

Daily Journal

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TOP VERDICTS OF 2015

The largest and most significant verdicts and appellate reversals handed down in California in 2015

TOP APPELLATE REVERSALS

Fluor Corp. v. Superior Court



G. ANDREW LUNDBERG



JOHN M. WILSON



BROOK B. ROBERTS

case INFO

Insurance coverage
California Supreme Court

Plaintiffs' lawyers: Latham & Watkins, G. Andrew Lundberg, Brook B. Roberts, John M. Wilson

Defense lawyers: Horvitz & Levy LLP, Jason R. Litt, John A. Taylor Jr.; Gains, Weil, West & Epstein LLP, Alan Jay Weil, Jeffrey B. Ellis; Shipman & Goodwin LLP, James P. Ruggeri, Joshua D. Weinberg

a long-running insurance coverage dispute with Hartford Accident and Indemnity Co.

The question — worth billions of dollars to California insurers and their customers — was whether an underwriter can enforce policy provisions that prohibit reassignment of policies to a third party without the insurer's consent.

The problem for Fluor and its lawyers was that the state high court had come up with an answer adverse to Fluor's position in a major precedential ruling in a case called *Henkel* more than a decade earlier. *Fluor Corp v. Superior Court*, 61 Cal.4th 1175.

How to overcome *Henkel*? One of Latham's lead counsel, Brook B. Roberts, said a colleague alerted him to an obscure provision of the Insurance Code dating from the 19th century, Section 520, which the Supreme Court had not considered when it issued its *Henkel* opinion.

Latham successfully persuaded a unanimous bench that Section 520 controlled the outcome, required *Henkel*'s reversal and allowed policyholders to freely assign their coverage rights following a loss.

Chief Justice Tani G. Cantil-Sakauye wrote the August opinion for her colleagues.

"I don't know how everybody missed it [Section 520] the first time around," Roberts said, noting that Latham was not involved in *Henkel*. "We would have found it."

"One challenge was to get the court not to be defensive about their prior ruling and to persuade them that the statute compels a contrary result," he added. "I was extremely proud that the justices appeared more than willing to hear our arguments and come to the right conclusion."

Latham added in a statement that the fresh outcome will have significant implications for long-tail asbestos, environmental and product liability claims by policyholders.

"The policyholder bar had attempted for years to overcome *Henkel*, which represented an outlier position among the courts to have considered when anti-assignment clauses are enforceable," the firm added in a statement.

— John Roemer

Petitioning the state Supreme Court to reverse itself is always a big ask. But that's the job Latham & Watkins LLP's litigation team took on in representing global engineering construction giant Fluor Corp. in