

SUPREME COURT
FILED

Case No. S205889

OCT 30 2012

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

FLUOR CORPORATION,

Petitioner,

RECEIVED

OCT 29 2012

v.

CLERK SUPREME COURT

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

REAL PARTY IN INTEREST HARTFORD ACCIDENT AND
INDEMNITY COMPANY'S REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF ITS ANSWER TO PETITION FOR REVIEW

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Counsel for Real Party In Interest Hartford Accident and Indemnity Company

Pursuant to California Rules of Court Rule 8.250 and Rule 8.252, and Evidence Code Sections 452 and 459, Real Party in Interest Hartford Accident and Indemnity Company (“Hartford”) respectfully submits this request that the Court take judicial notice of the following documents:

Exhibit 1: Reporter’s Certified Transcription of the Status Conference held on September 26, 2012 in *Fluor Corporation v. Hartford Accident and Indemnity Company*, Superior Court of California, County of Orange, No. 06cc0016 before Judge Ronald L. Bauer. A copy of the transcript is attached hereto as Exhibit 1 and is authenticated by the Declaration of Joshua D. Weinberg (“Weinberg Declaration”), filed concurrently herewith in support of Hartford’s Answer to Fluor Corporation’s Petition for Review.

Exhibit 2: Letter dated August 13, 2012 from John M. Wilson, on behalf of Petitioner Fluor Corporation, to Justices Kathleen E. O’Leary, William F. Rylaarsdam, and Raymond J. Ikola, which constitutes part of the court record in *Fluor Corporation v. Superior Court; Hartford Accident & Indemnity Co., Real Party in Interest*, California Court of Appeal, Fourth Appellate District, Division Three, No. G045579. A copy of the letter is attached hereto as Exhibit 2 and authenticated by the Weinberg Declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

The Evidence Code expressly contemplates that this Court may take judicial notice of the records of any California court. (*See* Cal. Evid. Code § 452(d)(1) [“Judicial notice may be taken of the following. . . (d) Records of (1) any court of this state. . . .”].) The Exhibits for which notice is sought qualify as records of California state courts (*See, e.g., Alch v. Superior Court* (2008) 165 Cal.App.4th 1412, 1421, fn. 3 [taking judicial notice of transcript from status conference]; *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914 [noting that court may take judicial notice of the existence of documents in a court file].) Hartford has provided Fluor with adequate notice of its request, through filing this notice, to meet the request and respond as it deems appropriate. In addition, the Court has sufficient information to enable it to take judicial notice of each of these documents. As the accompanying declaration sets forth, each of the documents for which Hartford seeks judicial notice are true and complete copies of California state court records. Consequently, this Court should take judicial notice of the documents requested under Evidence Code Sections 452 and 453.

STATEMENT OF RELIEF SOUGHT

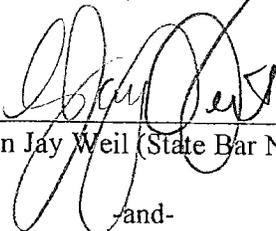
For the foregoing reasons, Hartford requests that the Court take judicial notice of Exhibit 1 and Exhibit 2 to Hartford’s Request for Judicial

Notice in support of its Answer to Petition for Review, and consider these documents in ruling on the Petition.

DATED: October 26, 2012

Respectfully submitted,

GAIMS, WEIL, WEST & EPSTEIN
LLP

By: 

Alan Jay Weil (State Bar No. 63153)

and-

James P. Ruggeri (*pro hac vice*)
Joshua D. Weinberg (*pro hac vice*)
SHIPMAN & GOODWIN LLP

Attorneys for Real Party in Interest
Hartford Accident and Indemnity
Company

DECLARATION OF JOSHUA D. WEINBERG

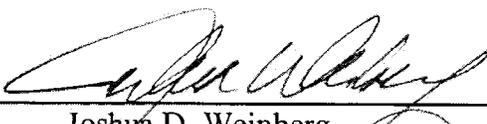
I, Joshua D. Weinberg, declare as follows:

1. I am an attorney duly licensed to practice law in the New York and the District of Columbia and a Partner at the law firm of Shipman & Goodwin LLP, counsel for Real Party in Interest Hartford Accident and Indemnity Company 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 1 is a true and correct copy of the Reporter's Certified Transcription of the Status Conference held on September 26, 2012 in *Fluor Corporation v. Hartford Accident and Indemnity Company*, Superior Court of California, County of Orange, No. 06cc0016 before Judge Ronald Bauer.

3. Attached hereto as Exhibit 2 is a true and correct copy of a Letter dated August 13, 2012 from John M. Wilson, on behalf of Petitioner Fluor Corporation, to Justices Kathleen E. O'Leary, William F. Rylaarsdam, and Raymond J. Ikola, which constitutes part of the court record in *Fluor Corporation v. Superior Court; Hartford Accident & Indemnity Co., Real Party in Interest*, California Court of Appeal, Fourth Appellate District, Division Three, No. G045579.

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 October 25, 2012 at Washington, DC.



Joshua D. Weinberg

EXHIBIT 1

APPEARANCES, CONTINUED:

FOR CONTINENTAL
CASUALTY CO.:

TROUTMAN SANDERS
BY: DANIEL RASHTIAN, ESQ.

FOR PACIFIC INDEMNITY:

CHAMBERLIN, KEASTER &
BROCKMAN
BY: MICHAEL MILLER, ESQ.

FOR AMERICAN MOTORISTS:

CHARLSTON, REVICH & WOLLITZ
BY: ALLAN FAVISH, ESQ.
(COURT CALL APPEARANCE)

1 SANTA ANA, CALIFORNIA - WEDNESDAY, SEPTEMBER 26, 2012

2 MORNING SESSION

3 * * * * *

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

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

8 GOOD MORNING, COUNSEL. YOUR APPEARANCES,
9 PLEASE.

10 MR. WILSON: GOOD MORNING, YOUR HONOR.

11 JOHN WILSON ON BEHALF OF THE FLUOR PLAINTIFFS.

12 MR. ROBERTS: GOOD MORNING, YOUR HONOR.

13 BROOK ROBERTS ON BEHALF OF THE FLUOR
14 PLAINTIFFS.

15 MR. RUGGERI: GOOD MORNING, YOUR HONOR.

16 JAMES RUGGERI ON BEHALF OF HARTFORD ACCIDENT
17 AND INDEMNITY.

18 MR. RASHTIAN: GOOD MORNING, YOUR HONOR.

19 DANIEL RASHTIAN ON BEHALF OF CONTINENTAL
20 CASUALTY COMPANY.

21 MR. MILLER: GOOD MORNING, YOUR HONOR.

22 MICHAEL MILLER ON BEHALF OF CROSS-DEFENDANT
23 PACIFIC INDEMNITY COMPANY.

24 THE COURT: MR. REVICH, YOU'RE WITH US ON THE PHONE?

25 MR. FAVISH: ON THE TELEPHONE IS ALLAN FAVISH OF
26 CHARLSTON, REVICH & WOLLITZ, REPRESENTING CROSS-DEFENDANT

1 AMERICAN MOTORISTS INSURANCE COMPANY. THANK YOU, YOUR
2 HONOR.

3 THE COURT: THANK YOU. MR. REVICH MADE THE
4 RESERVATION, OR AT LEAST IT WAS MADE IN HIS NAME. SO I
5 THOUGHT THAT MIGHT BE THE GENTLEMAN ON THE PHONE, BUT YOU
6 CAN CERTAINLY SPEAK ON HIS BEHALF. I KNOW THAT.

7 ALL RIGHT. WELL, GOOD MORNING TO ALL OF YOU.
8 WE HAVE AT LEAST A SLIGHT CHANGE IN THE LANDSCAPE SINCE
9 LAST WE MET, AND I GUESS THE QUESTION FOR THE DAY IS WHAT
10 WE DO NEXT. AND I THANK YOU FOR YOUR REPORTS. I KNOW WE
11 HAVE THE REPORTS FROM THE OUTLIERS WHO GIVE US THEIR
12 USUAL POINT OF VIEW THAT THEY JUST WANT TO SEE THE BLOOD
13 ON THE FLOOR AND THE BONES OF THE CARCASS BEFORE THEY GET
14 ANY MORE INVOLVED.

15 IS THAT A FAIR SUMMARY?

16 MR. RASHTIAN: THAT'S A FAIR SUMMARY, YOUR HONOR.

17 THE COURT: ALL RIGHT. I THINK THAT WILL BE THE
18 RESULT. WHATEVER MIGHT BE THE RESULT WITH FLUOR AND
19 HARTFORD, YOU CAN WELL ANTICIPATE YOUR RESULT IS YOU'LL
20 CONTINUE TO BE BYSTANDERS FOR THE NEAR FUTURE.

21 MR. RASHTIAN: THANK YOU.

22 THE COURT: WHAT IS GOING TO BE THE RESULT WITH FLUOR
23 AND HARTFORD? YOU'VE EACH SEEN THE OTHER'S PROPOSAL, I
24 TAKE IT, AT THIS POINT.

25 LET ME JUST GET A SENSE AS TO WHETHER YOU HAVE
26 YET FILED ON BEHALF OF FLUOR ANY PETITION IN THE SUPREME

1 COURT. HAS THAT BEEN DONE?

2 MR. WILSON: WE HAVE NOT, YOUR HONOR. BUT THE
3 PETITION IS DUE ON OCTOBER 9TH, AND WE DO INTEND TO FILE
4 ON OR BEFORE THAT DATE.

5 AS YOU MAY HAVE SEEN FROM OUR PAPERS, THE
6 CENTRAL PREMISE, I THINK, OF THE COURT OF APPEAL'S RULING
7 WAS THAT SECTION 520, WHICH THE SUPREME COURT OBVIOUSLY
8 DIRECTED TO BE REVIEWED BECAUSE IT HAD NOT BEEN
9 SUBSTANTIVELY REVIEWED BY AN APPELLATE COURT THROUGHOUT
10 ITS HISTORY, THE COURT OF APPEAL CONCLUDED IT DOESN'T
11 APPLY TO LIABILITY POLICIES. AND FLUOR DISAGREES WITH
12 THAT AND BELIEVES THAT THE SUPREME COURT SHOULD HAVE AN
13 OPPORTUNITY TO WEIGH IN ON THAT ISSUE IN PARTICULAR,
14 GIVEN THAT IN OUR VIEW, AS A GENERAL RULE, GOVERNING
15 INSURANCE SECTION 520 DOES GOVERN ALL POLICIES.

16 SO THAT'S GOING TO BE ONE OF THE FUNDAMENTAL
17 BASES OF THE PETITION WE FILE ON OR BEFORE THE 9TH.

18 THE COURT: MR. WILSON, IN YOUR REPORT YOU LISTED IN
19 ONE OF YOUR FOOTNOTES FOUR OR FIVE ISSUES THAT YOU THINK
20 ARE LURKING SOMEWHERE HERE IN THE BACKGROUND. HOW DO YOU
21 PROPOSE TO RESOLVE THOSE ISSUES?

22 MR. WILSON: I THINK CERTAINLY THE PARTIES ARE GOING
23 TO NEED TO CONFER, BECAUSE AT THE STATUS CONFERENCE IN
24 FEBRUARY, I THINK BOTH SIDES AGREE THAT THERE WAS A
25 CERTAIN AMOUNT OF DISCOVERY THAT WOULD NEED TO BE
26 CONDUCTED FOR THOSE ISSUES, PROBABLY FACT AND LIKELY

1 EXPERT DISCOVERY, AND WE HAVEN'T YET CONFERRED AT ALL
2 ABOUT WHAT THE TIMING OR SCOPE OF THAT WOULD LOOK LIKE.

3 I THINK THAT THERE WILL BE THE NECESSITY OF AT
4 LEAST SOME LIMITED FACT DISCOVERY THAT HAS NOT YET BEEN
5 CONDUCTED, PARTICULARLY OF FOLKS THAT ARE NO LONGER
6 INVOLVED WITH EITHER OF THE FLUOR PLAINTIFFS ON THE ONE
7 SIDE OR HARTFORD ON THE OTHER SIDE. AND I DO THINK THERE
8 IS THE POSSIBILITY OF EXPERT DISCOVERY THAT WOULD NEED TO
9 BE TAKEN.

10 ULTIMATELY, IT WOULD BE WRAPPED UP IN A TRIAL
11 TO RESOLVE HARTFORD'S CROSS-CLAIMS AGAINST FLUOR, FLUOR'S
12 DEFENSES TO THOSE CROSS-CLAIMS, INCLUDING ALL OF THE
13 ARGUMENTS ABOUT WHY HARTFORD, EVEN IF THE ANTI-ASSIGNMENT
14 CLAUSES ARE STILL ENFORCEABLE OR THEY'RE NOT VOID, WHY
15 THEY CAN'T BE ENFORCED AGAINST FLUOR UNDER THESE
16 CIRCUMSTANCES.

17 SO AT THE END OF THE DAY I THINK THAT'S GOING
18 TO HAVE TO BE RESOLVED AT TRIAL.

19 THE COURT: AT THE END OF THE DAY, THAT'S YOUR
20 ANSWER.

21 MR. WILSON: I THINK THAT'S THE ANSWER. NONE OF THAT
22 WOULD HAVE TO BE -- NONE OF THAT WOULD HAVE TO BE WEIGHED
23 IN ONE WAY OR THE OTHER, HOWEVER, IF THE SUPREME COURT
24 AGREES THE ANTI-ASSIGNMENT CLAUSES ARE VOID FROM THE
25 OUTSET AS A CONSEQUENCE OF SECTION 520.

26 THE COURT: YOUR ANSWER HAVING BEEN TRIAL, LET ME ASK

1 ABOUT A SUBSET THERE, WHETHER YOU PERCEIVE THAT THERE
2 WOULD BE A JURY TRIAL OR COURT TRIAL OR SOME OTHER
3 MECHANISM.

4 MR. WILSON: WE EXPECT THERE WOULD BE A JURY TRIAL.
5 I THINK THAT THE NUMBER OF FACTUAL ISSUES THAT -- UPON
6 WHICH FLUOR'S DEFENSES IN PARTICULAR TO HARTFORD'S CLAIMS
7 ARE CENTERED WOULD, OF NECESSITY, HAVE TO BE PRESENTED TO
8 A JURY.

9 THE COURT: LET ME STOP YOU THERE BECAUSE THAT IS NOT
10 A LOGICAL SEQUENCE. FACT DISPUTES ARE NOT NECESSARILY
11 PRESENTED TO A JURY. YOU JUST SAID THAT THEY ARE, AND
12 THAT SIMPLY ISN'T TRUE.

13 MR. WILSON: I UNDERSTAND THAT, YOUR HONOR.

14 FLUOR'S POSITION -- THE FLUOR PLAINTIFFS'
15 POSITION IS THAT WE HAVE ASKED FOR A JURY, AND WE WOULD
16 LIKE THOSE FACT ISSUES TO BE PRESENTED TO A JURY FOR
17 RESOLUTION ON THE QUESTIONS OF THINGS LIKE EFFECTIVE
18 CONSENT, ESTOPPEL, WAIVER. AND IN ORDER TO -- IN ORDER
19 TO WEIGH IN ON THE COURSE OF CONDUCT BETWEEN THE PARTIES
20 THAT STARTED BACK IN AT LEAST 2001, AND THE EIGHT YEARS
21 OF CONDUCT BETWEEN THE PARTIES BEFORE HARTFORD FINALLY
22 ASSERTED THIS NEW CLAIM IN 2009, IN OUR VIEW WE PREFER TO
23 HAVE A JURY DECIDE THOSE THINGS. WE BELIEVE WE'VE ASKED
24 FOR A JURY.

25 THE COURT: YOU THINK YOU HAVE A RIGHT TO A JURY. I
26 GUESS THAT'S THE QUESTION I'M ASKING YOU AND NOT GETTING

1 THERE.

2 MR. WILSON: WE DO. EXACTLY. THE FLUOR
3 PLAINTIFFS BELIEVE WE HAVE A RIGHT TO A JURY AND WOULD
4 ASK THE COURT TO --

5 THE COURT: ON ALL OF THOSE QUESTIONS AND ISSUES?

6 MR. WILSON: THAT'S RIGHT, YOUR HONOR.

7 THE COURT: ON THAT VERY SIMPLE SUBJECT AND THAT
8 SIMPLE QUESTION, WHAT'S YOUR THOUGHT, MR. RUGGERI?

9 MR. RUGGERI: YOUR HONOR, WE DO NOT BELIEVE THEY HAVE
10 A RIGHT TO A JURY TRIAL; AND WE DO NOT BELIEVE THESE ARE
11 ISSUES APPROPRIATE FOR A JURY, IN ANY EVENT. WE ACTUALLY
12 THINK THAT THE COURT HAS SORT OF SIGNALLED TO US ITS VIEW
13 OF THE LIMITED UTILITY OF MOTIONS PRACTICE. WE THINK
14 THESE ISSUES COULD BE RESOLVED ON MOTIONS, BUT
15 UNDERSTANDING THAT WE HAVE NO OBJECTION TO HOLDING
16 ANOTHER LEGAL ISSUES TRIAL.

17 LET'S TEE THE ISSUES UP. THE COURT OF APPEAL
18 HAS RULED. THE COURT HAS READ THE RULING. IT'S A PRETTY
19 SOUND RULING. THE COURT ALSO -- THE COURT OF APPEAL ALSO
20 NOTED THE REMAINING OPEN FACTUAL ISSUES THAT REMAIN WITH
21 THIS COURT. THOSE GO TO FLUOR'S ARGUMENTS WHY WE CAN'T
22 ENFORCE THE NOW VALID ASSIGNMENT CONDITIONS OF THE
23 HARTFORD POLICIES.

24 WE THINK IT'S A BIG MISTAKE TO OPERATE UNDER
25 THE ASSUMPTIONS -- FLUOR SEEMS TO SUGGEST WE SHOULD
26 OPERATE UNDER THE SUGGESTION THAT THE SUPREME COURT IS

1 GOING TO TAKE A REVIEW. WE THINK THE COURT SHOULD SET A
2 SCHEDULE. THEY SAY THAT WE'RE GOING TO KNOW FOR SURE BY
3 DECEMBER, MID-DECEMBER, WHETHER THE SUPREME COURT IS
4 GOING TO TAKE REVIEW OR NOT. WE DON'T EXPECT IT WILL.

5 BUT LET'S WORK UNTIL THEN AND MAYBE SET A TRIAL
6 DATE IN JANUARY, LET'S SET DEADLINES, LET'S TEE THESE
7 ISSUES UP, BECAUSE UNLESS THEY HAVE A -- I MEAN, I THINK,
8 JUDGE, THERE ARE TWO PARTS OF OUR ARGUMENT THAT ARE RIPE.
9 THERE'S THE CLAIMS THAT WE ALREADY DEFENDED AND
10 INDEMNIFIED ON BEHALF OF FLUOR II, IF WE USE THE COURT OF
11 APPEALS' NOMENCLATURE; AND THEN THERE IS THE ISSUE WITH
12 REGARD TO HARTFORD'S OBLIGATIONS GOING FORWARD.

13 WE THINK CLEARLY ALL OF THEIR WAIVER, ESTOPPEL,
14 MODIFICATION, OPERATION OF LAW, IMPLIED-IN-FACT,
15 IMPLIED-IN-LAW, THOSE ARE GOING TO FAIL PRETTY EASILY AS
16 TO ANY FORWARD FUTURE INCURRED COST BY HARTFORD, AND WE
17 THINK THEY FAIL AS TO THE BACK END.

18 BUT LET'S TEE THEM UP, FIGURE OUT WHERE WE ARE,
19 BECAUSE THEN THE ISSUE WHETHER FLUOR II IS AN INSURED
20 UNDER THE POLICY, THEY WON'T BE. THE QUESTION IS GOING
21 TO BE HARTFORD'S RIGHT TO REIMBURSEMENT ON COUNT II. WE
22 DON'T NEED TO DRAG IT UP.

23 WE'RE GOING TO BE FAST APPROACHING OUR SEVENTH
24 ANNIVERSARY TO THIS CASE ON FEBRUARY 1ST. THE COURT HAS
25 PUSHED US. I'D ASK YOU TO PUSH US AGAIN.

26 AND IF THE COURT DOES GRANT REVIEW, WELL THEN

1 THE COURT CAN MAKE ANY MODIFICATIONS THAT NEED TO BE MADE
2 IN THE SCHEDULE IN OR AROUND MID-DECEMBER. BUT WE WOULD
3 ASK THE COURT TO SET US ON OUR COURSE, YOUR HONOR.

4 THE COURT: YOU PROPOSED ALTERNATIVE MECHANISMS IN
5 YOUR PAPERS. DO YOU HAVE A PREFERENCE?

6 MR. RUGGERI: I DID, YOUR HONOR. YOU KNOW, I GUESS
7 IF -- I KNOW THE COURT'S PREFERENCE. I HAVE NO
8 OBJECTION --

9 THE COURT: YOU'VE BEEN HERE ENOUGH TIMES.

10 MR. RUGGERI: I'VE BEEN BURNED.

11 THE COURT: YOU'VE HEARD THAT SPEECH.

12 MR. RUGGERI: AND I THINK THE COURT HAS MADE IT
13 PRETTY CLEAR THAT IT'S PRETTY DARNED HARD TO GET A
14 SUMMARY ADJUDICATION IN YOUR FAVOR.

15 THE COURT: IF EVER THERE WAS A CASE THAT PROVES THE
16 POINT.

17 MR. RUGGERI: IT'S THIS ONE.

18 SO I THINK THAT WHAT THE COURT SHOULD DO -- AND
19 I FILED MY PAPER BEFORE I SAW FLUOR'S AND THEIR TIME
20 TABLE FOR THE SUPREME COURT. LET'S SET A LEGAL ISSUES
21 TRIAL FOR JANUARY. LET'S TEE IT UP.

22 THE COURT: WELL, I WAS GOING TO GIVE MY SPEECH
23 AGAIN; BUT I ASSUMED THAT IN THE MANY TIMES YOU'VE ALL
24 BEEN HERE, YOU'D EITHER HEARD IT IN THE AUDIENCE OR YOU'D
25 HEARD IT RIGHT WHERE YOU'RE STANDING NOW, AND YOU
26 CONFIRMED TO ME, MR. RUGGERI --

1 MR. RUGGERI: BOTH, YOUR HONOR. WE'VE HEARD IT BOTH
2 CONTEXTS.

3 THE COURT: -- YOU'VE HEARD THAT SPEECH. SO I WON'T
4 GIVE IT AGAIN, BUT YOU KNOW WHAT IT IS.

5 AND I WAS THINKING IN THE LAST DAY OR TWO THAT,
6 INDEED, AS I JUST INDICATED, THERE IS NO BETTER EXAMPLE
7 OF THE JUSTIFICATION. AND IT MAY BE -- I FULLY RECOGNIZE
8 THERE MAY BE SOME SORT OF SELF-FULFILLING PROPHECY THAT
9 COMES INTO PLAY HERE. WHEN I GIVE THE SPEECH, I CAN
10 ARGUABLY DETERMINE THAT THE SPEECH IS VALID BY THE
11 CONDUCT OF THE COURT; BUT I HOPE THAT'S NOT THE CASE.

12 BUT, SURELY, WE HAD SOME SUCCESS IN RESOLVING
13 FOUR ISSUES SEVERAL MONTHS AGO IN A MOTION SLASH
14 BIFURCATED TRIAL, ET CETERA, PRACTICE. AND I'M NOT SURE
15 WHAT NAME WE PUT TO THAT BECAUSE I MAY HAVE ALSO
16 MENTIONED TO YOU THAT THERE IS SOME -- THERE IS NOT
17 100 PERCENT CERTAINTY THAT THAT PRACTICE OF SETTING ASIDE
18 INDIVIDUAL ISSUES FOR PRETRIAL DETERMINATION IS
19 STATUTORILY AUTHORIZED.

20 YOU WELL KNOW THAT THERE IS A NEW MECHANISM
21 UNDER OUR SUMMARY JUDGMENT STATUTE. SUBSECTION (S) NOW
22 AT LEAST EXPANDS THE LIST OF ISSUES THAT CAN BE SUMMARILY
23 ADJUDICATED FROM THE ORIGINAL BIG FOUR TO ANY ISSUE, AS
24 LONG AS THERE IS A STIPULATION OF PARTIES ACCEPTED BY THE
25 COURT. BUT THAT'S STILL A SUMMARY ADJUDICATION AND BEARS
26 ALL OF THOSE BURDENS AND HURDLES AND GLITCHES THAT I

1 EXPOUNDED UPON.

2 SO ASIDE FROM HUMORING THE COURT,
3 MR. RUGGERI -- AND THAT'S ALWAYS A GOOD THING TO DO --
4 BUT YOU FAVOR THE MOTION PRACTICE OR SOMETHING LESS --
5 I'M SORRY. -- THE MINI TRIAL PRACTICE?

6 MR. RUGGERI: I DO, YOUR HONOR. AND IF YOU BASICALLY
7 EXTENDED THE DATES THAT WE PROPOSE IN OUR SCHEDULE BY A
8 MONTH -- I BASICALLY TOOK WHAT WE DID FOR THE TRIAL LAST
9 DECEMBER, USED THOSE SORT OF GUIDEPOSTS, PUT IN DATES.

10 BUT I DO THINK, IN VIEW OF FLUOR'S STATEMENT, I
11 HAVE NO PROBLEM, IF THE COURT HAS TIME, TO JUST KICKING
12 THOSE DATES BY A MONTH. THAT WOULD PROVIDE FOR A JANUARY
13 PHASE II LEGAL ISSUES TRIAL, WHICH I DO THINK, YOU KNOW,
14 WIN, LOSE, OR DRAW WAS HELPFUL IN MOVING US ALONG. AND
15 WE ALL KNOW WHAT THOSE ISSUES ENTAIL, AND I THINK IT CAN
16 BE DONE EVEN MORE EFFICIENTLY THAN LAST TIME.

17 THE COURT: MR. WILSON, ANY ADDITIONAL THOUGHTS ON
18 MECHANISMS?

19 MR. WILSON: SURE. THE MECHANISM, AS WE SAID, THE
20 FLUOR PLAINTIFFS BELIEVE THAT WE HAVE A RIGHT TO JURY
21 TRIAL AND INTEND TO ASK FOR THAT.

22 WITH RESPECT TO THE TIMING OF WHEN THAT TRIAL
23 WILL HAPPEN, I THINK ADVANCING THE BALL BY A COUPLE OF
24 MONTHS UNTIL WE'VE GIVEN THE SUPREME COURT A CHANCE TO
25 WEIGH IN ON THE PETITION AND TAKING ALL THAT DISCOVERY IN
26 THE INTERIM THAT'S GOING TO NEED TO BE CONDUCTED TO

1 PREPARE OURSELVES FOR A JURY TRIAL AT THE END OF THE DAY
2 COULD ULTIMATELY END UP BEING A TREMENDOUS WASTE OF
3 RESOURCES FOR THE PARTIES ON ISSUES THAT MAY NEVER NEED
4 TO BE LITIGATED.

5 I RECOGNIZE THIS CASE HAS BEEN PENDING FOR A
6 LONG PERIOD OF TIME. OBVIOUSLY, A BIG PART OF THAT IS
7 THE ISSUES THAT FLUOR PRESENTED, WHICH WERE LITIGATED
8 LAST DECEMBER AND RESOLVED IN A MINI TRIAL, ARE A
9 DIFFERENT SET OF ISSUES THAN THE ONE HARTFORD RAISED
10 SEVERAL YEARS INTO THE CASE. SO THERE IS A REASON THAT
11 WE'VE BEEN HERE FOR LONGER THAN WE EXPECTED TO AND ARE
12 NOW BEFORE THE APPELLATE COURTS.

13 BUT THAT DISCOVERY THAT'S GOING TO NEED TO BE
14 CONDUCTED MAY ULTIMATELY BE A WASTE OF THE PARTIES'
15 RESOURCES. SO I WOULD SIMPLY SUBMIT THAT IT DOESN'T --
16 NO ONE IS PREJUDICED BY COMING BACK IN TWO MONTHS.

17 IN THE MEANTIME, THE PARTIES CAN CONFER ABOUT
18 THE TYPE OF DISCOVERY THAT WILL NEED TO BE TAKEN, THE
19 SCOPE OF IT, THE TIMING OF WHAT WILL NEED TO BE DONE
20 BEFORE WE COME BACK FOR TRIAL DURING THAT TWO-MONTH
21 WINDOW, COME BACK ONCE THE SUPREME COURT HAS GIVEN US A
22 YEA OR NAY ON THE PETITION FOR REVIEW, AND AT THAT POINT
23 WE'LL BE PREPARED TO PRESENT THE DISCOVERY PLAN AND TRIAL
24 SCHEDULE TO THE COURT, IF NECESSARY.

25 MR. RUGGERI: YOUR HONOR, IF I MAY.

26 THE COURT: YES, SIR.

1 MR. RUGGERI: ON THE NAMED INSURED ISSUE, THAT ISSUE
2 HAS BEEN DISCOVERED TO DEATH. YOU WILL NO DOUBT RECALL
3 THAT I'M USUALLY ON THE SIDE OF "I NEED DISCOVERY" AND
4 THEY'RE ON THE SIDE OF "NO, YOU DON'T; NO, YOU DON'T."

5 WE HAVE DEPOSED LOTS AND LOTS OF -- EVERYONE
6 INVOLVED, THAT COULD BE INVOLVED, ON THAT ISSUE AND WITH
7 REGARD TO THOSE ISSUES. IT JUST -- I THINK THERE IS
8 PREJUDICE. WE'VE BEEN WAITING AROUND. EVEN IF YOU LOOK
9 BACK TO WHEN WE AMENDED OUR COMPLAINT TO EXPRESSLY NAME
10 THIS, IT WAS EARLY 2009. I MEAN, WE'RE JUST SITTING
11 AROUND PAYING DOLLARS THAT WE DON'T THINK WE SHOULD PAY.
12 NO ONE IS PREJUDICED.

13 ONE COULD ALWAYS SAY, WELL, THE SUPREME COURT
14 MAY TAKE REVIEW OF ANY ISSUE SO WE SHOULDN'T DO ANYTHING
15 AFTER THE COURT RULES ON THE FIRST ISSUE. I DON'T THINK
16 THAT'S FAIR. I THINK THE COURT OF APPEAL'S RULING WAS A
17 PRETTY GOOD INDICATOR. THE SUPREME COURT SENT IT BACK TO
18 THEM. WE NOW HAVE THEIR VIEWS, WHICH WERE IN LINE WITH
19 YOUR HONOR'S VIEWS. I THINK THAT THE FACTUAL ISSUES ARE
20 NOTED IN POINT TWO IN THAT DECISION.

21 I THINK WITH OUR WORKING ASSUMPTION, JUST
22 LOOKING AT THE STATISTICS, SHOULD BE KEEP MOVING FORWARD
23 ON THE ASSUMPTION THAT THE SUPREME COURT IS NOT -- I
24 DON'T KNOW WHAT DISCOVERY THEY THINK THEY WANT TO TAKE.
25 IF THEY WANT TO GIVE US AN IDEA, WELL THEN THAT WILL BE
26 BUILT INTO THE SCHEDULE. CERTAINLY, THERE IS NO NEED FOR

1 LENGTHY DISCOVERY. WE'VE GONE THROUGH, YOU KNOW,
2 PROBABLY A DOZEN DEPOSITIONS IN THIS CASE ALREADY WITH
3 LOTS OF DOCUMENT PRODUCTIONS.

4 LET'S TEE UP THE ISSUES. LET'S GET THEM
5 RESOLVED SO THAT WE CAN MOVE FORWARD.

6 THE COURT: LET ME ASK YOU AGAIN, MR. WILSON. YOUR
7 FOOTNOTE INDICATES FOUR ISSUES, AND I THINK LATER IN YOUR
8 PAPERS YOU REPEATED THAT THAT'S YOUR REFERENCE. IT'S
9 FOOTNOTE 2.

10 IS THAT WHAT YOU SEE AS THE REMAINING -- OR NOT
11 THE REMAINING TOPICS. WE HAVE A LOT MORE TOPICS AFTER
12 THESE. BUT THOSE ARE THE TOPICS THAT NOW AWAIT US?

13 MR. WILSON: THAT IS -- THAT CAPTURES -- FOOTNOTE 2
14 CAPTURES THE GIST OF THE ISSUES. THERE ARE OTHER
15 ARGUMENTS WITHIN THE SCOPE OF FLUOR'S AFFIRMATIVE
16 DEFENSES AND CROSS-CLAIMS THAT WOULD ALSO BE PART AND
17 PARCEL OF THE NAMED INSURED ISSUES, WHICH INCLUDE OUR --
18 FLUOR'S CROSS-CLAIMS, ALTERNATIVE CROSS-CLAIMS FOR
19 IMPLIED-IN-FACT OR IMPLIED-IN-LAW CONTRACT, THE
20 MODIFICATION ARGUMENT.

21 SO THOSE FOUR ISSUES CERTAINLY CAPTURE THE
22 GIST, THE THRUST OF WHAT WE WOULD ULTIMATELY HAVE TO
23 LITIGATE IF THE SUPREME COURT DISAGREES WITH US; BUT
24 THAT'S NOT THE SUM TOTAL OF EVERY SINGLE ISSUE THAT WOULD
25 HAVE TO BE RESOLVED IN THE TRIAL.

26 THE COURT: SOME DAY I SUPPOSE WE HAVE TO COUNT UP

1 THE DOLLARS AND CENTS AND FIGURE OUT WHAT'S SUPPOSED TO
2 BE PAID HERE, IF ANYTHING. WE HAVE NOT TALKED ABOUT THAT
3 ISSUE AT ALL YET.

4 MR. WILSON: THAT'S TRUE, YOUR HONOR. ALTHOUGH, WITH
5 RESPECT TO THE RULINGS THAT WERE MADE LAST DECEMBER, THE
6 TAKEAWAY FROM THOSE RULINGS WAS NOT THAT ANY ADDITIONAL
7 MONEY NEEDED TO CHANGE HANDS, AT LEAST AT THIS POINT, BUT
8 RATHER THAT THE PARTIES WOULD CONTINUE TO PERFORM AS THEY
9 HAD BEEN PERFORMING FOR A NUMBER OF YEARS HARTFORD'S
10 DEFENSE AND INDEMNITY AND WOULD CONTINUE TO CONFER ABOUT
11 WHETHER, FOR EXAMPLE, THERE WOULD EVER BE ANY MORE
12 RETROSPECTIVE PREMIUMS DUE OR WHETHER ANY MONEY SHOULD BE
13 REFUNDED.

14 MR. RUGGERI: YOUR HONOR, ON OUR COUNT 2, WE WOULD BE
15 PLEASED TO PRESENT THAT AT THE LEGAL ISSUES TRIAL AS
16 EARLY AS THE COURT CONVENIENTLY CAN FIT US IN.

17 I THINK, JUDGE, THE OTHER POINT WITH THEIR
18 ALTERNATIVES CLAIMS -- I MEAN, IMPLIED-IN-FACT,
19 IMPLIED-IN-LAW MODIFICATION -- I MEAN, IT'S PRETTY CLEAR
20 TO SORT OF, I THINK, DEAL WITH THOSE. THE
21 MODIFICATION -- HOW COULD HARTFORD MODIFY A CONTRACT WITH
22 A NONPARTY TO THE CONTRACT? THERE IS A LEGAL IMPEDIMENT
23 TO THE THEORY.

24 AND THE SAME WITH THE IMPLIED-IN-FACT,
25 IMPLIED-IN-LAW. THESE AREN'T ISSUES THAT A JURY IS GOING
26 TO BE ABLE TO DECIDE. THESE ARE DISCRETE ISSUES THAT THE

1 COURT IS GOING TO HAVE TO RULE ON. AND, LIKE I SAID, I
2 THINK THAT THE LEGAL ISSUES TRIAL THAT YOU ACTUALLY
3 ENCOURAGED US WAS EFFICIENT. I APPRECIATE THE EFFICIENCY
4 OF IT.

5 THE COURT: I THINK, MR. RUGGERI, YOU BROUGHT US TO
6 THE FIRST TASK WE NEED TO CONFRONT, AND THAT IS
7 DETERMINING WHO WILL MAKE THE DECISIONS IN TERMS OF THESE
8 ISSUES, WHETHER WE IMPANEL A JURY OR NOT. AND YOU HAVE
9 DIFFERENT POINTS OF VIEW UPON THAT. I THINK WE OUGHT TO
10 GET WRITTEN ANALYSIS OF THAT QUESTION ON THE FOUR ISSUES
11 THAT ARE DEFINED IN MR. WILSON'S FOOTNOTE 2.

12 I THINK THE COURT WOULD REQUIRE AND ASK THAT
13 YOU SUBMIT YOUR POINTS OF VIEW ABOUT WHICH, IF ANY OF
14 THESE, PERMIT EITHER PARTY TO ASK FOR A JURY TO DETERMINE
15 THOSE FACTUAL ISSUES, IF ANY THERE BE.

16 I GUESS I'M SLIPPING OVER A PRELIMINARY POINT,
17 AND THAT IS THE QUESTION ABOUT WHETHER THERE ARE IN FACT
18 ANY FACTUAL DISPUTES AT ALL. THAT SHOULD HAVE BEEN MY
19 FIRST EMPHASIS BECAUSE IF THERE ARE NO FACTUAL DISPUTES,
20 WE CERTAINLY DON'T NEED A JURY.

21 GIVE ME A MINUTE.

22 MR. RUGGERI: YOUR HONOR, CAN THAT BE PART OF THE
23 HOMEWORK AS WELL? BECAUSE I'M HAVING A TOUGH TIME
24 IDENTIFYING WHAT FACTUAL DISPUTES THERE ARE AS TO ANY OF
25 THESE ISSUES THAT FLUOR INTENDS TO RAISE THE
26 ENFORCEABILITY OF THE ASSIGNMENT CONDITION. I THINK THAT

1 WOULD BE PART AND PARCEL OF THE HOMEWORK, IT SEEMS TO ME.

2 THE COURT: WELL, I THINK I JUMPED ONE STEP AHEAD. I
3 THINK THAT THE FIRST STEP IN THE ANALYSIS YOU PRESENTED,
4 MR. RUGGERI, FOR THE TRIAL APPROACH IS TO IDENTIFY
5 PROPOSED STIPULATED FACTS FOR TRIAL. THAT MAY BE STEP
6 NUMBER ONE.

7 SO LET'S DO THIS. AND I HOPE I CAN DESCRIBE MY
8 PLAN WITH SOME CLARITY, BUT WE'RE GOING TO START WITH THE
9 FOUR ISSUES THAT MR. WILSON HAS IDENTIFIED IN FOOTNOTE 2
10 OF HIS PAPERS.

11 I'M GOING TO ASK COUNSEL TO MEET AND CONFER AND
12 SUBMIT A JOINT REPORT ABOUT YOUR POINTS OF VIEW IN TERMS
13 OF WHAT STIPULATED FACTS THERE ARE THAT ARE CENTRAL TO
14 EACH OF THOSE ISSUES AND WHAT DISPUTED FACTS THERE ARE
15 THAT NEED A RESOLUTION BY THE COURT, WHETHER THAT BE WITH
16 JURY OR WITHOUT JURY.

17 I THINK WE'LL GIVE YOU THAT SHORT ASSIGNMENT.
18 THAT'S THE SIMPLE ASSIGNMENT.

19 YOU CAN KNOW IN ADVANCE THAT THE SECOND
20 ASSIGNMENT WILL BE TO PRESENT YOUR POINT OF VIEW IF THERE
21 ARE DISPUTED FACTS ABOUT WHETHER WE NEED A JURY OR CAN
22 HAVE A JURY TO RESOLVE THOSE DISPUTES TO THE EXTENT WE
23 FIRST FIND THAT THERE ARE FACTUAL UNCERTAINTIES.

24 SO WHAT I WOULD LIKE YOU TO DO IS SET YOU ABOUT
25 THAT FIRST TASK. I THINK YOU UNDERSTAND THAT PROBABLY
26 BETTER THAN I EXPLAINED IT. THEN WE'LL MEET AGAIN AND

1 I'LL SEE WHAT WE NEED TO SAY ABOUT JURY OR NOT JURY AND
2 PROBABLY PUT YOU BACK TO THE RESEARCH AND ANALYSIS ON
3 THAT ISSUE, AND THEN WE'LL PROBABLY PLUG IN A SCHEDULE.
4 SO WE'RE PROBABLY GOING TO LOSE A COUPLE OF MONTHS JUST
5 DOING THAT. AND THEN WHEN THAT IS DONE, WE CAN SET OUT A
6 MORE DETAILED SCHEDULE THAT WOULD LEAD US TO A
7 RESOLUTION.

8 QUESTIONS ABOUT THAT PLAN?

9 MR. RUGGERI: DATES BY WHICH YOU WOULD WANT --

10 THE COURT: THAT WAS GOING TO BE THE VERY NEXT TOPIC
11 IS TO FIGURE OUT WHEN WE WOULD MEET AGAIN.

12 LET ME JUST ASK COLLECTIVELY IF YOU HAVE ANY
13 PREFERENCE ABOUT WHEN YOU WOULD LIKE TO COME BACK HERE.
14 I THINK WE PROBABLY SHOULD HAVE YOUR PAPERS FILED A WEEK
15 BEFORE WE MEET AND THEN COME BACK FOR ANOTHER MEETING.
16 YOU CAN MAKE THE DECISION LARGELY AMONG YOURSELVES ABOUT
17 HOW LONG THAT PROCESS WILL TAKE AND WHEN IT IS CONVENIENT
18 AND WORKABLE FOR YOU TO BE HERE.

19 SUGGESTIONS?

20 MR. WILSON: I THINK WE WOULD PREFER THE END OF
21 OCTOBER, OR THEREABOUTS.

22 THE COURT: ALL RIGHT. LET ME SUGGEST THAT WE MEET
23 AGAIN ON NOVEMBER 5. IT COULD BE AS YOU HAVE SUGGESTED,
24 MR. WILSON, OCTOBER 29. BUT JUST TO BE SURE YOU HAVE
25 AMPLE TIME, I'M GOING TO SAY OUR NEXT MEETING WILL BE
26 MONDAY, NOVEMBER 5, AT 8:30, HERE IN DEPARTMENT 103.

1 AND IF YOU COULD JUST HAVE YOUR REPORT IN THE
2 COURT'S HANDS BY THE 26TH OF OCTOBER, THAT WOULD BE
3 APPRECIATED.

4 MR. RUGGERI: YOUR HONOR, ANY INDICATION OF PAGE
5 LENGTH, AS THE COURT SOMETIMES HAS DONE FOR US IN THIS
6 CASE?

7 THE COURT: I DON'T THINK I NEED TO.

8 MR. RUGGERI: OKAY.

9 THE COURT: I APPRECIATE THE OFFER TO LIMIT
10 YOURSELVES, BUT JUST THE FACT THAT YOU WERE ABLE TO TODAY
11 PRESENT IN THREE OR FOUR PAGES YOUR POINTS OF VIEW
12 SUGGESTS TO ME THAT YOU CAN GET EVERYTHING YOU WANT TO
13 SAY IN A REASONABLE AMOUNT. SO THE SHORT ANSWER IS NO.

14 MR. ROBERTS: YOUR HONOR, I JUST HAD --

15 THE COURT: GO AHEAD, MR. ROBERTS.

16 MR. ROBERTS: I NEED TO CHIME IN HERE AT SOME POINT.
17 I JUST HAVE A QUICK QUESTION.

18 WHAT I UNDERSTOOD, YOUR HONOR, IS YOU
19 CONTEMPLATED A JOINT REPORT. SO THE PARTIES WOULD KIND
20 OF WORK ON THAT REPORT TOGETHER AND MAKE SURE THEY'RE NOT
21 TALKING OVER EACH OTHER, AT LEAST WITH RESPECT TO THEIR
22 POSITIONS?

23 THE COURT: THAT WOULD BE THE GOAL. I SUSPECT MAYBE
24 WITHIN THAT ONE DOCUMENT THERE MIGHT BE A REPORT ABOUT
25 AGREEMENT AND THERE MIGHT BE TWO OTHER PARTS OF THAT
26 DOCUMENT.

1 MR. ROBERTS: SURE.

2 MR. RUGGERI: PROBABLY ENTITLED PLAINTIFFS' VIEW AND
3 THEN HARTFORD'S VIEW; RIGHT? I SUSPECT THAT'S WHERE
4 WE'LL BE. BUT I DO THINK THERE WILL BE A BODY OF THE
5 REPORT THAT WILL BE JOINT, YOUR HONOR.

6 THE COURT: AND THE BIGGER IT IS, THE BETTER. BUT I
7 DO EXPECT -- I WOULD LIKE TO BE DISAPPOINTED, BUT I DO
8 EXPECT THERE MIGHT BE OTHER PARTS OF THAT REPORT.

9 ALL RIGHT. ANYTHING ELSE FOR THE DAY?

10 MR. WILSON: NO.

11 (OFF THE RECORD DISCUSSION.)

12 THE COURT: THANKS FOR YOUR TIME. WAIVE NOTICE OF
13 OUR PLAN?

14 MR. WILSON: NOTICE WAIVED.

15 MR. RUGGERI: NOTICE WAIVED.

16 MR. RASHTIAN: NOTICE WAIVED.

17 MR. MILLER: NOTICE WAIVED.

18 (PROCEEDINGS CONCLUDED.)

19

20

21

22

23

24

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 SEPTEMBER 27, 2012, AT SANTA ANA, CALIFORNIA.

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

EXHIBIT 2

AUG 14 2012

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August 13, 2012

VIA OVERNIGHT MAIL

Presiding Justice Kathleen E. O'Leary
Associate Justice William F. Rylaarsdam
Associate Justice Raymond J. Ikola
California Court of Appeal
Fourth Appellate District, Division Three
601 West Santa Ana Blvd.
Santa Ana, CA 92701

Re: Fluor Corporation v. Superior Court;
Hartford Accident & Indemnity Co., Real Party in Interest
California Court of Appeal, Fourth Appellate District, Division Three
Case No. G045579

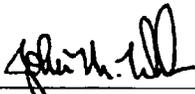
Dear Justices O'Leary, Rylaarsdam and Ikola:

Petitioner Fluor Corporation respectfully requests leave to call this Court's attention to the following opinion of the Supreme Court of California, filed on August 9, 2012: *State of California v. Continental Insurance Company* (Cal., Aug. 9, 2012, S170560) __ P.3d __ [2012 WL 3206561].

The Supreme Court's ruling bears directly on the issues raised at pages 53-59 of Fluor's Petition for Peremptory Writ of Mandate, and discussed at pages 21-26 and 32-33 of Fluor's Reply in Support of Petition for Peremptory Writ of Mandate.

Respectfully submitted,

LATHAM & WATKINS LLP

By 
John M. Wilson

Attorneys for Petitioner Fluor Corporation

Proof of Service attached

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 August 13, 2012, I served the following document described as:

**PETITIONER FLUOR CORPORATION'S AUGUST 13, 2012
LETTER REGARDING NEW AUTHORITY**

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 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 Express Mail or other express service carrier; such documents are delivered for overnight mail delivery by 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's 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 Express Mail or other express service carrier:

<p>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</p>	<p>Counsel for Hartford Accident and Indemnity Company</p>
<p>James P. Ruggeri, Esq. (pro hac vice) Tara Plochocki, Esq. Joshua Weinberg, Esq. Shipman & Goodwin LLP 1133 Connecticut Avenue, NW Washington, D.C. 20036 Telephone: (202) 469-7750 Facsimile: (202) 469-7751 jruggeri@goodwin.com tplochocki@goodwin.com jweinberg@goodwin.com</p>	

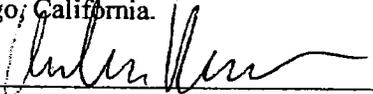
BY U.S. MAIL

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid. I deposited in Latham & Watkins LLP's 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 mailing with the United States Postal Service:

Superior Court of California,
County of Orange, Dept. CX 103
Hon. Ronald L. Bauer
751 West Santa Ana Blvd.
Santa Ana, CA 92701

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 August 13, 2012, at San Diego, California.


Andrea Rasco

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am over eighteen years of age and not a party to the within action; my business address is
4 400 Second Street, Suite 425, San Francisco, California 94107; I am employed in San Francisco
County, California.

5 On October 29, 2012, I served the foregoing document(s) described as ANSWER TO
6 PETITION FOR REVIEW and REAL PARTY IN INTEREST HARTFORD ACCIDENT AND
7 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:

8 **SEE ATTACHED SERVICE LIST**

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

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

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

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

15 
16 _____
Steven Santiago

1
2 ***Fluor Corporation v. Superior Court/Hartford Accident and Indemnity Company,***
3 **Case No. S205889**

4 **SERVICE LIST**

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Superior Court of California
County of Orange, Department CX103
Honorable Ronald L. Bauer
751 West Santa Ana Blvd.
Santa Ana, CA 92701

ANSWER TO RULE 8.252 QUESTIONS

A. Why The Matter To Be Noticed Is Relevant To The Appeal.

Exhibit 1 (September 26, 2012 Reporter's Transcript) is relevant to rebut Fluor-2's assertion in its petition 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." See Answer to Petition, p. 3. Exhibit 2 (Fluor-2's August 13, 2012 letter to the Court of Appeal) constitutes part of the official court record in these writ proceedings and is relevant because it shows that the Court of Appeal was asked to address and did address this Court's decision in *State of California v. Continental Insurance Co.* (2012) 55 Cal.4th 186.

B. Whether The Matter To Be Noticed Was Presented To The Trial Court And If So Whether Judicial Notice Was Taken By That Court.

Exhibits 1 and 2 were not the subject of a request for judicial notice in the trial court. There was no proceeding in the trial court as to which judicial notice of those two exhibits would have been relevant since the Court of Appeal had denied Fluor-2's writ petition and Fluor had not yet filed a petition for review in this Court.

C. Whether The Matter To Be Noticed Relates To Proceedings Occurring After The Order Or Judgment That Is The Subject Of The Appeal.

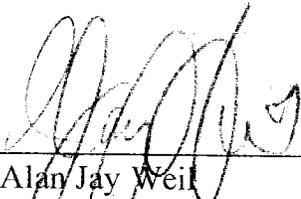
Exhibits 1 and 2 relate to proceedings occurring after the date of the order or judgment that is the subject of Fluor-2's petition. The September 26, 2012 transcript and the August 13, 2012 letter post-date the Superior Court order from which writ proceedings were commenced. The September 26, 2012 transcript post-dates all proceedings in the

Court of Appeal, and the August 13, 2012 letter is a part of the record before the Court of Appeal.

Respectfully submitted,

Dated: October 29, 2012 **GAIMS, WEIL, WEST & EPSTEIN, LLP**

By: _____


Alan Jay Weil

Attorneys for Real Party in Interest
Hartford Accident and Indemnity Company

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† ALSO ADMITTED IN WASHINGTON, D.C.

October 29, 2012

ALAN JAY WEIL
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ajweil@gwwe.com

Via Federal Express

Clerk of the California Supreme Court
400 McAllister Street
San Francisco, CA 94102
Attn: Robert Toy

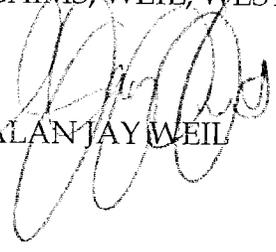
Re: Fluor Corporation, Petitioner v. Superior Court of the State of California, County of Orange, Respondent; Hartford Accident & Indemnity Company, Real Party In Interest, Case No. S205889

Dear Mr. Toy:

As requested, I have enclosed an insert to Hartford's Request for Judicial Notice. Please let me know if you need anything further.

Very truly yours,

GAIMS, WEIL, WEST & EPSTEIN, LLP


ALAN JAY WEIL

AJW :md
Enclosure

cc: John Wilson (w/encl.)
Brook Roberts (w/encl.)
James Ruggeri (w/encl.)