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LAWSUITS

California Jury Says Tutor-Saliba Breached Contract on Tunnel

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By Tony Illia

The 11-year legal battle between the Los Angeles County Metropolitan Transit Authority and its contractor, Tutor-Saliba-Perini, over construction of the Red Line subway, took a new turn on Dec. 18. A state Superior Court jury found the joint venture guilty of submitting false claims and breach of contract. It awarded MTA \$446,604 in damages.

The new decision rules on 8,800 ft of disputed hand-railing inside adjoining tunnels at the Wilshire-Normandie subway station. MTA issued and paid for a change order related to the railing. But Tutor-Saliba-Perini claimed it as added work due to ambiguous bid documents and architectural plans.

"MTA has made this fight a matter of principle and not money," says Ronald Helmuth, a Pasadena-based attorney representing the agency. "It's appropriate to bring this type of wrongful conduct to light." Calls to Ronald N. Tutor, president of Tutor-Saliba Corp., Sylmar, Calif., were not returned by ENR press time.

In 1995, Tutor-Saliba-Perini filed suit to recover \$3 million in claimed work on the Wilshire-Normandie station. Its \$79-million contract had increased by \$20 million based on owner-approved change orders. MTA, in response, filed a cross complaint in 1999.

In 2001, a Superior Court judge cut proceedings short and found in favor of MTA, sanctioning Tutor-Saliba-Perini for allegedly destroying and/or concealing vital documents. MTA was awarded \$60 million. But the award was overturned on appeal in 2005 in favor of the joint venture. An appellate court ruled that the lower court judge abused his discretion and violated the contractor's due process rights.

Yet the bitter courtroom fight is far from over. Superior Court Judge Carolyn Kuhl now will rule on up to \$82,500 in penalties for Tutor-Saliba-Perini's violation of the state's unfair competition law. About \$20 million in claims and counterclaims also will be decided trials set to start next spring.