, BUT I THINK YOU WOULD HAVE THE
14 SAME LUCK IF YOU WENT BACK TO OUR STATEMENT.

15 AND MR. WILSON MENTIONED NUMBER ONE. NUMBER
16 TWO, THE ENTITY KNOWN AS FLUOR CORPORATION (FLUOR I) WAS
17 RENAMED MASSEY ENERGY COMPANY IN 2000. THREE, FLUOR II
18 WAS INCORPORATED IN DELAWARE ON OR ABOUT SEPTEMBER 11,
19 2000.

20 JUDGE, WHAT I DID IS I ACTUALLY -- BECAUSE
21 THERE WAS NO MEET-AND-CONFER, I WENT THROUGH AND I
22 ACTUALLY THINK THAT BOTH SIDES, TO THE EXTENT WE'RE
23 LOOKING TO REALLY GO TO MATERIAL ISSUES, CAN PROBABLY
24 LIST ALL OF THEM IN A DOZEN OR LESS -- OR LESS -- FROM
25 THEIR LIST AND OUR LIST. I THINK THAT'S REALLY WHAT
26 WE'RE TALKING ABOUT HERE. I DON'T THINK THEY'RE

1 DISPUTED. I PUT TOGETHER SEVEN THAT I THINK, YOU KNOW,
2 CAPTURE VIRTUALLY ALL OF MINE AND VIRTUALLY ALL OF
3 THEIRS; AND I'M CERTAINLY HAPPY TO TALK TO THEM ABOUT
4 THAT.

5 BUT I THINK YOU'RE RIGHT. AND I'M HAPPY TO,
6 YOU KNOW, GO DOWN AND RECITE THE ONES FROM THEIRS IF
7 YOU'D LIKE, BECAUSE I THOUGHT IT WAS SOMETHING THE COURT
8 EXPECTED US TO DO AND I DID THAT ON THE WAY OUT HERE. I
9 COUNTED 15, AS I SAID, FROM THEIR LIST.

10 THE PROBLEM WITH SOME OF THEIRS -- YOU KNOW, IF
11 YOU TURN TO NUMBER THREE OF THEIRS, RIGHT -- WELL, LET'S
12 START WITH NUMBER ONE OF THEIRS FOR AN EXAMPLE OF WHY I
13 COULDN'T JUST AGREE TO NUMBER ONE.

14 FLUOR CORPORATION IS A FORTUNE 200 COMPANY --
15 GOOD, RIGHT? -- WHICH HAS CONTINUOUSLY CONDUCTED E.P.C.
16 OPERATIONS BEGINNING IN 1912.

17 WELL, FLUOR II, TODAY'S FLUOR CORPORATION,
18 DIDN'T EXIST UNTIL 2000. SO I COULDN'T AGREE TO THAT AS
19 IT'S WORDED. THERE'S GOT TO BE THE SEPARATION OF FLUOR I
20 AND FLUOR II TO THEIR PROPOSED STIPULATIONS. BUT IF WE
21 CLEAN UP WITH THAT SORT OF STUFF -- YOU KNOW, YOU GO TO
22 NUMBER THREE WHEN THEY TALK ABOUT THAT HARTFORD DEFENDED.
23 YOU ADD "UNDER A RESERVATION OF RIGHTS" AND WE'RE GOOD
24 WITH THAT.

25 I MEAN, I CAN GO THROUGH THE LIST -- AND I'VE
26 DONE THAT. I'VE UNDERTAKEN THAT TASK, AS I THOUGHT THE

1 COURT WANTED US TO DO.

2 JUDGE, I'M DISINCLINED TO RESPOND TO THE
3 POSTURING MAYBE THIS MORNING ABOUT -- I'M HAPPY TO DO
4 THAT, YOU KNOW. I THINK THERE WAS A REQUEST TO STAY
5 EVERYTHING HERE. THEY WENT TO THE COURT -- THE SUPREME
6 COURT AND SAID THE LIGHTS ARE OFF HERE.

7 I THINK THE COURT HAS READ THE COURT OF APPEAL
8 RULING. THERE ARE ISSUES THAT REMAIN, EVEN UNDER THEIR
9 520 ARGUMENT SHOULD IT SUCCEED. THERE WAS A
10 BACK-AND-FORTH AT THE COURT OF THE APPEAL, WELL, DIDN'T
11 DID YOU ASSIGN OR DIDN'T YOU ASSIGN? WELL, WE RETAINED.
12 WELL, IS IT THE SAME AS ASSIGNMENT?

13 THE COURT OF APPEAL IN ITS DECISION NOTED AND
14 POINT TO THERE ARE A NUMBER OF OPEN FACTUAL ISSUES TO BE
15 RESOLVED.

16 SO THE LIGHTS HERE ARE NOT OFF. WE'RE HERE
17 TODAY. I THOUGHT WE HAD OUR HOMEWORK ASSIGNMENT AND THE
18 COURT WAS GOING TO TELL US, OKAY, AFTER I GET YOUR LIST
19 AND WE FIGURE OUT WHERE WE ARE, YOU PUT US ON WARNING, I
20 THINK I'M PROBABLY GOING TO ASK YOU TO PUT PEN TO PAPER
21 ON THE JURY TRIAL ISSUE, LET'S DO IT.

22 YOU KNOW, MY VIEW IS LET'S GET TO RESOLUTION AS
23 FAST AS WE CAN. BUT I REALLY DON'T WANT TO GET DOWN TO
24 THE WEEDS, UNLESS THE COURT WANTS US TO, ON THE FINGER
25 POINTING HERE BECAUSE I DON'T THINK IT'S PRODUCTIVE TO
26 THE EXERCISE THAT THE COURT WANTS.

1 THE COURT: YOU ACTUALLY HAVE MENTIONED AN ISSUE
2 THAT'S SOMEWHERE ON MY LIST HERE OF THE NOTES THAT I MADE
3 PREPARATORY TO TODAY'S HEARING, AND THAT'S THE QUESTION
4 ABOUT WHETHER AND HOW WE RESOLVE THAT ISSUE ABOUT -- IN
5 THE FIRST INSTANCE, WE'VE BEEN TALKING ABOUT WHETHER
6 THERE REALLY IS A FACTUAL DISPUTE HERE. I'M STILL GOING
7 TO HAVE TO SEE THAT TO BELIEVE IT.

8 MR. RUGGERI: JUDGE, MAY I?

9 THE COURT: BUT THE NEXT QUESTION WILL BE IF THERE
10 IS, WHO IS GOING TO RESOLVE THAT?

11 YOU HAVE A THOUGHT, MR. RUGGERI?

12 MR. RUGGERI: I MEAN, A FACTUAL DISPUTE, ONE THAT IS
13 RIPE, OBVIOUSLY, IS WAS THERE AN ASSIGNMENT? WAS THERE A
14 PURPORTED PURPOSEFUL ASSIGNMENT FROM FLUOR I TO FLUOR II?
15 EVEN UNDER 520, THAT'S AN ISSUE THAT NEEDS TO BE
16 RESOLVED, BECAUSE THE COURT MAY REMEMBER, AS DO I,
17 I ASKED ABOUT A HUNDRED WAYS TO SUNDAY "IS THERE AN
18 ASSIGNMENT IN HERE" AND KEPT GETTING "NO, THERE IS NOT A
19 ASSIGNMENT, THERE IS A RETENTION." AND THAT PIQUED THE
20 CURIOSITY OF THE PANEL WHO PRESSED ON THAT ISSUE, WHICH
21 IS "I THOUGHT YOU SAID THERE WAS AN ASSIGNMENT."

22 SO THAT'S A CLASSIC FACTUAL ISSUE THAT WOULD
23 NEED TO BE RESOLVED, IN ANY EVENT, THAT IS AN OPEN
24 FACTUAL ISSUE. THAT'S A REAL ONE, IT SEEMS TO ME.

25 NOW, ON THE JURY TRIAL ISSUE, THE COURT ENGAGED
26 IN SOME BACK-AND-FORTH WITH COUNSEL AT THE LAST STATUS ON

1 SEPTEMBER 26 AND I THINK RIGHTLY SAID THAT, NO, COUNSEL
2 FOR FLUOR CORPORATION, JUST BECAUSE AN ISSUE IS A FACTUAL
3 ISSUE DOESN'T MEAN THAT YOU'RE ENTITLED TO A JURY TRIAL.
4 I SCRATCHED MY HEAD A LITTLE BIT AND THEN I WENT BACK AND
5 I LOOKED AND I SAID YOU'RE EXACTLY RIGHT, AND THAT'S
6 BECAUSE THE COURTS HAVE MADE IT CLEAR THAT YOU REALLY
7 HAVE TO LOOK TO SEE WHETHER THE CLAIM OR DEFENSE IS AN
8 EQUITABLE ONE OR LEGAL ONE.

9 AND IF YOU LOOK AT THE DEFENSES TO THE
10 ENFORCEMENT TO THE ASSIGNMENT CONDITIONS, THE FIVE PLUS
11 TWO, THEY'RE EQUITABLE.

12 SO I AM HAPPY TO BRIEF IT. THERE IS NO RIGHT
13 TO JURY TRIAL, EVEN IF THEY HAD PRESERVED THE RIGHT TO
14 JURY TRIAL. BUT THEY'RE EQUITABLE. SO THEY'RE ISSUES
15 FOR THE COURT TO DECIDE.

16 AND THEN IF YOU LOOK -- AND I THINK OUR LIST
17 WAS HELPFUL FROM THIS PERSPECTIVE. IF YOU LOOK AT THE
18 ISSUES THAT WE BELIEVE ARE RELEVANT TO THE VARIOUS
19 EQUITABLE DEFENSES AND EQUITABLE ISSUES THE COURT IS
20 GOING TO HAVE TO DECIDE, ALL OF THOSE FACTUAL ISSUES ARE
21 GOING TO BE ADDRESSED AND RESOLVED BY THE COURT.

22 SO TO THE EXTENT THERE WAS ONE, PERHAPS, LEGAL
23 DEFENSE OUT THERE, THE FACTUAL ISSUE IS GOING TO BE
24 DECIDED AND IT'S GOING TO BE BINDING ON THE PARTIES AS
25 THE COURT DECIDES IT.

26 I'M HAPPY TO BRIEF THAT ISSUE TO THE COURT, TO

1 ADDRESS THAT ISSUE ONCE AND FOR ALL. BUT I THINK THE
2 COURT WAS SPOT ON WHEN IT SAID JUST BECAUSE -- YOU KNOW,
3 THE *HODGE* CASE, FOR EXAMPLE, TELLS US THAT. BUT JUST
4 BECAUSE AN ISSUE IS DISPUTED DOESN'T MEAN THAT YOU'RE
5 ENTITLED TO A JURY TRIAL ON IT.

6 THE COURT: YOU AND I BOTH MIGHT HAVE JUMPED A STEP
7 AHEAD HERE WHEN WE TALK ABOUT DETERMINING WHETHER OR NOT
8 THERE IS A RIGHT TO A JURY TRIAL, MR. RUGGERI, AND I
9 THINK THAT IS ONE OF THE LANDMARKS THAT WE'LL HAVE TO
10 PASS HERE.

11 BUT BEFORE WE GET TO THAT, WE'VE GOT TO FIND
12 OUT WHAT THE ISSUES ARE. I'M NOT SURE WE'VE ACCOMPLISHED
13 MUCH IN OUR EXCHANGE OF DOZENS OF FACTUAL PRESENTATIONS.
14 SO I WOULD LIKE TO GET TO THE POINT YOU'VE SUGGESTED, AND
15 THAT IS TO ADDRESS IN FORMAL BRIEFING THE QUESTION ABOUT
16 A JURY TRIAL AND WHETHER THERE IS SUCH A RIGHT; BUT I'M A
17 LITTLE LEERY OF GOING THERE BEFORE WE KNOW WHAT WE'RE
18 TRYING.

19 MR. RUGGERI: WELL, ONE EXAMPLE, JUDGE, IS THEY
20 DECLINED, BECAUSE OF THE OVERLAP, TO BREAK DOWN THEIR
21 FACTS LIKE WE DID BY ISSUE SO THE COURT COULD SEE WHAT
22 THE ISSUE IS AND WHAT THE PARTY BELIEVED WERE THE
23 RELEVANT FACTS. THAT WOULD BE HELPFUL, IT SEEMS TO ME,
24 BECAUSE THEN WE WOULD BE ABLE TO IDENTIFY BY DEFENSE,
25 EQUITABLE VERSUS LEGAL, THE FACTS THAT THE SIDES BELIEVE
26 GO TO THAT.

1 AND I THINK WHAT WE'RE GOING TO SEE -- AND THE
2 LAW IS PRETTY CLEAR TOO THAT WE'RE SUPPOSED TO RESOLVE
3 THE EQUITABLE DEFENSES FIRST -- THAT ALL OF THOSE FACTS
4 ARE GOING TO BE RESOLVED ON THE EQUITABLE SIDE OF THE
5 HOUSE TO THE EXTENT THAT ONE COULD EVEN ARGUE THAT ANY
6 DEFENSES ARE LEGAL.

7 BUT I THINK WE NEED TO SEE WHICH FACTS
8 PLAINTIFF BELIEVES ARE RELEVANT TO WHICH ISSUES, AND I
9 THINK THAT WOULD BE A HELPFUL EXERCISE FOR US TO GO
10 FORWARD.

11 I'M CERTAINLY HAPPY TO SHARE MY LIST OF SEVEN
12 WITH PLAINTIFF HERE SO THEY SEE, OKAY, I BELIEVE, YOU
13 KNOW, THERE ARE THESE SEVEN OVERARCHING FACTS AND THEY'RE
14 UNDISPUTED AND I THINK IT KIND OF -- THAT'S WHAT'S GOING
15 TO DRIVE THE COURT'S DECISION ON YOUR DEFENSES TO
16 ENFORCEMENT OF THE ASSIGNMENT CONDITION, BECAUSE WE KNOW
17 RIGHT NOW THE COURT OF APPEAL HAS SAID THAT CONDITION IS
18 NOT VOID. AND NOW WE HAVE THE PETITION TO THE SUPREME
19 COURT, AND PRESUMABLY WE'RE GOING TO HEAR ONE WAY OR THE
20 OTHER.

21 BUT I DON'T THINK IT CAUSES US TO STOP DOING
22 WHAT WE'RE DOING HERE, CERTAINLY. AND, AGAIN, WE'RE --

23 THE COURT: THAT'S A GIVEN. UNTIL AND UNLESS WE ARE
24 TOLD OTHERWISE, WE'RE GOING TO PROCEED.

25 MR. WILSON, I HAVE A RECOLLECTION THAT IN YOUR
26 PRIOR PRESENTATION YOU HAD LISTED ABOUT FOUR OR FIVE, I

1 WANT TO SAY, ISSUES OR CONTENTIONS OR THEORIES. DO YOU
2 REMEMBER THAT?

3 YOU PROPOSED A RATHER LIMITED NUMBER OF ISSUES
4 TO BE RESOLVED, BASICALLY DRIVING FROM THE
5 CROSS-COMPLAINT. DO YOU RECALL THAT AT ALL?

6 MR. WILSON: WE DID, YOUR HONOR. IT'S THE SAME FIVE
7 THAT ARE SET FORTH IN SECTION THREE OF OUR STATUS
8 CONFERENCE STATEMENTS; THE SAME FIVE THAT, AS WE'VE SAID
9 ALL ALONG, WE THINK WILL BE MOOTED IF WE'RE ULTIMATELY
10 DEEMED TO BE CORRECT IN THE APPELLATE PROCEEDINGS.

11 WE DON'T THINK THAT THERE IS GOING TO BE ANY
12 FACTUAL ISSUES THAT NEED TO BE RESOLVED, AND THAT'S THE
13 SAME REASON THAT DISCOVERY WAS STAYED IN FEBRUARY AND THE
14 SAME REASON THAT WE'RE PROCEEDING ALONG THIS PRELIMINARY
15 PATH NOW RATHER THAN LAUNCHING BACK INTO A TRIAL OR INTO
16 A FULL-BLOWN DISCOVERY THAT HARTFORD HAD ASKED BEFORE THE
17 COURT GRANTED THE PARTIES EIGHT MONTHS TO CONDUCT BEFORE
18 WE MOVED INTO THAT SECOND PHASE.

19 SO THOSE SAME FIVE ISSUES WERE SET OUT ON PAGES
20 FOUR TO SIX OF OUR STATUS CONFERENCE STATEMENT. AND
21 IT'S -- IT'S THE -- ESSENTIALLY, EITHER THE ARGUMENTS OR
22 THE DEFENSES THAT WE HAVE AS TO WHY IT IS THAT HARTFORD
23 CAN'T ENFORCE THE ANTI-ASSIGNMENT CONDITIONS IN THIS CASE
24 EVEN IF IT'S ULTIMATELY DETERMINED BY THE APPELLATE
25 COURTS THAT THEY REMAIN VALID.

26 THE TWO ADDITIONAL ISSUES THAT WE NOTED, THAT

1 WE HADN'T SET FORTH IN THAT FOOTNOTE FROM THE LAST STATUS
2 CONFERENCE, ARE OUR TWO ALTERNATIVE CROSS-CLAIMS; AND
3 THOSE WERE -- THEY'RE STILL WITHIN THE SAME GIST, THEY'RE
4 STILL THE SAME -- THE SAME GENERAL FACTS STILL SUPPORT
5 THOSE ALTERNATIVE CROSS-CLAIMS, AS THEY DO OUR DEFENSES.

6 BUT THAT FIVE SORT OF PLUS THE ADDITIONAL
7 ALTERNATIVE CAUSES OF ACTION ARE THE THINGS THAT WE THINK
8 WOULD NEED TO BE LITIGATED IF THE APPELLATE COURTS
9 ULTIMATELY COME DOWN ON THE SIDE OF THE ANTI-ASSIGNMENT
10 CLAUSE REMAINING BOUT.

11 MR. RUGGERI: YOUR HONOR, MAY I READ -- I'M NOT SURE
12 IF MR. WILSON KNOWS, BUT PAGE 17 OF THE COURT OF APPEAL
13 RULING. POINT 3 IN BOLD IS: "THE PARTIES HAVE NOT
14 PROPERLY PLACED INTO ISSUE WHETHER FLUOR I ASSIGNED THE
15 POLICIES TO FLUOR II."

16 AND THE POINT OF THE COURT'S DISCUSSION THERE
17 IS A FURTHER GROUND TO DENY THE PETITION, IS --
18 MR. WILSON JUST WHISPERED "IT'S NOT TRUE." I'M READING
19 FROM IT RIGHT HERE -- IS THAT THERE ARE OPEN FACTUAL
20 ISSUES, EVEN UNDER THEIR 520 THEORY, THAT YOUR HONOR
21 HASN'T BEEN ALLOWED TO RESOLVE.

22 I MEAN, THIS RETENTION VERSUS ASSIGNMENT --
23 THEY'RE NOT SYNONYMS. THEY'RE DIFFERENT. AND THAT
24 ISSUES NEEDS TO BE GRAPPLED WITH, BECAUSE IF THEY
25 DIDN'T -- IF THERE IS NO PURPORTED ASSIGNMENT OF RIGHTS
26 UNDER THE POLICIES, THEY FAIL EVEN UNDER THEIR THEORY OF

1 520.

2 SO THERE ARE OPEN ISSUES HERE. IT'S NOT LIKE
3 EVERYTHING IS MOOTED. AND THAT WAS THE SECOND
4 INDEPENDENT GROUND FOR THE COURT OF APPEAL TO SAY IT
5 SHOULDN'T -- WE SHOULDN'T GRANT THE RELIEF THAT'S
6 REQUESTED.

7 MR. WILSON: YOUR HONOR, THE COURT OF APPEAL SAID, IN
8 RESPONSE TO A FACTUAL ARGUMENT THAT HARTFORD RAISED AT
9 THE 11TH HOUR, THAT THE PARTIES HAD NOT PROPERLY PLACED
10 THAT ISSUE BEFORE THE COURT OF APPEAL. THAT'S NOT THE
11 SAME AS SAYING THAT THERE IS A FACTUAL DISPUTE THAT
12 PRECLUDES GRANTING THE RELIEF THAT WE SEEK.

13 TO THE CONTRARY, WHAT THE COURT OF APPEAL SAID
14 IS WE DON'T NEED TO WEIGH INTO THAT ISSUE. TO USE THEIR
15 WORDS, WE'RE NOT GOING TO ENMESH OURSELVES IN THIS
16 THICKET BECAUSE THE PARTIES HAVE DISPUTES ABOUT WHAT THE
17 FUTURE MAY LOOK LIKE; BUT WE DON'T NEED TO RESOLVE THAT
18 QUESTION AS WE SIT HERE TODAY BECAUSE WE DISAGREE WITH
19 FLUOR ON ITS ARGUMENT REGARDING THE APPLICABILITY OF
20 SECTION 520. AND THAT'S FINE. WE HAVE A DISAGREEMENT
21 WITH THE COURT OF APPEAL, AND WE'RE GOING TO MAKE OUR
22 ARGUMENTS TO THE SUPREME COURT.

23 BUT TO MISCHARACTERIZE THE COURT OF APPEAL'S
24 OPINION AS SUGGESTING OUR ARGUMENT ON 520 RAISES FACTUAL
25 ISSUES IS SIMPLY NOT TRUE.

26 THE COURT: MR. WILSON, CAN YOU DEFINE FOR US -- NOT

1 AT THIS MOMENT, BUT MAYBE WE CAN PUT YOU TO THE TASK OF
2 DEFINING THE ISSUES YOU THINK REQUIRE A JURY DECISION. I
3 THINK THAT MIGHT ACHIEVE TWO PURPOSES: ONE WOULD BE TO
4 CAUSE YOU TO WHITTLE DOWN YOUR LIST; AND THE SECOND THING
5 WOULD BE ONCE YOU'VE DONE THAT, WE COULD ALL FOCUS MORE
6 CLEARLY ON THE ISSUE THAT'S AWAITING US, AND THAT'S THE
7 QUESTION ABOUT WHETHER THIS IS NECESSARILY A JURY ISSUE.

8 CAN WE HAVE YOU FILE THE FIRST BRIEF ON THAT
9 SUBJECT, IDENTIFYING ISSUES THAT ARE GENERATED BY THE
10 CROSS-COMPLAINT THAT YOU THINK REQUIRE A JURY DECISION
11 AND SHOW US WHY.

12 MR. WILSON: I THINK -- WE CERTAINLY CAN, YOUR HONOR,
13 IF THAT'S THE WAY THE COURT PREFERS TO PROCEED. I WOULD
14 SAY A COUPLE OF THINGS.

15 NUMBER ONE, I GUESS I JUST HAVE A QUESTION.
16 THERE ARE CERTAINLY ISSUES THAT WE BELIEVE WE'RE ENTITLED
17 TO A JURY ON. ALL OF THE FACTS THAT WE LAID OUT ARE WHAT
18 WE BELIEVE WILL NEED TO BE DECIDED IN ORDER TO RESOLVE
19 THOSE ISSUES.

20 SO, FIRST OF ALL, I GUESS I JUST HAVE A
21 QUESTION ON WHETHER YOUR HONOR IS FOCUSING ON THE ISSUES
22 THEMSELVES, THE LEGAL ISSUES, OR THE FACTS THAT SUPPORT
23 THOSE LEGAL ISSUES.

24 AND THEN, SECONDLY, I GUESS THERE IS A BIT OF A
25 DISCONNECT ON THE JURY TRIAL ISSUE, BECAUSE FROM FLUOR'S
26 PERSPECTIVE, WE HAVE ALWAYS DEMANDED A JURY TRIAL. YOUR

1 HONOR SET THE CASE FOR A JURY TRIAL. IT'S OUR
2 UNDERSTANDING THAT HARTFORD IS NOW ARGUING THAT FLUOR
3 WAIVED ITS RIGHT TO A JURY TRIAL. AND SO IF THAT'S THE
4 ARGUMENT, IT SEEMS TO ME LIKE HARTFORD SHOULD BE THE
5 PARTY THAT GIVES IT THE FIRST SHOT, FOR LACK OF A BETTER
6 WORD, SO THAT WE UNDERSTAND WHAT IT IS THAT WE'RE
7 TARGETING, BECAUSE I DO THINK THAT, AS WE HAD IDENTIFIED
8 THE ISSUES IN THE PAST AND WE'VE TOLD THE COURT THAT WE
9 REQUEST A JURY TRIAL, AS IS OUR RIGHT UNDER THE
10 CONSTITUTION -- I GUESS I'M JUST HAVING A LITTLE
11 DISCONNECT AS TO WHAT THE ACTUAL DISPUTE IS BETWEEN THE
12 PARTIES. IS IT ON A WAIVER ISSUE? IS IT SOMETHING ELSE?

13 THE COURT: I THINK YOU CORRECTLY NOTED THE COURT'S
14 INCORRECT USE OF THE WORD "ISSUE." FACTS ARE WHAT WE'RE
15 LOOKING FOR, DISPUTED FACTS THAT ARE BUILDING BLOCKS IN
16 ACHIEVING RESOLUTION OF THESE ISSUES. BUT THE FACTS --
17 IF YOU CAN JUST IDENTIFY FACTS THAT YOU BELIEVE ARE
18 DISPUTED -- NOW, I HAD THE GOOD FORTUNE OF PICKING OUT
19 ONE THAT REALLY WASN'T WORTH A NIT TO STAY IT WAS
20 DISPUTED, AND I'M GUESSING THAT I -- WELL, YOU
21 ACKNOWLEDGE THAT I PROBABLY COULD HAVE FOUND ONE OR TWO
22 MORE, MAYBE 30 OR 40, AND IN BOTH SETS.

23 BUT LET'S START THERE. THE REQUEST FOR A JURY
24 TRIAL SHOULD BE YOUR TASK TO ESTABLISH THE RIGHT THERETO.
25 I THINK TIED TO THAT WILL BE IDENTIFYING ISSUES -- FACTS,
26 RATHER, BUT NOT DIVORCED OF ISSUES, BECAUSE ULTIMATELY

1 ISSUES THAT MAY BE EQUITABLE IN NATURE, THOUGH THEY BE
2 DISPUTED FACTS, I THINK THE COURT MAY BE CORRECT -- AND
3 MR. RUGGERI HAS HUMORED US THIS MORNING BY SUGGESTING
4 THAT HAS BEEN A MOMENT OF LUCID INTERVAL FOR THE COURT --
5 THAT JUST DISPUTED FACT DOESN'T CARRY THE BALL AND GET
6 YOU TO A JURY TRIAL, BUT YOU NEED AN OVERRIDING ISSUE
7 THAT WOULD BE OF THAT NATURE.

8 SO I THINK YOU CAN GIVE US THE DISPUTED FACTS,
9 YOU CAN TIE THEM TO AN ISSUE, AND YOU CAN SHOW US WHERE
10 YOU HAVE THE RIGHT TO A JURY TRIAL. AND THAT WOULD BE, I
11 THINK, A FIRST HURDLE. WE'LL LET MR. RUGGERI RESPOND TO
12 THAT.

13 IN THE MEANTIME, MY QUESTION TO ALL OF YOU,
14 PARTICULARLY THE TWO THAT ARE IN THE FRONT LINES TODAY,
15 WOULD BE THE QUESTION ABOUT DISCOVERY AND ONGOING
16 PREPARATION FOR THE RESOLUTION OF THESE ISSUES.

17 I DON'T WANT TO RELY ON STATISTICAL EVIDENCE,
18 BUT CERTAINLY PETITIONS TO THE SUPREME COURT FOR REVIEW
19 DON'T OFTEN SUCCEED. THIS ONE MAY HAVE MORE CHANCE OF
20 SUCCESS BECAUSE IT'S A CASE OF PROVEN INTEREST IN THE
21 SUPREME COURT; BUT I THINK THIS COURT IS GOING TO RELY ON
22 THE OVERALL STATISTICAL LIKELIHOOD OF SUCCESS, AND THAT
23 MEANS THAT WE'VE GOT TO GET GOING AND ASSUME THAT WE'RE
24 NOT GOING TO BE INTERRUPTED.

25 SO, FOR THAT PURPOSE, MAYBE WE NEED TO START
26 PREPARATION FOR THE RESOLUTION OF THESE ISSUES. AND IF

1 YOU NEED DISCOVERY, I THINK WE NEED TO VACATE ANY
2 INTENDED OR PERCEIVED EMBARGO ON DISCOVERY NOW, LET YOU
3 GO AT IT.

4 WHAT DO YOU THINK ABOUT PREPARING A BRIEF?
5 TELL ME HOW LONG THAT MIGHT TAKE, MR. WILSON.

6 MR. WILSON: I WOULD ASK A LITTLE OF THE COURT'S
7 INDULGENCE JUST ON FLEXIBILITY FOR SCHEDULE IN LIGHT OF
8 THE HOLIDAYS AND WE HAVE A TRIAL THAT STARTS DECEMBER 5TH
9 THAT IS SCHEDULED TO GO THROUGH DECEMBER 21ST. SO IF THE
10 COURT WOULDN'T MIND SETTING THE SCHEDULE IN THE FIRST
11 WEEK OR SO OF JANUARY, WE COULD CERTAINLY FILE A BRIEF BY
12 THEN.

13 THE COURT: PICK A DATE WHEN YOU WOULD LIKE TO HAVE A
14 BRIEF IN MY HANDS.

15 MR. WILSON: I DON'T HAVE A CALENDAR, BUT IF THE 11TH
16 OR 12TH OF JANUARY IS --

17 THE COURT: THE 11TH IS A FRIDAY. THAT SOUNDS LIKE A
18 GOOD CHOICE.

19 MR. WILSON: PERFECT.

20 THE COURT: IF YOU COULD HAVE THAT BRIEF COVERING
21 THOSE TOPICS THAT I HAVE SO INARTFULLY DESCRIBED FILED
22 AND SERVED BY THE 11TH OF JANUARY, I'LL NOW TURN TO
23 MR. RUGGERI AND GIVE HIM THE OPPORTUNITY TO SCHEDULE HIS
24 REPLIES.

25 MR. RUGGERI: TWO WEEKS. JANUARY 25TH.

26 THE COURT: 25TH OF JANUARY?

1 MR. RUGGERI: YES.

2 THE COURT: WE MEET AGAIN ON THE 11TH OF FEBRUARY.

3 MR. RUGGERI: YOUR HONOR, TO THE POINT THE COURT -- I
4 MEAN, I THINK THE COURT HAS ADMONISHED BOTH PARTIES IF
5 YOU THINK YOU NEED MORE DISCOVERY, GET IT OUT NOW.
6 RIGHT? I MEAN, THE SERVING OF DISCOVERY SHOULD NOT BE
7 AFFECTED BY WHATEVER TRIAL MR. WILSON HAS. WE DON'T
8 THINK THERE IS FURTHER DISCOVERY NEEDED ON THIS ISSUE.

9 YOU KNOW, THE COURT KNOWS THAT WE WAITED A YEAR
10 FROM THE MOMENT THAT I FILED MY UNSUCCESSFUL MOTION TO
11 ALLOW THE DISCOVERY TO TAKE PLACE; BUT I JUST DON'T WANT
12 TO WAIT TWO MORE MONTHS AND THEN COME BACK IN FEBRUARY
13 AND HEAR, WELL, NOW WE HAVE TO TAKE DISCOVERY. IF THEY
14 BELIEVE THAT DISCOVERY IS NEEDED, PLEASE SERVE IT NOW SO
15 THAT WE KNOW WHERE WE ARE IN FEBRUARY, IT SEEMS TO ME.

16 THE COURT: DO YOU KNOW WHAT YOU JUST ASKED FOR?
17 THERE IS GOING TO BE A U-HAUL VAN ARRIVING IN YOUR OFFICE
18 BY THE END OF THE WEEK.

19 MR. RUGGERI: YOUR HONOR, I THINK WE'VE ALREADY
20 FILLED THE VAN AND SENT IT BACK TO THEM. THAT'S THE
21 POINT.

22 BUT I JUST DON'T WANT -- THE COURT HAS BEEN
23 CLEAR THAT DISCOVERY -- THE DISCOVERY EMBARGO IS OVER AND
24 THAT THE PARTIES SHOULD RESUME DISCOVERY. IF THEY THINK
25 MORE DISCOVERY IS NEEDED, WE SHOULD KNOW ABOUT IT, IT
26 SEEMS TO ME. BOTH SIDES.

1 THE COURT: I'M ONLY ADOPTING HALF YOUR SENTENCE.
2 THE DISCOVERY EMBARGO IS OVER. THE FURTHER DECISIONS ARE
3 NOT MINE TO MAKE. I CAN'T TELL MR. WILSON TO SEND
4 DISCOVERY.

5 MR. RUGGERI: THANK YOU. I JUST -- AS WE APPROACH
6 OUR 7TH ANNIVERSARY OF THIS CASE. WHEN WE COME BACK, WE
7 WILL HAVE PASSED THE SEVEN-YEAR MARK.

8 THE COURT: WE'LL MEET AGAIN THEN ON FEBRUARY 11.

9 ANYTHING ELSE IN THE MEANTIME?

10 MR. WILSON: NO, YOUR HONOR.

11 THE COURT: I THINK THAT'S IT.

12 DO YOU WAIVE NOTICE ABOUT THAT SCHEDULE?

13 MR. WILSON: YES.

14 MR. RUGGERI: YES, YOUR HONOR.

15 MR. MILLER: WE RETURN THEN ON THE 11TH AT 8:30, YOUR
16 HONOR?

17 THE COURT: YES. THANK YOU VERY MUCH, COUNSEL.

18 (PROCEEDINGS CONCLUDED.)

19

20

21

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25

26

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, JENNIFER L. SCOTT, CSR NO. 9218, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING REPORTER'S TRANSCRIPT IS A FULL, TRUE AND CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES THEREOF, AND A FULL, TRUE AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED THIS DAY OF NOVEMBER 6, 2012, AT
SANTA ANA, CALIFORNIA.

S/ JENNIFER L SCOTT

JENNIFER L. SCOTT, CSR NO. 9218
OFFICIAL COURT REPORTER

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:

**PETITIONER FLUOR CORPORATION'S
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PETITION FOR REVIEW**

by serving a true copy of the above-described document in the following manner:

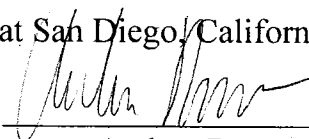
BY OVERNIGHT MAIL DELIVERY

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Federal Express Mail or other express service carrier. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained for receipt of overnight mail by Federal Express Mail or other express service carrier; such documents are delivered for overnight mail delivery by Federal Express Mail or other express service carrier on that same day in the ordinary course of business, with delivery fees thereon fully prepaid and/or provided for. I deposited in Latham & Watkins LLP' interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Federal Express Mail or other express service carrier:

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **November 8, 2012**, at San Diego, California.



Andrea Rasco

SERVICE LIST

Alan Jay Weil, Esq.
Jeffrey B. Ellis, Esq.
Gaims, Weil, West & Epstein, LLP
1875 Century Park East, Suite 1200
Los Angeles, CA 90067-2513
Telephone: (310) 407-4500
Facsimile: (310) 277-2133
ajweil@gwwe.com
jellis@gwwe.com

**Counsel for Hartford Accident
and Indemnity Company**

James P. Ruggeri, Esq. (pro hac vice)
Tara Plochocki, Esq.
Joshua Weinberg, Esq.
Shipman & Goodwin LLP
1133 Connecticut Avenue, NW
Washington, D.C. 20009
Telephone: (202) 469-7750
Facsimile: (202) 469-7751
jruggeri@goodwin.com
tplochocki@goodwin.com
jweinberg@goodwin.com

**Counsel for Hartford Accident
and Indemnity Company**