Fluor Corp. v. Superior Court

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 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.

“Tani doesn’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.