

Supreme Court Number S231549

IN THE SUPREME COURT OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ONE

---

UNITED RIGGERS & ERECTORS, INC.,

*Plaintiff and Respondent,*

vs.

COAST IRON & STEEL CO.,

*Defendant and Appellant.*

SUPREME COURT  
FILED

AUG 12 2016

Frank A. McGuire Clerk

Deputy

---

Review of the Opinion of the Court of Appeal of the State of California,  
Los Angeles County Superior Court, Case No. B258860

---

APPLICATION OF THE ASSOCIATED GENERAL  
CONTRACTORS OF CALIFORNIA FOR LEAVE TO FILE AN  
AMICUS CURIAE BRIEF

---

JOHN P. CARPENTER  
(State Bar No. 148884)  
Kiewit Infrastructure West Co.  
4650 Business Center Drive  
Fairfield, CA 94539  
Telephone: (707) 439-7433  
Facsimile: (707) 271-2830

Attorney for THE ASSOCIATED GENERAL CONTRACTORS OF  
CALIFORNIA

Amicus Curiae on Behalf of Plaintiff and Respondent,  
UNITED RIGGERS & ERECTORS, INC.

**TABLE OF CONTENTS**

	Page(s)
AMICUS CURIAE BRIEF .....	9
INTRODUCTION.....	9
LEGAL ARGUMENT .....	12
I. THE STATUTORY FRAMEWORK PERTAINING TO CONSTRUCTION RETENTION SUPPORT THE DETERMINATION THAT ONLY A “DISPUTE” INVOLVING THE RETENTION ITSELF JUSTIFIES WITHHOLDING PAYMENT OF RETENTION .....	12
A. SECURITIES PLACED IN ESCROW IN LIEU OF CONSTRUCTION RETENTION ARE TO BE PAID AT PROJECT COMPLETION AND CAN ONLY BE WITHDRAWN FOR DEFAULT SUPPORTS THE HOLDING THAT ONLY A DISPUTE INVOLVING THE RETENTION CAN DELAY PAYMENT OF THE RETENTION .....	13
B. A PERFORMANCE AND PAYMENT BOND MAY BE USED IN LIEU OF RETENTION ON A PUBLIC WORKS PROJECT SUPPORTS THE HOLDING THAT ONLY A DISPUTE INVOLVING THE RETENTION CAN DELAY PAYMENT OF THE RETENTION .....	15
C. THE FACT PUBLIC CONTRACT CODE 7107 REQUIRES RETENTION TO BE RELEASED AT “COMPLETION” SUPPORTS THE HOLDING THAT ONLY A DISPUTE INVOLVING THE RETENTION CAN DELAY PAYMENT OF THE RETENTION .....	17
CONCLUSION.....	19
CERFICIATE OF WORD COUNT .....	19

**TABLE OF AUTHORITIES**

**Page(s)**

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

<i>East West Bank v. Rio School District</i> (2015) 235 Cal.App.4th 742 .....	18
<i>Harsco Corporation v Department of Public Works</i> (1971) 21 Cal.App.3d 272 .....	11
<i>McAndrew v. Hazegh</i> (2005) 128 Cal.App.4th 1563 .....	10
<i>Pittsburgh Unified School District v. S.J. Amoroso</i> <i>Construction Co., Inc.</i> (2014) 232 Cal.4th 808 .....	11, 13
<i>Pittsburgh Unified School District v. S.J. Amoroso</i> <i>Construction Co. Inc.</i> (2014) 232 Cal.App.4th 808 .....	14
<i>Quinn v. United States</i> (1879) 99 U.S. 30 .....	19
<i>Scott Company v. United States Fidelity &amp; Guaranty</i> <i>Insurance Company</i> (2003) 107 Cal.App.4th 197 .....	16
<i>United Riggers &amp; Erectors, Inc. v. Coast Iron &amp; Steel Co.</i> (2015) 243 Cal.App.4th 151 .....	9
<i>Westamerica Bank v. City of Berkeley</i> (2011) 201 Cal.App.4th 598 .....	13
<i>Yassin v. Solis</i> (2010) 184 Cal.App.4th 524 .....	10
<b>Statutes</b>	
California Civil Code sections 8180, 8412 and 8414 .....	18
Public Contract Code section 7017 .....	17

**TABLE OF AUTHORITIES**  
**(Continued)**

	Page(s)
Public Contract Code section 7102 .....	15, 16
Public Contract Code section 7107 .....	15, 16, 19
Public Contract Code section 7107(c) .....	11, 17
Public Contract Code sections 7107(c)(1) .....	17
Public Contract Code section 7107(e) .....	11
Public Contract Code section 7201(b)(2).....	16
Public Contract Code section 10221 .....	16
Public Contract Code section 10261(a) .....	10
Public Contract Code section 22300 .....	13, 14, 15
Public Contract Code section 22300(a) .....	13
Public Contract Code section 22300(b) .....	14
Public Contract Code section 22300(b) and (f)(7).....	14
Public Contract Code section 22300(c) .....	14
Public Contract Code section 22300(e) .....	13
Public Contract Code section 22300(f) .....	14
 <b>Legislative Materials</b>	
Senate Rules Committee, SB 593 Bill Analysis, August 8, 2008 .....	15

Permission to file a brief in this matter is requested by The Associated General Contractors of California (“AGC”), pursuant to Rule 8.200 (c) of the California *Rules of Court*. The applicants and their counsel are familiar with the issues involved in this case and the scope of their presentation. The AGC believe that there is a need for further briefing and argument concerning the issue before the Court as to the extent of a general contractor/construction owner’s right to continue to hold funds earned by a contractor/subcontractor.<sup>1</sup>

The AGC would be one of the most impacted trade associations if the Court of Appeal’s decision in *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.* (2015) 243 Cal.App.4th 151 pertaining to conditions upon which construction retention can be withheld is not upheld on appeal. The use of retention is a hallmark of the construction payment process. The AGC’s members’ livelihoods depend on the certainty and protections of this construction payment process.

The Court of Appeal’s decision in favor of *United Riggers & Erectors, Inc.* (“United”) is correct and sound. *Coast Iron & Steel* (“Coast

---

<sup>1</sup> For purposes of ease of reading, Amicus Curiae Associated General Contractors of California will use the example of a public agency “owner” for the party holding retention and “general contractor” for the party who earned the retention throughout this pleading as the terms are jointly used with “general contractor” and “subcontractor” in Public Contract Code section 7017 which functions identically to California Civil Code section 8814.

Iron”) is seeking to have this Court find, in contravention of the law and sound public policy, that the security for performance (retention) afforded to an owner by California’s construction retainage laws can continue to be withheld even when there is no longer a need for that protection. Appellant Coast Iron contends that even if it no longer needs the protection of the security (retention), so long as there is *any* kind of dispute between it and United, Coast Iron can continue to hold United’s retention. Money that United earned on a project that United completed and that Coast Iron accepted.

The AGC believes that the State construction payment laws and public policy considerations support the Court of Appeal’s holding in *United Riggers* that construction retention is a form of security for performance and when the need for that protection is gone and the work completed, then the contractor (or subcontractor) is entitled to receive prompt payment of that security. Only a dispute involving an issue related to the purpose of the retention, is justification to withhold payment of retention after completion of the project. *United Riggers* at p. 158)

The AGC’s members are responsible for performing over a billion dollars in public construction contracts statewide. The AGC’s members are in a unique position with regard to this issue of whether retention payments may be withheld when there is a good faith dispute of *any* kind, or only when the dispute relates to the retention itself because our

members are not only the general contractors that are having their earned construction funds retained by a project owner but, as general contractors our members hold retention from subcontractors. In addition, AGC members also serve in the role of a subcontractor who also has funds withheld as retention by general contractors.

The holding of the Court of Appeal in *United Riggers* that only a dispute involving the retention can form the basis for withholding payment of retention is a vested interest of the AGC in maintaining the integrity of the protections afforded by the statutory construction payment process and the owner/contractor/subcontractor relationship.

The AGC is a statewide trade association comprised of twelve geographical districts and two regional offices and counts as its' members more than a thousand general and specialty contractors. The organization has a formal process for the evaluation of potential amicus curiae issues requiring time, coordination, and approvals.<sup>2</sup> The Associated General Contractors of California, respectfully requests this Court to uphold the Court of Appeal, Second Appellate District decision and issue an order

---

<sup>2</sup> The Associated General Contractors of California certifies that no person or entity other than the Associated General Contractors of California and its counsel authored this proposed brief in whole or in part and that no person or entity other than the Associated General Contractors of California, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of the proposed brief. See Cal. Rules of Court, rule 8.520 (f) (4).

permitting the AGC to submit the within amicus curiae brief on behalf of  
Plaintiff and Respondents, United Riggers & Erectors, Inc.

Respectfully submitted,

John P. Carpenter

By:   
John P. Carpenter

*Attorney for THE ASSOCIATED GENERAL CONTRACTORS OF  
CALIFORNIA, Amicus Curiae on Behalf of Plaintiff and Respondent,  
UNITED RIGGERS & ERECTORS, INC.,*



## AMICUS CURIAE BRIEF

The Associated General Contractors of California (“AGC”) respectfully submit this Amicus Curiae Brief on behalf of plaintiff and respondent, United Riggers & Erectors, Inc. The AGC contends that the Court of Appeal’s holding is correct, “... a contractor is entitled to withhold a retention payment only when there is a good faith dispute regarding whether the subcontractor is entitled to the full amount of the retention payment.” *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.*, (2015) 243 Cal.App.4th 151, 158 (hereafter *United Riggers*).

The Court in *United Riggers* hit the nail on the head when it determined, “To excuse Coast in this case from paying United the retention payments would unduly increase the leverage of owners and primary contractors over smaller contractors and subcontractors by discouraging subcontractors from making legitimate claims for fear of delaying the retention payment”. *Ibid*

## INTRODUCTION

Retention was never intended to be used as a weapon. Retention is assurance. Assurance for a public agency/general contractor that it won’t be left holding the bag if its contractor/subcontractor does not properly perform the work or it fails to pay for its labor or materials in performing the project.

Retention is money *earned* by the contractor. Typically, the contractor will submit an invoice or, “pay application” to the owner each month for the work that was performed for the prior pay period. The owner will confirm that the work being billed by the contractor was properly performed and the contractor has provided releases reflecting the amounts owed for labor and material furnished to the project have been paid (or will be paid). *McAndrew v. Hazegh* (2005) 128 Cal.App.4th 1563, 1566.

After confirming that the work invoiced by the contractor was properly performed and the contractor has submitted releases from the subcontractors and suppliers attesting that they have, or will be paid for all the work they provided to the project, then the owner will pay the contractor for all of the work it had performed *less* five percent retention. Public Contract Code section 10261(a); Civil Code section 8132.

Why doesn't the contractor receive payment for all of the work performed? Because there is a possibility that the owner will discover that some of the work wasn't properly performed or that a supplier or subcontractor or laborer wasn't fully paid. The owner holds retention as “*security*” to protect itself from those types of performance and payment issues. *Yassin v. Solis* (2010) 184 Cal.App.4th 524, 534 (citations omitted). If there is a dispute involving these types of issues (retention issues), then the owner may hold up to 150% of the value of that issue from the contractor's earned retention that the owner is holding until the issue is

resolved. Public Contract Code section 7107(e). Under the California Public Contract Code, the contractor will not receive its earned retention funds from the owner until 60-days after project “completion”. Public Contract Code section 7107(c).

The reason that the owner can hold the contractor’s retention until completion of the project is because retention serves to both spur the contractor to complete the project, and is security to protect the owner should it have to pay to correct the contractor’s defective work or complete the contractor’s work. *Pittsburgh Unified School District v. S.J. Amoroso Construction Co., Inc.* (2014) 232 Cal.4th 808, 812. Retention also protects the owner and project from claims of non-payment by subcontractors and suppliers. *Harsco Corporation v Department of Public Works* (1971) 21 Cal.App.3d 272, 276-277.

The California construction payment laws are part of an interrelated statutory framework where the statutes should be interpreted in harmony with one another to achieve the purpose of the framework. “As our Supreme Court recently observed: ‘A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them to construe them to give full force and effect to all of their provisions [Citations].’” *Pittsburgh Unified School* at pp. 821-822. To disregard the purpose and interplay of the other sections of this statutory payment framework when interpreting the circumstances of when a contractor is

entitled to receive its retention (a hallmark of the construction payment process), would result in transforming what has always been a form of protective security into a weapon that will discourage those in a lesser position from pursuing legitimate claims for fear that they won't receive all of the money they had earned performing work for the owner.

### LEGAL ARGUMENT

#### **I. THE STATUTORY FRAMEWORK PERTAINING TO CONSTRUCTION RETENTION SUPPORT THE DETERMINATION THAT ONLY A "DISPUTE" INVOLVING THE RETENTION ITSELF JUSTIFIES WITHHOLDING PAYMENT OF RETENTION**

California's comprehensive statutory framework governing construction payment are based on principles of security, that those who furnish labor and materials to construct a project will be promptly paid and that those who contract to have the work performed will have the work properly performed. The California statutory construction payment framework provides various means by which this security function can be fulfilled including securities in lieu of cash retention, surety bonds and cash retention. Public Contract Code section 22300, Public Contract Code section 7201, and Public Contract Code section 7107. A contractor should not be placed in any less position because one of the statutory options for security was selected over another. The security (retention) should be released when there is no longer an issue or dispute involving the security. Simply, the security is no longer needed.

**A. SECURITIES PLACED IN ESCROW IN LIEU OF CONSTRUCTION RETENTION ARE TO BE PAID AT PROJECT COMPLETION AND CAN ONLY BE WITHDRAWN FOR DEFAULT SUPPORTS THE HOLDING THAT ONLY A DISPUTE INVOLVING THE RETENTION CAN DELAY PAYMENT OF THE RETENTION**

The Legislature in enacting Public Contract Code section 22300, recognized that the system of construction payment and retention was harming contractors and discouraging participation in public contracting, “The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.” Public Contract Code section 22300(e).

Public Contract Code section 22300 provided that contractors would have the right to place securities in escrow as retention in lieu of having the public owner holding back a percentage of every payment. *Pittsburgh Unified School District* at pp. 814-815; *Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 611-612.

Virtually every public contract in California must allow a contractor to place securities into an escrow account instead of having money withheld from each payment to the contractor to “*ensure performance under a contract*”. (Public Contract Code section 22300(a), emphasis added). Because the purpose of retention is to assure performance, it is logical that the right of an owner to withhold payment of

retention must be based on an issue or “dispute” that implicates the retention.

Under the provisions of Public Contract Code section 22300, if a public owner does not include the provision for a contractor to establish an escrow and deposit securities in the bid and contract documents, then “any provisions for performance retentions” in the public agency’s contract are “void.” Public Contract Code section 22300(c) (emphasis added).

The law establishing the right of a contractor to place securities in lieu of retention further provides that upon “satisfactory completion of the contract”, the contractor is to receive from the escrow agent “all securities, interest, and payments by the escrow agent from the owner, pursuant to this section.” Public Contract Code section 22300(b).

The Legislature in enacting Public Contract Code section 22300 went so far as to include a form of escrow agreement that is to be used by the public owner to effectuate the use of securities in lieu of retention. Public Contract Code section 22300(f). An owner may only draw upon the securities under the terms of the statutory escrow agreement form “in the event of a default by the Contractor” and the escrow agent is to pay the proceeds to the contractor upon “satisfactory completion” of the project. Public Contract Code sections 22300(b) and (f)(7); *Pittsburgh Unified School District v. S.J. Amoroso Construction Co. Inc.* (2014) 232 Cal.App.4th 808.

Public Contract Code section 22300 does not allow a public owner to withhold payment of the contractor's retention (escrow) for *any* dispute but only an event of "default". Why would the Legislature allow a different result under Public Contract Code section 7107 and enable payment of retention to be withheld for a reason other than default merely because the contractor opted to have the public owner retain and hold funds instead of availing itself to the statutory escrow process?

Respondent's argument that Public Contract Code section 7107 pertaining to an owner's right to hold retention for any dispute is out of synch with the State's statutory contract payment framework.

**B. A PERFORMANCE AND PAYMENT BOND MAY BE USED IN LIEU OF RETENTION ON A PUBLIC WORKS PROJECT SUPPORTS THE HOLDING THAT ONLY A DISPUTE INVOLVING THE RETENTION CAN DELAY PAYMENT OF THE RETENTION**

When the Legislature passed Public Contract Code section 7102 prohibiting the California Department of Transportation ("Caltrans") from withholding any retention from progress payments to contractors working on transportation projects, they did so in part because, "Caltrans relies on payment and performance bonds to ensure contractor performance and completion of contract work." Senate Rules Committee, SB 593 Bill Analysis, August 8, 2008, [ftp://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0551-0600/sb\\_593\\_cfa\\_20080808\\_165453\\_sen\\_floor.html](ftp://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0551-0600/sb_593_cfa_20080808_165453_sen_floor.html);

Public Contract Code section 7102 and Public Contract Code section 10221.

In light of Public Contract Code section 7102 prohibiting Caltrans from withholding *any* retention from public contractors because Caltrans has alternate security in the form of performance and payment bonds which can only be pursued if there is a default, it follows that when retention is held, it should not be subject to any more expansive usage than a performance and payment bond.

In addition, under Public Contract Code section 7201(b)(2), the only circumstance where a contractor on a public works project can withhold more than five percent retention is when the subcontractor is unable to provide a performance and payment bond by an admitted surety insurer. Because a general contractor is permitted by statute to withhold retention on a subcontractor when the subcontractor is unable to provide a performance and payment bond demonstrates that bonds serve the same protective function as retention.

A performance bond secures the contractor's performance, like retention. A payment bond assures that the contractor will pay its subcontractors and suppliers, like retention. *Scott Company v. United States Fidelity & Guaranty Insurance Company* (2003) 107 Cal.App.4th 197, 215-216. Why would Public Contract Code section 7107 be interpreted to allow a public owner to withhold payment of retention for a



reason other than a default (issue involving the retention) when there is not a corresponding right had a performance and payment bond been posted by the subcontractor instead?

The holder of retention should have no greater rights against cash retention than a bond. Why should a public works contractor in California be in any more tenuous position with respect to receiving its retention and the reasons an owner can withhold payment, merely because it was performing work for a public agency (other than Caltrans) where it provided cash retention other than a bond?

**C. THE FACT PUBLIC CONTRACT CODE 7107  
REQUIRES RETENTION TO BE RELEASED AT  
“COMPLETION” SUPPORTS THE HOLDING THAT  
ONLY A DISPUTE INVOLVING THE RETENTION  
CAN DELAY PAYMENT OF THE RETENTION**

Under the California Public Contract Code, a contractor will not receive its earned retention funds from the owner until 60 days after the project is completed. Public Contract Code section 7107(c). The term “completion” is defined in Public Contract Code section 7017 as the occurrence of any one of the four “completion” events set forth in Public Contract Code sections 7107(c)(1) through 7107(c)(4). It is important to note that three of the four events depend on the event being accompanied by a “cessation of labor on the work of improvement”.

The reason why the “cessation of labor on the work of improvement” is integral to the definition of “completion” and the required timing for the release of retention is because the deadlines for filing both a stop notice and mechanics lien and their associated payment remedies are triggered by the “cessation of labor”. California Civil Code sections 8180, 8412 and 8414.

The fact “cessation of labor” is a term synonymous with the timing deadlines provided by California’s construction payment statutory remedies and use in the timing for release of retention (security for payment claims) is not a coincidence. The Appellate Court in *East West Bank v. Rio School District* (2015) 235 Cal.App.4th 742, 748 stated, “The purpose of retention is to provide security against potential mechanics liens [Cites] ... Here, after the stop notices were cleared, District points to nothing for which security was required.” The Court in *East West Bank* went on to hold, “Once the legitimate purpose for retaining the funds ends, the public entity must release the funds or suffer the statutory penalty. District may not hold these funds hostage because it disputes amounts owed under the contract that includes numerous change orders.” *Id.* at 749-750.

The fact that the Public Contract Code requires an owner to release a contractor’s retention at completion which includes the “cessation of labor” further bolsters the argument that retention is security for payment claims, that only a dispute regarding an issue affecting the retention will

enable an owner to withhold payment of retention beyond “completion” provided in Public Contract Code section 7107.


### CONCLUSION

A public owner wanting to withhold payment of a contractor’s retention for a reason other than security for performance is nothing new. In fact the U.S. Supreme Court over 135 years ago decided a case where the public owner (Federal Government) contended that it could withhold a contractor’s retention for a dispute other than one based on the purpose of the retention (security). In that case the Court held, “In our view, it is a fair construction of this part of the agreement that the money retained under it is for security that the contractor will not abandon his work, but will proceed in it with due vigor, and for indemnity to the United States in case he fails to do this. Unless, therefore, the government has sustained some loss, some pecuniary or legal damage by his failure, the money which he has fairly earned should be paid to him when the work which he agreed to do has been completed ....” *Quinn v. United States* (1879) 99 U.S. 30, 34.

California’s prompt payment statutes and more particularly the rules governing construction retention are about security and protection. An owner (or contractor) may not continue to hold retention unless there is a dispute that relates to the retention and its purpose.

It is for the above reasons that the Associated General  
Contractors of California as Amicus Curiae, respectfully requests that this  
Court uphold the ruling of the appellate court.

Dated: August 2, 2016

  
\_\_\_\_\_  
JOHN P. CARPENTER, SBN 148884  
KIEWIT INFRASTRUCTURE WEST  
4650 Business Center Drive  
Fairfield, CA 94534  
Telephone: (707) 439-7433  
Attorney for Amicus Curiae  
THE ASSOCIATED GENERAL  
CONTRACTORS OF CALIFORNIA

**CERTIFICATE OF WORD COUNT**  
**Cal. Rules of Court, rule 8.204(c)(1.)**

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the total word count of the Petition For Review, excluding covers, table of contents, table of authorities, and certificate of compliance is 3,271. In making this certification, I have relied on the computer program, Microsoft Word, for this word count.

Dated: August 2, 2016

  
\_\_\_\_\_  
JOHN P. CARPENTER

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I, the undersigned, declare as follows:

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 311 California Street, San Francisco, CA 94104.

On August 3, 2016, I served the following document described as APPLICATION OF THE ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA FOR LEAVE TO FILE AMICI CURIAE BRIEF; PROPOSED BRIEF on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

<input checked="" type="checkbox"/>	<b>BY U.S. MAIL:</b> By placing a true and correct copy thereof enclosed in a sealed envelope addressed as above or on the attached service list, with postage thereon fully prepaid, in the U.S. Mail at San Francisco, California. I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on the same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing as stated in the affidavit.
<input checked="" type="checkbox"/>	<b>BY FEDERAL EXPRESS:</b> I am readily familiar with my employer's practice of the collection and processing of FedEx packages. Under that practice, packages should be deposited with FedEx that same day, with overnight (next business day) delivery charges thereon fully prepaid, in the ordinary course of business. I caused such envelope(s) to be delivered by overnight mail to the addressees listed on the attached service list.
<input checked="" type="checkbox"/>	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
<input checked="" type="checkbox"/>	Executed on August 3, 2016, at San Francisco, California.



Laurie Stoker

**SERVICE LIST**

***UNITED RIGGERS & ERECTORS, INC. v. COAST IRON & STEEL CO.***

**Case No. S231549**

<p>R. Duane Westrup. Westrup &amp; Associates 444 Ocean Boulevard, Suite 1614 Long Beach, CA 90802 Tel: (562) 432-2551; Fax: (562) 435-4856 Attorneys for Defendant and Appellant <b>COAST IRON &amp; STEEL CO.</b></p>	
<p>Dirk Bruinsma Law Office of Dirk Bruinsma 1181 Puerta del Sol, Suite 120 San Clemente, CA 92673 Tel: (714) 939-8100; Fax: (714) 634-1387 Attorneys for Plaintiff and Respondent <b>UNITED RIGGERS &amp; ERECTORS, INC.</b></p>	<p>Kristen Martin Law Offices of Kristen Martin 600 Anton Blvd., Suite 1100 Costa Mesa, CA 92626 Tel: (818) 340-1950; Fax: (818) 340-1990 Attorneys for Plaintiff and Respondent <b>UNITED RIGGERS &amp; ERECTORS, INC.</b></p>
<p>California Court of Appeal 2<sup>nd</sup> District 2<sup>nd</sup> Floor, North Tower 300 South Spring Street Los Angeles, CA 90013 <b>Mail Only</b></p>	<p>Honorable Thomas I. McKnew Los Angeles Superior Court Southeast District 1270 Norwalk Boulevard Norwalk, CA 90650 <b>Mail Only</b></p>