



December 16, 1999

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Transportation  
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**TO: BOARD OF DIRECTORS****FROM: JULIAN BURKE**  
*Julian Burke*  
**CHIEF EXECUTIVE OFFICER****SUBJECT: DISMISSAL OF LITIGATION AGAINST UNION PACIFIC  
RAILROAD COMPANY AND SPRINT, INC.**

Earlier this year, Sprint sued MTA, SCRRA and SANBAG concerning fiber optic cable rights on real property acquired by LACTC from Southern Pacific (SP) in 1990. Sprint contends, and the United States District Court agreed on November 15, 1999, that Sprint has the right under its 1983 easement agreement with SP to install additional fiber optic cable on MTA and SANBAG rights-of-way without payment of additional compensation.

In response to Sprint's lawsuit, MTA, SCRRA and SANBAG filed cross-complaints against SP's successor, Union Pacific Railroad Company (UP). At the parties' request, retired Judge Enrique Romero conducted a voluntary mediation on November 23, 1999 with respect to the merits of such cross-complaints.

On November 29th, Judge Romero issued an advisory opinion (attached) in which he agrees with the position taken by UP and concludes that "there is little or no likelihood that MTA will prevail either at a summary judgment motion or at trial..." for the following reasons:

- The information provided leads to the conclusion that the Sprint easement agreement was given to LACTC prior to the signing of the 1990 SP - LACTC Purchase and Sale Agreement;
- The Court's ruling of November 15th granting Sprint's motion for partial summary judgment precludes MTA from pursuing its claim against UP. The Court ruled that LACTC "had actual knowledge of both Sprint's easement and the easement agreement prior to executing the Purchase and Sale Agreement;"

- The Purchase and Sale Agreement cannot be read to restrict the rights of Sprint or other third parties that are not parties to the Agreement. Regardless of the language in the Agreement, LACTC knew of Sprint's easement rights prior to signing and could have terminated the transaction or requested a reduction in the purchase price, pursuant to the terms of the Agreement.

Before the cross-complaint was filed we completed an exhaustive search of the MTA's records related to the purchase of the SP rights-of-way. We also interviewed staff and outside counsel who participated in the right-of-way purchase. We could not find any record that the MTA had actual knowledge of an agreement which gave Sprint the right to install additional cable in the purchased right-of-way.

In the early stages of the litigation, UP presented a convincing case that MTA staff had been given the opportunity to review the easement agreement. Interviews of former staff members supported UP's arguments.

In light of the Court's ruling in favor of Sprint, the mediator's findings and the latest information uncovered by MTA staff County Counsel, I believe it is in MTA's best interest to pursue a dismissal of this entire litigation in exchange for a full release of all claims against MTA by Union Pacific and Sprint, and I have instructed County Counsel to proceed accordingly.

Attachment

Hon. Enrique Romero  
2049 Century Park East, Suite 350  
Los Angeles, California 90067-3239  
(310) 201-0010 Phone  
(310) 201-0016 Fax

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

LOS ANGELES COUNTY	)	CASE NO. CV-99-4700 WJR
METROPOLITAN TRANSPORTATION	)	Central District of California
AUTHORITY, AND SOUTHERN	)	
CALIFORNIA REGIONAL RAIL	)	
AUTHORITY,	)	
	)	
Third Party Plaintiffs,	)	Mediator's Report Re Evaluation of the
	)	Merit of the Case Against Union Pacific
vs.	)	Railroad Company
	)	
UNION PACIFIC RAILROAD	)	
COMPANY,	)	
	)	
Third Party Defendant.	)	
	)	
	)	

*EW*  
*11/29/99*

The above-referenced case is set for trial before the Honorable William J. Rea, Judge Presiding, Central District of California (Los Angeles) on June 6, 2000. Partial summary judgment has been granted by the Court as to Plaintiff Sprint Communication Company ("Sprint"), and all parties agree that a final judgment will be entered in favor of Sprint against Defendants Los Angeles County Metropolitan Transportation Authority (MTA) and the San Bernardino Associated Governments ("SANBAG").

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1 On November 23, 1999, the mediator conducted a voluntary mediation in the  
2 above-referenced third party case brought by MTA and SANBAG against the Union  
3 Pacific Railroad Company ("Union Pacific"). Attorneys Ronald Stamm and Alan Wayte  
4 appeared on behalf of MTA, attorney Marc Hurd and principal Michael Bair, Director of  
5 Transit/Rail Program, appeared on behalf of SANBAG, and attorneys Tyrone Childress,  
6 Mehran Arjomand and Robert Starzel appeared on behalf of the Union Pacific. (A copy  
7 of the mediator's resume is attached as Exhibit A to this report.) All of the parties  
8 submitted, among other things, mediation briefs, including copies of the operative  
9 complaint, the tentative ruling by Judge Rea in favor of Sprint, the 1983 agreement  
10 between Union Pacific and Sprint, the 1990 Purchase and Sale Agreement (PSA) entered  
11 into between MTA and Union Pacific (their predecessors), stipulated facts, and several  
12 declarations filed by several MTA and other parties regarding the PSA agreement that is  
13 the subject of this third party litigation. (The mediator will use "MTA" to refer to the  
14 predecessors of the MTA and SANBAG.)

15 MTA's and SANBAG's position is very simple and straightforward, that is, Union  
16 Pacific breached the 1990 PSA agreement, Sections 6.2(a), (c), among other things, by  
17 not disclosing the fact that since 1983 Sprint had an easement to install additional fiber  
18 optic cables on the property that was sold to MTA, and that MTA could not discover this  
19 fact by due diligence and observation since it was the subject of an unrecorded easement,  
20 and that Union Pacific had a duty to disclose this fact to MTA prior to the signing of the  
21 PSA agreement. Thus, MTA and SANBAG have been damaged because they can not  
22 charge Sprint fees for cable that is being installed on MTA property and/or their property  
23 has diminished in value as a result thereof.

24 Union Pacific's position is also simple and straightforward, that is, Judge Rea has  
25 made findings of fact in the Sprint case that MTA had knowledge of the terms of Sprint's  
26 easement rights and rejected MTA's argument that it was a "bona fide purchaser" not  
27 bound by Sprint's easement rights; and MTA's lawyers and principals involved in the  
28 negotiation of the PSA knew of the subject easement prior to the signing of the PSA  
29 agreement.

1 This mediator agrees with the position taken by Union Pacific and concludes that  
2 there is little or no likelihood that MTA will prevail either at a summary judgment motion  
3 or at trial, should the Court find that there is a "triable issue of genuine fact" precluding  
4 the granting of summary judgment, for the following reasons, among others:

- 5
- 6 1. As part of a future summary judgment motion, Union Pacific will have at least two  
7 declarations from Robert Starzel and Kevin Conway stating emphatically and  
8 unequivocally that the agreement between Sprint and Union Pacific regarding the  
9 subject easement, among other agreements that were also given, was given to  
10 MTA's principals including Alan Wayte prior to the signing of the PSA  
11 agreement. Mr. Wayte's recollection has been refreshed and he now remembers  
12 that this was the case. Mr. Wayte and others knew that there was an unrecorded  
13 easement given to Sprint running with the land that was the subject of the PSA;  
14 however, MTA did not care because they wanted to purchase the land from Union  
15 Pacific and it was not about to let the sale fall through over any easement. There  
16 will not be any declarations from MTA or SANBAG that will directly contradict  
17 Starzel's and Conway's declarations. Thus, they will be unrefuted and there will  
18 not be any dispute regarding this material fact. Mr. Starzel was at the mediation  
19 and questions were asked regarding his recollection of these facts. It is the  
20 opinion of this mediator that Mr. Starzel comes across as a very credible witness.  
21
- 22 2. With this information at hand, MTA could have terminated the PSA agreement  
23 after signing it since that information was provided to MTA and it had a material  
24 and adverse effect on MTA's valuation of such portion of the property. See  
25 Section 3.3 of the PSA, "Termination Rights." The whole thrust of MTA's and  
26 SANBAG's allegations is that the property has lost value. Armed with this  
27 information, MTA could have terminated the agreement or could have requested a  
28 reduction in the purchase price, pursuant to 3.3.

29 ///

1 3. The ruling by Judge Rea will have collateral estoppel on MTA and SANBAG  
2 (since SANBAG cannot have rights greater than those of the MTA pursuant to the  
3 PSA agreement). Rea's tentative detailed ruling that later became final makes it  
4 clear that MTA [its predecessor] "had actual knowledge of both Sprint's easement  
5 and the Easement agreement prior to executing the Purchase and Sale Agreement."  
6 One has to keep in mind that Judge Rea also did not have the benefit of Starzel's  
7 and Conway's declarations. There is little or no doubt that Judge Rea will grant  
8 summary judgment given the fact that all of persons involved in the purchase of  
9 the property in question have "locked" themselves in to their prior testimony that  
10 cannot contradict the above declarations of Union Pacific.

11  
12 4. "Article 6: Reservations and Fiber Optics" cannot be read to refer to Sprint or  
13 other third parties that are not part of the PSA as "owner" of the Fiber Optic  
14 Easement in Section (c) of the PSA agreement. It is clear that "owner" refers to  
15 Union Pacific who has created an easement that can be sold or transferred to a  
16 third party, otherwise there would be no need for the creation of an easement since  
17 Union Pacific owned the land (an owner of land does not need an easement to do  
18 whatever it chooses to do with its land, it is only third parties, non-owners that  
19 need the creation of an easement in order to transfer the property right that is being  
20 created). Even if by some stretch of the imagination an argument could be made  
21 regarding the term "owner" as referring to Sprint and other easement holders,  
22 MTA cannot get around the fact that the agreement between Sprint and Union  
23 Pacific detailing the easement rights of Sprint was disclosed prior to the signing of  
24 the PSA agreement.

25  
26 Section 9.2 of the PSA agreement provides that the prevailing party is entitled to  
27 attorney's fees and costs in any dispute concerning the PSA. It is clear that Union Pacific  
28 will incur mid to high six figure attorney's fees and costs at the end of the case. MTA  
29 will have to pay these.

1 It is for these reasons that the mediator concludes that it is appropriate, reasonable  
2 and that it makes legal and economic sense to dismiss the case against Union Pacific for a  
3 waiver of costs and attorney's fees. If any representative of MTA or SANBAG have any  
4 questions, I can be reached at the number listed in the caption of the case.

5  
6 Respectfully submitted,

7  
8 Date: November 29, 1999.

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12 Hon. Enrique Romero  
13 Superior Court Judge (Retired)  
14 Mediator

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 350, Los Angeles, California 90067.

On November 29, 1999, I served the foregoing document described as the **MEDIATOR'S REPORT RE EVALUATION OF THE MERIT OF THE CASE AGAINST UNION PACIFIC RAILROAD COMPANY** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ronald W. Stamm, Esq.  
Alan Wayte, Esq.  
OFFICE OF COUNTY COUNSEL  
COUNTY OF LOS ANGELES  
500 West Temple Street  
Los Angeles, California 90012

Tyrone R. Childress, Esq.  
Mehran Arjomand, Esq.  
Robert Starzel, Esq.  
TROOP, STEUBER, PASICH,  
REDDICK & TOBEY  
2029 Century Park East, 24<sup>th</sup> Floor  
Los Angeles, California 90067

Marc S. Hurd, Esq.  
KINKLE, RODIGER AND SPRIGGS  
3333 Fourteenth Street  
Riverside, California 92501

  X   **BY U.S. MAIL** I caused such envelope with postage thereon to be placed in the United States mail at Los Angeles, California.

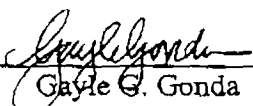
  X   **BY FACSIMILE**, I caused such to be faxed to the attorneys on November 29, 1999.

       **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to:

  X   **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

       **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 29, 1999 at Los Angeles, California.

  
\_\_\_\_\_  
Gayle G. Gonda