



Metropolitan Cases

Thomas A. Liguori as trustee of the Thomas A. Liguori Separate Property Trust v. Metropolitan Water District (Riverside Superior Court)

This case was filed on April 10, 2012 and asserted that construction of Diamond Valley Lake altered underground geology and depleted available groundwater at 31500 Briggs Road in Menifee. Plaintiff alleged that in 1999 it relied upon certain representations about the provision of free water and long term solutions to plaintiff's water shortage. Plaintiff further alleged that certain restrictions at a fill station established by Eastern Municipal Water District triggered his claim for damages in 2012. Plaintiff alleged inverse condemnation, injunctive and declaratory relief. Plaintiff's objective was to obtain a court order that required Metropolitan to either pay damages or pay for the cost of providing water delivery infrastructure to the property. Metropolitan filed a motion for summary judgment to dismiss the case, which was heard and granted on August 6, 2013. The Legal Department represented Metropolitan in this matter.

Management and Professional Employees Association (MAPA) v. Metropolitan (Public Employment Relations Board)

MAPA filed an unfair practice charge with the Public Employment Relations Board (PERB) on March 22, 2013. The charge alleges Metropolitan violated the Meyers-Miliias-Brown Act (MMBA) by changing job descriptions and salary grades for seven WSO section managers without implementing MAPA's request to increase the salary grade for all other MAPA classifications by one salary grade. While MAPA did agree to the changes to the descriptions and salary grades for the section managers, the charge alleges that Metropolitan refused to meet and confer in good faith by creating salary disparities within MAPA and by implementing the proposed changes without following the District's impasse procedures. On August 6, 2013, PERB issued a complaint in this matter alleging Metropolitan acted improperly by not affording MAPA the opportunity to meet and confer to impasse over the decision to change job descriptions and salary grades. The Legal Department will continue to represent Metropolitan

in this matter. (See General Counsel's March 2013 Activity Report.)

Copper Pipe Cases: Briososa Owners Ass'n v. Moulton Niguel Water District, et al.; Caito, et al. v. Moulton Niguel Water District, et al.; Cantora Community Ass'n v. Metropolitan Water District, et al.; Cypress Point Condominium Ass'n v. Metropolitan Water District, et al.; Eckert, et al. v. Moulton Niguel Water District, et al.; Lennar Homes of California, Inc. v. Metropolitan Water District, et al.; Williams, et al. v. Irvine Ranch Water District, et al. (Orange County Superior Court)

As previously reported, the *Lennar* case was dismissed without prejudice on April 5, 2013, before Metropolitan's and Santa Margarita Water District's (SMWD) motions for summary judgment could be heard. Metropolitan was dismissed from three additional cases before plaintiffs responded to demurrers filed by the General Counsel's Office. On May 21, 2013, the *Cypress Point* case was dismissed without prejudice. Subsequently, on July 22, 2013, Metropolitan was dismissed without prejudice from the *Briososa* and *Cantora* cases. Although these dismissals are without prejudice, plaintiffs are barred from renewing their tort claims against Metropolitan. Plaintiffs in the dismissed cases may reassert inverse condemnation if that cause of action survives dispositive motions in pending cases.

On July 17, 2013, the court granted, with leave to amend, Metropolitan's and Irvine Ranch Water District's (IRWD) demurrers to plaintiffs' dangerous condition of public property, breach of contract, breach of contract/third party beneficiary, breach of warranty, and violation of Consumer Legal Remedies Act claims in the *Williams* case. The court denied Metropolitan's and IRWD's demurrers to plaintiffs' inverse condemnation and nuisance claims and ordered Metropolitan to file a Notice of Related Case regarding the other copper pitting cases. Accordingly, Metropolitan filed the required notice and asked that all the cases be assigned to the judge in the *Williams* case. On August 2, 2013, counsel in the *Williams* case filed two additional cases: (1) *Anthony Caito and Enrique Cenicerros v. Moulton Niguel Water District and Metropolitan*



“Caito”), and (2) *Steven Eckert and Joseph Repetti v. Moulton Niguel Water District and Metropolitan* (“Eckert”). The *Caito* and *Eckert* complaints are almost identical to the third amended complaint, which was recently filed in the *Williams* case. In all three cases, plaintiffs seek to represent a class of homeowners.

Metropolitan plans to demur to the inverse condemnation and nuisance claims alleged in *Williams*, *Caito*, and *Eckert* and will aggressively oppose class certification. If Metropolitan is unsuccessful in its demurrers, the General Counsel’s Office will bring other appropriate motions in an effort to dispose of these remaining claims. (See General Counsel’s January 2013 Activity Report.)

State and Federal QSA Cases

On July 31, the trial court issued its final statement of decision and final judgments in the state litigation challenging the validity of the Quantification Settlement Agreement (QSA) and related agreements. The court’s final statement of

decision tracks the tentative decision in all substantive respects. But in addition, it addresses a host of procedural issues that were raised by the parties during the course of trial. The court also addressed objections to the tentative decision filed by various parties, including those filed by the County of Imperial, Imperial County Air Pollution Control District, Cuatro del Mar in which they asserted that the court had failed to decide some issues they claimed were raised at trial. The parties now have 30 days to file an appeal of the court’s ruling in the validation action and 60 days to file appeals of the court’s rulings in the two writ mandate actions involving claims brought under the California Environmental Quality Act.

With respect to the federal QSA case that is on appeal before the Ninth Circuit, IID, San Diego County Water Authority, Coachella Valley Water District and Metropolitan filed their joint reply brief on July 25. The briefing for the appeal is now complete. No hearing date has been set. (See General Counsel’s June 2013 Activity Report.)

Matters Involving Metropolitan

***Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (California Supreme Court)**

Last fall, Legal Staff coauthored an amicus (“friend of the court”) brief filed in the *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* case arguing that a CEQA lead agency has the discretion to use future projected conditions as the environmental baseline in an Environmental Impact Report (EIR). On August 5, 2013, the California Supreme Court filed its opinion agreeing with the respondent lead agency and the arguments made by Metropolitan and other friends of the court. The decision is significant for Metropolitan because the EIR for the QSA used a future conditions baseline to evaluate some of the impacts of that project (a decision that was recently upheld by the trial court in that litigation), as does the EIR for the Monterey Plus amendments, which also has been challenged under CEQA. It also confirms that Metropolitan, as a lead agency on its own projects, has the discretion to determine the most appropriate and informative environmental baseline for CEQA analysis.