



HILL, FARRER & BURRILL LLP

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**HILL FARRER & BURRILL DELIVERS \$1.6 MILLION VICTORY
FOR EL CAPITAN OWNER IN
INVERSE CONDEMNATION LAWSUIT AGAINST MTA**

LOS ANGELES – CUNA Mutual Life Insurance Company has won a \$1.6 million negotiated settlement from Los Angeles Metropolitan Transportation Authority (MTA) relating to construction of the Hollywood/Highland Red Line Station adjacent to the historic El Capitan building on Hollywood Boulevard. This brings to a conclusion an almost nine-year battle over an inverse condemnation liability action which CUNA brought against MTA in 1996. The lawsuit sought \$755,000 for the cost of strengthening the building's foundation and protecting its façade which, according to MTA's own design documents, were threatened with damage as a result of settlement during subway construction. Nevertheless, the MTA refused to guarantee the El Capitan's integrity so CUNA turned to the courts.

“We are gratified that Judge Kalin recognized the validity of our claim, a finding that prompted the MTA to settle the case right before the jury trial was due to start on the damages,” said Kevin Thompson, Vice President of CUNA Mutual. “Our attorneys did a great job getting the original decision reversed, both in the appellate court and in the second trial.”

Kevin Brogan and Paul Porter, partners at Hill Farrer & Burrill LLP, tried the original case based on a seminal California Supreme Court ruling in *Albers v County of Los Angeles* which found that reasonable, good faith expenditures made to mitigate damage threatened by a public project can be recovered in inverse condemnation. In this trial, the judge applied an incorrect legal standard, requiring CUNA to prove that “but for” the steps taken to mitigate the threat, the building would have been damaged.

Dean Dennis, another partner at Hill Farrer & Burrill LLP specializing in appellate matters, won a reversal in the Court of Appeals which ordered a new trial, instructing the Court that CUNA was entitled to recovery if it could establish that the mitigation measures were undertaken in good faith and reasonably. The “but for” standard was in error. CUNA's good faith was established in the first trial, and MTA did not appeal that finding.

Following remand, this trial was to be in two parts with Brogan and Porter again serving as trial counsel. They were successful in persuading Judge Joseph Kalin in Los Angeles Superior Court that CUNA's mitigation expenses were reasonably incurred, thereby opening the door to a trial on the damages. However, seeing the handwriting on the wall, the MTA agreed to pay CUNA \$1.6 million, including reimbursable expenses plus interest and attorneys' fees.

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Hill Farrer & Burrill LLP is a full-service California law firm that has served the expanding litigation and transaction needs of the business community for 80 years, working with America's corporate giants, privately held companies and entrepreneurs. The firm offers strong expertise in labor and employment, real property, commercial and corporate law, intellectual property, environmental law, employee benefits, bankruptcy, and tax and estate planning. The firm's attorneys are known for the business perspective they bring to solving complex legal issues and have an outstanding track record in the courts and around the negotiating table.