



Metropolitan Cases

Alameda County Flood Control & Water Conservation District, Zone 7, et al. v. California Department of Water Resources (Sacramento County Superior Court)

The first phase of trial on contract interpretation was completed on December 12, 2008, with a total of 22 days actually spent in court. All sides relied very heavily on historical documents to support their respective cases. Nonetheless, the videotaped deposition testimony of 16 witnesses was shown and another six witnesses testified live. As previously reported to the committee, Plaintiffs' case focused predominantly on evidence from the pre-contract negotiations and early years of the contract, which suggests that: (1) power generated by the Hyatt-Thermalito (H-T) complex would be sold at "market"; (2) total revenues from such sales would be applied to reduce "water supply" costs; and (3) water supply costs would be reflected in and recaptured through the Delta Water Charge. In contrast, Intervenor's case focused mainly on evidence of the negotiations that took place in the mid-1970s, in which DWR and the SWP contractors agreed to use the bulk of any revenues from H-T power sales to offset the variable Transportation Charge, i.e., to reduce water delivery costs. In addition, Intervenor's presented a substantial amount of evidence reflecting the Plaintiffs' failure to raise any objections to this agreement until relatively recently. DWR's case was largely based on its asserted discretion in administering the State Water Contract.

Typically, the parties would give oral closing arguments at the end of the Plaintiffs' rebuttal case. However, given the scope and complexity of this case, the parties requested permission to submit written post-trial briefs instead, to which the court agreed. Plaintiffs' initial brief is due on February 25, DWR's and Intervenor's responding briefs are due on April 24, and Plaintiffs' final brief is due on May 26. Given this extended briefing schedule and the extensive amount of evidence that the court will have to review and consider, a decision on this first phase of trial is not expected until fall 2009, at the earliest. If the decision is favorable to DWR and the Intervenor, this case

will be over at the trial level and the Plaintiffs then will have to decide whether or not to appeal.

If the decision is favorable to Plaintiffs, the litigation will move into the next phase of trial concerning the parties' affirmative defenses.

Los Angeles Unified School District v. County of Los Angeles, et al. (Los Angeles County Superior Court)

In December, Judge Emilie Elias ruled against LAUSD in its bid to require the County to direct a higher share of redevelopment agency property tax revenue to the school district. LAUSD contended that the County's accounting mechanism (Education Reserve Augmentation Fund, or "ERAF") wrongly calculated the percentage share of redevelopment mitigation payments to the school district. Millions of dollars of annual property tax revenues are at stake. LAUSD named Metropolitan a defendant in the case because of our collection of property taxes. Although the case would have a negligible effect on Metropolitan's finances, we supported the County's defense of its position. An appeal is expected.

Cadiz, Inc. v. Metropolitan (Los Angeles County Superior Court)

In November, the court granted Metropolitan's Motion for Judgment on the Pleadings eliminating Cadiz's final cause of action for fiduciary duty and granted Cadiz leave to amend its complaint. Cadiz filed its Third Amended Complaint on November 26. Metropolitan filed a demurrer to the Third Amended Complaint on December 23. A hearing is scheduled on the demurrer on February 4, 2009. If the demurrer is granted without leave to amend, Cadiz's case against Metropolitan will be over at the trial court level. Metropolitan will still have the opportunity to try its cross-complaint against Cadiz for failure to pay the amounts due pursuant to the cost-sharing agreement. Cadiz has indicated they plan to appeal if their case is dismissed without a trial. Staff will update the Board at the February board meeting.



Matters Involving Metropolitan

AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)

On September 1, 2005, AFSCME filed a PERB unfair practice charge alleging Metropolitan violated the Myers-Milias-Brown Act (MMBA) by failing to conclude negotiations with AFSCME over Management's modifications to eleven operating policies. The challenged policies addressed the following subjects: requests for information (B-07), reimbursable expenses (C-03), business travel (C-04), credit cards (C-05), time recording (C-07), intellectual property (F-03), procurement of goods and services (G-05), rehiring retired employees (H-02), affirmative action (H-08), temporary labor (H-08), recruitment (H-10), and guaranteed ride home (J-09). At PERB's request, AFSCME amended the charge on January 22, 2008. The amended charge continued to challenge modifications to the noted operating policies. On March 7, 2008, PERB issued a complaint alleging Metropolitan violated the MMBA by failing to complete negotiations over modifications to five of the operating policies. These five policies addressed reimbursable expenses (C-03), business travel (C-04), procurement of goods and

services (G-05), rehiring retired employees (H-02) and temporary labor (H-08). That same day – March 7 – PERB sent AFSCME a letter dismissing the remaining challenges to operating policy modifications.

On March 28, 2008, Metropolitan filed an answer to PERB'S complaint denying any purported violation of law. Subsequently, PERB scheduled several informal conferences to explore settlement of the complaint. On December 18, the parties signed an agreement resolving the complaint. The settlement – which contains clarifications of how the five operating policies will be interpreted – contains no admission of wrongdoing. Further, the settlement does not require Metropolitan to amend its policies, nor does it impact Management's prerogative to modify operating policies. Metropolitan will continue to meet and confer with the bargaining units over future operating policy changes to the extent required by law. On December 22, AFSCME withdrew its unfair practice charge with prejudice as agreed to, and on December 29, PERB dismissed the complaint. This matter is now closed.

Items of Interest

Finances

Legal staff assisted with amendments to two outstanding standby bond purchase agreements supporting Metropolitan's Water Revenue Refunding Bonds, 2001 Series C-1 and C-2. The amendments extended the expiration date of these agreements by three years, from December 31, 2008 to December 30, 2011. The amendments permitted remarketing of these variable rate bonds, in the principal amount of \$200 million, to continue.

Administrative

The law firm of Horvitz and Levy provided a program for the Legal Department on The Keys to Success on Appeal. Topics included: Strategic Considerations in Evaluating an Appeal, Preserving the Record, and the Role of Appellate Counsel. The program qualified for continuing legal education credit by the California State Bar for attorneys and paralegals.