

## **TENTATIVE RULINGS for CIVIL LAW and MOTION October 21, 2016**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted on Yolo Court's Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Please take note that Yolo Superior Court is now located at 1000 Main Street, in Woodland.

Telephone number for the clerk in Department Ten: (530) 406-6722

### **TENTATIVE RULING**

**Case:** **The Regents of the University of California v. Howard S. Wright Construction Co.**

**Case No. CV CV 12-1911**

**Hearing Date:** **October 21, 2016** **Department Ten** **10:00 a.m.**

Defendant Howard S. Wright Construction Co.'s ("HSW") request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

The Court declines to rule on objections directed to *statements* made in each parties' separate statements of undisputed facts. (HSW's Objections nos. 1-8; the Regents of the University of California's Objections nos. 1-2.) These objections are not framed as objections to *evidence*, but instead to individual undisputed material facts. (Cal. Rules of Court, rule 3.1354(b).)

The Regents of the University of California's ("Regents") evidentiary objections to the declaration of Joseph Odom are **OVERRULED**. (Evid. Code, §§ 352, 702, 1200, 1400.)

The Court declines to rule on the Regents' remaining objections and HSW's objections as they are immaterial to the disposition of HSW's motion. (Code Civ. Proc., § 437c, subd. (q).)

HSW's motion for summary adjudication as to the first cause of action for breach of construction contract, second cause of action for negligence, and third cause of action for express indemnity in the Regents' complaint is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Triable issues of material facts exist. (HSW's Statement of Undisputed Material Facts 63, 75-78, 80, 86, 102, 110, 122-125, 127, 133, 149, 159, 173-178, 184, 200; Decl. of Joseph Odom, ¶¶ 6, 8, Exhs. B, C; Decl. of Theresa C. Barfield, ¶¶ 2-3, Exhs. A, B; Decl. of J. Michael Head, ¶ 6, Exh. B; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)

HSW's motion for summary judgment is **DENIED**.

HSW's request for defense fees and costs is **DENIED**. (Code Civ. Proc., § 1038.)

If no hearing is requested, HSW is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rule of Court 3.1312.

The Regents of the University of California's ("Regents") evidentiary objections to the declaration of Joseph Odom are **OVERRULED**. (Evid. Code, §§ 352, 702, 1200, 1400.)

The Court declines to rule on the Regents' remaining objections and Fidelity and Deposit Company of Maryland ("Fidelity") and Zurich American Insurance Company's ("Zurich") objections as they are immaterial to the disposition of Fidelity and Zurich's motion. (Code Civ. Proc., § 437c, subd. (q).)

Fidelity and Deposit Company of Maryland ("Fidelity") and Zurich American Insurance Company's ("Zurich") motion and joinder in Howard S. Wright Construction Co.'s motion for summary judgment, or in the alternative summary adjudication is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Triable issues of material facts exist. (Fidelity and Zurich's Statement of Undisputed Material Facts 14, 26-29, 31, 37, 53, 68, 80-83, 85, 91; Decl. of Joseph Odom, ¶¶ 6, 8, Exhs. B, C; Decl. of Theresa C. Barfield, ¶¶ 2-3, Exhs. A, B; Decl. of J. Michael Head, ¶ 6, Exh. B; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)

Fidelity and Zurich's request for defense fees and costs is **DENIED**. (Code Civ. Proc., § 1038.)

If no hearing is requested, Fidelity and Zurich are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rule of Court 3.1312.