

A Win For Subcontractors: California Court Of Appeal Rules That Any Party Which Is
"Adverse" to Another Party, Has Standing To File An Opposition To Motion For
Summary Judgment

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

One of the procedural hurdles that subcontractors with contractual indemnity obligations in California deal with is a situation where a personal injury case arises, numerous parties are named as Defendants (including the subcontractor), and the Plaintiffs strategically agree to not oppose a Motion for Summary Judgment filed by a co-defendant. A wrinkle in the situation is where, more directly, the Plaintiffs in a personal injury case, or construction defect case, file a Motion for Summary Judgment against a prime contractor, and the prime contractor either fails to Oppose the Motion or effectively Opposes the Motion but, at the same time, has express indemnity rights against the subcontractor. These situations cry out for the need for a subcontractor to have standing to Oppose any Motion for Summary Judgment, so long as the subcontractor is adverse to the parties involved in the Motion.

In what was deemed as a "case of first impression," the California Court of Appeal, 4th Appellate District, in RND Contractors, Inc. v. Superior Court (2025) (Super. Ct. No. CIVSB2116995) ("RND case") resolved the issue. In RND, Omar Nuro and Jose Navarro, employees of RND Contractors, Inc., suffered injuries (and in the case of Navarro, fatal injuries) when a steel structure failed on a public school construction jobsite. Omar Nuro and Navarro's family sued various Defendants, including Structural Engineer Wiseman + Rohy Structural Engineers ("WRSE"), and Balfour Beatty Construction, LLC ("Balfour Beatty"). Balfour Beatty then filed Cross-Complaints for Express Indemnity against, among others, RND Contractors, Inc.

About a year into the litigation, WRSE moved for summary judgment, arguing that the collapse occurred solely due to the failure to follow structural engineering drawings prepared by WRSE, and that there was no design deficiency. Plaintiffs filed Notices of Non-Opposition to the Motion for Summary Judgment. RND and Balfour Beatty Opposed the Motion, arguing that WRSE was at least partially liable for Plaintiffs' damages due to allegedly faulty design plans (those two parties argued that there were two inadequate bolts).

As to the Oppositions to Summary Judgment, the Trial Court acknowledged that there was no direct case law in California on point, although there was a significant amount of federal court case law (which was also split as to standing). The Trial Court then found that WRSE had met its initial burden and agreed with WRSE that RND and

Balfour Beatty lacked standing to Oppose WRSE's Motion for Summary Judgment. RND timely appealed and Balfour Beatty filed an *amicus curiae* brief.

On appeal, the California Court of Appeal ruled, based on the California Supreme Court Case in Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th, that "any" party may oppose a motion for summary judgment so long as that party is "adverse" to the moving party. The Court of Appeal found that RND and WRSE were adverse parties and reversed the Trial Court's ruling.

The RND case is very important in that it holds that any party, so long as adverse, may oppose a Motion for Summary Judgment.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at morrisonlawgroup.com.

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504.

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.