

Union Pacific Seeks Dismissal Of Class Easement Claims

By **Patrick Boyle**

Law360, Washington (December 15, 2015, 4:04 PM ET) -- Union Pacific Railroad Co. asked a California federal judge on Monday to dismiss claims by landowners seeking payment for the construction of a pipeline under a railroad easement, saying they can't prove they own the land or are owed money for its use.

The landowners in the class action can't show where their lines of ownership fall within the right of way that Congress gave the railroad in the 1800s and which abut their properties, and can't show they lost any money by the construction of a petroleum pipeline under that right of way, Union Pacific said.

The claim for compensation "hinges on several faulty theories," the railroad said.

The four consolidated lawsuits in California are among several nationwide claiming Union Pacific unlawfully used landowners' subsurface rights in the 1950s to construct underground oil and gas pipelines within the railroad's right of way. They say the congressional easement to Union Pacific's corporate predecessor, Southern Pacific Transportation Co., allowed the railroad to use the subsurface only to support railway operations, and the landowners should have been paid to let the pipeline go through.

Union Pacific told the court the plaintiffs have no claim to the land or the subsurface rights. It rebutted their contention that they own the land up to the center point of an easement that abuts their property, saying the claim is based on a so-called "center line presumption" that they can't back up with documentation. The railroad contends the landowners cannot provide titles showing that previous owners of the land transferred the subsurface rights to the next owners.

Even if the landowners prove one of their core arguments — that the railroad exceeded its rights in using the subsurface easement for a pipeline — they aren't entitled to payments, the railroad said. It said the landowners can claim payments only on the strength of their titles to the land and subsurface rights, "not on the weakness of defendant's title."

They also have no basis for payments because there is no money to return to them, Union Pacific said. The landowners didn't pay for the subsurface rights in the first place, it said, and any money the railroad made for the underground use of the easement was not taken from the landowners.

In fact, Union Pacific said, it has no relationship with the landowners at all — and without a fiduciary relationship or something akin to it, their claim to be reimbursed through "equitable accounting" has to

be dismissed because there is no balance due to the landowners from the railroad.

Attorneys for Union Pacific did not immediately respond to requests for comment.

The lead attorney for the plaintiffs, Norman E. Siegel, declined to comment.

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

Defendant Union Pacific is represented by Joseph Rebein, Tammy B. Webb and John K. Sherk III of Shook Hardy & Bacon LLP.

The plaintiffs are represented by Norman E. Siegel, Barrett J. Vahle, Ethan M. Lange and Jason S. Hartley of Stueve Siegel Hanson LLP; Steven M. Wald, Thomas S. Stewart and Elizabeth G. McCulley of Stewart Walk and McCulley LLC; John W. Cowden, Angela M. Higgins, J. Robert Sears and Caroline M. Tinsley of Baker Sterchi Cowden and Rice LLC; Robert Ahdoot, Tina Wolfson, Theodore W. Maya and Bradley K. King of Ahdoot and Wolfson PC; Francis A. Bottini, Jr., Albert Y. Chang, Yury A. Kolesnikov of Bottini and Bottini Inc.; and Andrew G. Giacomini and John T. Cu of Hanon Bridgett LLP.

The consolidated case is In re: SFPP Right-of-Way Claims, case number 8:15-cv-00718, in the U.S. District Court for the Central District of California.

--Editing by Rebecca Flanagan.