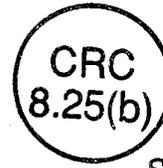


Case No. S205889



SUPREME COURT  
FILED

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

MAR 13 2013

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**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  
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
OPENING BRIEF ON THE MERITS;  
DECLARATION OF JOHN M. WILSON**

**LATHAM & WATKINS LLP**  
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JOHN M. WILSON (STATE BAR NO. 229484)  
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Counsel for Petitioner Fluor Corporation

Pursuant to California Rules of Court, rule 8.252, and sections 452 and 459 of the Evidence Code, Petitioner Fluor Corporation (“Fluor”) respectfully requests that the Court take judicial notice of the following orders of the Superior Court:

- The Superior Court’s January 3, 2012 minute order, issued following a bench trial conducted in December 2011, granting the request of Fluor and the related Fluor entities and subsidiaries named as Plaintiffs in this action (collectively, “the Fluor Insureds”) for declaratory relief concerning the right to select the insurance policy(ies) under which Hartford Accident & Indemnity Company (“Hartford”) provides defense and indemnity coverage for the underlying asbestos lawsuits. A copy of the Superior Court’s order is attached hereto as Exhibit A and authenticated by the Declaration of John M. Wilson (“Wilson Declaration”), filed concurrently herewith in support of Fluor’s Opening Brief on the Merits.
- The Superior Court’s January 9, 2012 minute order, issued following a bench trial conducted in December 2011, deciding in favor of Hartford the Fluor Insureds’ request for declaratory relief regarding independent counsel to defend the underlying asbestos lawsuits. A copy of the Superior Court’s order is attached hereto as Exhibit B and authenticated by the Wilson Declaration, filed concurrently herewith in support of Fluor’s Opening Brief on the Merits.
- The Superior Court’s January 11, 2012 minute order, issued following a bench trial conducted in December 2011, granting the Fluor Insureds’ request for a declaration that the underlying asbestos lawsuits brought against the Fluor Insureds cannot be aggregated as a single “occurrence” within the meaning of Hartford’s policies. A copy of the Superior Court’s order is attached hereto as Exhibit C and authenticated by the Wilson Declaration, filed concurrently herewith in support of Fluor’s Opening Brief on the Merits.
- The Superior Court’s February 28, 2012 minute order, issued following a bench trial conducted in December 2011, granting

the Fluor Insureds' request for declaratory relief concerning the proper interpretation of the "completed operations hazard" provision of the Hartford policies. A copy of the Superior Court's order is attached hereto as Exhibit D and authenticated by the Wilson Declaration, filed concurrently herewith in support of Fluor's Opening Brief on the Merits.

- The Notice of Ruling filed following a February 11, 2013 Case Management Conference, in which the Superior Court reiterated that it had fully resolved the dispute between the Fluor Insureds and Hartford concerning the "completed operations" dispute, and stayed further proceedings between the Fluor Insureds and Hartford pending this Court's resolution of Fluor's petition. A copy of the Notice of Ruling is attached hereto as Exhibit E and authenticated by the Wilson Declaration, filed concurrently herewith in support of Fluor's Opening Brief on the Merits.
- The Superior Court's minute order issued following the February 11, 2013 Case Management Conference. A copy of the Superior Court's order is attached hereto as Exhibit F and authenticated by the Wilson Declaration, filed concurrently herewith in support of Fluor's Opening Brief on the Merits.

A court may take judicial notice of records of any court of this state.

(Evid. Code, § 452, subd. (d)(1); *id.*, § 459, subd. (a).) This includes judicial notice of pleadings and orders filed in connection with related actions. (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]; *Alexander v. Super. Ct.* (1994) 22 Cal.App.4th 901, 905, fn. 1 [taking judicial notice of municipal and superior court files].)

Petitioner, therefore, requests that the Court take judicial notice of the above-referenced documents, which are copies of orders issued by the Superior Court subsequent to the June 27, 2011 denial of Fluor's motion for summary adjudication, which gave rise to Fluor's present Petition. These judicial records are relevant to the resolution of this case because they demonstrate that all disputes between Fluor and Hartford unrelated to the issue currently before this Court were resolved by the Superior Court in the bench trial conducted in December 2011, and that all other disputes between the Fluor Insureds and Hartford are stayed pending the outcome of this proceeding.

This Court should judicially notice these documents pursuant to its authority to take judicial notice of any matter properly the subject of judicial notice. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881.) When, as here, a party requests such notice, furnishes the court with sufficient information to enable it to take judicial notice of the matter, and gives the adverse party sufficient notice of the request, judicial notice is mandatory. (Evid. Code, § 453.)

#### **STATEMENT OF RELIEF SOUGHT**

For the foregoing reasons, Fluor requests that the Court take judicial notice of Exhibits A through F to Fluor's Request for Judicial Notice in support of its Opening Brief on the Merits.

DATED: March 12, 2013

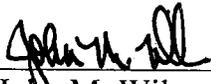
Respectfully submitted,

LATHAM & WATKINS LLP

Brook B. Roberts

John M. Wilson

G. Andrew Lundberg

By:   
\_\_\_\_\_

John M. Wilson

Attorneys for Petitioner

Fluor Corporation

## DECLARATION OF JOHN M. WILSON

I, John M. Wilson, declare:

1. I am an attorney licensed to practice before the courts of the State of California, and am one of the attorneys of record for Plaintiff/Cross-Defendant Fluor Corporation (“Fluor”) and the related Fluor entities and subsidiaries named as Plaintiffs in this action (collectively, “the Fluor Insureds”). 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. In December 2011, the Superior Court conducted a bench trial to resolve each of the “core” issues that had animated this case from its inception. Specifically, the Superior Court addressed the request of the Fluor Insureds for declaratory relief concerning (a) the right to select the insurance policy(ies) under which Hartford Accident & Indemnity Company (“Hartford”) provides defense and indemnity coverage for the underlying asbestos lawsuits; (b) the right to a defense of the underlying asbestos lawsuits through independent counsel; (c) whether the underlying asbestos lawsuits brought against the Fluor Insureds can be aggregated as a single “occurrence” within the meaning of Hartford’s policies; and (d) the proper interpretation of the “completed operations hazard” provision of the Hartford policies.

3. Following the December 2011 bench trial, the Superior Court decided the “policy selection” issue in favor of the Fluor Insureds. A true and correct copy of the Superior Court’s January 3, 2012 minute order is attached hereto as Exhibit A.

4. Following the December 2011 bench trial, the Superior Court decided the “independent counsel” issue in favor of Hartford. A true and correct copy of the Superior Court’s January 9, 2012 minute order is attached hereto as Exhibit B.

5. Following the December 2011 bench trial, the Superior Court decided the “single occurrence” issue in favor of the Fluor Insureds. A true and correct copy of the Superior Court’s January 11, 2012 minute order is attached hereto as Exhibit C.

6. Following the December 2011 bench trial, the Superior Court decided the “completed operations” issue in favor of the Fluor Insureds. A true and correct copy of the Superior Court’s February 28, 2012 minute order is attached hereto as Exhibit D.

7. On February 11, 2013, the Superior Court conducted a Case Management Conference at which Hartford asserted that the “completed operations” dispute had not been resolved at the December 2011 bench trial, and that the Superior Court should re-litigate the issue while Fluor’s petition before this Court is pending. The Superior Court rejected

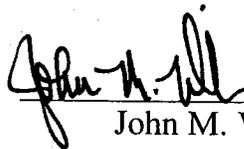
Hartford's assertion, agreeing with the Fluor Insureds that the Court had fully resolved the "completed operations" dispute at the December 2011 bench trial. The Superior Court only permitted Hartford to proceed with its cross-claims for contribution against the Insurer Cross-Defendants.

8. A true and correct copy of the Notice of Ruling filed by the Fluor Insureds following the February 11, 2013 Case Management Conference is attached hereto as Exhibit E.

9. A true and correct copy of the minute order issued by the Superior Court following the February 11, 2013 Case Management Conference is attached hereto as Exhibit F.

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

Executed this 12<sup>th</sup> day of March, 2013 in San Diego, California.



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John M. Wilson



SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 01/03/2012 TIME: 04:20:00 PM DEPT: CX103  
JUDICIAL OFFICER PRESIDING: Ronald L. Bauer  
CLERK: Janet E Frausto  
REPORTER/ERM: None  
BAILIFF/COURT ATTENDANT: Cecilia Pedraza

CASE NO: 06CC00016 CASE INIT.DATE: 02/01/2006  
CASE TITLE: Fluor Corporation VS. Hartford Accident and Indemnity Company  
CASE CATEGORY: Civil - Unlimited CASE TYPE: Insurance Coverage

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EVENT ID/DOCUMENT ID: 71390469  
EVENT TYPE: Chambers Work

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APPEARANCES

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06CC00016 FLUOR VS HARTFORD ACCIDENT AND INDEMNITY COMPANY

No appearances.

The court having taken this matter under submission on 12/15/2011, now rules as follows:

Over an extended period of years, defendant Hartford Accident and Indemnity Company ("Hartford") issued eleven indemnity policies to one "Fluor" entity or another, which, collectively, are the plaintiffs in this action and which, for simplicity, we shall here merely call "Fluor." In total, those policies covered the period from May 1, 1971 through July 31, 1976.

Thousands of claimants have alleged that Fluor's industrial activities exposed them to asbestos and thereby caused them physical injuries. The nature of such exposure and injuries leads to considerable imprecision in the determination of the exact onset of these injuries, which can extend over decades of a plaintiff's life. The law's response to this difficulty is the rule that "bodily injuries and property damage that are continuous or progressively deteriorating throughout successive policy periods are covered by all policies in effect during those periods." *Montrose Chemical Corp. v. Admiral Ins. Co.* (1995) 10 Cal. 4<sup>th</sup> 645, 675. In such circumstances, where several policies have been in effect during an extended period of bodily injury, the policy holder may elect to seek coverage under any one or more of those policies.

Hartford and Fluor do not disagree with the foregoing rules. The seed for the dispute raised in Fluor's third and fourth causes of action in this litigation is the fact that some of the policies which Hartford issued to Fluor during the 1971-86 period had fixed premiums, while other policies permitted Hartford to

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DATE: 01/03/2012  
DEPT: CX103

MINUTE ORDER

Page 1  
Calendar No.

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assess Fluor with retrospective premiums reflecting loss experience.

Here's the question: If Fluor makes a claim for coverage under a policy that does not provide for the retrospective adjustment of premiums, can Hartford seek equitable contribution from the other policies (with provisions for retrospective premiums) that may also have been in effect during the period of the claimant's injuries? The short answer is "no." Among the reasons are the following:

- Any other answer would subvert the rule permitting the policyholder to select the policy against which it wishes to make a claim. That rule is best expressed in *Stonelight Tile, Inc. v. California Ins. Guar. Ass'n* (2007) 150 Cal. App. 4<sup>th</sup> 19, 37 as follows: "When a continuous loss is covered by multiple policies, the insured may elect to seek indemnity under a single policy with adequate policy limits. If that policy covers 'all sums' for which the insured is liable, as most CGL policies do, that insurer may be held liable for the entire loss." As long as the insured has the right to select its target policy, as California law provides, it follows that the carrier may not trump that selection by invoking terms (such as retrospective premium assessment) that are not a part of the designated policy.

- Any other conclusion would anomalously put an insured in a better position if it had a single annual (fixed premium) policy and no other coverage during the period of the claimant's injuries rather than if it purchased a series of annual policies (which might sometimes include a plan for retrospective premiums).

- As a practical matter, the rule espoused here by Hartford could encourage an insured to rotate its coverage among several carriers, with each issuing an annual policy. This would immunize the insured from the indemnification plan urged by Hartford. There may be underwriting rules and other factors limiting this option, but making such scrambled coverage a possibility is not in anyone's best interests.

The court therefore adopts the declaration proposed by Fluor to the effect that: Each Fluor plaintiff may select the Hartford policy (or policies) under which it seeks defense and/or indemnity coverage for each of the underlying suits alleging injury caused by exposure to asbestos. Hartford may not re-allocate defense and/or indemnity payments to other policies issued to any Fluor entity.

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on , at Santa Ana, California.

ALAN CARLSON/Executive Officer & Clerk Of The Superior Court, by: Janet Frausto deputy.

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(  
Alan Jay Weil  
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Los Angeles, CA 90067-2513

James P. Ruggeri

CASE TITLE: Fluor Corporation VS. Hartford Accident  
and Indemnity Company

CASE NO: 06CC00016

---

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DATE: 01/03/2012  
DEPT: CX103

MINUTE ORDER

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Calendar No.

003



SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 01/09/2012

TIME: 02:36:00 PM

DEPT: CX103

JUDICIAL OFFICER PRESIDING: Ronald L. Bauer

CLERK: Janet E Frausto

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Cecilia Pedraza

CASE NO: 06CC00016

CASE INIT DATE: 02/01/2006

CASE TITLE: Fluor Corporation VS. Hartford Accident and Indemnity Company

CASE CATEGORY: Civil - Unlimited CASE TYPE: Insurance Coverage

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EVENT ID/DOCUMENT ID: 71393449

EVENT TYPE: Chambers Work

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APPEARANCES

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06CC00016 FLUOR VS HARTFORD ACCIDENT AND INDEMNITY COMPANY

No appearances.

The court having taken this matter under submission on 12/15/2011, now rules as follows:

In its Fifth Cause of Action in this suit, plaintiffs Fluor Corporation et al. ("Fluor") seek a declaration that they may select the counsel they wish to defend Fluor in the multitude of underlying suits against Fluor alleging damages resulting from exposure to asbestos. Defendant Hartford Accident and Indemnity Company ("Hartford") has acknowledged that it issued policies to Fluor and has been defending these suits, while reserving its rights to deny coverage under a variety of circumstances.

At the center of this problem is the recognized tripartite relationship between an insurer, its insured, and the attorney retained by the former to defend the latter. In the simplest of cases, an insured sued for automobile negligence notifies his/her insurance agent, who then forwards the complaint to the insurer's claims department. The carrier will readily undertake the defense of the suit without any reservation of the right later to deny coverage. One term of the subject policy will require the insured to cooperate with the carrier in that defense; this may include giving a statement to an investigator, responding to discovery, and appearing at a settlement conference and trial. The policy will also grant the carrier substantial control over the strategy for the defense of the suit. This means that (except in claims for professional liability) the carrier can settle the case with its own funds without the consent - and often without even the knowledge - of the insured. This control ceded to the carrier also includes

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DATE: 01/09/2012

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the right to select an attorney to defend the lawsuit. In the vast majority of these tort cases, the insured wants nothing to do with any of these decisions and simply hopes that the lawsuit will quietly disappear. As long as the insured's personal funds are not threatened by the litigation, there is no tension between the interests of the insured (who is being defended by an unknown lawyer) and the insurer (who is paying the attorney) and the attorney. Even though the attorney has an immediate financial interest in pleasing the insurer (which may even be his/her direct employer) and a long-term interest in currying the favor of the insurer which might lead to future employment, this does not impede the professional obligation owed to the defendant, since all three parties to this arrangement have the common goal of successfully defending the suit or settling it with the least possible expenditure of the carrier's funds and none of the insured's money.

Our thousands of underlying cases are not that simple. The critical point of divergence is Hartford's regular assertion of its right to deny coverage for these asbestos claims based upon facts that might be uncovered during the course of the litigation. These issues include questions about the number of "occurrences" that may be implicated in any given suit, the date when coverage may have been triggered for any plaintiff, and the activities then being pursued (or no longer being pursued) by Fluor at the time of exposure or injury. Hartford readily acknowledges that "In some circumstances, . . . the insurer's reservation of rights may create a conflict of loyalties for insurer-appointed counsel that requires independent counsel for the insured." Trial Brief, page 1, lines 12-14. But Hartford urges that the many underlying cases here do not present a situation where such a conflict may exist.

The governing statute is Civil Code section 2860, which states that "a conflict of interest may exist" "when an insurer reserves its rights on a given issue and the outcome of that coverage issue can be controlled by counsel first retained by the insurer for the defense of the claim." At the hearing on this issue, both sides presented the testimony of attorneys well versed in civil litigation who, not surprisingly, opined on both sides of the question about whether or not such a conflict may arise in the defense of the underlying suits. We could parse those opinions at length in an effort to determine which witness had an extra feather on his side of the balance scale, but the court feels that there is another body of empirical evidence that is far more compelling than any opinion.

In a general discussion of the question about where the burden of proof might lie on the many issues presented for decision at this hearing, it was ultimately decided that this was not likely to be a matter of much significance. But that issue comes into play here. All counsel generally accepted the estimate that there have been 27,000 claims for asbestos-related injury filed against Fluor and tendered to Hartford for defense, with more still being filed. The court cannot find - nor even imagine - another situation where the history of the litigation has included such data. If ever, in any of those cases, counsel selected by Hartford had strayed from a true defense of Fluor, the latter would surely have brought that to this court's attention. That evidence would be well within Fluor's knowledge, and Fluor should bear the burden of presenting this proof, if it exists. The only conclusion the court can reach is that the conflict required by section 2860 and hypothecated by Fluor has never occurred in any of these 27,000 claims and, in fact, does not exist. Indeed, Hartford has referenced several instances where Fluor has lauded the work of the counsel selected by Hartford. Trial Brief, page 4, lines 2-15.

To be sure, past performance is no guarantee of future results, but such evidence of a long and successful relationship consigns Fluor's contentions to an unacceptable level of speculation. Fluor's theory that the outcome of some issue in an underlying case can be controlled by Hartford's selected attorney falls under the heavy weight of such actual experience.

CASE TITLE: Fluor Corporation VS. Hartford Accident  
and Indemnity Company

CASE NO: 06CC00016

The declaration sought by Fluor in its fifth cause of action is denied. Hartford retains the right to select counsel for the defense of Fluor in these claims.

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on , at Santa Ana, California.

ALAN CARLSON/Executive Officer & Clerk Of The Superior Court, by: Janet Frausto deputy.

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DATE: 01/09/2012  
DEPT: CX103

MINUTE ORDER

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006



**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 01/11/2012

TIME: 02:28:00 PM

DEPT: CX103

JUDICIAL OFFICER PRESIDING: Ronald L. Bauer

CLERK: Janet E Frausto

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Cecilia Pedraza

CASE NO: **06CC00016**

CASE INIT.DATE: 02/01/2006

CASE TITLE: **Fluor Corporation VS. Hartford Accident and Indemnity Company**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Insurance Coverage

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EVENT ID/DOCUMENT ID: 71395550

EVENT TYPE: Chambers Work

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**APPEARANCES**

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**06CC00016 FLUOR CORPORATION VS HARTFORD ACCIDENT AND INDEMNITY COMPANY**

No appearances.

The court having taken this matter under submission on 12/15/2011, now rules as follows:

In the second cause of action in its pending complaint, Fluor seeks a judicial declaration that is either (1) simple and obvious or (2) so abstruse and recondite as to be far beyond the reach of this court. (The court chooses not to consider the possibility that the topic is both simple and beyond this court's comprehension.)

Fluor prays the following declaration: "The underlying asbestos suits do not constitute a single 'occurrence' under the Hartford policies." In response, Hartford never directly addresses the issue. Instead, Hartford suggests that it doesn't understand Fluor's request, that the request is premature, that the court can't declare such a thing, that the issue requires extensive factual analysis, etc., etc., etc.

In view of the parties' agreement that about 27,000 claimants have sought compensation for injuries allegedly arising from exposure to asbestos at one of Fluor's many jobsites or projects over a period of several decades, Fluor's proposal seems inescapable. Further details are referenced in Fluor's Trial Brief, page 1, lines 14-17. In fact, amidst all of its circumlocutions, Hartford never says otherwise.

Therefore, at the risk of accomplishing nothing (or "kicking the can down the street," as seems to be the current political vernacular), the court will accept Fluor's invitation to declare that the massive number of claims submitted in the underlying suits against Fluor allege events constituting more than

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DATE: 01/11/2012

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DEPT: CX103

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Calendar No.

**007**

CASE TITLE: Fluor Corporation VS. Hartford Accident  
and Indemnity Company

CASE NO: 06CC00016

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one "occurrence" within the meaning of Hartford's policies.

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 1/11/2012, at Santa Ana, California.

ALAN CARLSON/Executive Officer & Clerk Of The Superior Court, by: Janet Frausto deputy.

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DATE: 01/11/2012  
DEPT: CX103

MINUTE ORDER

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Calendar No.

008



SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 02/28/2012

TIME: 09:16:00 AM

DEPT: CX103

JUDICIAL OFFICER PRESIDING: Ronald L. Bauer

CLERK: Janet E Frausto

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Cecilia Pedraza

CASE NO: 06CC00016

CASE INIT.DATE: 02/01/2006

CASE TITLE: Fluor Corporation VS. Hartford Accident and Indemnity Company

CASE CATEGORY: Civil - Unlimited CASE TYPE: Insurance Coverage

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EVENT ID/DOCUMENT ID: 71425800

EVENT TYPE: Chambers Work

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APPEARANCES

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06CC00016 FLUOR VS HARTFORD ACCIDENT AND INDEMNITY COMPANY

No appearances.

The court having taken this matter under submission on 12/15/2011, now rules as follows:

Plaintiffs Fluor Corporation et al. ("Fluor") and defendant Hartford Accident and Indemnity Company ("Hartford") disagree about the proper implementation of the "completed operations hazard" provision in a series of liability policies issued by Hartford to Fluor. Thousands of underlying claims have alleged that various industrial activities of Fluor exposed those claimants to asbestos, with resulting personal injuries generally extending over many years. Each of Hartford's policies has two distinct limits of liability coverage: (1) a "per occurrence" limit and (2) an aggregate limit of liability for those claims alleging injury within the "completed operations hazard." It is in Hartford's interests to define a claim as arising from "completed operations" and thereby place it within that aggregate limit of liability. Fluor seeks the opposite result, with claims only subject to a "per occurrence" limit.

The following situation may put this dispute into context: A subcontractor delivering goods to a Fluor jobsite on a regular basis ultimately develops asbestosis and presents convincing medical evidence that his disease was caused by exposure to asbestos at that site and that his bodily injury first manifested itself during the term of Hartford policy number 1. The bodily injury continues through the next five years. These are among the possibilities:

- Fluor has no subsequent policies with Hartford even though it continues the same operations during those five years. The "all sums" rule espoused by Fluor would require Hartford to indemnify Fluor for all

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DATE: 02/28/2012

MINUTE ORDER

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DEPT: CX103

Calendar No.

damages proven by this claimant that occurred during those five years. Hartford likely agrees with this conclusion.

- Fluor has a policy with Hartford for each of those five years while its operations continue. Same result as in the preceding paragraph, with the added note, as previously ruled by this court, that Fluor could make a claim against any of those five policies. Hartford perhaps did not agree with this conclusion before this trial, but it now knows that the court has ruled as indicated.

- Policy for just the first year, and Fluor's operations then cease. Here's where the litigants part company in regard to the first cause of action in Fluor's complaint. The court has concluded that coverage continues for the full five years of this claimant's bodily injury and that it does not fall within the "completed operations hazard" coverage. Reasons therefor:

- - The California Supreme Court opinion in *Aerojet-General Corp. v. Transport Indemnity Co.* (1997) 17 Cal. 4<sup>th</sup> 38, 57 fn. 10 summarized the history of the "all sums" rule which extends an insurer's obligation for continuing injuries beyond the term of the policy in effect at the time of the first harm.

- Our hypothetical tradesman did not incur his injury during a period of "completed operations." His pain may have continued through those later years, but the "all sums" rule would put Hartford's first-year policy on the line for those continuing injuries.

- The completed operations coverage would seem to be a means of lessening a carrier's exposure when its insured loses direct control over an operation or worksite. In our situation, Fluor had this control at the time of our worker's exposure.

- Fluor should not have lesser rights (in the form of an aggregate limit of coverage) because it had a policy with completed operations coverage in subsequent years than it would have if it had no policy at all in those years.

In summary: 1. A claim for indemnification for damages that originated before the completion of operations is not subject to the limitations of completed operations coverage, no matter how long those damages may persist.

2. The foregoing rule applies even if subsequent policies have completed operations coverage and even if there are no subsequent policies at all.

3. A claim for indemnification for damages that had their inception after the completion of Fluor's operations at the subject site will always be subject to the rules for completed operations coverage.

4. Rule 3 applies regardless of how long those damages may persist and even if there are no subsequent policies or no completed operations coverage in any such policy.

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 2/28/2012, at Santa Ana, California.

ALAN CARLSON/Executive Officer & Clerk Of The Superior Court, by: Janet Frausto deputy.

Micheal Weaver  
LATHAM & WATKINS  
600 West Broadway, Suite 1800  
San Diego, CA 92101-3375

Alan Jay Weil

CASE TITLE: Fluor Corporation VS. Hartford Accident  
and Indemnity Company

CASE NO: 06CC00016

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DATE: 02/28/2012  
DEPT: CX103

MINUTE ORDER

Page 3  
Calendar No.

011



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12 Attorneys for Plaintiffs and Cross-Defendants  
13 FLUOR CORPORATION, et al.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF ORANGE**  
16 **CIVIL COMPLEX CENTER**

17 FLUOR CORPORATION,  
18 Plaintiff & Cross-Defendant,  
19 - AND -

20 AMERICAN EQUIPMENT COMPANY, INC.;  
21 FLUOR DANIEL ENGINEERS &  
22 CONSTRUCTORS, LTD.; FLUOR DANIEL  
23 CONSTRUCTION COMPANY.; FLUOR  
24 ABADAN LIMITED; FLUOR  
25 CONSTRUCTORS INTERNATIONAL, INC.;  
26 FLUOR FACILITY AND PLANT SERVICES,  
27 INC.; FLUOR ENTERPRISES, INC.; FLUOR  
28 DANIEL MAINTENANCE SERVICES, INC.;  
29 FLUOR DANIEL TECHNICAL SERVICES,  
30 INC.; FLUOR INTERNATIONAL, INC.;  
31 FLUOR MIDEAST LIMITED; FLUOR  
32 DANIEL SERVICES CORPORATION;  
33 FLUOR HOLDING COMPANY, LLC;  
34 FLUOR DISTRIBUTION COMPANIES, INC.;  
35 FLUOR DANIEL ILLINOIS, INC.; FLUOR  
36 TEXAS, INC.; MIDDLE EAST FLUOR;  
37 STRATEGIC ORGANIZATIONAL SYSTEM  
38 ENTERPRISES, INC.; FLUOR NE, INC.,

39 Plaintiffs and Cross-Defendants,  
40 v.  
41 HARTFORD ACCIDENT AND INDEMNITY  
42 COMPANY,  
43 Defendant and Cross-Complainant.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**02/13/2013** at 08:00:00 AM  
Clerk of the Superior Court  
By Lisa Streavel, Deputy Clerk

Case No. 06CC00016

Assigned for all purposes to the Honorable  
Ronald L. Bauer

**NOTICE OF RULING**

Hearing Date: February 11, 2013  
Dept.: CX 103

Action Filed: February 1, 2006

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that at the February 11, 2013 Case Management  
3 Conference in Department CX 103, following appearances and argument by counsel on behalf of  
4 Fluor Corporation ("Fluor") and the related Fluor entities and subsidiaries named as Plaintiffs in  
5 the above-captioned action (collectively, "the Fluor Plaintiffs"), Defendant/Cross-Complainant  
6 Hartford Accident and Indemnity Company ("Hartford"), and Cross-Defendants Pacific  
7 Indemnity Company ("Pacific"), Continental Casualty Company ("Continental") and American  
8 Motorists Insurance Company<sup>1</sup> ("AMICO") (Pacific, Continental and AMICO are collectively  
9 referred to as the "Insurer Cross-Defendants"), the Honorable Ronald L. Bauer issued the  
10 following rulings:

11 1. The Fluor Plaintiffs and Hartford tried their "completed operations" dispute in  
12 December 2011, and the Court entered an Order dated February 28, 2012 which fully resolved  
13 the dispute. Therefore, Hartford's request to re-litigate the dispute and/or modify the Court's  
14 Order of February 28, 2012 is denied.

15 2. Hartford's request to commence discovery and litigation concerning the cross-  
16 claims for contribution between Hartford and the Insurer Cross-Defendants is granted. The  
17 Court adopts the schedule proposed by Hartford for litigation of the contribution cross-claims:

- 18 a. Discovery between Hartford and the Insurer Cross-Defendants shall be  
19 completed by July 9, 2013.
- 20 b. Hartford and the Insurer Cross-Defendants shall exchange stipulated facts  
21 and exhibits for a "legal issues" bench trial by July 9, 2013.
- 22 c. Hartford and the Insurer Cross-Defendants shall file opening briefs of not  
23 more than 15 pages by August 9, 2013.
- 24 d. Hartford and the Insurer Cross-Defendants shall file reply briefs of not  
25 more than 10 pages by September 10, 2013.
- 26 e. The Court shall conduct a "legal issues" bench trial on September 19,  
27 2013.

28 <sup>1</sup> Counsel for AMICO appeared telephonically.

1           3.     All other proceedings in the case are stayed, pending resolution of Fluor's writ  
2 petition pending the California Supreme Court (Case No. S205889).

3           4.     A Further Case Management Conference to discuss the status of discovery  
4 between Hartford and the Insurer Cross-Defendants is scheduled in Department CX 103, for July  
5 9, 2013, at 8:30 a.m.

6  
7 Dated: February 12, 2013

LATHAM & WATKINS LLP

8  
9 By: /s/ John M. Wilson

10 John M. Wilson

11 Attorneys for Plaintiffs Fluor Corporation, et al.  
12  
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**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 March 12, 2013, I served the following document described as:

**PETITIONER FLUOR CORPORATION'S  
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
OPENING BRIEF ON THE MERITS;  
DECLARATION OF JOHN M. WILSON**

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

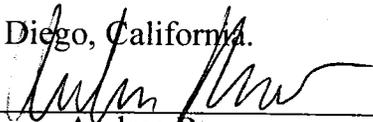
**BY OVERNIGHT MAIL DELIVERY**

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 March 12, 2013, at San Diego, California.

  
\_\_\_\_\_  
Andrea Rasco

**SERVICE LIST**

<p>Alan Jay Weil, Esq. Jeffrey B. Ellis, Esq. Gains, Weil, West &amp; Epstein, LLP 1875 Century Park East, Suite 1200 Los Angeles, CA 90067-2513 Telephone: (310) 407-4500 Facsimile: (310) 277-2133 <a href="mailto:ajweil@gwwe.com">ajweil@gwwe.com</a> <a href="mailto:jellis@gwwe.com">jellis@gwwe.com</a></p>	<p><b>Counsel for Hartford Accident and Indemnity Company</b></p>
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