

JPML Won't Join Union Pacific Pipeline Rent Suits

By **Dani Kass**

Law360, New York (August 10, 2015, 7:12 PM ET) -- The Judicial Panel on Multidistrict Litigation on Monday declined to centralize proceedings for three suits lodged by landowners against Union Pacific Railroad Co. and Kinder Morgan alleging illegally granted easements, saying there were few enough parties that collaboration could be completed informally.

The panel found that with only three suits, represented by three groups of counsel, voluntary coordination is preferable. Both Union Pacific and Kinder Morgan opposed centralization, according to the order.

"On the basis of the papers filed and the hearing session held, we conclude that centralization will not serve the convenience of the parties and witnesses or further the just and efficient conduct of the litigation," the order states.

The panel also rejected the plaintiffs' argument that the case could grow, declining to focus on speculative arguments. Of the dozen potential "tag-along" actions that may be added, 11 of those were filed by the same counsel already in the suit, according to the order.

The panel said the attorneys were wrongly trying to use centralization to ensure the same conclusion was reached across the board.

"Although these actions do share certain factual issues regarding the railroad's alleged grant of easements to Kinder Morgan for the installation and operation of a petroleum pipeline, the key issue, as plaintiffs acknowledge, is legal in nature," the panel said. "Seeking a uniform legal determination, though, generally is not a sufficient basis for centralization."

Jason S. Hartley of Stueve Siegel Hanson LLP, counsel for one set of plaintiffs, said the panel's decision increases the possibility of conflicting rulings.

"We continue to be perplexed why the panel has become more and more reluctant to perform the very function for which it was created — to consolidate cases for pretrial proceedings — even when cases meet the standards of 28 USC Sec. 1407," he said. "The panel's decision in this case continues its trend to rely more on counsel and judges to coordinate far-flung litigation. This trend unnecessarily burdens the court system and increases the likelihood of conflicting rulings, which were among the very things Congress intended to prevent."

The suits claim that Union Pacific unlawfully utilized landowners' subsurface rights in the 1950s to construct an underground petroleum pipeline within the railroad's right of way, despite only holding a surface easement for its railroad.

According to one complaint, Union Pacific gained surface easement rights through congressional land grants in the late 1800s, including the right to use the subsurface to support railway operation. However, Congress did not grant rights to the subsurface real property beneath the railroad's right of way.

But Union Pacific's predecessor began construction of oil and gas pipelines beneath the right of way in the 1950s in California and other states, claiming a right to construct a pipeline within the subsurface. That decision unlawfully utilized the subsurface rights of the actual fee owners, the suit argues.

Counsel for the defendants and remaining plaintiffs didn't respond to requests for comment.

The Clements plaintiffs are represented by John W. Cowden, Angela M. Higgins, J. Robert Sears and Caroline Marie Tinsley of Baker Sterchi Cowden & Rice LLC, as well as William W. Drury Jr., John Anthony Klecan and Denise J. Wachholz of Renaud Cook Drury Mesaros PA.

The Rivera plaintiffs are represented by John W. Cowden and Caroline Marie Tinsley of Baker Sterchi Cowden & Rice LLC, as well as John T. Cu, Andrew Gary Giacomini and Geoffrey R. Pittman of Hanson Bridgett LLP

The Phillips plaintiffs are represented by Jason S. Hartley of Stueve Siegel Hanson LLP.

Union Pacific is represented by Joseph Michael Rebein and Tammy Beth Webb of Shook Hardy & Bacon LLP.

Kinder Morgan is represented by Catherine Joseph O'Connor, M. Ray Hartman III, Steven M. Strauss and Summer J. Wynn of Cooley LLP.

The cases are Clements et al. v. Union Pacific Railroad Company et al., case number 4:15-cv-00191, in the U.S. District Court for the District of Arizona, Rivera v. Union Pacific Railroad Company et al., case number 4:15-cv-01842, in the U.S. District Court for the Northern District of California, and Shelby Phillips III et al. v. Union Pacific Railroad Company et al., case number 8:15-cv-00718, in the U.S. District Court for the Central District of California.

The MDL petition was IN RE: IN RE: SFPP, L.P., Railroad Property Rights Litigation, case number 2647, for the Judicial Panel on Multidistrict Litigation.

--Additional reporting by Jacob Batchelor. Editing by Philip Shea.