



9TH CIRC. STAYS RULING IN \$2M HIGH-SPEED RAIL CONTRACTOR SPAT

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By Linda Chiem

The Ninth Circuit agreed Friday to pause its recent ruling that engineering and design firm STV Inc. does not owe its subcontractor Ultrasystems Environmental Inc. more than \$2 million in late payment penalties for environmental review work on California's multibillion-dollar high-speed rail project, allowing Ultrasystems to petition the U.S. Supreme Court.

A three-judge panel of the Ninth Circuit agreed to hold off on issuing a mandate sealing its January decision, in which it affirmed the dismissal of a lawsuit filed by Ultrasystems, an Orange County, California-based environmental planning firm, against STV.

Ultrasystems claimed STV had stiffed it on late payment penalties it should have received from the California High Speed Rail Authority under STV's prime contract to perform preliminary engineering and prepare environmental impact reports for a Los Angeles segment of the highly anticipated high-speed rail line.

The appeals panel shot down Ultrasystems' breach of contract argument that the late payment penalties that state agencies are required to pay their prime contractors if they cannot make invoice payments within 45 days — in accordance with the California Prompt Payment Act — should have been collected and split pro rata with Ultrasystems.

"The district court correctly interpreted Section 927 to not impose obligations on entities other than 'state agencies,' and thus correctly concluded that UEI failed to plead that STV violated the subcontract," the panel said then. "The unambiguous plain meaning of the term 'state agencies' does not include entirely private companies such as STV that contract with 'state agencies,' and the statute therefore does not impose upon private contractors the obligation to pay subcontractors late payment penalties."

The subcontract that Ultrasystems inked with STV stated that payment will be made within 15 business days after STV is paid by the California High Speed Rail Authority. Ultrasystems

alleges that although it was fully paid approximately \$4.5 million on its invoices under its subcontract with STV, it was paid “late” by STV because STV was paid late by the California High Speed Rail Authority during a state budget crisis, according to court documents.

The panel also pointed out that the Ultrasystems-STV subcontract lacked any language concerning late payment penalties.

“UEI’s failure to negotiate for terms obligating STV to seek late payment penalties from CHSRA is fatal to its proposed covenant of good faith and fair dealing claim,” the panel said.

Ultrasystems had said in January that it "emphatically disagrees" with the panel's reasoning in rejecting its arguments that STV should've paid Ultrasystems' invoices within 45 days even if it hadn't yet been paid by the California High-Speed Rail Authority and that it should've paid Ultrasystems those late-payment penalties.

Ultrasystems first launched its breach of contract suit in 2013, but it was dismissed in January 2015 by the district court. Ultrasystems’ attorney John C. Teal Jr. insisted to the appeals court in December that the California Prompt Payment Act should’ve been a foolproof method to make sure contractors doing business with the state were paid promptly and that the instant dispute had implications for thousands of small businesses and potentially billions of dollars worth of government contracts in California.

However, STV has blasted Ultrasystems for engaging in “legal sophistry to concoct a meritless contract argument” premised on the application of the very state law that it has already conceded does not require STV to pay Ultrasystems prompt payment penalties, according to court documents.

The California Prompt Payment Act only binds state agencies to pay prompt payment penalties to those in direct contract with the state. It specifically does not require design consultants like STV to pay prompt payment penalties to subconsultants like Ultrasystems, STV argued.

Counsel or representatives for the parties could not be immediately reached for comment Friday.

Circuit Judges Stephen Reinhardt and Richard Paez, and U.S. District Judge Paul L. Friedman, sitting by designation from the District of Columbia, sat on the panel.

Ultrasystems Environmental is represented by John C. Teal Jr. of the Law Offices of John C. Teal Jr.

STV is represented by Robert G. Campbell and Trevor B. Potter of [Cox Castle & Nicholson LLP](#).

The case is Ultrasystems Environmental Inc. v. STV, Inc., case number 15-55215, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Christine Chun.