

Daily Journal

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Top Verdicts of 2014

The Largest and most significant verdicts and appellate reversals handed down in California in 2014

TOP APPELLATE REVERSALS

Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines Inc. et al.

In a significant victory for pipeline operator Santa Fe Pacific Pipelines Inc., the 2nd District Court of Appeal in November overturned \$100 million in damages awarded to Union Pacific Railroad Co. based on an examination of acts of Congress more than a century earlier.

At issue are the 1,850 miles of land underneath Union Pacific's right-of-way, which it gave to Santa Fe, a subsidiary of Kinder Morgan Inc.

Union Pacific received much of this land from the U.S. government in the mid-19th century for building and operating transcontinental railroads.

In 2004, Union Pacific sued Santa Fe seeking a judgment for the fair annual rent of the easements under the terms of a 1994 settlement agreement. The pipeline was hit with the hefty award in 2012, after a Los Angeles County Superior Court judge found Santa Fe owed \$81 million in back rent and \$19 million in prejudgment interest.

Santa Fe appealed. During oral argument, the appellate panel focused on whether the railroad owned the land that

Contract dispute, real estate

2nd District Court of Appeal

Justices Laurence D. Rubin and Madeleine Flier, and Los Angeles County Superior Court Judge Russell S. Kussman, sitting by designation

Attorneys for appellant:

Cooley LLP, Steven M. Strauss, Ray Hartman, Summer Wynn, Catherine O'Connor, Shannon Sorrells

Attorneys for appellee:

McKenna Long & Aldridge LLP, Thomas F. Winfield III, Michael H. Wallenstein

it was renting out in the first place, said Steven Strauss, Santa Fe's lead counsel and a Cooley LLP partner.

That issue became the focus of its 81-page opinion, which ruled the trial court had not properly determined what property the railroad had not properly determined what property the railroad controlled. The federal acts from the 1800s gave railroads surface property to encourage construction, the opinion stated, but it didn't give them the right to rent subsurface lands



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to private third parties.

"Congress did not include such a provision, and we will not insert, create, recognize or enforce such a provision here," the appeals panel wrote.

The decision could affect easements all across the country, as railroads and pipeline operators figure out who owns subsurface land and who has the right to charge rent, Strauss said.

The appeals court remanded the case to Los Angeles County Superior Court to recalculate the rent payment.

It also accepted Strauss' argument that the trial court erred in allowing prejudgment interest under a provision that requires the railroad to have suffered damages by an unlawful act, and reversed that part of the judgment. *Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines Inc. et al.*, 2014 DJDAR 14887.

Union Pacific's attorney, Thomas F. Winfield III of McKenna Long & Aldridge LLP, declined to comment.

— Kylie Reynolds