APPENDIX

Remarks before Senate Oversight Committee on Decision to Award Contract for Enhanced Inspection System to Parsons Infrastructure and Technology Group, Inc.

July 29, 1998

by James A. DiEleuterio, Jr.
State Treasurer

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THANK YOU FOR INVITING ME TO DISCUSS MY DECISION TO AWARD THE BID FOR THE STATE'S ENHANCED MOTOR VEHICLE INSPECTION SYSTEM TO PARSONS INFRASTRUCTURE AND TECHNOLOGY GROUP OF PASADENA, CALIFORNIA.

I WOULD LIKE TO BEGIN MY REMARKS THIS MORNING BY MAKING THIS CLEAR: MY DECISION TO AWARD THE CONTRACT TO PARSONS INFRASTRUCTURE AND TECHNOLOGY GROUP IS BASED SOLELY ON: THE FINDINGS OF THE EVALUATION COMMITTEE; THE RESULTS OF THE BACKGROUND INVESTIGATION PERFORMED BY THE DIVISION OF PURCHASE AND PROPERTY; AND, ON MY DETERMINATION THAT IT IS IN

1x

THE BEST INTEREST OF THE STATE OF NEW JERSEY TO AWARD THIS CONTRACT.

LAST YEAR WE RECEIVED ONLY ONE BID FOR THIS PROJECT WHICH I REJECTED ON THE GROUNDS THAT IT WAS NOT TECHNICALLY COMPLIANT WITH THE RFP. FOLLOWING THAT ACTION, THE DIVISION OF PURCHASE AND PROPERTY, AT MY INSTRUCTION, PROVIDED EVERY PARTICIPANT IN THE PRE-BIDDERS CONFERENCE WITH THE OPPORTUNITY TO IDENTIFY THEIR CONCERNS WITH THE PROJECT SPECIFICATIONS. OUR GOAL IN THIS PROCESS WAS TO WRITE A NEW RFP THAT ADDRESSED THE CONCERNS OF THE ENTIRE INDUSTRY. WE ADDRESSED QUESTIONS RAISED BY EVERY PARTICIPANT WITH ***EXACTLY*** THE SAME DEGREE OF CONSIDERATION.

IN FEBRUARY OF THIS YEAR THE DIVISION ISSUED A NEW RFP. A MANDATORY PRE-BIDDERS CONFERENCE WAS HELD IN MARCH AND, AS YOU CAN SEE BY THE LIST OF ATTENDEES INCLUDED IN YOUR HANDOUT, NUMEROUS COMPANIES EXPRESSED AN INTEREST IN THE PROJECT. AS A MATTER OF

2x.

FACT, I WAS, FRANKLY, SURPRISED THAT WE RECEIVED ONLY ONE PROPOSAL ON JUNE 12 WHEN THE BID WAS OFFICIALLY OPENED.

NEVERTHELESS, THE PARSONS BID UNDERWENT THE SAME PROCESS WHICH GOVERNS THE CONSIDERATION OF EVERY PUBLIC BID. A TEAM OF CAREER STATE OFFICIALS FROM: THE DEPARTMENT OF TRANSPORTATION; THE DIVISION OF MOTOR VEHICLES; THE DIVISION OF PURCHASE AND PROPERTY; AND, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, REVIEWED THE PROPOSAL TO ENSURE THAT IT WAS TECHNICALLY RESPONSIVE TO THE RFP. I WOULD LIKE TO NOTE HERE THAT OFFICIALS FROM THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND THE FEDERAL HIGHWAY ADMINISTRATION PARTICIPATED IN THE DEVELOPMENT OF THE RFP AND THE REVIEW OF THE PROPOSAL.

3x

AFTER A CAREFUL REVIEW OF THE BID, THE COMMITTEE ADVISED ME THAT IT WAS RESPONSIVE TO THE TECHNICAL SPECIFICATIONS OF THE RFP.

IN ADDITION TO THE TECHNICAL REVIEW, THE DIVISION OF PURCHASE AND PROPERTY UNDERTOOK A COMPREHENSIVE REVIEW OF PARSONS INFRASTRUCTURE AND TECHNOLOGY. THIS REVIEW FOCUSED ON TWO CRITICAL QUESTIONS: IS THE COMPANY QUALIFIED TO DO THIS WORK; AND, IS THE COMPANY FREE OF ANY LEGAL ENCUMBRANCES WHICH MAY AFFECT ITS ABILITY TO EXECUTE THE TERMS OF THE CONTRACT.

WHAT WE FOUND – AND WHAT, IN MY OPINION, HAS BEEN GROSSLY UNDER-REPORTED – IS THAT NOT ONLY IS PARSONS A LEADER IN THE FIELD OF ENGINEERING AND CONSTRUCTION, BUT THAT IT HAS THE KIND OF LEGAL RECORD OF WHICH VIRTUALLY EVERY OTHER MAJOR CORPORATION WOULD BE ENVIOUS.

4x

ON THE QUESTION OF WHETHER PARSONS HAS THE FINANCIAL RESOURCES AND EXPERIENCE TO UNDERTAKE THIS PROJECT, CONSIDER THIS: THE COMPANY IS RANKED FOURTH IN THE COUNTRY IN THE CATEGORY OF DESIGN AND ENGINEERING AND IT IS RANKED 29TH IN THE COUNTRY IN THE CATEGORY OF CONSTRUCTION.

BY ANY MEASUREMENT, PARSONS' QUALIFICATIONS AND ITS EXPERIENCE ARE QUITE IMPRESSIVE. THIS IS A CRITICAL POINT BECAUSE IT IS ABSOLUTELY NECESSARY THAT A PROJECT OF THIS SCOPE AND SIGNIFICANCE BE ENTRUSTED TO A COMPANY WITH A PROVEN TRACK RECORD. BASED ON THESE FACTS, I HAVE TOTAL CONFIDENCE IN THE ABILITY OF PARSONS TO EXECUTE THE TERMS OF THE CONTRACT.

YOU MAY FIND IT INTERESTING TO KNOW THAT THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FEELS THE SAME WAY. IN FACT, IT GAVE PARSONS ITS *"EXCELLENCE IN TRANSPORTATION"* AWARD FOR "OUTSTANDING ACHIEVEMENT"

5x

IN THE DEVELOPMENT OF A MAJOR STATE-FUNDED PROJECT IN LOS ANGELES COUNTY IN 1997.

LET ME QUOTE A LETTER TO PARSONS FROM THE PROJECT DEVELOPMENT SUPERVISOR IN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION:

"IT GIVES ME GREAT PLEASURE, ON BEHALF OF CALTRANS, TO CONGRATULATE YOU AND YOUR STAFF FOR OUTSTANDING ACHIEVEMENT IN THE DEVELOPMENT OF THE METRO RED LINE WILSHIRE EXTENSION.

"THE CALIFORNIA DEPARTMENT OF TRANSPORTATION IS PROUD TO ACKNOWLEDGE THE ACHIEVEMENTS OF EVERYONE WHOSE PROFESSIONAL TALENT, DEDICATION AND COMMITMENT TO EXCELLENCE CONTRIBUTED TO OUR STATE'S CONTINUED LEADERSHIP IN TRANSPORTATION SYSTEM DESIGN, DEVELOPMENT, MAINTENANCE AND OPERATION." –

SIGNED, R.P. WEAVER, DEPUTY DIRECTOR, PROJECT DEVELOPMENT, JUNE 20, 1997.

6x

INCIDENTALLY, CALTRANS GAVE THE AWARD AND COMMENDATION TO PARSONS FOR THE VERY MTA PROJECT WHICH IS NOW AT THE CENTER OF SO MUCH DISCUSSION, AND IF YOU WILL NOTE THE DATE ON THE LETTER, YOU CAN SEE THAT IT DID SO ***AFTER*** THE SO-CALLED WHISTLEBLOWER LAWSUIT WAS FILED.

IN THE COURSE OF ITS RESEARCH, THE DIVISION OF PURCHASE AND PROPERTY CONTACTED THE FEDERAL GOVERNMENT, WITH WHOM PARSONS IS A MAJOR CONTRACTOR. THE FEDERAL GOVERNMENT DOES NOT HESITATE TO FINE, PENALIZE OR SEEK JUDGMENTS AGAINST COMPANIES WHICH IT BELIEVES HAVE VIOLATED FEDERAL CONTRACTS OR PERFORMED UNSATISFACTORILY.

ONCE AGAIN, THE DIVISION FOUND A REMARKABLY CLEAN RECORD. THE FEDERAL GOVERNMENT HAD NO CLAIMS AGAINST PARSONS; IT HAD TAKEN NO ACTIONS TO SUSPEND OR DEBAR PARSONS; AND IT CONTINUES TO CONTRACT WITH

7x

PARSONS ON MAJOR CONSTRUCTION AND ENGINEERING PROJECTS AROUND THE COUNTRY.

NOW I WOULD LIKE TO DISCUSS THAT PART OF OUR EVALUATION WHICH FOCUSED ON CIVIL MATTERS.

THE STATE CONDUCTED A THOROUGH SEARCH OF THE NUMBER AND NATURE OF CIVIL JUDGMENTS RENDERED AGAINST PARSONS. THE DIVISION OF PURCHASE AND PROPERTY COMMISSIONED DUNN & BRADSTREET TO PERFORM A COMPUTER SEARCH FOR ALL JUDGMENTS OVER $1 MILLION LEVIED AGAINST PARSONS IN THE PAST 10 YEARS.

WHAT WE FOUND IS THAT WITH OVER 100,000 CONTRACTS IN FORCE DURING THIS PERIOD, THERE WERE ONLY TWO SUCH JUDGMENTS RENDERED. ONE OF THEM WAS SUBSEQUENTLY OVERTURNED. THE ONLY REMAINING JUDGMENT WAS FOR $3 MILLION AND IT CAME AS THE RESULT OF A PERSONAL INJURY SUIT WHICH HAD NOTHING TO DO WITH THE COMPANY'S PERFORMANCE OR INTEGRITY. THAT IS A REMARKABLE

8x

RECORD FOR A COMPANY OF THIS SIZE AND COMPLEXITY. INCIDENTALLY, PARSONS HAS PERFORMED 18 PROJECTS FOR THE STATE OF NEW JERSEY IN THE PAST 10 YEARS, AND WE HAVE BEEN MORE THAN SATISFIED WITH ITS PERFORMANCE IN ALL OF THOSE CASES.

THE SUITS IN CALIFORNIA WHICH HAVE BECOME THE FOCUS OF SO MUCH CONTROVERSY ARE ALSO WORTH MENTIONING. FIRST, LET ME CLARIFY SOMETHING: THESE PENDING SUITS ARE NOT CRIMINAL CASES, THEY ARE CIVIL MATTERS. UNDER NEW JERSEY STANDARDS, A PENDING CIVIL MATTER IS NOT IN AND OF ITSELF REASON TO DISQUALIFY A COMPANY. THE EXECUTIVE ORDER AND REGULATIONS GOVERNING DEBARMENT AND SUSPENSION DO NOT PERMIT SUCH AN ACTION AGAINST THIS FIRM BASED ON THE EXISTENCE OF THESE ALLEGATIONS.

WITH RESPECT TO THESE SUITS, IT WOULD BE INAPPROPRIATE FOR ME AS STATE TREASURER TO CHARACTERIZE THE LITIGATION. THE QUESTION OF WHETHER A CHARGE HAS

9x

LEGAL MERIT IS NOT MINE TO ANSWER. HOWEVER, IT IS MY JOB TO DETERMINE WHETHER LITIGATION INVOLVING A POTENTIAL OR CURRENT STATE CONTRACTOR REFLECTS NEGATIVELY ON THE COMPANY'S INTEGRITY, OR WHETHER THE OUTCOME OF THE LITIGATION COULD PLACE THE STATE OR THE PROJECT IN JEOPARDY.

IT WAS CLEAR TO ME BASED ON ALL OF THE FACTS AT MY DISPOSAL, AND BASED ON A COMPREHENSIVE REVIEW BY THE STATE, THAT THIS LITIGATION WOULD NOT AFFECT PARSONS' ABILITY TO MEET THE TERMS OF THE CONTRACT. INDEED, THE UNPROVED ALLEGATIONS MADE IN THESE CASES APPEAR TO BE INCONSISTENT WITH PARSONS' INTERNATIONAL REPUTATION AND RECORD OF PERFORMANCE.

THE FACT THAT THE STATE OF CALIFORNIA AND THE FEDERAL GOVERNMENT REFUSED TO JOIN THE SUIT AGAINST PARSONS, DESPITE THE USE OF STATE AND FEDERAL FUNDING FOR THE PROJECT, IS INSTRUCTIVE, PARTICULARLY IN VIEW OF THE CALIFORNIA DEPARTMENT OF TRANSPORTATION

10x

"EXCELLENCE" AWARD WHICH I MENTIONED EARLIER IN MY REMARKS.

IT SHOULD ALSO BE NOTED THAT THE KIND OF OVER-BILLING ALLEGED IN THE CALIFORNIA CASES WOULD BE VIRTUALLY IMPOSSIBLE UNDER THE TERMS OF THIS CONTRACT.

IN THE CALIFORNIA CASE, THE CONTRACT IN QUESTION WAS A COST-PLUS CONTRACT. A COST-PLUS CONTRACT ESSENTIALLY PERMITS THE CONTRACTOR TO BILL THE STATE FOR ALLOWABLE COSTS AND ALLOWABLE OVERHEAD. IN OTHER WORDS, IT DOES NOT SET A FIRM PRICE FOR THE PROJECT. IT ALLOWS THE CONTRACTOR TO BE REIMBURSED BY THE STATE AS THE PROJECT ADVANCES.

THE CONTRACT WHICH WE ARE PREPARING TO AWARD, LIKE MOST OF OUR CONTRACTS, IS WHAT WE CALL A FIRM-FIXED-PRICE CONTRACT. IN THIS TYPE OF CONTRACT, THE COST TO THE STATE IS FIRMLY ESTABLISHED. THERE IS A FIRM-FIXED PRICE ESTABLISHED FOR THE COST OF CAPITAL

CONSTRUCTION AND A FIRM-FIXED PRICE FOR EACH INSPECTION PERFORMED.

THE STATE WILL NOT BE LIABLE FOR REIMBURSING PARSONS FOR ANY UNANTICIPATED COST INCREASES IT MAY INCUR EITHER FOR DESIGNING AND BUILDING THE FACILITIES OR FOR OPERATING AND MAINTAINING THE SYSTEM. THIS FORM OF CONTRACT ENSURES THAT THERE WILL BE NO SURPRISES. BOTH PARTIES ARE BOUND TO THE PRICES AND CONDITIONS ESTABLISHED IN THE CONTRACT.

THE ONLY WAY OUR COSTS COULD BE INCREASED IS IF THE VENDOR IDENTIFIES AN UNANTICIPATED CHANGE IN CONDITIONS. FOR EXAMPLE, IF DURING THE BUILDING PHASE OF ONE OF THE FACILITIES PARSONS AND THE STATE DISCOVER AN UNANTICIPATED CONDITION WHICH REQUIRES ENVIRONMENTAL REMEDIATION, PARSONS COULD REQUEST A CONTRACT MODIFICATION. THE BASIS FOR THAT MODIFICATION WOULD HAVE TO BE VERIFIED BY THE PROJECT

MANAGERS AND THE CONTRACT MODIFICATION WOULD THEN HAVE TO BE APPROVED BY ME.

IF, ON THE OTHER HAND, PARSONS DETERMINES AT SOME POINT THAT IT MUST HIRE MORE EMPLOYEES TO HANDLE AN UNEXPECTED INCREASE IN VOLUME, THE COMPANY – NOT THE STATE – WOULD BE RESPONSIBLE FOR THE ADDITIONAL COST.

NOW I WOULD LIKE TO SHIFT YOUR ATTENTION TO THE STATE LAW UNDER WHICH I HAVE PROCEEDED TO THIS POINT.

THE CLEAN AIR COMPLIANCE ACT OF 1995 ENACTED BY THIS LEGISLATURE MANDATES THE USE OF AN ENHANCED MOTOR VEHICLE INSPECTION SYSTEM FOR BRINGING NEW JERSEY INTO COMPLIANCE WITH THE FEDERAL CLEAN AIR ACT. WHEN YOU CONSIDER THE ALTERNATIVES TO THIS SYSTEM – A FEDERALLY IMPOSED BAN ON NEW HIGHWAY CONSTRUCTION OR, EVEN WORSE, SWEEPING FEDERAL RESTRICTIONS ON NEW BUSINESS CONSTRUCTION OR EXPANSION – IT IS CLEAR THAT THIS LAW WAS NECESSARY.

UNDER THAT LAW, THE NEW JERSEY STATE TREASURER IS CHARGED WITH SOME VERY CLEAR RESPONSIBILITIES, AND I HAVE BEEN CAREFUL TO MEET THEM AT EVERY STAGE OF THIS PROCESS.

FIRST, I WAS CHARGED WITH COORDINATING THE ISSUANCE OF AN RFP WHICH SETS AMBITIOUS BUT REALISTIC GOALS. THAT WE HAVE DONE – TWICE -- WITH THE EXPLICIT APPROVAL OF FEDERAL REGULATORS.

SECONDLY, AS TREASURER I AM RESPONSIBLE FOR ENSURING THAT THE REVIEW PROCESS IS COMPREHENSIVE AND EXHAUSTIVE. AS I DEMONSTRATED EARLIER IN MY REMARKS, THIS BID, AS WELL AS PARSONS INFRASTRUCTURE AND TECHNOLOGY, WAS EXAMINED WITH PAINSTAKING SCRUTINY.

THIRDLY, THE LAW REQUIRES THAT THE TREASURER AWARD THIS CONTRACT. THIS PROVISION IS UNIQUE BECAUSE THAT

RESPONSIBILITY NORMALLY FALLS TO A PURCHASING OFFICER WITHIN THE DIVISION OF PURCHASE AND PROPERTY.

IN CARRYING OUT THIS RESPONSIBILITY, THE TREASURER MUST CHOOSE BETWEEN THREE POSSIBLE CONTRACT SCENARIOS: TO DESIGN AND BUILD ONLY; TO DESIGN, BUILD, OPERATE AND MAINTAIN; AND A HYBRID COMBINATION OF THE TWO PREVIOUS SCENARIOS. I WOULD ALSO NOTE THAT A SERIES OF MEETINGS WERE HELD WITH THE AFFECTED UNIONS TO PROVIDE THEM WITH SUFFICIENT INFORMATION TO PREPARE A PROPOSAL.

WE RECEIVED ***ONE*** BID. ***THIS*** BID. TO DESIGN, BUILD, OPERATE AND MAINTAIN A NEW MOTOR VEHICLE INSPECTION SYSTEM. IN MY JUDGMENT, IT IS A RESPONSIVE BID FROM A RESPONSIBLE BIDDER.

THEREFORE, IN THE ABSENCE OF A LEGALLY SUSTAINABLE BASIS FOR REJECTING THE BID, I AM LEFT WITH TWO CHOICES: TO AWARD THE CONTRACT; OR, TO REJECT IT AND PLACE THE

STATE IN JEOPARDY OF FEDERAL SANCTIONS, INCLUDING THE LOSS OF SUBSTANTIAL FEDERAL FUNDS, AND LEGAL ACTION BY THE BIDDER.

BASED ON THE FINDINGS OF OUR REVIEW AND INVESTIGATION, I BELIEVE THAT THERE IS NO COMPELLING LEGAL, TECHNICAL OR PRACTICAL REASONS FOR REJECTING THIS BID. I AM ALSO CERTAIN THAT THROUGHOUT THIS PROCESS, I HAVE BEEN FAITHFUL TO THE LETTER AND SPIRIT OF THE CLEAN AIR COMPLIANCE ACT OF 1995, AS WELL AS THE PURCHASING LAWS UNDER TITLE 52 OF THE NEW JERSEY STATUTES.

I WOULD BE HAPPY TO ANSWER ANY QUESTIONS FROM THE COMMITTEE.

THANK YOU.

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY PETE WILSON, Governor

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE DIRECTOR
1120 N STREET
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 654-6490
FAX (916) 654-6608

June 20, 1997

Parsons/Dillingham
523 West 6th Street, Suite 400
Los Angeles, CA 90014

Ladies and Gentlemen:

It gives me great pleasure, on behalf of Caltrans, to congratulate you and your staff for outstanding achievement in the development of the Metro Red Line, Wilshire Extension.

This project was recognized as the winner in Category 1 - Intermodal Transportation in the 1997 Excellence in Transportation awards competition.

The judges noted that, "By adding only two miles and three stations to the MTA's rail transit system, the subway's ridership numbers increased from 18,000 a day to 36,500 the first month. The jury was also impressed with the aesthetic treatment that involved the creation of landscaped and water amenity in the community."

The California Department of Transportation is proud to acknowledge the achievements of everyone whose professional talent, dedication, and commitment to excellence contributed to our state's continued leadership in transportation system design, development, maintenance, and operation.

Please convey my congratulations to all those responsible for a job well done. Information regarding presentation of the Excellence Awards will be forwarded to you shortly.

Sincerely,

Dick Weaver

R. P. WEAVER
Deputy Director
Project Development

APPENDIX I. Official List of Those Who Signed in at the I/M Bidder's Conference

American Decal & Mfg. Co.
1450 Garrett Dr.
Wall NJ 07719
ATTN: William H. Thomas
Phone: 732-280-7944

Aspire, Inc.
925 Lincoln Highway
Morrisville PA 19067
ATTN: Rinaldo Minicucci
Phone: 215-295-0722

Classic Vehicle Advocate Group
48 Bush Ave.
West Patterson NJ 07424-3311
ATTN: Butch De Zuzio
Phone: 973-881-8838

de la Torre Klausmeir Consulting
1401 Foxtail Cove
Austin TX 78704
ATTN: Rob Klausmein

Deloitte & Touche
144 West State Street
Trenton NJ 08608-1102
ATTN: Virginia Stillwell

Dynamometer Car
31 Northampton Drive
Willingboro NJ 08046
ATTN: Russell F. Bent

EA Engineering Science & Technology
3 Washington Center
Newburgh NY 12550
ATTN: Art Vatsky

Environmental Systems Products
7 Kripes Rd.
East Granby CT 06025
ATTN: Rinaldo Tedeschi

Envirotest Systems Corp.
246 Sobrante Way
Sunnyvale CA 94086
ATTN: Joe McKeon

Hunter Engineering Co.
995 Plowshare Rd.
Yardley PA 19067
ATTN: Doug Woolverton

J. L. Associates, Inc.
1201 Edwin Ave.
Atlantic City NJ 08401
ATTN: Patrick Nolan

Keating Technologies, Inc.
4525 E. Skyline Drive, Suite 109
Tuscon AZ 85718
ATTN: Thomas Fournier

L. R. Kimball & Assoc.
1150 Raritan Rd., Suite 102
Cranford NJ 07016
FAX: Gary R. Pittman

Local 518 S.E.I.U
880 E. 5th Street
Florence NJ 08518
ATTN: Kevin P. Mattis

MAHA
Barfield Court
Marco Island FL
ATTN: Jerry Aman

Maxwell Emissions Test Systems
118 Pickering Way, Suite 104
Exton PA 19341
ATTN: Geri Courington

MCI Telecommunications
2495 Natomas Park Drive, Suite 550
Sacramento CA 95833
ATTN: Richard A. Storick

MCI Telecommunications
979 East Park Drive
Harrisburg PA 17111
ATTN: Joseph Battista

Parsons Engineering Science
100 W. Walnut St.
Pasadena CA 91124
ATTN: Jim Shappell
Phone: 626-440-6000

Parsons Infrastructure & Technology Group
2233 Watt Avenue, Suite 330
Sacramento CA 95825
ATTN: Larry Sherwood

ProtectAir, Inc.
5830 Campus Rd.
Mississauga Ontario Canada L4V-1G2

Sherman Engineering, Inc.
2700 W. Lawrence Ave., Suite M
Springfield IL 62704
ATTN: Frank Sherman

Siemens
400 Atrium Drive
Somerset NJ 08873
ATTN: Tom Michlik

Techni Systems, Inc.
116 Woodview Lane
Cinnaminson NJ
ATTN: William B. Young

Testcom, Inc.
25 Walker Way
Albany NY 12205
ATTN: Edmund Trifari, Jr.

QCSC
52 Avenue E
Lodi NJ 07644-1908
ATTN: Daniel Buckley

STATEMENT OF ALAN KAUFMAN
Senate Legislative Oversight Committee - July 29, 1998

Good morning. My name is Alan Kaufman. I am a National Staff Representative with the Communications Workers of America. CWA is pleased to have the opportunity to speak to the members of the Senate Legislative Oversight Committee. We never called for hearings because we don't think the process should have gotten this far. We never should have been in the position to even contemplate privatizing inspections. The Parsons bid should be rejected, period.

However, we are at this point in the process, a hearing was called, and we are prepared to speak with the Committee on all the important issues this contract raises.

We are here to provide you with evidence that this contract will cost the taxpayers of New Jersey millions more than to keep inspections public as they have been for sixty years.

We are here to provide you with evidence that the allegations that have been made against Parsons go directly to the issue of their integrity, honesty and ability to do the job.

And we are here to say that it is unconscionable to privatize a workforce that has given years of dedicated and honest service to the state and that has been trained at the expense of the New Jersey taxpayers. To turn this workforce over to a private company from California that has contributed nothing to New Jersey is something that the elected representative of the people should stop.

But the Administration is bent on going forward, despite the slew of criticism that appears daily in the press. The philosophy of privatization must be implemented at all costs. And the cost will be borne by the taxpayers and the inspection workers.

With me are CWA District I Research Director Dr. Kenneth Peres, and CWA Supervisor with the Division of Motor Vehicles Jerry Jagger, who each have relevant, but separate points to make. Out in the audience are other CWA supervisors.

Parsons spokesperson Carl Golden was reported in the press as saying CWA didn't represent any motor vehicle inspection workers, but we just go around throwing out numbers and opposing privatization. Let me briefly address these points.

Well, CWA does oppose privatization. Privatization is neither in the public interest nor in the interests of the workers we represent. And I think it is very clear that the public sentiment has

shifted against privatization as it has become clear that it does not save the taxpayers money and that private companies, whose primary concern is profit, do not provide the same quality of service as public run entities. The working public of the private sector have also experienced the attack on their own living standards through subcontracting of production to low wage countries. That is the private sector version of privatization. It's about wiping out unions and good paying jobs in the name of corporate profits.

However, just as the taxpayer saves no money when public services are privatized, neither does the consumer save any money when jobs are taken overseas to be produced by workers making a dollar an hour and less. That Nike shoe that costs $5 to make costs from $75 to $150 as the discount store.

But we are here today because in 1995 there was a privatization frenzy and the Legislature enacted legislation, mainly along party lines, which let the Treasurer explore the possibility of privatizing a new enhanced vehicle inspection system for New Jersey. The Federal Clean Air Act Amendments led to the decision to clean up car exhausts. However, Privatization was definitely not part of the Federal mandate. It was part of the political landscape that the current Whitman Administration pushed with Carl Golden helping to lead the charge. And so we have a law that Mr. Golden and other well connected corporate politicos stand to financially benefit from.

And while the members of this committee split their vote along party lines in enacting the 1995 law, it is clear from the current bipartisan effort against budget privatization, from letters from both sides of the aisle against awarding this bid, plus the outspoken opposition of Speaker Collins to privatizing inspections, that the political mood has shifted, reflecting the unfavorable experience the public has had with the privatization of various public services, and the displacement of experienced and dedicated public workers to private companies who pay less and do not provide equal health care and pension benefits.

The CWA research Department, under Dr. Kenneth Peres, has been the source of numerous documents on the NJ Budget and State Health Benefits Plan, such as **Do the Right Thing** and **Good Medicine**. Some of these research documents have been used officially in public hearings conducted by the Legislature and have been used by the Division of Pensions to bring about health care savings which saved taxpayers millions of dollars. We have fought battles with both Democratic and Republican Administrations over contracts, health care and pensions, without being accused us of throwing numbers around.

Even if we did not represent any inspection workers we would say that the Parsons contract is a Bad Deal for New Jersey. The workers we represent live here and pay taxes and we feel confident that they want us to address the issues which affect them. But, I am also pleased to say that we **do** represent the supervisors of the motor vehicle inspection program, most of whom have come up through the ranks. They are citizens of New Jersey whose taxes helped secure the land and build the infrastructure of the motor vehicle inspection program. And unlike the Parsons Corporation from California for whom Mr. Golden speaks, which has contributed nothing to this

program, the CWA supervisors have given years of dedicated, honest service to the task of inspecting vehicles. There are no lawsuits against them or the State alleging fraud against the public.

We have provided each of you a packet of information which includes copies of my statement, the statement and report on costs by Dr. Peres, a long and detailed letter from CWA counsel Steven P. Weissman which outlines why the Treasurer should not sign the contract and Parsons should be barred from receiving the contract, copies of the lawsuits from California, Pennsylvania and North Carolina and copies of some articles off the Internet relating to the lawsuits Parsons disclosed in their bid and those they did not disclose.

As soon as the Treasurer forwarded his report to the Legislature through Senate President DiFrancesco and Speaker Collins, CWA held a press conference and pointed out how the state would lose money during the period of continued regular inspections in the year between October, 1998 when Parsons was scheduled to take over and October 1999. We also pointed out some of the political connections involved in the contract and distributed copies of the lawsuits alleging fraud we had obtained from California, since all the Parsons had done was provide the cover sheets.

Since then, we received some numbers from the Treasurer on State costs which form the basis of our Research Department report. And we discovered and made public the undisclosed lawsuit from Pennsylvania.

Our general position on this bid is well known. Privatizing motor vehicle inspections is not in the public interest even if Parsons was a squeaky clean corporation. There is no good reason why a California firm should make profits inspecting New Jersey cars by paying long term, dedicated employees less in overall wages and benefits while paying no rent, gas, water, electric, non-routine maintenance and trash pick up costs on a system they contributed nothing of their own resources to build.

But Parsons is not squeaky clean. And it is mind boggling to see how the Administration is bent on going forward with this contract despite the allegations out there about Parsons. I won't go through all the legal problems that Parsons has. I ask that you spend the time to read Steve Weissman's letter to the Treasurer. The allegations raised in both California and especially Pennsylvania raise serious questions about the integrity of Parsons and their ability to perform what is required under the contract. I don't represent these problems as any more than allegations but the allegations are of a very serious nature such that this committee should assure itself that they have been fully and adequately researched.

This committee owes that to the public.

Further, the failure to disclose the Pennsylvania lawsuit should be considered a non-waivable non-conformity to the bid requirements and the basis for denying the contract outright.

And Parsons will cost more than the state. We do not believe that the Administration

figures provide you with an accurate cost analysis. They have underestimated Parsons costs by millions and overestimated the State costs by millions. Dr. Kenneth Peres will speak to that issue.

And Parsons cannot do a better, more honest job than the state workers who have been running this program from the trenches since its inception in 1938. CWA Supervisor Jerry Jagger will speak to that issue.

We will all be available to answer any questions you might have.

First, I would like to present CWA District One Research Director Dr. Kenneth Peres who has presented testimony on budget and money matters numerous times in New Jersey over the last ten years.

6statement

WEISSMAN & MINTZ
ATTORNEYS AT LAW
ONE EXECUTIVE DRIVE
SUITE 200
SOMERSET, NEW JERSEY 08873
(732) 563-4565
FAX (732) 560-9779

DAVID A. MINTZ*
STEVEN P. WEISSMAN
ALAN M. COMPAGNON
JAMES M. COONEY
JUDIANN CHARTIER
JOEL N. WEISSMAN
SHARRA E. GREER

OF COUNSEL
MARK ROSENBAUM

*ADMITTED TO PRACTICE IN NEW YORK ONLY

150 WEST STATE STREET
TRENTON, NEW JERSEY 08608
(609) 394-0856

80 PINE STREET, 33rd FLOOR
NEW YORK, NEW YORK 10005
(212) 509-0918
FAX (212) 425-1588

PLEASE REPLY TO SOMERSET

July 23, 1998

VIA FACSIMILE (609) 984-3888
AND VIA OVERNIGHT MAIL (FEDERAL EXPRESS)

James DiEleuterio, Deputy Treasurer
Department of Treasury
P.O. Box 002
Trenton, NJ 08625-0002

Re: Parsons Corp. Contract
Our File No. 1J-98-117

Dear Mr. DiEleuterio:

Please be advised that I represent the Communications Workers of America, AFL-CIO. As you are aware, CWA represents supervisory employees who work at DMV inspection stations.

On July 17, 1998 you signed a letter of intent to award a seven year contract to the Parsons Corporation to design, build, operate and maintain an enhanced motor vehicle inspection system. It is our understanding that the contract with Parsons will go into effect on August 3, 1998.

On behalf of CWA I am requesting that you rescind your decision to award the contract to Parsons for the following reasons:

(1) Parsons' bid contains a material non-conformity which may not be waived;

24x

(2) The fact that well-connected New Jersey Republicans, including Carl Golden, Frank Holman and Anthony Sartor, stand to reap enormous economic benefits from the Parsons' contract, creates the appearance of impropriety; and

(3) Public employees can operate and maintain the enhanced inspection stations more economically and more efficiently than a private company.

Further, pursuant to N.J.S.A. 17:12-3.1, CWA requests that debarment hearings be conducted with respect to Parsons. Each of the above items will be addressed in turn.

1. Parsons Failed to Fully Disclose Pending Litigation

While many factors must be weighed in awarding a contract valued at between $550 and $650 million dollars to a private company, at the very top of the list must be the company's reputation for honesty and fair dealing and its ability to perform the required work. Presumably, the State recognizes that to make such judgments it is imperative that the past performance of a bidder be subjected to close scrutiny. To facilitate this process, §5.5.5 of the RFP requires that:

> [E]ach Bidder shall disclose any current prosecution, pending charges, or other legal proceedings, in any jurisdiction, concerning the Bidder, any individual associated with the Bidder, any subcontractor, or any financial backer of the Bidder which may bear upon the Bidder's ability to perform the contract. This is a continuing disclosure requirement. Any litigation or investigation commencing after submission of a proposal, must also be disclosed by the Bidder in a written statement to the Director of the Division of Purchase and Property.

Further, §5.5.6 of the RFP provides that the bidder shall present any other information that it believes would assist the State in evaluating the viability of its qualifications.

In response to the above sections of the RFP, Parsons disclosed three lawsuits pending

in California, two of which were filed in state court and one in federal court. Unfortunately, you have cavalierly dismissed the significance of these lawsuits, stating, "Parsons is a big company and corporations get sued all the time. People are suing New Jersey all the time. I don't know what the contract was in California. That's up to the courts out there." The Times, "Treasurer Defends $400M Auto Pact" (July 16, 1998). The fact that you don't know "what the contract was in California," and apparently have no interest in finding out is, to say the least, troubling. The public interest demands that pending litigation -- especially litigation involving claims of fraud, cost overruns and overcharges -- be fully investigated to determine the fitness of a contractor. While such litigation must be taken seriously regardless of the size and scope of a contract, when the State is about to enter into a seven year, $650 million contract that will impact upon virtually every licensed driver, it is imperative that a full investigation be conducted into such allegations. If Treasury has undertaken any type of investigation, please provide a copy of the Department's report or analysis.

Of equal, if not greater, significance is that Parsons did not disclose a pending lawsuit in Pennsylvania state court. In that action, Ponderosa Fibres of Pennsylvania is seeking more than $100 million in damages from Parsons Corp. and a Parsons' subsidiary, Parsons Main. The complaint levels twelve separate accusations against Parsons, including fraud, negligence, conspiracy and breach of contract. At issue in this litigation is the allegedly faulty construction of a paper recycling plant. The project was financed through the sale of Pennsylvania Economic Development Bonds and equity contributions from Ponderosa's general partners.

Ponderosa alleges that Parsons Corp. represented itself as a leading international contractor, with experience handling the engineering, procurement, construction, commission,

testing and start-up of a complex processing plant such as the recycling facility. Parsons also provided assurances that its wholly-owned subsidiary, Parsons Main, Inc., had the necessary expertise and experience to fulfill the terms of the contract.

However, according to the lawsuit, the engineering and design of the recycling facility were defective and Parsons Main fell behind schedule. It is further alleged that Parsons knew or should of known that the design, engineering and construction defects were so significant that major reengineering, redesign and retrofitting would be required to achieve the performance requirements of the contract. On June 27, 1997 Ponderosa notified Parsons that the recycling facility "had not met any of the performance guarantees" and that Parsons should submit a "realistic plan of action...to address the deficiencies." However, on July 2, 1997 Parsons and its subsidiary "unilaterally, abruptly and without forewarning declared that the Facility had achieved commercial operation and notified Ponderosa that it was turning the facility over to Ponderosa for care, custody and control." According to Ponderosa, the abrupt abandonment of the facility without notice jeopardized the "safety and integrity of the facility and placed critical systems and processes in the facility in risk of damage."

Clearly, the failure to disclose the Ponderosa lawsuit by Ponderosa violates the requirements of the RPF. As such, Parsons' bid is non-conforming and on this basis alone, should be rejected. Additionally, Parsons' failure to disclose this critical information raises troubling questions about the company's integrity and its ability to faithfully and competently perform the work at issue. Further, the Ponderosa lawsuit itself calls into question Parsons' track record of performance.

While certain requirements in bidding specifications may be waived without frustrating

the policies which underlie competitive bidding, the waiver of other conditions may encourage "improvidence or extravagance," as well as "corruption or favoritism." Terminal Const. Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. 403, 412 (1975). As the appellate court noted in Matter of On-Line Games Contract, 279 N.J. Super. 566, 595, "[i]f the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." But, on the other hand, if the non-compliance is not material and may be waived, a court must determine whether a decision to grant waiver constitutes an abuse of discretion.

As a matter of law, it must be recognized that the bid by Parsons is non-conforming. You must therefore either reject the bid or find that the non-compliance is not material and may be waived. But surely, the failure to disclose the Ponderosa lawsuit represents a substantial and material deviation from the requirements of the RFP. Under such circumstances, waiver is clearly inappropriate. Indeed, a major objective of all bidding statutes is "to promote the honesty and integrity of those bidding and of the system itself." Keyes Martin, 99 N.J. 244, 256 (1985). Not only do the lawsuits pending against Parsons cast doubt upon the honesty and integrity of the company, the failure to disclose the Ponderosa action appears to be a blatant attempt to avoid the type of scrutiny that the bidding law is designed to encourage. Moreover, the information required by §§5.5.5 and 5.5.6 of the RFP is a material condition and it is firmly established that such conditions may not be waived. Terminal Const., 67 N.J. at 411.

Apparently, this is not the first time that Parsons failed to disclose pending litigation. On October 31, 1996 the Los Angeles Times reported that Metro East Consultants, a Parsons' subsidiary, did not reveal that another subsidiary, Deleuw, Cather & Co., was the subject of a

false claims lawsuit. (Metro East had submitted a bid to the Los Angeles MTA to perform work on the subway system). The lawsuit accused the Parsons' subsidiary of overbilling the MTA by nearly $20 million. Upon learning of this lawsuit, the Transit Chief withdrew his recommendation to award a contract to Metro East. This pattern of non-disclosure militates in favor of rescinding the letter of intent and subjecting the entire Parsons' bid to closer scrutiny.

2. **The Involvement of Prominent Republicans in the Bidding Process Creates the Appearance of Impropriety**

Conflict of interest and patronage issues also compel the recision of the letter of intent. Through legislation and case law, New Jersey has emphatically declared that public officials should avoid even the appearance of a conflict of interest. Thus, the Conflicts of Interest Statute, N.J.S.A. 52:13D-12 et seq., requires that government officials avoid conduct which creates the justifiable impression among the public that the public trust is being violated. Further, N.J.S.A. 52:13D-17 provides that no State officer or employee, after leaving their position in government, should provide representation in connection with a matter in which they had direct or substantial involvement during the course of their employment. The conflict of interest guidelines issued by the Department of Law and Public Safety in connection with the enhanced inspection maintenance system reinforce the notion that even the appearance of a conflict is to be eschewed.

Nevertheless, as has been widely reported, Parsons has "put together a dream team of well-connected New Jersey Republicans." The Star Ledger, "Auto Tester Relies on GOP Aides" (July 16, 1998). Parsons was represented at DOT bidding conferences by Frank Holman, a former GOP State chairman, who continues to collect $5,000 a month as a consultant to the Party. Further, Carl Golden, Governor Whitman's former spokesman who left the State

government just 18 months ago, stands to collect $178,000.00 per month over the course of seven years on behalf of his communications firm. Golden's firm, whose principals include Roger Bodman, a DOT Commissioner under Governor Kean, was hired by Parsons this past January. Parsons has also designated Anthony Sartor, a close political and personal friend of Senate President Donald DiFrancesco, as its engineer. Moreover, Parsons contributed $64,100 to Republican campaign committees during last year's State elections. Further exacerbating the appearance of impropriety is that Dave Mortimer, the State official in charge of the new inspection contract, is the chairman of the Sussex County Republican Party. During Golden's tenure as the Governor's spokesman he had direct and substantial involvement in issues pertaining to the DMV privatization initiatives, and to the construction and operation of enhanced inspection facilities. In an article entitled "Governor Jump-starts Auto Bill; Inspection Would Change to Every Two Years," published in the March 31, 1995 edition of The Record, the enhanced inspection bill was described as a political power struggle, pitting the State Government against the federal government and placing Governor Whitman in conflict with State lawmakers.

Golden, serving as the Governor's spokesman, told The Record that the vote on the enhanced inspection bid demonstrated that Whitman has" the political clout to persuade lawmakers to cooperate with her on key issues." According to Golden, the enhanced inspection bill was something "the Governor wanted, felt very strongly about, and was successful in persuading the Senate to support...it really demonstrates the Governor's ability to get things done." Then, in December of 1995, when legislation was introduced to repeal the enhanced inspection law, Golden declared that the proposal advanced by three Democratic Assemblymen

"reeks of demagoguery" and the Governor will not back away from the bill.

Golden continues to serve as a chief spokesman relative to the enhanced inspection system, only now, he is, at least in theory, speaking on behalf of Parsons. Yet, there is simply no doubt that from the public's point of view there is an actual conflict of interest. Just 18 months earlier, Golden functioned as the Governor's mouthpiece, and during his tenure he commented, on the Governor's behalf, with respect to the very legislation that the State is in the process of implementing. Accordingly, CWA calls upon you to reject the bid submitted by Parsons because Golden's prominent role as a Parsons' spokesman, coupled with the involvement of a former DOT Commissioner, the State GOP chairman and a close personal friend of Senator DiFrancesco, undoubtedly creates the appearance of impropriety.

3. Absent Demonstrated Economies or Efficiencies, Replacing Public Workers With Private Workers is Illegal

Additionally, the letter of intent should be rescinded because it will cost more to use a private company to operate and maintain the inspection stations than it will to use public employees. As per the report recently prepared by the CWA research department entitled, "Privatizing Vehicle Inspections - A Bad Deal for New Jersey," the State has overestimated its own costs for enhanced inspections by at least $7.6 million per year, or $3.76 per car. As CWA researchers demonstrate, public employees can perform enhanced inspections at a rate of $22.56 per car, while the Parsons' contract will cost the State at least $28.36 per car. In other words, the Parsons' contract will cost taxpayers an additional $5.80 per car or $11.72 million per year. While you have dismissed CWA's cost comparison as flawed, you have yet to explain the basis for your conclusion in this regard. Before the Parsons' contract is awarded, it is incumbent upon you to explain why CWA's calculations are incorrect.

For example, how do you address CWA's contention that the State incorrectly calculated its labor costs based upon five, as opposed to four safety specialists per lane, resulting in an overestimation of $3.63 million? For that matter, upon what data did the State rely when it attributed ten overtime hours per week to every worker? As CWA points out in its report, the State is assuming that it will pay overtime to workers who will not be on the line or working. Accordingly, the State has overestimated overtime requirements by at least $2.2 million. Further, why didn't the State include $5.49 million for additional operating costs and other indirect expenses, which the State will be required to pay under the terms of the RFP?

To enable CWA, legislators and members of the public to independently analyze the State's cost calculations, kindly make available all data, analyses and reports reviewed or prepared by Treasury, comparing the costs of operating and maintaining inspection stations using public workers versus a private company.

As the Supreme Court noted in In re IFPTE, Local 195 v. State, 88 N.J. 393, 411 (1982), a public employer does not enjoy "limitless freedom" to subcontract for any reason. The State may not

> subcontract in bad faith for the sole purpose of laying off public employees or substituting private workers for public workers. State action must be rationally related to a legitimate governmental purpose. Our decision today does not leave public employees vulnerable to arbitrary or capricious substitutions of private workers for public employees.

Here, the Governor is intent upon substituting public workers with private workers. Why else have you dismissed, without any investigation, the lawsuits pending in California which allege that Parsons engaged in fraudulent practices and overcharged government entities? And, why else have you chosen not to pursue Parsons' failure to disclose the lawsuit filed in Pennsylvania

by Ponderosa Fibres against both Parsons and one of its subsidiaries? The Pennsylvania lawsuit raises serious questions regarding Parsons' business practices, reliability and competence. If you are making a decision based upon the public interest, as you are bound to do by statute, you would rescind the letter of intent in light of Parsons' failure to conform to the requirements of the RFP.

4. **The Constitutional Requirement That Appointments Be Made Based Upon Merit and Fitness Restricts the State's Authority to Contract With Private Entities to Perform Services That the State Has Historically or Customarily Performed and Which Can Be Adequately and Competently Performed by Public Employees**

Article 7, §1, ¶2 of the New Jersey Constitution provides that appointments and promotions in government service shall be made

> according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive.

The goal of a competitive appointment system based upon merit and fitness is to eliminate political patronage and corruption. Although the New Jersey courts have afforded public entities considerable authority in deciding whether services typically performed by public employees should be subcontracted, government officials may not abuse their discretion in this area. Unfortunately, the Governor's credo appears to be that privatization is an end unto itself, no matter what the cost to the taxpayers, the public interest or dedicated government workers.

Apparently, the Governor believes that privatization is a convenient method of rewarding well-heeled Republican party contributors and functionaries. Since there are a finite number of positions in State government to which outright patronage appointments may be made, the current Administration has expanded the opportunities for patronage through privatization.

Certainly, this was the underlying motivation for the privatization of DMV agencies in 1995 and is once again the real reason for privatizing the maintenance and operation of inspection facilities. As a result, the Governor is literally dismantling the constitutional requirement that appointments be based upon merit and fitness.

Precisely for this reason the California Supreme Court has found that California's constitutional civil service provision contains an implied mandate limiting the state's authority to contract with private entities to perform services that the State has historically or customarily performed and which public employees can perform adequately and competently. Professional Engineers In California Government v. DOT, 15 Cal. 4th 543, 936 P.2d 473, 474 (1997); Fund v. Riley, 9 Cal.2d 126, 134-136, 69 P.2d 985 (1937); California State Employees' Ass'n. v. State of California, 199 Cal. App. A.3d 840, 844, 245 Cal. Rptr. 232 (1988). Significantly, California's merit and fitness provision is virtually identical to Article 7, §1, ¶1 of the New Jersey Constitution. The California Constitution requires that appointments and promotions "be made under a general system based on merit ascertained by competitive examination." Cal. Const., Article VII, §1, Subd. (5).

As the Supreme Court of California observed in Professional Engineers, the patronage hiring of public employees "corrupts the political process, leads to waste, and depletes the quality of the public work force.... Early on the California Supreme Court recognized that civil service provisions will not work if the merit appointment system can be circumvented by simply contracting out civil service jobs." (Quoting from the dissenting opinion of the Court of Appeals in Professional Engineers). The Court further observed that most states protect their civil service systems from encroachment through private contracting and by imposing an "economy

and efficiency" requirement before government services may be privatized. See, Michigan State Employees v. Civil Service Com'n., 141 Mich. App. 288, 67367 N.V.2d 850, 852 (1985); University of Nevada v. State Employees' Ass'n, 90 Nev. 105, 520 P.2d 602, 604-607 (1974); Nassau Ed. Chap. v. Great Neck U. Free Schools, 85 A.D.2d 733, 445 N.Y.S.2d 812, 813 (1981); Carter v. Ohio Department of Health, 28 Ohio St.3d 463, 504 N.E.2d 1108, 1109-1110 (1986); Local 4501, Comm. Workers v. Ohio State Univ., 12 Ohio St.3d 274, 466 N.E.2d 912, 194-915 (1984); Stump v. Dept. of Labor and Industry, 154 Pa. Commw. 471, 624 A.2d 229, 231 (1993).

In light of the Governor's intent to privatize without regard to achieving economies or efficiencies, it is time to interpret New Jersey's Constitutional provision to prohibit subcontracting with private entities when services, historically performed by public employees, can continue to be adequately and competently performed by such employees. Only in that manner will the Administration's relentless drive to reinstate a spoils systems be curtailed.

5. Debarment Proceedings Should Be Conducted With Respect to Parsons

Pursuant to N.J.A.C. 17:12-6.2 the Division of Purchase and Property may debar or disqualify a company from performing services under State contract based upon:

> 10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;
>
> 12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by Purchase and Property to warrant debarment, including, but not limited to making a material false representation in the bid, even if such conduct has not been or may not be prosecuted as

violations of such laws or contracts;

> 17. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might to tend to impair the objectivity or independence of judgment of said officer or employee.

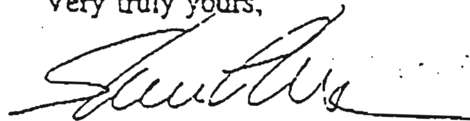
Clearly, there is a basis for debarring Parsons Corp. The allegations in the lawsuit filed by Ponderosa Fibres, if true, establish a record of failure to perform and of unsatisfactory performance, which standing alone, compel the debarment of Parsons. Further, by failing to disclose the Ponderosa lawsuit, Parsons is guilty of a material false representation in a bid. Omissions of critical information in a bid proposal may constitute material misrepresentations and, as such, provide a basis for debarment. Finally, by literally throwing millions of dollars at influential Republicans, Parsons has clearly sought to influence or caused to be influenced State officials responsible for awarding the contract in question. Accordingly, we call upon the Director of the Division to convene debarment hearings, or alternatively to transfer this matter to the Office of Administrative Law for hearing before an Administrative Law Judge.

6. The Award of the Contract to Parsons Should be Stayed Pending Appeal

In the event that you choose to ignore or waive the material non-conformity in Parsons' bid and decide to award the contract to Parsons, notwithstanding the demonstrated ability of public workers to operate and maintain inspection stations more economically and efficiently, CWA requests that you stay the award of the contract pending the disposition of an appeal to

the Superior Court, Appellate Division. At the request of either party, appellate proceedings may be expedited. I look forward to your prompt response.

Very truly yours,



Steven P. Weissman, Esq.

SPW/jmw

cc: Larry Mancino, V.P. District 1 (via facsimile and overnight mail)
Robert W. Pursell, Area Director (via facsimile and overnight mail)
Hetty Rosenstein, EVP, CWA Local 1037 (via facsimile and overnight mail)
Peter Verniero, Attorney General (via facsimile and overnight mail)

H:\LAW\1998 CWA\1117PARSN GRP\COR1

DANIEL ROBERT BARTLEY
California Bar No. 79586
101 Larkspur Landing Circle
Suite 223
Larkspur, CA 94939-1750
(415) 464-1382

SHARON GREEN, LAWYER
California Bar No. 43392
1721 Waldman Avenue
Las Vegas, Nevada 89102
(702) 387-8124

Attorneys for Plaintiff(s)

File under seal for 60 days
Cal. Gov't Code § 12652(c)(2)

SUMMONS ISSUED
SEP 05 1996

NO SUMMONS ISSUED

FILED
LOS ANGELES SUPERIOR COURT
MAY 20 1996
JOHN A. CLARKE, CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

STATE OF CALIFORNIA; COUNTY OF LOS ANGELES; CITY OF LOS ANGELES; LOS ANGELES METROPOLITAN TRANSIT AUTHORITY; UNITED STATES OF AMERICA; DOES 1 - 10; ex rel. J. MARTIN GERLINGER, and J. MARTIN GERLINGER, Individually and Personally, Plaintiffs, vs. PARSONS-DILLINGHAM METRO RAIL CONSTRUCTION MANAGER JOINT VENTURE; THE RALPH M. PARSONS COMPANY; DILLINGHAM CONSTRUCTION, N.A., INC.; and De LEUW, CATHER, INC. Defendants	Civil No. BC150298 VERIFIED COMPLAINT FOR DAMAGES WITH DEMAND FOR JURY TRIAL: 1. False Claims Act Violations; 2. Employment Retaliation [Cal. Gov't Code §§ 12652 et seq.] NO FEE

Plaintiff, J. MARTIN GERLINGER, alleges:

INTRODUCTION

1. This action arises from the wrongful conduct of the defendants in overbilling more than $19,741,000 as joint venture partners in the construction of the Los Angeles Metrorail system

1 ("the Metrorail project") being constructed in Los Angeles.

2 PARTIES

3 2. The plaintiffs in this action are (a) the STATE OF
4 CALIFORNIA, the COUNTY OF LOS ANGELES and the CITY OF LOS
5 ANGELES, which are political subdivisions of the State of
6 California, LOS ANGELES METROPOLITAN TRANSIT AUTHORITY, which
7 relator-plaintiff is informed and believes is a political
8 subdivision of the State of California within the meaning of Cal.
9 Gov't Code § 12652(c)(3); the UNITED STATES OF AMERICA, and DOES
10 1 - 10, ex rel. UNITED STATES OF AMERICA ("collectively referred
11 to here in as the Government") via qui tam plaintiff ("relator")
12 J. MARTIN GERLINGER; and (b) J. MARTIN GERLINGER, individually
13 and personally. The UNITED STATES OF AMERICA is here named a
14 party for notice purposes because of the UNITED STATES' close and
15 intertwined funding partnership with the State plaintiffs, and
16 because of GERLINGER's related federal qui tam action filed under
17 the Federal False Claims Act, in the U.S. District Court, now
18 unsealed, U.S.A. et al. v. Parsons-Dillingham et al., Civil No.
19 94-6678 JSL.

20 3. Relator J. MARTIN GERLINGER is, and at all relevant
21 times was, a resident of California, with his home in Sierra
22 Madre, California since September 1991. Mr. Gerlinger was hired
23 by defendant Parsons in July, 1991 as Finance Manager for the
24 Metrorail project. Mr. Gerlinger had previously worked for
25 Parsons from August, 1980 to April, 1982 as Project Finance
26 Manager for Parsons' mining and metallurgical projects worldwide,
27 and for all of Parsons' projects in South America. Mr.
28 Gerlinger's personnel records indicate that his performance at

OBERT BARTLEY
ia Bar No. 79586
spur Landing Circle
3
, CA 94939-1750
4-1382

REEN, LAWYER
ia Bar No. 43392
dman Avenue
s, Nevada 89102
7-8124

s for Plaintiff(s)

File under seal for 60 days
Cal. Gov't Code § 12652(c)(2)

SUMMONS ISSUED
SEP 05 1996

NO SUMMONS ISSUED

FILED
LOS ANGELES SUPERIOR COURT
MAY 20 1996
JOHN A. CLARKE, CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

F CALIFORNIA; COUNTY OF ELES; CITY OF LOS ; LOS ANGELES LITAN TRANSIT TY; UNITED STATES OF ; DOES 1 - 10; ex rel. IN GERLINGER, and J. GERLINGER, Individually sonally, Plaintiffs, -DILLINGHAM METRO RAIL CTION MANAGER JOINT ; THE RALPH M. PARSONS ; DILLINGHAM CTION, N.A., INC.; and , CATHER, INC. Defendants	Civil No. BC150298 VERIFIED COMPLAINT FOR DAMAGES WITH DEMAND FOR JURY TRIAL: 1. False Claims Act Violations; 2. Employment Retaliation [Cal. Gov't Code §§ 12652 et seq.] NO FEE

intiff, J. MARTIN GERLINGER, alleges:

INTRODUCTION

This action arises from the wrongful conduct of the ts in overbilling more than $19,741,000 as joint venture in the construction of the Los Angeles Metrorail system

40x

Angeles.

STATE OF
OF LOS
tate of
RITY, which
litical
meaning of Cal.
ERICA, and DOES
ively referred
ff ("relator")
individually
ere named a
ATES' close and
intiffs, and
ion filed under
Court, now
l., Civil No.

l relevant
in Sierra
nger was hired
ger for the
orked for
t Finance
ects worldwide,
Mr.
rformance at

1 Parsons was at all times exemplary.

2 In December, 1991 his performance was rated "outstanding",
3 the highest possible rating. The first annual performance review
4 by his superior, Mr. Clark, rated GERLINGER'S overall performance
5 as "very good" (the second highest rating) and stated "major
6 progress has been made in the financial program since Martin
7 became Finance Manager. Achievements have been significant and
8 the program has been brought into the modern business world."
9 Mr. Clark noted that "Martin has a very good background and
10 knowledge of financial management and project requirements" and
11 he attached a two-page description of Mr. Gerlinger's
12 accomplishments, detailing how Gerlinger had transformed an
13 outdated system with tremendous operational problems, lacking
14 adequate procedures into a system which brought all of the
15 financial accounts current and implemented needed procedures and
16 controls.

17 4. Defendant PARSONS-DILLINGHAM METRO RAIL CONSTRUCTION
18 MANAGER JOINT VENTURE ("Joint Venture") is an unincorporated
19 joint venture between defendant THE RALPH M. PARSONS COMPANY,
20 defendant DILLINGHAM CONSTRUCTION, N.A., INC. and defendant
21 PARSONS, DE LEUW. The principal place of business of the Joint
22 Venture is 523 West Sixth Street, Suite 400, Los Angeles,
23 California. The Joint Venture was formed in 1984 and was awarded
24 the construction management consultant contract for the Los
25 Angeles County Metrorail project. In May 1991 (by amendments 13
26 and 14) a second contract was awarded to the Joint Venture for
27 continuation of the Metro Red Line Rail Project through September
28 1998.

5. Defendant THE RALPH M. PARSONS COMPANY ("PARSONS") is a corporation whose principal place of business is at Pasadena, California.

6. Defendant DILLINGHAM CONSTRUCTION N.A., INC ("DILLINGHAM") is a corporation, the principal place of business is Honolulu, Hawaii; doing business in Los Angeles, CA.

7. Defendant DE LEUW, CATHER, INC. formerly DE LEUW, CATHER & COMPANY ("DE LEUW") is a corporation the principal place of business is Washington, D.C.; doing business in Los Angeles.

FACT ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

8. The two construction management consultant contracts awarded to the Joint Venture are "cost plus" contracts; the first one has a fixed fee and the second one contains an incentive fee. The Joint Venture had two clients, The Southern California Rapid Transit District (RTD) was the signatory on the Segment One contract and the Rail Construction Corporation, a subsidiary of the Los Angeles County Transportation Commission (LACTC) contracted for the Segment Two work. In 1992 the RTD and LACTC merged into the Metropolitan Transit Authority (MTA). The RTD, LACTC and MTA are collectively referred to in this complaint as the "client". The United States Government provides part of the funding for the project. Plaintiff GERLINGER is informed and believes, and on that basis alleges, that the balance of the funding is paid one-half by the STATE OF CALIFORNIA, and one-half of the balance of the funding, plus overruns, was paid by LOS ANGELES COUNTY from sales taxes and by the CITY OF LOS ANGELES. Such federal funding formed the basis for GERLINGER'S action under the federal False Claims Act, filed in U.S. District Court,

1 which is referred to in paragraph 2 above.

2 The Joint Venture was awarded the contract for construction
3 management of the Los Angeles Metro project, and work commenced
4 in 1984.

5 9. Relator J. MARTIN GERLINGER was hired by Parsons to
6 serve as the Finance Manager for the Joint Venture on the Los
7 Angeles Metro Project in July 1991. At the time he was hired he
8 was directed to develop an integrated computer accounting system
9 for the project.

10 10. The Joint Venture had no employees, the members of the
11 Joint Venture assigned their employees to work on the Joint
12 Venture project. Relator, in his work as finance manager for the
13 project, reported to other Parsons employees; he reported to
14 Larry Fincannon until Dennis Hedberg was appointed Project
15 Finance Manager and became relator's direct supervisor.

16 11. Soon after assuming the position of Finance Manager for
17 the Metro project, GERLINGER began discovering contract
18 violations, which he reported to Deputy Construction Manager Jim
19 Clark, who was also a Parsons employee.

20 12. In early 1992 GERLINGER received a report authored by
21 Alex Borra, entitled "Metrorail Project Office Review January 21,
22 1992." Mr. Borra was the Manager of Internal Audit for The
23 Parsons Corporation. Mr. Borra's report questioned some
24 apparently unethical practices of the Joint Venture. He was
25 terminated by Parsons shortly thereafter. Parsons stated reason
26 for the termination was that Mr. Borra's job was being
27 eliminated. A short time later another person was hired who was
28 given Mr. Borra's job title and responsibilities. A clear

1 message was conveyed to the finance office of the Joint Venture
2 that comments about the administration of the project would be
3 harshly dealt with by Parsons.

4 13. GERLINGER, in the course of his employment as Finance
5 Manager for the Metro project, uncovered numerous illegal and
6 improper contract practices, whereby the Joint Venture had
7 overbilled the government an estimated $19,741;000. He reported
8 his findings to Jim Clark, T.V. Haig and Dennis Hedberg who were
9 in management positions at Parsons on June 23, 1993. In response
10 to Mr. GERLINGER'S report, Mr. Jesse Harmon, Manager of Contracts
11 for Parsons, met with GERLINGER on September 24, 1993. He
12 provided GERLINGER with a written agenda listing ten of the items
13 GERLINGER had reported to Parsons management. When they went
14 through the list at the meeting Mr. Harmon refused to discuss the
15 items with GERLINGER. Harmon simply went down the list and said
16 that the item (a) "had been accepted" without identifying the
17 accepting party; (b) the item "had to be settled yet"; (c) that
18 relator's findings were "not true"; (d) that "it was the Project
19 Manager's decision"; (e) that it was being handled by a Public
20 Relations Manager who was in fact a political operative; (f) that
21 the finding was "not verifiable"; (g) that GERLINGER'S finding
22 "would have to be audited"; (h) that the finding was "due to an
23 auditing change"; or that (i) GERLINGER'S finding "would have to
24 be audited."

25 14. On April 2, 1993 GERLINGER was terminated from his job
26 with the Joint Venture project. He was notified he was being
27 "released back to your parent company." Parsons then laid him
28 off. He filed a grievance. GERLINGER retained a lawyer who

1 wrote a letter to Parsons threatening to sue if GERLINGER was not
2 reinstated. GERLINGER was retained to work at Parsons' corporate
3 headquarters.
4 15. The illegal practices of the Joint Venture which
5 GERLINGER has identified are as follows:
6 A. Segment One costs billed to the government were
7 $1.5 million more than the Segment One costs incurred.
8 Costs incurred on Segment One work were billed during
9 Segment Two. Relator is informed and believes that as of
10 July, 1994 no credits have been passed through to the
11 government to correct this. After a certain date the Joint
12 Venture was precluded under the contract from billing the
13 project for costs incurred on Segment One work, and the
14 Joint Venture was contractually obligated to absorb any such
15 costs after that date. In contravention of the contract,
16 the Joint Venture illegally billed Segment One costs as
17 Segment Two work. The amount of such overcharges through
18 December 31, 1993 was $1,000,000 and relator is informed and
19 believes that an additional $500,000 has been similarly
20 improperly billed to the government since that date.
21 B. Since January 1, 1992 the Joint Venture has been
22 billing the client on an accrual basis. This practice is
23 not allowed under the contract, and is a violation of
24 Federal Acquisition Regulations ("FAR"). The effect of this
25 practice is to bill the government before the costs are
26 incurred. The contract requires that costs not be billed
27 until after they are paid. The time difference is
28 approximately 90 days, and the resulting "cost of money" is

1 borne by the client rather that by the Joint Venture.

2 C. Defendant Dillingham illegally charges 50% mark-up
3 on premium labor costs. The 50% mark-up is charged on
4 overtime as well. This practice is clearly not allowed by
5 the contract with L.A.C.T.C. and violates F.A.R. rules. See
6 F.A.R. 31.105, 31.201, 31.202 and 31.203. Relator is
7 informed and believes that the total overcharge to the
8 government which has resulted is approximately $1,200,000.

9 D. The government is being charged a fee on sub-
10 contractors' overcharges. Relator is informed and believes
11 that the improper billings to the government for fees on
12 sub-contractors overcharges have exceeded $100,000.

13 E. Legal fees and costs expended in the defense of
14 wrongful termination suits are illegally being charged to
15 the project. These costs are properly attributed to
16 overhead. At the meeting with Mr. Harmon set forth above,
17 Mr. Harmon stated that this allegation was "not true".
18 GERLINGER knows that it is true, because while he was
19 Finance Manager he paid billings in excess of $40,000
20 submitted by Gibson, Dunn & Crutcher and Mills & Schroeder
21 for the defense of wrongful termination actions.

22 F. Defendant Parsons overcharges 8.5% of non-declared
23 profit margin as payroll burden. Of the 60% payroll burden
24 invoiced to the client, Parsons, at the end of the fiscal
25 period (a month), transfers 8.5% of the 60% from labor
26 recovery to profit. Chargeable profit is contractually
27 limited and clearly defined. This practice results in a
28 contractually disallowable charge and a breach of F.A.R.

ARON GREEN, LAWYER
21 Waldman Avenue
s Vegas, Nevada 89102
(702) 387-8124

31.105, 31.201, 31.202, 31.203. At the meeting with Mr. Harmon, Mr. Harmon stated to relator that this is "not true." However, GERLINGER knows that it is true from his personal experience. GERLINGER is informed and believes that the illegal billings set forth in this paragraph have resulted in an overcharge of approximately $500,000 per annum, for an estimated total overcharge of $4,500,000.

G. After having entertained a client representative the Project Manager ordered GERLINGER to make an unidentified payment of $1,000 to the General Manager's secretary. This expenditure was charged to the government, but the purpose was never identified. Due to the nature and circumstances of the events, GERLINGER formed the opinion that it was a "pay off" of some sort.

H. A political contribution was made from the project to Los Angeles' then Mayor Tom Bradley's political campaign. This contribution was paid through a Parsons employee who was placed on the project as a Public Relations Manager. At the meeting with Mr. Harmon, Mr. Harmon stated that this matter was being handled by the Public Relations Manager.

I. The Joint Venture hired former government consultants who had been terminated by the government for budget reasons. They were hired through subcontractors, and their fees were charged back to the government at double the original cost.

J. Parsons De Leuw overcharged payroll mark-up of approximately 112%, when the contractual limit was 105%. In 1992 alone this overcharge reached $100,000. This billing

1 is a violation of F.A.R. 31.105, 31.201, 31.202 and 31.203

2 K. Parsons improperly charged overhead as payroll
3 burden in the claims it submitted to the client.

4 L. Under the contract administration procedures set up
5 in the contract and government regulations, labor costs are
6 estimated and charged in advance. At the end of the year
7 the estimated costs which have been paid by the government
8 are supposed to be compared to the actual labor costs, and
9 any overcharges are to be repaid to the government by the
10 Joint Venture. The labor overcharges have never been
11 adjusted, and GERLINGER is informed and believes that such
12 overcharges exceed $9,000,000.

13 M. Dillingham has never followed the contract
14 procedures in billing labor costs to the project. This
15 Joint Venture partner does not summarize direct labor
16 invoiced to the project by straight time, overtime and
17 double time. The Joint Venture finance office is unable to
18 properly allocate and bill the client because inadequate
19 information is provided by one Joint Venture partner in its
20 billings to the Joint Venture.

21 N. The contract provides that home office time billed
22 to the project must be authorized at the project level.
23 This was never done, and relator is informed and believes
24 that the resulting overcharge to the government is in excess
25 of $1,000,000.

26 O. As of September 1991 the purchase of capital items
27 like automobiles, cellular phones, computers, office
28 furniture and the like were not scheduled and pre-approved

AARON GREEN, LAWYER
721 Waldman Avenue
Las Vegas, Nevada 89102
(702) 387-8124

by the government as called for by amendment number seven to the first contract. The amount purchased and billed to the government without pre-approval exceeds $2,300,000.

P. Costs to attend political events and government penalties were charged to the government without required legal approvals, and without formal approval by the Joint Venture committee.

Q. The Joint Venture billed the government for direct labor time spent by its employees while participating in lunches and dinners with the clients' personnel at the L.A. Athletic Club, outings with the LACTC at the Sky Mountain Resort, Rose Bowl Parade and football games.

R. Parsons did not follow its own relocation policies for employees assigned to the Metrorail project. A Parsons employee was defined as "permanent" over 180 days, but an employee assigned to Metrorail was entitled to relocation benefits for 365 days. Parsons employees were entitled to ship or store 150 lbs.; employees assigned to Metrorail were entitled to 9,000 lbs. Parsons employees received 30 "settling in-days"; employees assigned to Metrorail received 60 days.

S. Government funds were used to pay non-reimbursable costs, in violation of F.A.R..

T. The Project Manager charged his spouse's costs at L.A. Athletic Club to the project, and violated Government Procurement Regulations by hiring his friends as consultants without purchase orders and without utilizing the bid process, all in violation of F.A.R.

1 U. When the defendants learned, through
2 communications from GERLINGER and others, that they had
3 obtained excess monies as a result of false claims
4 which had been files, as alleged in this complaint,
5 they failed to disclose the subsequently discovered
6 false claims in violation of Cal. Gov't Code §
7 12651(a)(8).

8 V. Defendants, in violation of Cal. Gov't Code §
9 12653(a) interfered with GERLINGER'S investigation and
10 disclosures and retaliated against him for such disclosures
11 (i) when the Joint Venture terminated him from the project
12 on April 2, 1993, and he was "released back to" PARSONS;
13 (ii) the course of retaliatory conduct continued when
14 PARSONS laid him off; after GERLINGER retained a lawyer and
15 filed a grievance hie was retained on the payroll and given
16 an office at PARSON'S corporate headquarters. However,
17 (iii) he was excluded from his department's circulation
18 list, (iv) his supervisor never spoke to him more than once
19 a week, and (v) he was given no meaningful work which would
20 enable him to keep his skills current, and this treatment
21 continued until (vi) he was terminated on November 1994, all
22 in violation of Cal. Gov't Code § 12653(d).

23 W. Some of defendants' managers and employees filed
24 claims with actual knowledge that the information was false,
25 while others deliberately ignored or acted in reckless
26 disregard of the falsity of the information contained in the
27 claims. Some of defendants' managers in certain instances
28 played "ostrich" by ignoring "red flags" indicating that the

ARON GREEN, LAWYER
21 Waldman Avenue
s Vegas, Nevada 89102
(702) 387-8124

1 information on claims might not be accurate, and
2 deliberately chose to feign ignorance of the correct process
3 through which claims were required to be handled; they also
4 failed to make simple inquiries that would have alerted
5 defendants to the false claims that were being submitted.

6 16. Gerlinger's wrongful termination is the subject of a
7 separate Los Angeles Superior Court action, Gerlinger v. The
8 Ralph M. Parsons Company, Civil No. 136717, pending in Dept. 53.

9 FIRST CAUSE OF ACTION

10 KNOWINGLY FALSE STATEMENTS TO GET A FALSE OR FRAUDULENT CLAIM
11 PAID OR APPROVED IN VIOLATION OF THE FALSE CLAIMS ACTS, Cal.
12 Gov't Code §§ 12652 et seq. and 31 U.S.C. § 3729(a)(2).

13 17. Plaintiffs reallege paragraphs 1 through 16 herein.

14 18. By virtue of the acts described above, defendants have
15 knowingly made, used or caused to be made or used, a false record
16 or statement to get a false or fraudulent claim paid or approved
17 by the Government in contravention of the False Claims Acts.
18 Further, defendants were the beneficiaries of false claims, who,
19 upon subsequent discovery, failed to disclose it.

20 19. Because of these acts, plaintiff Government has suffered
21 damages in a sum not less than $19,741,000 in excess payments to
22 the Joint Venture on the Los Angeles Metro project.

23 20. Through the wrongful conduct described herein,
24 defendants acted fraudulently, maliciously, oppressively and in
25 conscious disregard of Plaintiffs' rights. Defendants should not
26 be permitted to escape and consequences of its conduct by simply
27 having to reimburse Plaintiffs for their compensatory damages.
28 Defendants' oppressive conduct should not be rewarded by limiting

SHARON GREEN, LAWYER
1721 Waldman Avenue
Las Vegas, Nevada 89102
(702) 387-8124

their liability to the amount they were entitled to receive under their contract obligations. If defendants' only exposure for liability from this type of conduct is to have to live up to the contract they entered into in the first place, there is no deterrent to keep defendants from similar misconduct in the future. Plaintiffs request that punitive damages be assessed against defendants in a sum to be determined by trial, by way of example, and as a deterrent to future misconduct.

SECOND CAUSE OF ACTION

EMPLOYER INTERFERENCE WITH EMPLOYEE DISCLOSURE AND RETALIATION

21. Plaintiffs reallege paragraphs 1 through 16 herein.

22. By virtue of the acts described above, defendants have knowingly interfered with GERLINGER'S investigations and his disclosures and wrongfully retaliated against him in his employment in violation of Cal. Gov't Code § 12653(a).

23. As a legal result of the Defendants' wrongful conduct Plaintiff GERLINGER has individually suffered special damages, including lost wages, the amount of such damages has not yet been fully ascertained and is subject to proof at trial; such damages are in excess of the jurisdictional limits of this court.

24. As a further legal result of Defendants' wrongful conduct plaintiff GERLINGER has individually suffered general damages, including loss of his reputation as a businessman; in addition, as a direct and proximate result of such conduct GERLINGER has experienced, and continues to experience, tremendous embarrassment, humiliation, mortification, anguish and distress for which he is entitled to recover damages in a sum subject to proof at trial.

1 25. Through the wrongful conduct described herein,
2 defendants acted fraudulently, maliciously, oppressively and in
3 conscious disregard of Plaintiff GERLINGER'S rights. Defendants
4 should not be permitted to escape and consequences of its conduct
5 by simply having to reimburse Plaintiff for his compensatory
6 damages. Defendants' oppressive conduct should not be rewarded
7 by limiting their liability to compensatory damages, as that is
8 no deterrent to keep defendants from similar misconduct in the
9 future. Plaintiff requests that punitive damages be assessed
10 against defendants, and awarded to GERLINGER, in a sum to be
11 determined by trial, by way of example, and as a deterrent to
12 future misconduct.

13 PRAYER

14 WHEREFORE, plaintiffs demand judgment against the
15 defendants and each of them, as follows:

16 1. Judgment in favor of the STATE OF CALIFORNIA,
17 COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, LOS ANGELES
18 METROPOLITAN TRANSIT AUTHORITY, UNITED STATES OF AMERICA,
19 and DOES 1 - 10 against defendants, jointly and severally,
20 for recovery of the excess charges, and civil penalties as
21 are allowed by law in the amount of $10,000 per violation
22 (i.e., each false claim for payment);

23 2. Judgment in favor of J. Martin Gerlinger against
24 defendants, jointly and severally, for a qui tam statutory
25 award, and special and general damages for employment
26 retaliation and interference with reporting;

27 3. The greater of treble damages, double damages, or
28 punitive damages as may be recoverable pursuant to each

1 claim;

2 4. Pre-judgment interest and post-judgment interest at
3 the judicial rate;

4 5. Costs of suit incurred herein;

5 6. Attorneys' fees and expenses under any applicable
6 provision of law, with a reasonable multiplier;

7 7. Trial by jury; and

8 8. Such other and further relief as the Court deems
9 proper.

10 Dated: May 18, 1996

11

12 SHARON GREEN, Attorney
13 for qui tam Plaintiff,
J. MARTIN GERLINGER

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[SH]ARON GREEN, LAWYER
[7]21 Waldman Avenue
[La]s Vegas, Nevada 89102
(702) 387-8124

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLAINTIFF'S JURY TRIAL DEMAND

Plaintiffs, by counsel, demand a trial by jury in the above action.

Dated: May 18, 1996

Sharon Green

SHARON GREEN, Attorney
for *qui tam* Plaintiff,
J. MARTIN GERLINGER

SHARON GREEN, LAWYER
1721 Waldman Avenue
Las Vegas, Nevada 89102
(702) 387-8124

VERIFICATION

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, J. MARTIN GERLINGER, under penalty of perjury pursuant to the laws of the State of California, hereby declare:

I am the qui tam plaintiff for the STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, LOS ANGELES METROPOLITAN TRANSIT AUTHORITY, UNITED STATES OF AMERICA, DOES 1 - 10 and a plaintiff individually and personally in my own right in this action. I have read the foregoing VERIFIED COMPLAINT FOR DAMAGES and DEMAND FOR JURY TRIAL, and I know the contents. The matters stated therein are true of my own personal knowledge, and they are matters to which I am willing and competent to testify if called upon to do so, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Dated: May 19, 1996

J. MARTIN GERLINGER

ARON GREEN, LAWYER
21 Waldman Avenue
s Vegas, Nevada 89102
(702) 387-8124

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

The undersigned hereby certifies that on May 20, 1996 she served a copy of the VERIFIED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL and WRITTEN DISCLOSURE OF ALL MATERIAL EVIDENCE AND INFORMATION upon the Attorney General of the State of California by depositing a copy in the United States mail at Las Vegas, Nevada certified mail, return receipt requested, postage fully prepaid, addressed to:

Daniel E. Lundgren
Attorney General
State of California
P.O. Box 944255
Sacramento, CA 94244-2550

I declare under penalty of perjury that the foregoing is true and correct and this declaration is executed on May 20, 1996.

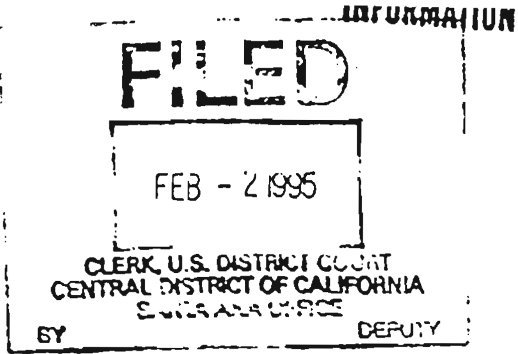
SHARON GREEN

SHARON GREEN, LAWYER
1721 Waldman Avenue
Las Vegas, Nevada 89102
(702) 387-8124

57x

BRIAN M. BROWN
LAW OFFICES OF BRIAN M. BROWN
17541 E. Seventeenth Street
Tustin, California 92680
(714) 730-3411

Attorneys for Plaintiff
QUI TAM REALTOR, MICHAEL QUINT



UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex. rel. MICHAEL QUINT, under 31 U.S.C., §3729, Qui Tam Realtor,

Plaintiffs,

v.

RALPH M. PARSONS COMPANY, THE PARSONS CORPORATION, DILLINGHAM CONSTRUCTION, NA., INC., DILLINGHAM CONSTRUCTION, INC., De LEUW, CATHER & ASSOC., individually, and as Joint Venturers in the Joint Ventures known as PDCD, P-D and PARSONS-DILLINGHAM, TUTOR SALIBA, INC., S.J. GROVES, INC., PERINI CORPORATION, Individually, and as Joint Venturers in the Joint Ventures known as TUTOR-SALIBA, TUTOR-SALIBA/GROVES, and TUTOR-SALIBA-PERINI,

Defendants.

CASE NO. CV 95-666 TJH (GHKx)

COMPLAINT FOR VIOLATIONS OF THE FALSE CLAIMS ACT [31 U.S.C. §3729(a)]

[UNDER SEAL PER 31 U.S.C. §3930(A)(2)]

JURY TRIAL DEMANDED

Comes now Qui Tam Realtor, MICHAEL QUINT, suing on behalf of the United States of America, pursuant to 31 U.S.C. §3729 et seq., who pleads and alleges as follows:

///

58x

COMMON ALLEGATIONS

Jurisdiction

1. Jurisdiction of the claim asserted herein is based upon Federal subject matter jurisdiction pursuant to 31 U.S.C. §3729 et seq.

Venue

2. Venue in the United States District Court for the Central District of California is based upon the fact that Defendant as charged here with violations of 31 U.S.C. §3729 et seq. (the "False Claims Act") is found in and has its principal place of business in this district, and the violations alleged here occurred in this district.

Parties

3. Realtor MICHAEL QUINT is a resident and citizen of the United States, the State of Nevada, and between Ocotber, 1987 and April 5, 1991, Plaintiff was employed by Defendants as a Senior Inspector involved in inspections of various portions of the L.A. Metro Rail Project ("the Project"). During the course of his employment, Plaintiff was responsible for inspecting various aspects of ongoing construction work for the project, including Contract A-141 and the construction of the Union Station portion of the Project. QUINT was allegedly laid off from his employment with Defendants on or about April 5, 1991.

Defendants

4. Defendants, RALPH M. PARSONS CO., THE PARSONS CORPORATION, DILLINGHAM CONSTRUCTION N.A., INC., DILLINGHAM CONSTRUCTION, INC., AND DE LEUW, CATHER & CO. (hereinafter collectively "PDCD") are corporations organized and existing in various states, and was a joint venture formed in the State of California with their principal place of business in Los Angeles, California, which performs business in this district, and is in good standing with the State of California. During the relevant periods of Realtor's allegations in this Complaint, from 1986 through 1991, PDCD, and later PD, was the Construction Manager ("CM") for the Project pursuant to a contract executed on June 29, 1984 (Contract No. 3369), in which PDCD contracted with the Southern California Rapid Transit District ("SCRTD") to provide construction management services for the Metro Red Line

59x

Segment One, consisting of 4.6 miles of subway-type railroad construction and five below-grade stations with an at-grade yard and shop facility.

5. Defendants, TUTOR-SALIBA, INC., S.J. GROVES, INC., PERINI CORPORATION, Individually, and as Joint Venturers in the Joint Ventures known as TUDOR-SALIBA, TUDOR-SALIBA/GROVES, and TUTOR-SALIBA-PERINI (hereinafter collectively "TUTOR-SALIBA"), are corporations organized and existing in various states, and individually formed joint ventures in the State of California with their principal place of business in Los Angeles, California, which performed business in this district, and are in good standing with the State of California. During the relevant periods of Realtor's allegations in this Complaint from 1986 through 1991, TUTOR-SALIBA was a contractor performing various tunnel work for the L.A. Metrorail Project, for which Defendant PDCD was a construction manager. TUTOR-SALIBA provided construction services for the Metro Redline Segment 1, consisting of 4.6 miles of subway-type railroad construction at five below-grade stations, with an at-grade yard and shop facility. Specifically, TUDOR-SALIBA was the contractor on the A-141 Contract, as well as on other contracts.

Contractual History

6. As stated above, on June 29, 1984, PDCD executed Contract No. 3369 with the SCRTD to provide construction management services for the Project. PDCD was paid by the SCRTD (now the Metropolitan Transit Agency or "MTA"), and received monies from the United States as part of this public works project and for its construction management services. Since June 29, 1984, PDCD (now Parsons-Dillingham or "PD" has executed fourteen (14) Amendments to Contract 3369, the last Amendment (which combines Amendments 13 and 14 to Contract No. 3369) dated July 16, 1991. The latter Amendment noted that PDCD's original contract, including Amendments 1 through 12, was superseded by this Amendment which constituted a conformed contract for services performed subsequent to April 30, 1991.

7. The original scope of work for PDCD consisted of the following, taken from PDCD's "Construction Management Job Description Manual" of December 1985:

"PDCD has agreed to serve the RTD as its Construction Manager

("CM") and to assemble the necessary personnel resources and expertise to provide the specified services. The CM acting for the RTD is responsible for constructability review of design, drawings, specifications, schedules, cost estimates, and bid documents; performance of special studies, etc.; assistance in procurement of long-lead materials and equipment; assistance in selecting construction and procurement contractors; supervision and inspection of construction; and scheduling and cost control of construction. The CM is also responsible for system wide elements, including testing and systems certification."

With respect to performing these functions, PDCD's contract with the RTD provided under Article V, General Provisions, Section 5.2, Provision 5.2.2:

"Subject to the authority and direction of the District, the CM is responsible for the overall management of construction activities on behalf of the District."

In terms of the professional standards to be observed by PDCD in carrying out its obligations under its contract with RTD, the contract, under Section 5.3, Provision 5.3.1 provided:

"With respect to the performance of its services, the CM will exercise that degree of skill, care and diligence normally exercised by recognized professional construction management firms with respect to services of a comparable nature."

8. Pursuant to its obligations under the contract, and under Article III, "Scope of Services", Section 3.1, Provision 3.1.1(I), PDCD was required to develop all detailed written procedures necessary to facilitate the fulfillment of its contractual obligations, including procedures manuals.

STATEMENT OF FACTS

Statement of Facts

9. This action concerns fraud perpetrated by PDCD in connection with their work as

61x

Construction Manager for the L.A. Metro Rail Project, and, in particular, the construction management services contractually provided for on all Segment One construction contracts between PDCD and the RTD.

10. Contemporaneously with the filing of this Complaint, Realtor has come forward to the United States with allegations contained in this law suit. Supportive evidence has been provided by the Realtor and his counsel to the Government. The allegations and evidence as presented reveal fraud by PDCD, the nature of which has jeopardized the integrity of the L.A. Metro Rail Project, including its structural integrity and ability to withstand earthquakes. The allegations concern deficiencies in PDCD's failure to provide construction management services as required under their contract. These deficiencies include, but are not limited to, the following:

A. Daily Inspection Reports:

(1) PDCD was required under Section 6.1 of the Resident Engineer's Procedures Manual to initial each Daily Inspection Report ("DIR") on the Project. Between February 1986 and July 1989, the Resident Engineer, Leavitt Clowell, failed to sign DIR's, and failed to acknowledge his review or address issues raised in at least fifty percent (50%) of the reports issued during this time frame.

(2) Furthermore, as part of the DIR, PDCD was required to explain and resolve any defective or nonconforming construction noted on the DIR's which, in many instances, had deviations or nonconformances which were never explained. Moreover, PDCD was required under Section 13.2 of the Inspector Guidelines Manual to note any unusual or unsatisfactory conditions in each succeeding report until or unsatisfactory or unsafe conditions had been corrected. Defendants failed to follow this requirement during the course of this and other contracts on Segment One, and failed to notify the RTD or its predecessors of their failure to do so.

(3) PDCD's Construction Operations Procedures Manual, Section 4.2.3, required, inter alia, that Noncompliance Reports ("NCR's") and corrective action be noted and written for any condition which "deviates from construction specifications, approved procedures and instructions, codes, or other special requirements, ...". In this regard, PDCD failed to comply

1 with this requirement, failed to write NCR's in many, if not all, instances where required, and
2 failed to inform the client of their failure to do so, including their failure to initial DIR's and note
3 nonconforming work therein.

4 B. Concrete Placement Check Off and Clearance Forms:

5 (1) PDCD was required to complete concrete placement check off and
6 clearance forms for Segment One tunnel work. These forms included areas for signature by
7 PDCD inspectors, and a PDCD inspector was required to sign off the form as "okay to place"
8 before any concrete pouring could take place. Moreover, a concrete placement form was
9 required to be filled out each time a concrete pour took place.

10 (2) Realtor is aware of in excess of twenty-five (25) instances where
11 concrete placement forms for Contract A-141 were not signed off as okay to place, but concrete
12 pours were allowed to go forward without signature by a PDCD Inspector. Moreover, in many
13 instances, the concrete placement forms had deviations or noncompliances that were noted on the
14 forms, which were not corrected prior to concrete placement. At no time was the RTD or the
15 owner apprised of these failures, and PDCD failed to comply with their duties and responsibilities
16 under the contract by stopping work on the Project until these deviations and nonconformances
17 were corrected. In each of these instances, the Resident Engineer and Chief Inspector did not
18 take the necessary corrective actions or notify the contractor or owner of the nonconformances
19 as required by contract documents and procedures. Said failure violated PDCD's written
20 procedures in place at the time.

21 C. Site Deficiency Notices/Nonconformance Reports:

22 (1) Contrary to contract specifications and procedures, PDCD failed to
23 prepare Site Deficiency Notices and/or NCR's after noting a deficiency or Nonconformance in
24 DIR's or concrete pour tickets. Moreover, PDCD's Resident Engineer on Contract A-141
25 specifically criticized the first four nonconformances issued on Contract A-141 as inappropriate,
26 thus preventing follow-up work and/or correction of these deficiencies. In fact, it appears that
27 the Resident Engineer effectively suppressed the preparation of this information and, thereafter,
28 disregarded the Nonconformance procedure.

(2) In those few instances where NCR's were actually issued, the "disposition section" of the form was not completed, which was also a deviation from PDCD's written procedures and policies in existence at the time. The case of site deficiency notices, the "corrective action taken" section of the form was not typically completed.

D. Suspension of Work Notices:

(1) Only seven (7) suspension of work notices were issued during Contract A-141. In only one of these cases was the form complete, which would include completion of the "commencement of work approved" section of the form. Although the contractor was not allowed to resume work until correction of the problem and completion of the form, PDCD allowed this work to go forward, which is also contrary to the specifications and procedures in existence at the time.

E. Change Orders:

(1) Although generally PDCD followed its written change order guidelines with regard to evaluating direct costs with respect to change orders, and in many cases the final change order values did not match the sum of force account charges related to the change. This is contrary to industry practice.

(2) Pursuant to PDCD's written procedures in existence at the time, (Project Control Procedures Manual Section 5B, Change Order Control), PDCD was required to perform a Schedule Impact Analysis for each change order. PDCD failed to perform such analyses in the vast majority of cases, in direct contravention of written procedures in Contract A-141 Network Analysis requirements.

F. Schedules and Submissions:

(1) Throughout the duration of Contract A-141, PDCD operated without an approved project schedule, which could be impacted by changes or delays, which was required in order to pro-actively manage the Project and to determine actual progress versus progress projected. PDCD's failure to ensure that an approved project schedule existed represented a failure of the Defendants to manage and administer the construction of A-141.

64x

G. Contracts A-130, A-146 and A-171:

(1) Similar to the problems experienced in Contract A-141, PDCD similarly failed to implement policies and procedures with respect to DIR's, concrete placement tickets, Noncompliance Reports, Suspension of Work Notices, Change Orders and Scheduling Submissions.

State Investigation: Widespread failures, Quality Assurance and Scheduling Problems.

11. Beginning approximately June of 1991, and continuing thereafter, Realtor advised various State and Federal Agencies of widespread fraud and corruption involving the Metro Rail Project, including failure on the part of PDCD to implement or enforce contract policies and procedures, as well as various falsified reports involving the Project. In fact, on January 18, 1991, Mr. Quint informed is Resident Engineer on Contract A-141, Roger Vitti, through a memorandum, of at least three areas of problems associated with the contract. No follow up to these problems was done by Mr. Vitti, or any other representatives of PDCD, and Realtor believes that his layoff in April of 1991 was as a direct and proximate result of his raising these issues internally with his superiors.

12. Beginning in June of 1991, Plaintiff relayed these problems to various State and Federal Agencies, and, ultimately, his presentation to a meeting of the L.A. County Transportation Commission led directly to the beginning of various investigations, including ultimately an investigation by Barba Arkhon International, Inc., which was concluded on February 23, 1994. This investigation was the culmination of a number of other investigations, including investigations by Fluor Daniels, Inc. and the Edward J. Cording Tunnel Review Panel, all of which confirmed Mr. Quint's original observations of problems associated with the Project, which were originally ignored.

13. As a direct and proximate result of Realtor's previous allegations, Barba Arkhon International, Inc. confirmed that PDCD had failed to meet industry standards in each of the areas outlined hereinabove with respect to Contracts A-130, A-141, A-146 and A-171.

14. Realtor contends that the aforementioned findings of these panels illustrate the damages to the United States, which is a direct result of the perpetration of the frauds alleged

1 herein by PDCD upon the United States in the course of its work in overseeing the L.A. Metro
2 Rail Project.

3 Intentional Circumvention of Project Procedures and Submission of False Reports

4 15. From the beginning of Segment One of the Metro Rail Project, and continuing
5 through approximately January 1, 1992, PDCD knowingly submitted falsified weekly and
6 monthly status reports to the RTD, and later the RCC and MTA, and specifically failed to advise
7 the RTD or MTA of the problems and deficiencies that have now been uncovered on the Metro
8 Rail Project, and their failure to enforce contract specifications and procedures for which they
9 were being paid to enforce.

10 16. In approximately May of 1991, Plaintiff wrote to the Los Angeles District
11 Attorney's office outlining a number of observations and deficiencies which he had noted during
12 his work on the project. In response to these allegations, a formal response was prepared by
13 PDCD, although it was signed by RCC Vice-President John Adams. Here, again, Defendant
14 PDCD knowingly submitted falsified information in response to Plaintiff's allegations, or
15 knowingly covered up an omitted information directly responsive to these allegations which
16 would have uncovered the failures on the part of PDCD which have now been acknowledged by
17 independent investigation.

18 17. PDCD's own internal audits and memorandum reflect that division management
19 was aware of a complete lack of established procedures and compliance with policies and
20 procedures in place at the time, and yet failed to advise the RTD (and later MTA) of these
21 problems, and allowed nonconforming work to be performed with their knowledge. Moreover,
22 PDCD continued to issue weekly and monthly reports which failed to acknowledge the problems
23 of which they were aware.

24 18. Realtor therefore alleges that each DIR, NCR, Suspension of Work Notice, as well
25 as the Weekly and Monthly Status Reports, constitute false statements made to the RTD and
26 MTA.

27 19. During the course of their work on Contract A-141, and other contracts,
28 Defendants, and each of them, continuously bypassed the contract policies and procedures in

1 favor of continuing work toward completion. Moreover, in many instances, the Defendants'
2 employees were aware of failures on the part of the contractors to take corrective action for
3 deficiencies noted in DIR's or concrete placement forms, and rather than notify the MTA or
4 RTD, or document these defective conditions in NCR's or Stop Work Notices, Defendants'
5 Inspectors, Chief Inspectors and Resident Engineers ignored the problems and informed the
6 contractor and their representatives that they were proceeding with work at their own risk. Not
7 only did the Defendants fail to advise the owner of this procedure, but said procedure was in
8 direct violation of Defendants' contractual responsibilities to insure the contract specifications and
9 procedures were being followed.

10 20. PDCD's work on the project was completely schedule-driven, and both the
11 Resident Engineer and Chief Inspector, as well as other inspectors, were under pressure in
12 directives from senior management to move construction along by doing whatever it took.
13 Quality assurance and safety controls which did exist on testing and inspections were deliberately
14 ignored by PDCD management. This resulted in widespread falsified documentation which
15 reflected that properly inspected and tested construction was proceeding on this contract and
16 others, including inspection of the HDPE membrane, which was a critical part of the tunnel work,
17 because this prevented gas and water intrusion into the tunnels. Complaints by Realtor and others
18 were ignored, and project procedures and specifications were scrapped in favor of construction
19 progress. Thus, the weekly and monthly status reports being submitted by PDCD did not reflect
20 the true performance of the vast majority of the construction on Contract A-141 and other
21 contracts on Segment One of the Project.

22 21. Because PDCD's traceability documentation system, including NCR's, DIR's, or
23 Stop Work Notices was a subject of widespread falsification and error, PDCD did not and could
24 not take effective corrective action once deficiencies in the field were noted.

25 22. The MTA hired the firm of Barba Arkhon International, Inc. to conduct a
26 "Construction Management Performance Review" on October 26, 1993. This independent
27 consultant issued a report on February 23, 1994, after an extensive review of documentation and
28 interviews with many project and PDCD employees. This review found a total lack of

67x

1 compliance with PDCD's procedures, and complete ignoring of contract specifications, and a lack
2 of an approved project schedule for Contract A-141, among other things.

3 23. Among the findings of the Barba Arkhon report were failures on the part of PDCD
4 in the areas of (A) Daily Inspection Reports (B) Concrete placement check off and clearance
5 forms (3) Site deficiency notices/Nonconformance reports (D) Suspension of Work Notices (E)
6 Change Orders (F) Scheduling submissions (G) Project procedures updating.

7 24. The failures on the part of PDCD with respect to Contract A-141 were also found
8 to exist with respect to Segment One Contracts A-130, A-146 and A-171.

9 25. The MTA's own independent consultant found that PDCD failed to meet industry
10 practices and standards in their work as a construction manager on the Project. Failures on the
11 part of PDCD was not authorized by the RTD or MTA, and PDCD knew that by allowing
12 contract specifications and procedures to be ignored, that they were not providing quality
13 assurance and traceability systems for which the RTD, the MTA and the Department of
14 Transportation were paying.

15 26. In addition to the Barba Arkhon independent report, two other reports were
16 commissioned by the MTA, those being an independent review by Fluor Daniels, Inc., and the
17 Edward J. Cording Tunnel Review Panel. Each of these independent investigations also
18 confirmed many of the Realtor's allegations concerning failures on the part of PDCD to properly
19 enforce contract specifications and procedures, and also confirmed many instances where thin
20 tunnel liner sections existed, or where reinforcing steel was not added to portions of the tunnel
21 as noted by the Realtor.

22 27. As an example of an attempt to suppress contract procedures with respect to the
23 writing of NCR's, then Resident Engineer A.L. Crowell wrote a memo to Quality Assurance
24 Inspector R. Frias on December 15, 1988, indicating that NCR's should only be issued for those
25 items which "materially affect the quality of the final product and are of such severity that
26 extensive remedial measures must be taken to alleviate the situation." This memo, as well as this
27 policy, was in direct contradiction to PDCD's own requirements, procedures and specifications;
28 yet, Mr. Crowell and others failed to inform the owner of their failure to follow contract

1 procedures in this and other areas.

2 28. Other memos were issued from the Quality Assurance Department on January 25,
3 1989, and August 28, 1989 to Mr. Crowell and/or Roger Vitti, indicating that Noncompliance
4 Reports were issued, but no written disposition of corrective action was taken. Again, the RTD
5 or MTA were not notified of PDCD's failure to follow specifications in these areas.

6 29. Senior Management of PDCD directed their Audit Department, and specifically,
7 Senior Quality Assurance Auditor Ray Frias, to conduct audits of PDCD's procedures. Individual
8 auditors also included Randall Paton.

9 30. The corporate internal audit confirmed the regular, and unauthorized, practice of
10 PDCD of failing to document their activities, failing to follow contract procedures and
11 specifications, failure to prepare inspection reports, as well as failures to develop and implement
12 inspection and test plans. As of April 5, 1988, the teams working under Frias determined that
13 failures in each of these areas continued to exist, despite repeated memorandum on particular
14 items to the Resident Engineers and Chief Inspectors on this and other projects.

15 31. PDCD directed and conducted this fraud on a comprehensive scale. Subsequent
16 investigations reflect evidence of falsehood throughout PDCD's records, widespread
17 noncompliances with PDCD's inspection procedures and contract requirements, and years of
18 failure to take corrective actions.

19 32. Realtor, therefore, alleges that each of the following records, including Quality
20 Assurance records, contains and constitutes false statements:

21 A. Daily Inspection Reports;

22 B. Concrete Check Off and Clearance Forms;

23 C. Nonconformance Reports;

24 D. Suspension of Work Notices;

25 E. Change Orders;

26 F. Weekly and Monthly Progress Schedule and Status Reports;

27 G. PDCD's preparation of a response to Realtor's allegations and observed
28 items, which occurred on or about August 31, 1991, although signed by RCC Vice-President,

1 John Adams.

2 33. As a further result, PDCD knowingly made, used and caused to be used, and used, 3 false records and statements to get false and fraudulent claims paid. The Government has been 4 damaged in an amount unknown to Realtor, but which includes the cost of all efforts associated 5 with compliant operation of a Quality Assurance system, and compliance with traceability 6 requirements as described above. In addition, said damages include the amounts paid to PDCD 7 for inspection and oversight procedures which were not followed, as well as the costs associated 8 with remedial measures which subsequently had to be taken, which were not charged to the 9 contractor.

10 COMMON DAMAGE CLAIMS

11 34. While Realtor does not have access to all information at present, there is every 12 reason to believe that the delivery to the Government of the Metro Rail Project, including those 13 portions covered by Contracts A-130, A-141, A-146 and A-171, continue to contain defective 14 parts, as hereinafter alleged, and may, in addition to those set forth specifically in each count, 15 include the cost to the Government of subsequent remedial measures such as leaks, damages 16 resulting from failure to conform the project to earthquake and seismic specifications, plus any 17 damage awards and litigation costs it may have incurred, or may ultimately incur, in defending 18 itself against civil litigation, if any, which may result from these defects.

19 FIRST CAUSE OF ACTION

20 **Violation of Title 31, §3729 et seq. of the United States Code (The "False Claims Act")**
21 **(Against Defendants RALPH M. PARSONS CO., THE PARSONS CORPORATION,**
22 **DILLINGHAM CONSTRUCTION N.A., INC., DILLINGHAM CONSTRUCTION, INC.,**
23 **AND DE LEUW, CATHER & CO.)**

24 COUNT I

25 Contract A-141

26 35. Realtor hereby realleges and reincorporates by reference all paragraphs in the 27 Complaint as though fully set forth herein.

28 36. In June 1984, PDCD and the RTD entered into a contract which provided, inter

alia, that PDCD would serve as Construction Manager for the RTD, and would be responsible for the overall management of construction activities on behalf of the RTD, whereby PDCD would protect the district from construction problems by establishing and assuring compliance with contract procedures and specifications, in exchange for which PDCD was to be paid a fee, part of which was paid for utilizing federal funding.

37. From 1984 through approximately May of 1991, PDCD charged the RTD and/or MTA, and was paid utilizing federal funds, substantial sums to operate as Construction Manager for Contract A-141 and other contracts. Realtor is informed and believes that PDCD knowingly billed for work it did not perform, as required by its contract, and failed to inform the RTD, and its predecessor agencies, of its failure to follow other procedures or policies required by the contractor, although billing the Government for performing such work, as outlined hereinabove.

38. In submitting these claims for non-existent work, or in submitting claims for work which was not being properly performed under its contractual obligations, PDCD knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid by the Government in violation of the False Claims Act. As a result, the Government was damaged in the amounts paid for such non-existent work, and/or work that was not properly performed, and/or the result and failure(s) of various portions of the Project, which were a direct and proximate result of PDCD's failure to properly inspect those areas and/or to inform the owner of these deficiencies, and of failing to utilize their enforcement powers to stop work until deficiencies were corrected.

COUNT II

Contract A-130

39. Realtor hereby realleges and reincorporates by reference all paragraphs in the Complaint as though fully set forth herein.

40. In June 1984, PDCD and the RTD entered into a contract which provided, inter alia, that PDCD would serve as Construction Manager for the RTD, and would be responsible for the overall management of construction activities on behalf of the RTD, whereby PDCD would protect the district from construction problems by establishing and assuring compliance

71x

with contract procedures and specifications, in exchange for which PDCD was to be paid a fee, part of which was paid for utilizing federal funding.

41. From 1984 through approximately May of 1991, PDCD charged the RTD and/or MTA, and was paid utilizing federal funds, substantial sums to operate as Construction Manager for Contract A-141 and other contracts. Realtor is informed and believes that PDCD knowingly billed for work it did not perform, as required by its contract, and failed to inform the RTD, and its predecessor agencies, of its failure to follow other procedures or policies required by the contractor, although billing the Government for performing such work, as outlined hereinabove.

42. In submitting these claims for non-existent work, or in submitting claims for work which was not being properly performed under its contractual obligations, PDCD knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid by the Government in violation of the False Claims Act. As a result, the Government was damaged in the amounts paid for such non-existent work, and/or work that was not properly performed, and/or the result and failure(s) of various portions of the Project, which were a direct and proximate result of PDCD's failure to properly inspect those areas and/or to inform the owner of these deficiencies, and of failing to utilize their enforcement powers to stop work until deficiencies were corrected.

COUNT III

Contract A-146

43. Realtor hereby realleges and reincorporates by reference all paragraphs in the Complaint as though fully set forth herein.

44. In June 1984, PDCD and the RTD entered into a contract which provided, inter alia, that PDCD would serve as Construction Manager for the RTD, and would be responsible for the overall management of construction activities on behalf of the RTD, whereby PDCD would protect the district from construction problems by establishing and assuring compliance with contract procedures and specifications, in exchange for which PDCD was to be paid a fee, part of which was paid for utilizing federal funding.

45. From 1984 through approximately May of 1991, PDCD charged the RTD and/or

MTA, and was paid utilizing federal funds, substantial sums to operate as Construction Manager for Contract A-141 and other contracts. Realtor is informed and believes that PDCD knowingly billed for work it did not perform, as required by its contract, and failed to inform the RTD, and its predecessor agencies, of its failure to follow other procedures or policies required by the contractor, although billing the Government for performing such work, as outlined hereinabove.

46. In submitting these claims for non-existent work, or in submitting claims for work which was not being properly performed under its contractual obligations, PDCD knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid by the Government in violation of the False Claims Act. As a result, the Government was damaged in the amounts paid for such non-existent work, and/or work that was not properly performed, and/or the result and failure(s) of various portions of the Project, which were a direct and proximate result of PDCD's failure to properly inspect those areas and/or to inform the owner of these deficiencies, and of failing to utilize their enforcement powers to stop work until deficiencies were corrected.

COUNT IV

Contract A-171

47. Realtor hereby realleges and reincorporates by reference all paragraphs in the Complaint as though fully set forth herein.

48. In June 1984, PDCD and the RTD entered into a contract which provided, inter alia, that PDCD would serve as Construction Manager for the RTD, and would be responsible for the overall management of construction activities on behalf of the RTD, whereby PDCD would protect the district from construction problems by establishing and assuring compliance with contract procedures and specifications, in exchange for which PDCD was to be paid a fee, part of which was paid for utilizing federal funding.

49. From 1984 through approximately May of 1991, PDCD charged the RTD and/or MTA, and was paid utilizing federal funds, substantial sums to operate as Construction Manager for Contract A-141 and other contracts. Realtor is informed and believes that PDCD knowingly billed for work it did not perform, as required by its contract, and failed to inform the RTD, and

73x

its predecessor agencies, of its failure to follow other procedures or policies required by the contractor, although billing the Government for performing such work, as outlined hereinabove.

50. In submitting these claims for non-existent work, or in submitting claims for work which was not being properly performed under its contractual obligations, PDCD knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid by the Government in violation of the False Claims Act. As a result, the Government was damaged in the amounts paid for such non-existent work, and/or work that was not properly performed, and/or the result and failure(s) of various portions of the Project, which were a direct and proximate result of PDCD's failure to properly inspect those areas and/or to inform the owner of these deficiencies, and of failing to utilize their enforcement powers to stop work until deficiencies were corrected.

SECOND CAUSE OF ACTION

Violation of Title 31, §3729 et seq. of the United States Code (The "False Claims Act")

(Against Defendants TUTOR-SALIBA, INC., S.J. GROVES, INC., PERINI CORPORATION, Individually, and as Joint Venturers in the Joint Ventures known as TUDOR-SALIBA, TUDOR-SALIBA/GROVES, and TUTOR-SALIBA-PERINI)

51. Realtor hereby realleges and reincorporates by reference all paragraphs in the Complaint as though fully set forth herein.

52. Defendant TUTOR-SALIBA was charged with the principal performance of the construction work for Contract A-141 on Segment One of the L.A. Metrorail Project pursuant to contracts between TUTOR-SALIBA and the Southern California Rapid Transit District, also known as the Rail Construction Corporation, L.A. County Transportation Commission, and the L.A. Metropolitan Transit Authority.

53. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendant TUTOR-SALIBA had knowledge of, acquiesced income, authorized, directed and/or ratified the conduct of its management and employees in the performance or non-performance of the acts as herein alleged, and that such acts took place during the course and

scope of such managements and employees employment with TUTOR-SALIBA.

54. Some time in 1984 or 1985, TUTOR-SALIBA entered into their first contract to perform construction work on the L.A. Metrorail Project, Contract A-141, which was an agreement between Defendants TUTOR-SALIBA and The Southern California Rapid Transit District, whereby TUTOR-SALIBA agreed to perform construction work on various contracts, including Contract A-141. Plaintiff is informed and believes and thereon alleges that TUTOR-SALIBA was entitled to receive progress payments during the course of their construction work on these contracts.

55. During the course of construction work, TUTOR-SALIBA failed to perform the work required of them, failed to follow contract documents, drawings, specifications and procedures, including, but not limited to, the following:

A. Continuing to perform concrete pours without signed authorization from the construction manager, allowing the pour to go forward;

B. Pouring concrete without proper submittal drawings or lift drawings in existence;

C. Failing to properly install structural steel and rebar as called for in contract drawings and specifications;

D. Failing to take proper corrective action once deviations from the contract specifications and procedures were provided to them;

E. Installing and pouring tunnel walls of improper thickness, and failing to correct such problems once they were brought to their attention.

F. Using improper concrete which was contrary to project specifications.

56. Plaintiff is informed and believes that other deviations from the contract specifications and procedures, as well as the contractual obligations of TUTOR-SALIBA, exist and are presently unknown to Plaintiff, who will seek leave to amend this Complaint to include additional deviations once same have become known to Plaintiff.

57. In order to obtain their progress payments, Plaintiff is informed and believes that TUTOR-SALIBA submitted progress reports and other reports to the construction manager and/or

1 the public entities, which failed to apprise them of their own deviations from the contract
2 specifications and procedures, in order to continue to obtain their progress payments. These
3 documents constitute a submission of false statements to the government, and knowingly
4 misrepresented the status of the construction work, and failed to inform the construction manager
5 and/or public entities of their deviations.

6 58. Throughout the time frame specified in this lawsuit, TUTOR-SALIBA submitted
7 charges to the local public entities which were paid for by government funds, in the form of
8 request for progress payments, as well as invoices, Certificates of Conformance, and regular
9 Status Reports which contained records and statements that were knowingly false, due to the
10 regular ongoing fraudulent acts perpetrated by TUTOR-SALIBA as alleged herein.

11 59. Upon submitting requests for progress payments to the government throughout the
12 time frame specified herein, wherein TUTOR-SALIBA represented that the labor and material
13 charges were incurred in accordance with contractual requirements, and other documents
14 submitted at the time of payment, TUTOR-SALIBA knowingly submitted false and fraudulent
15 claims to the public entities and to the United States for payment and approval, or which were
16 paid for utilizing federal funds.

17 60. Through the specific acts and methods alleged in this lawsuit, TUDOR-SALIBA
18 made, used and caused to be made and used, false records and statements to get false or
19 fraudulent claims paid by the government, or utilizing government funds, in violation of the False
20 Claims Act.

21

22 **PRAYER**

23 WHEREFORE REALTOR PRAYS:

24 1. For the First Cause of Action and for each and every count stated therein,
25 judgment against Defendants, and each of them, for treble the United States' damages, maximum
26 civil penalties and forfeitures allowed under law, pre-judgment and post judgment interest, all
27 expenses which the Court finds to have been reasonably incurred, plus reasonable expenses,
28 attorneys' fees and costs; and,

1 2. For the Second Cause of Action and for each and ever count stated therein,
2 judgment against Defendants, and each of them, for treble the United States Damages, maximum
3 civil penalties and forfeitures allowed under law, pre-judgment and post-judgment interest, all
4 expenses which the Court finds to have been reasonably incurred, plus reasonable attorney's fees
5 and costs;
6 3. For such other relief as this court deems proper.
7
8
9
10 BRIAN M. BROWN
Attorney for Qui Tam Realtor
MICHAEL QUINT
11
12
13 DEMAND FOR JURY TRIAL
14 Plaintiff and Qui Tam Realtor, MICHAEL QUINT, hereby demands a Jury Trial as
15 provided by Rule 38(a) of the Federal Rules of Civil Procedure.
16
17 DATED: January 17, 1995
18 BRIAN M. BROWN
Attorney for Qui Tam Realtor
MICHAEL QUINT
19
20
21
22
23
24
25
26
27
28 *A:\QUINTAM.COM2*

LEXIS·NEXIS

reQUESTer

Copyright 1995 McGraw-Hill, Inc.
Engineering News-Record

October 30, 1995

SECTION: NEWS; Vol. 235, No. 18; Pg. 20

LENGTH: 286 words

HEADLINE: Parsons paid settlement

BODY:

A subsidiary of **Parsons Corp.** has agreed to pay the U.S. Dept. of Justice $ 3.22 million to settle a civil **lawsuit** by a former employee charging the company with fraud.

The contracts involved an environmental clean-up at Brooks Air Force Base in Texas in 1992 and 1993. J.R. Tucker, a former employee of Parsons Engineering Science Inc., filed suit against the company in U.S. district court in Raleigh, N.C., on behalf of the U.S. government. Tucker alleged that the Pasadena-based company inflated actual labor costs and misclassified employees. Under federal law, a private party can file a suit on behalf of the government and receive part of the recovered funds. As a result, Tucker collected $ 354,750 of the settlement.

According to a statement by the Justice Dept., the overbilling "may have been unintentional at the start but continued even after the company discovered the discrepancies." Parsons Engineering Science notified the government but continued excessive invoices and offered to correct the error for an amount that "grossly underestimated the mischarged amount," U.S. officials claim.

The amount of the overbilling is unclear. Neither officials of the Justice Dept. nor Parsons Engineering Sciences could be reached for clarifications.

In a statement released several days after the settlement became known, a spokesman for Parsons Corp. emphasizes that Parsons, "not Mr. Tucker," first notified the Air Force of the error. The problem arose from an invoicing error and Parsons Engineering Science never received payment "in excess of which was properly due." The statement noted that Parsons Engineering Science was recently awarded a new contract on the same project.

LANGUAGE: ENGLISH

LOAD-DATE: November 02, 1995

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF NORTH CAROLINA
Raleigh DIVISION

FILED

Case No. 93-251-CIV-S-F

APR 21 1993

J.R. TUCKER, Bringing this Action on Behalf of the United States Government, Plaintiff, v. ENGINEERING-SCIENCE, INC., and RALPH M. PARSONS CORPORATION Defendants.	)))))))))))	COMPLAINT (JURY TRIAL DEMANDED) (COMPLAINT ORIGINALLY SEALED UNDER 31 U.S.C. § 3730(b)(2))

Plaintiff Tucker, bringing this *qui tam* action in the name of the United States Government, complaining of Defendants Engineering-Science, Inc., and Ralph M. Parsons Corporation, alleges as follows:

PARTIES

1. Plaintiff Tucker is an individual citizen of the State of North Carolina and resides in Cary, North Carolina. Plaintiff Tucker is bringing this civil action for violations of 31 U.S.C. § 3729 for himself and for the United States Government, pursuant to the provisions of 31 U.S.C. § 3730(b)(1).

2. The Defendant, Engineering-Science, Inc., is a North Carolina corporation with its principal office and place of business in Pasadena, California and an office and place of business in Cary, North Carolina. Plaintiff Tucker is employed at the Cary, North Carolina, office of Defendant Engineering-Science, Inc. Defendant, Engineering-Science, Inc.'s, registered agent is

79x

CT Corporation located at 225 Hillsborough Street, Raleigh, North Carolina 27603.

3. The Defendant, Ralph M. Parsons Corporation, is a Nevada corporation with its principal office and place of business in Pasadena, California and is, upon information and belief, the sole owner and parent corporation of the Defendant, Engineering-Science, Inc. Defendant, Ralph M. Parsons Corporation's, registered agent is CT Corporation located at 225 Hillsborough Street, Raleigh, NC 27603.

JURISDICTION AND VENUE

4. This action arises under 31 U.S.C. § 3729 *et seq.*, known as the "False Claims Act."

5. Jurisdiction over this action is conferred on this Court by 31 U.S.C. § 3732(a) and 28 U.S.C. § 1331 because this civil action arises under the laws of the United States.

6. Venue is proper in the Eastern District of North Carolina under 28 U.S.C. § 1391(c) and 31 U.S.C. § 3732(a) because Defendant Engineering-Science, Inc. is doing business in this district; because some of the claims alleged arose in this district, in Wake County, North Carolina; and because the Defendant Engineering-Science, Inc. charged with the violation is located in this district.

PRELIMINARY STATEMENT

7. Plaintiff Tucker is an employee of Defendant, Engineering-Science, Inc.'s, Cary, North Carolina, facility. Plaintiff has

been employed by Defendant, Engineering-Science, Inc., since 1991.

8. Defendant Engineering-Science, Inc. is a contractor supplying services to the United States Government, including, but not limited to, services to the United States Coast Guard, the United States Air Force, and the United States Environmental Protection Agency (USEPA).

THE CLAIMS

9. Defendant Engineering-Science, Inc., pursuant to its contracts and agreements, entered into one or more contracts or agreements with the United States Government to perform environmental surveys for the Coast Guard, Air Force, and USEPA as a prime contractor and/or as a subcontractor to another prime contractor.

10. Under the terms of the contracts entered into by the United States Government with the Defendant, Engineering-Science, Inc., Defendant was responsible for keeping detailed, accurate records, including but not limited to, records of billable hours of time expended by Engineering-Science, Inc.'s employees in carrying out the work performed pursuant to the completion of such contracts.

11. In order to receive payment from the United States Government for supplying services pursuant to the contracts described above, Defendant Engineering-Science, Inc. prepared claims for payment or approval, based upon the records described above and presented or caused them to be presented to an officer or employee of the United States Government or a member of the United

81x

States Government's Armed Forces or to a prime contractor to the United States Government.

12. Defendant Engineering-Science, Inc., by and through its officers, agents, or employees caused vouchers to be made, used, presented, or delivered to the United States Government, either directly or indirectly by means of summaries of them, which vouchers or summaries were false or fraudulent because the records of billable rates per hour and/or the number of hours expended had been inflated. The records of billable hours had been improperly adjusted to bill one or more of Defendant's employees at higher rates than those for which they were qualified, or the number of hours expended was very inflated, resulting in the United States Government being overbilled for the services performed by Defendant, Engineering-Science, Inc., pursuant to the contracts described above.

13. Upon information and belief Defendant Engineering-Science, Inc.'s officers, agents and/or employees were aware of the proper billing rates to be applied to its billings but higher rates were billed than were allowed by the contract.

14. Upon information and belief, Defendant Engineering-Science, Inc.'s employees' billable rates/hour and billable hours expended were knowingly falsified by one of more of Defendant's employees for the purpose of wrongfully obtaining funds belonging to the United States Government.

15. The information described above has been brought to the attention of several of Defendant Engineering-Science, Inc.'s high

level management officials on at least one occasion, an April 6, 1993 dinner at which Plaintiff Tucker was present. At the dinner, these officials discussed ways in which Defendant Engineering-Science, Inc. could conceal, avoid or decrease its obligation to repay the United States Government the appropriate amounts due and to continue to bill at rates above those justified by the contract. No discussion was conducted at the dinner to suggest that Defendant, Engineering-Science, Inc., should come forward and tell the United States Government that its billing under the contracts described above was erroneous.

COUNT I

16. Paragraphs 1-15 are incorporated by reference as if set out in full below.

17. Upon information and belief, Defendant Engineering-Science, Inc., by and through its officers, agents, and/or employees, knowingly presented or caused to be presented to an officer or employee of the government or a member of the armed forces false or fraudulent claims for payment or approval during the last year or more of Defendant, Engineering-Science, Inc.'s, contract(s) referenced in paragraph (9) herein.

18. Upon information and belief, Defendant, Engineering-Science, Inc., by and through its officers, agents, and employees, knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved.

19. Upon information and belief, Defendant, Engineering-Science, Inc., by and through its officers, agents, and employees,

has authorized the actions of its various officers, agents, and employees to take the actions set forth above.

20. Upon information and belief, the United States Government has sustained damages because of the acts of Defendant Engineering-Science, Inc. as a result of its violations of the False Claims Act, 31 U.S.C. § 3729.

21. Upon information and belief, the actions described above have occurred during the time period in which Defendant, Engineering-Science, Inc., was a contractor with the United States Government pursuant to various contracts, including, but not limited to, the time period during which Plaintiff Tucker has been employed by Defendant.

22. Upon information and belief, as set forth in the preceding paragraphs, Defendant, Engineering-Science, Inc., has knowingly violated 31 U.S.C. § 3729 and has thereby damaged the United States Government by its actions in an amount to be determined at trial.

* * * * * * * * * * * *

Further, Jurisdiction of the Court having been invoked and established under Plaintiff's first claim for relief, the jurisdiction of the Court is invoked under the doctrine of pendent jurisdiction for the purpose of Claim Two in that Claim Two alleges different grounds in support of a single claim for relief arising out of the same transaction.

COUNT II

(Conversion)

23. Paragraphs 1-22 are incorporated by reference as if set out in full below.

24. Defendant, Engineering-Science, Inc., by and through the acts and/or omissions to act of its officers, agents and/or employees has wrongfully converted to its own use and benefit funds belonging to the United States Government.

25. The United States Government has been deprived of the legitimate use and benefit of said funds by the detention of said funds.

26. By engaging in the acts pleaded herein, Defendant, Engineering-Science, Inc., should be charged with punitive damages.

WHEREFORE, PLAINTIFF, on behalf of the United States Government, prays:

(a) That this Court Order that Defendant Engineering-Science, Inc. cease and desist from violating 31 U.S.C. § 3729;

(b) That this Court enter judgment against Defendant, Engineering-Science, Inc. and/or Defendant, Ralph M. Parsons Corporation, in an amount equal to three times the amount of damages the United States Government has sustained because of its actions, plus a civil penalty of

$5,000 to $10,000 for each action in violation of 31 U.S.C. § 3729, and the costs of this action with interest, including the costs of the United States Government for its expenses related to this action;

(c) That Plaintiff be awarded all costs incurred, including reasonable attorneys fees;

(d) That in the event that the United States Government continues to proceed with this action, Plaintiff be awarded an amount for bringing this action in the amount of at least 15 percent and as much as 25 percent of the proceeds of the action or settlement of the claim;

(e) That in the event that the United States Government does not proceed with this action, Plaintiff be awarded an amount that the Court decides is reasonable for collecting the civil penalty and damages, which shall be not less than 25 percent nor more than 30 percent of the proceeds of the action or settlement;

(f) That punitive damages in an amount to be determined be awarded pursuant to the second claim for relief;

(g) That a trial by jury be held on all issues;

(h) That the United States Government and Plaintiff receive any other relief, both at law and at equity, to which they may reasonably appear entitled.

This the 21 day of April, 1993.

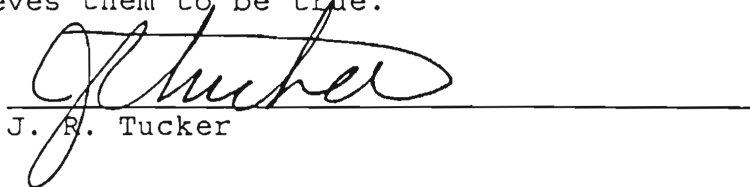
Reagan H. Weaver

Reagan H. Weaver
Capitol District Law Offices
11 South Blount Street
P.O. Box 25096
Raleigh, North Carolina 27611
Telephone: (919) 828-0363
State Bar No. 12585

NORTH CAROLINA

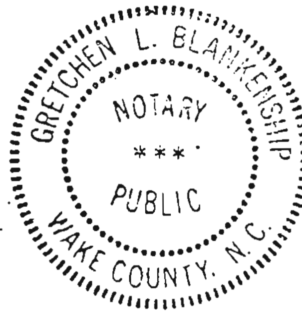
WAKE COUNTY

Plaintiff, J.R. Tucker, being first duly sworn deposes and says that he is the plaintiff in the foregoing action; that he has read the foregoing Complaint and knows its contents and that the same is true of his own knowledge except as to those matters and things set forth therein upon information and belief, and as to those matters he believes them to be true.



J. R. Tucker

Sworn and subscribed to me this the 21 day of April, 1993.



My commission expires:

My Commission Expires 7/8/96

88x

CERTIFICATE OF SERVICE

It is hereby certified that on this date the foregoing Complaint [Sealed Under 31 U.S.C. §3730(b)(2)] and substantially all material evidence in the possession of the Plaintiff was served upon the Office of the United States Attorney for the Eastern District Of North Carolina by hand delivery of such copies in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure.

This the 22 day of April, 1993.

Reagan H. Weaver

Reagan H. Weaver
Capitol District Law Offices
11 South Blount Street
P.O. Box 25096
Raleigh, NC 27611
Telephone: (919) 828-0363
State Bar No.: 12585

LEXIS·NEXIS®

reQUESTer

Copyright 1995 McGraw-Hill, Inc.
Engineering News-Record

October 30, 1995

SECTION: NEWS; Vol. 235, No. 18; Pg. 20

LENGTH: 286 words

HEADLINE: Parsons paid settlement

BODY:

A subsidiary of **Parsons Corp.** has agreed to pay the U.S. Dept. of Justice $ 3.22 million to settle a civil **lawsuit** by a former employee charging the company with fraud.

The contracts involved an environmental clean-up at Brooks Air Force Base in Texas in 1992 and 1993. J.R. Tucker, a former employee of Parsons Engineering Science Inc., filed suit against the company in U.S. district court in Raleigh, N.C., on behalf of the U.S. government. Tucker alleged that the Pasadena-based company inflated actual labor costs and misclassified employees. Under federal law, a private party can file a suit on behalf of the government and receive part of the recovered funds. As a result, Tucker collected $ 354,750 of the settlement.

According to a statement by the Justice Dept., the overbilling "may have been unintentional at the start but continued even after the company discovered the discrepancies." Parsons Engineering Science notified the government but continued excessive invoices and offered to correct the error for an amount that "grossly underestimated the mischarged amount," U.S. officials claim.

The amount of the overbilling is unclear. Neither officials of the Justice Dept. nor Parsons Engineering Sciences could be reached for clarifications.

In a statement released several days after the settlement became known, a spokesman for Parsons Corp. emphasizes that Parsons, "not Mr. Tucker," first notified the Air Force of the error. The problem arose from an invoicing error and Parsons Engineering Science never received payment "in excess of which was properly due." The statement noted that Parsons Engineering Science was recently awarded a new contract on the same project.

LANGUAGE: ENGLISH

LOAD-DATE: November 02, 1995

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF NORTH CAROLINA
Raleigh DIVISION

FILED

Case No. 93-251-CIV-5-F

APR 21 1993

J.R. TUCKER, Bringing this Action on Behalf of the United States Government, Plaintiff, v. ENGINEERING-SCIENCE, INC., and RALPH M. PARSONS CORPORATION Defendants.	)))))))))))	COMPLAINT (JURY TRIAL DEMANDED) (COMPLAINT ORIGINALLY SEALED UNDER 31 U.S.C. § 3730(b)(2))

Plaintiff Tucker, bringing this *qui tam* action in the name of the United States Government, complaining of Defendants Engineering-Science, Inc., and Ralph M. Parsons Corporation, alleges as follows:

PARTIES

1. Plaintiff Tucker is an individual citizen of the State of North Carolina and resides in Cary, North Carolina. Plaintiff Tucker is bringing this civil action for violations of 31 U.S.C. § 3729 for himself and for the United States Government, pursuant to the provisions of 31 U.S.C. § 3730(b)(1).

2. The Defendant, Engineering-Science, Inc., is a North Carolina corporation with its principal office and place of business in Pasadena, California and an office and place of business in Cary, North Carolina. Plaintiff Tucker is employed at the Cary, North Carolina, office of Defendant Engineering-Science, Inc. Defendant, Engineering-Science, Inc.'s, registered agent is

91x

CT Corporation located at 225 Hillsborough Street, Raleigh, North Carolina 27603.

3. The Defendant, Ralph M. Parsons Corporation, is a Nevada corporation with its principal office and place of business in Pasadena, California and is, upon information and belief, the sole owner and parent corporation of the Defendant, Engineering-Science, Inc. Defendant, Ralph M. Parsons Corporation's, registered agent is CT Corporation located at 225 Hillsborough Street, Raleigh, NC 27603.

JURISDICTION AND VENUE

4. This action arises under 31 U.S.C. § 3729 *et seq.*, known as the "False Claims Act."

5. Jurisdiction over this action is conferred on this Court by 31 U.S.C. § 3732(a) and 28 U.S.C. § 1331 because this civil action arises under the laws of the United States.

6. Venue is proper in the Eastern District of North Carolina under 28 U.S.C. § 1391(c) and 31 U.S.C. § 3732(a) because Defendant Engineering-Science, Inc. is doing business in this district; because some of the claims alleged arose in this district, in Wake County, North Carolina; and because the Defendant Engineering-Science, Inc. charged with the violation is located in this district.

PRELIMINARY STATEMENT

7. Plaintiff Tucker is an employee of Defendant, Engineering-Science, Inc.'s, Cary, North Carolina, facility. Plaintiff has

been employed by Defendant, Engineering-Science, Inc., since 1991.

8. Defendant Engineering-Science, Inc. is a contractor supplying services to the United States Government, including, but not limited to, services to the United States Coast Guard, the United States Air Force, and the United States Environmental Protection Agency (USEPA).

THE CLAIMS

9. Defendant Engineering-Science, Inc., pursuant to its contracts and agreements, entered into one or more contracts or agreements with the United States Government to perform environmental surveys for the Coast Guard, Air Force, and USEPA as a prime contractor and/or as a subcontractor to another prime contractor.

10. Under the terms of the contracts entered into by the United States Government with the Defendant, Engineering-Science, Inc., Defendant was responsible for keeping detailed, accurate records, including but not limited to, records of billable hours of time expended by Engineering-Science, Inc.'s employees in carrying out the work performed pursuant to the completion of such contracts.

11. In order to receive payment from the United States Government for supplying services pursuant to the contracts described above, Defendant Engineering-Science, Inc. prepared claims for payment or approval, based upon the records described above and presented or caused them to be presented to an officer or employee of the United States Government or a member of the United

States Government's Armed Forces or to a prime contractor to the United States Government.

12. Defendant Engineering-Science, Inc., by and through its officers, agents, or employees caused vouchers to be made, used, presented, or delivered to the United States Government, either directly or indirectly by means of summaries of them, which vouchers or summaries were false or fraudulent because the records of billable rates per hour and/or the number of hours expended had been inflated. The records of billable hours had been improperly adjusted to bill one or more of Defendant's employees at higher rates than those for which they were qualified, or the number of hours expended was very inflated, resulting in the United States Government being overbilled for the services performed by Defendant, Engineering-Science, Inc., pursuant to the contracts described above.

13. Upon information and belief Defendant Engineering-Science, Inc.'s officers, agents and/or employees were aware of the proper billing rates to be applied to its billings but higher rates were billed than were allowed by the contract.

14. Upon information and belief, Defendant Engineering-Science, Inc.'s employees' billable rates/hour and billable hours expended were knowingly falsified by one of more of Defendant's employees for the purpose of wrongfully obtaining funds belonging to the United States Government.

15. The information described above has been brought to the attention of several of Defendant Engineering-Science, Inc.'s high

level management officials on at least one occasion, an April 6, 1993 dinner at which Plaintiff Tucker was present. At the dinner, these officials discussed ways in which Defendant Engineering-Science, Inc. could conceal, avoid or decrease its obligation to repay the United States Government the appropriate amounts due and to continue to bill at rates above those justified by the contract. No discussion was conducted at the dinner to suggest that Defendant, Engineering-Science, Inc., should come forward and tell the United States Government that its billing under the contracts described above was erroneous.

COUNT I

16. Paragraphs 1-15 are incorporated by reference as if set out in full below.

17. Upon information and belief, Defendant Engineering-Science, Inc., by and through its officers, agents, and/or employees, knowingly presented or caused to be presented to an officer or employee of the government or a member of the armed forces false or fraudulent claims for payment or approval during the last year or more of Defendant, Engineering-Science, Inc.'s, contract(s) referenced in paragraph (9) herein.

18. Upon information and belief, Defendant, Engineering-Science, Inc., by and through its officers, agents, and employees, knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved.

19. Upon information and belief, Defendant, Engineering-Science, Inc., by and through its officers, agents, and employees,

has authorized the actions of its various officers, agents, and employees to take the actions set forth above.

20. Upon information and belief, the United States Government has sustained damages because of the acts of Defendant Engineering-Science, Inc. as a result of its violations of the False Claims Act, 31 U.S.C. § 3729.

21. Upon information and belief, the actions described above have occurred during the time period in which Defendant, Engineering-Science, Inc., was a contractor with the United States Government pursuant to various contracts, including, but not limited to, the time period during which Plaintiff Tucker has been employed by Defendant.

22. Upon information and belief, as set forth in the preceding paragraphs, Defendant, Engineering-Science, Inc., has knowingly violated 31 U.S.C. § 3729 and has thereby damaged the United States Government by its actions in an amount to be determined at trial.

* * * * * * * * * * * *

Further, Jurisdiction of the Court having been invoked and established under Plaintiff's first claim for relief, the jurisdiction of the Court is invoked under the doctrine of pendent jurisdiction for the purpose of Claim Two in that Claim Two alleges different grounds in support of a single claim for relief arising out of the same transaction.

COUNT II

(Conversion)

23. Paragraphs 1-22 are incorporated by reference as if set out in full below.

24. Defendant, Engineering-Science, Inc., by and through the acts and/or omissions to act of its officers, agents and/or employees has wrongfully converted to its own use and benefit funds belonging to the United States Government.

25. The United States Government has been deprived of the legitimate use and benefit of said funds by the detention of said funds.

26. By engaging in the acts pleaded herein, Defendant, Engineering-Science, Inc., should be charged with punitive damages.

WHEREFORE, PLAINTIFF, on behalf of the United States Government, prays:

(a) That this Court Order that Defendant Engineering-Science, Inc. cease and desist from violating 31 U.S.C. § 3729;

(b) That this Court enter judgment against Defendant, Engineering-Science, Inc. and/or Defendant, Ralph M. Parsons Corporation, in an amount equal to three times the amount of damages the United States Government has sustained because of its actions, plus a civil penalty of

$5,000 to $10,000 for each action in violation of 31 U.S.C. § 3729, and the costs of this action with interest, including the costs of the United States Government for its expenses related to this action;

(c) That Plaintiff be awarded all costs incurred, including reasonable attorneys fees;

(d) That in the event that the United States Government continues to proceed with this action, Plaintiff be awarded an amount for bringing this action in the amount of at least 15 percent and as much as 25 percent of the proceeds of the action or settlement of the claim;

(e) That in the event that the United States Government does not proceed with this action, Plaintiff be awarded an amount that the Court decides is reasonable for collecting the civil penalty and damages, which shall be not less than 25 percent nor more than 30 percent of the proceeds of the action or settlement;

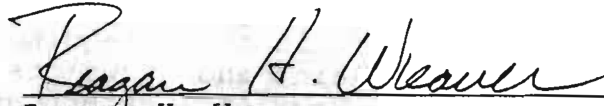
(f) That punitive damages in an amount to be determined be awarded pursuant to the second claim for relief;

(g) That a trial by jury be held on all issues;

(h) That the United States Government and Plaintiff receive any other relief, both at law and at equity, to which they may reasonably appear entitled.

98x

This the 21 day of April, 1993.

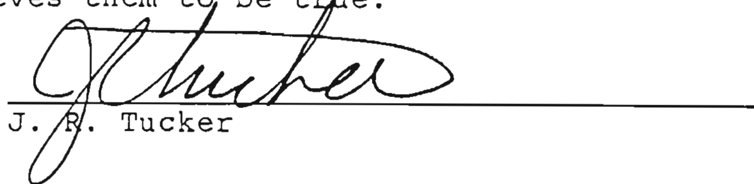


Reagan H. Weaver
Capitol District Law Offices
11 South Blount Street
P.O. Box 25096
Raleigh, North Carolina 27611
Telephone: (919) 828-0363
State Bar No. 12585

NORTH CAROLINA

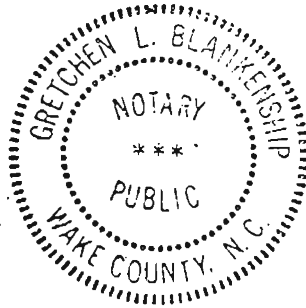
WAKE COUNTY

Plaintiff, J.R. Tucker, being first duly sworn deposes and says that he is the plaintiff in the foregoing action; that he has read the foregoing Complaint and knows its contents and that the same is true of his own knowledge except as to those matters and things set forth therein upon information and belief, and as to those matters he believes them to be true.



J. R. Tucker

Sworn and subscribed to me this the 21 day of April, 1993.



My commission expires:

My Commission Expires 7/8/96

100x

CERTIFICATE OF SERVICE

It is hereby certified that on this date the foregoing Complaint [Sealed Under 31 U.S.C. §3730(b)(2)] and substantially all material evidence in the possession of the Plaintiff was served upon the Office of the United States Attorney for the Eastern District Of North Carolina by hand delivery of such copies in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure.

This the 22 day of April, 1993.

Reagan H. Weaver

Reagan H. Weaver
Capitol District Law Offices
11 South Blount Street
P.O. Box 25096
Raleigh, NC 27611
Telephone: (919) 828-0363
State Bar No.: 12585

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

PONDEROSA FIBRES OF PENNSYLVANIA, INC., and APPLETON RECYCLED FIBRES, INC., t/d/b/a PONDEROSA FIBRES OF PENNSYLVANIA PARTNERSHIP, 7 Penn Plaza, Suite 618 New York, NY 10001	
Plaintiffs,	No. 97-C-4861
v.	
PARSONS MAIN, INC. Prudential Center Boston, MA 02199	
and	*JURY TRIAL DEMANDED*
THE PARSONS CORPORATION, 100 West Walnut Street Pasadena, CA 91124	
Defendants.	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

NORTHAMPTON LAWYER REFERRAL SERVICE
155 SOUTH 9TH STREET
EASTON, PENNSYLVANIA 18042
TELEPHONE: (610) 258-6333

PI-89884.03

John R. Dingess (Pa. I.D. No. 28861)
Richard F. Paciaroni (Pa. I.D. No. 46690)
KIRKPATRICK & LOCKHART LLP
1500 Oliver Building
Pittsburgh, Pennsylvania 15222
Telephone: (412) 355-6500

Douglas J. Smillie (Pa. I.D. No. 36687)
FITZPATRICK LENTZ & BUBBA, P.C.
Saucon Valley Road at Route 309
Post Office Box 219
Center Valley, Pennsylvania 18034-0219
Telephone: (610) 797-9000

Attorneys for Plaintiffs Ponderosa Fibres of Pennsylvania, Inc. and Appleton Recycled Fibres, Inc., t/d/b/a Ponderosa Fibres of Pennsylvania Partnership

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

PONDEROSA FIBRES OF PENNSYLVANIA, INC., and APPLETON RECYCLED FIBRES, INC., t/d/b/a PONDEROSA FIBRES OF PENNSYLVANIA PARTNERSHIP, 7 Penn Plaza, Suite 618 New York, NY 10001 Plaintiffs,	COMPLAINT No. 97-C-4861
v.	
PARSONS MAIN, INC. Prudential Center Boston, MA 02199 and THE PARSONS CORPORATION, 100 West Walnut Street Pasadena, CA 91124 Defendants.	***JURY TRIAL DEMANDED***

103x

COMPLAINT

Plaintiffs, Ponderosa Fibres of Pennsylvania, Inc. and Appleton Recycled Fibres, Inc. t/d/b/a Ponderosa Fibres of Pennsylvania Partnership, by and through their counsel, Kirkpatrick & Lockhart LLP and Fitzpatrick, Lentz and Bubba, P.C., file this Complaint against Defendants Parsons Main, Inc. and The Parsons Corporation, and in support thereof, aver as follows:

PARTIES

1. Ponderosa Fibres of Pennsylvania Partnership ("Ponderosa") is a general partnership formed under the laws of the Commonwealth of Pennsylvania. Its two general partners are Ponderosa Fibres of Pennsylvania, Inc. ("PFP") and Appleton Recycled Fibres, Inc. ("ARF"). Both PFP and ARF are Delaware corporations and each has a place of business in Pennsylvania.

2. Ponderosa conducts business through its majority general partner, PFP.

3. At all times relevant hereto, Ponderosa was the owner of a 415 ADST/D (Air Dry Short Tons Per Day) Mixed Office Waste Chemical Fiber Deinking Mill located in Northampton, Northampton County, Pennsylvania (the "Facility").

4. Defendant, Parsons Main, Inc. ("PMI"), is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. Its principal place of business is located in Boston, Massachusetts.

5. At all times relevant hereto, PMI was the contractor for the engineering, procurement, construction, commissioning, testing and start-up of the Facility.

6. Defendant, The Parsons Corporation ("Parsons"), is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is in Pasadena, California.

7. At all times relevant hereto, Parsons was the ultimate parent of PMI and the guarantor of all of PMI's obligations with respect to the Facility.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over PMI because PMI: (a) is licensed, authorized, or registered to do business in Pennsylvania; (b) has, within the relevant time period, conducted business in Pennsylvania; and/or (c) has done business with Ponderosa in Northampton County, Pennsylvania in connection with the transactions at issue in this Complaint.

9. This Court has personal jurisdiction over Parsons because the claims at issue in this Complaint against Parsons relate to Parsons' unconditional guaranty of the performance and payment of all of PMI's obligations with respect to the Facility. In its guaranty, Parsons consented to the jurisdiction of all state and federal courts in the Commonwealth of Pennsylvania.

10. This Court has subject matter jurisdiction over this action pursuant to 42 Pa. C.S.A. § 931.

11. Venue is proper in this Court because Ponderosa's causes of action against PMI and Parsons have arisen in, or the transactions from which its causes of action have arisen took place in, Northampton County, Pennsylvania.

FACTUAL BACKGROUND

A. Introduction

12. The claims at issue in this Complaint relate to a $190+ million project to develop, finance, engineer, procure, construct, commission, test and start-up the Facility (the "Project"). The object of the Project was to produce a plant which would be capable of

105x

processing mixed office waste (waste paper) through various mechanical and chemical processes so as to produce 415 tons per day of recycled paper pulp, meeting specified guarantees as to quality and quantity, for resale to paper manufacturers.

13. The Project was financed through the sale of Pennsylvania economic development bonds and equity contributions from Ponderosa's general partners. The Trustee for the bondholders is Mellon Bank, N.A. Brown & Root, Inc. ("Brown & Root") is the Independent Engineer who reports to the Trustee for the bondholders.

B. The EPC Contract and Parsons' Guaranty

14. On or about March 23, 1995, Ponderosa and PMI entered into a contract for the engineering, procurement, construction, commissioning, testing and start-up of the Facility (the "EPC Contract"). A true and correct copy of the EPC Contract (without Exhibits and Attachments, which are voluminous) is attached hereto as Exhibit "A".

15. On or about March 23, 1995, Parsons executed a Construction Contract Guaranty (the "Guaranty") whereby Parsons unconditionally and irrevocably guaranteed to both Ponderosa and the Trustee the punctual payment of all amounts due and the performance of each and every obligation of PMI under the EPC Contract. Parsons further agreed that the performance of its obligations under the Guaranty was not conditioned or contingent upon any attempt to collect amounts due from PMI or to enforce performance by PMI under the EPC Contract, or on any other condition or contingency. A true and correct copy of the Guaranty is attached hereto as Exhibit "B".

16. In connection with the negotiation of and entry into the EPC Contract, PMI represented itself as a leading contractor with the capability and expertise to engineer, procure all necessary equipment for and construct the Facility (an "EPC contractor") in accordance with the EPC Contract. Ponderosa relied upon such representations by PMI in connection with its decision to enter into the EPC Contract with PMI, its decision to partially fund the Project with

equity contributions of its general partners, and its decision to obtain primary financing for the Project from the bondholders.

17. In connection with the negotiation of and entry into the EPC Contract, Parsons represented itself as a leading international EPC contractor with experience handling the engineering, procurement, construction, commissioning, testing and start-up of complex process plants like the Facility. Parsons further gave assurances to Ponderosa that its wholly-owned subsidiary, PMI, had the necessary expertise and experience to successfully engineer, procure, construct, commission, test and start-up the Facility in accordance with the EPC Contract.

18. To further assure Ponderosa of the full and faithful discharge of all of PMI's obligations under the EPC Contract, Parsons represented and agreed to provide to Ponderosa and the Trustee an unconditional and irrevocable guaranty of: (1) PMI's performance of the EPC Contract, and (2) payment of all of PMI's obligations under the EPC Contract. Ponderosa relied upon such representations and assurances by Parsons in connection with its decision to enter into the EPC Contract with PMI, its decision to partially fund the Project with equity contributions of its general partners, and its decision to obtain primary financing for the Project from the bondholders.

19. The EPC Contract required PMI to provide all professional services, labor, supervision, materials, equipment, tools, supplies, and all other items (with the exception of certain materials which Ponderosa agreed to provide pursuant to Article 36 of the EPC Contract) necessary to engineer, procure, construct, commission, test and start-up the Facility.

20. As part of its duties and obligations under the EPC Contract, PMI guaranteed that the Facility would achieve certain performance and quality standards including, but not limited to: (1) quality and quantity of pulp production; (2) yield, defined as a ratio of the tonnage of pulp produced to the tonnage of waste paper utilized; (3) consumption of chemicals;

(4) consumption of electricity and steam; and (5) effluent discharge quality (hereinafter collectively the "Performance Guarantees").

21. The EPC Contract required that the Facility achieve Mechanical Completion, which is defined in the EPC Contract as follows:

> "Mechanical Completion" shall occur on the last to occur of the following requirements: (1) Contractor has completed the installation of all necessary components of the Facility and all Project Systems shall have achieved Acceptance, except that to permit the earliest possible commissioning of the Facility, the completion of the Punch List Items may be deferred by Owner solely for the purposes of Mechanical Completion; (2) the Facility is mechanically and electrically sound (i.e., interruption of use for further normal recommissioning activities is not expected); (3) Facility equipment may be operated within manufacturers' recommended limits and together with all other Facility equipment in compliance with all applicable laws as an integrated Facility without hazard or damage to the Facility or any other property and without injury to any person; (4) completion of all items on Part A of the Deficiency List; (5) all Pre-Operational Tests and testing and Commissioning of the auxiliary boiler shall have been successfully completed; (6) Owner has received all drawings, specifications and instruction books necessary to start up, operate and maintain the Facility in a safe and reliable manner; and (7) the certificate called for by Paragraph 3.D has been signed by all parties.

22. The EPC Contract, at Paragraph 2.G., defines "Deficiency List" items as follows:

> In accordance with Paragraph 2.I, Owner shall prepare a list of items of the Work construction which have not been completed, together with any defects and deficiencies in the Work (collectively, the "Deficiency List"). Part A of the Deficiency List must be completed prior to Mechanical Completion, and Part B of the Deficiency List (such Part, the "Punch List") must be completed prior to Final Completion (the items thereon, the "Punch List Items"). Punch List Items shall consist only of such items of the Work which are minor in nature and can be successfully completed without interfering with the commercial operation of the Facility and do not affect the performance of the Facility, including the operability, maintainability, reliability, safety or mechanical or electrical or thermal integrity of the Facility.

108x

23. The EPC Contract also requires that the Facility achieve Commercial Operation, which is defined in the EPC Contract as follows:

> "Commercial Operation" shall occur upon the last to occur of the following requirements: (1) Mechanical Completion has been achieved; (2) Contractor has completed the Work (including stocking of spare parts and Special Tools in accordance with Paragraph 2.H), except Punch List Items and items number (3), (4), (5) and (8) in the definition of Final Completion; (3) the Facility is able to operate in accordance with its design requirements and in accordance with applicable laws; (4) the Effluent Discharge Guaranty has been met; (5) Contractor has paid all liquidated damages, if any, required pursuant to Paragraph 8.C.1 and 8.C.2; (6) Contractor has successfully completed all Operational Testing; (7) Contractor has demonstrated that Guaranteed Plant Performance has been achieved or Contractor has given the notice and paid all liquidated damages required pursuant to Paragraph 13.F; (8) the Facility is ready to begin uninterrupted operation under the control of Owner or its agents; (9) all permits necessary to conduct Commercial Operation on an uninterrupted basis which are to be obtained by Contractor have been issued to Owner other than those listed on Exhibit D attached hereto; and (10) the Certificate called for by Paragraph 3.D has been signed by all parties.

24. The EPC Contract also requires that the Facility achieve Final Completion, which is defined in the EPC Contract as follows:

> "Final Completion" shall occur upon the last to occur of the following requirements: (1) Commercial Operation has been achieved; (2) completion of all Punch List Items; (3) Contractor has provided to Owner all As-Built Drawings, system descriptions and engineering data called for by this Contract; (4) all Contractor supplies, equipment, waste material, rubbish and temporary facilities have been removed from the Facility Site; (5) Contractor has delivered all releases and lien waivers required pursuant to Paragraph 3.E; (6) Owner has received all amounts, if any, to be paid by Contractor; (7) Contractor shall have completed all obligations required under this Agreement other than those items which require future performance (e.g., warranties, indemnities); and (8) the certificate called for by Paragraph 3.D has been signed by all parties.

25. The EPC Contract, at Paragraph 2.D., explicitly requires that "Commercial Operation shall be achieved on or before the Guaranteed Commercial Operation Date," which was

May 22, 1997. The EPC Contract provides that if PMI fails to cause the Facility to achieve Commercial Operation on or before May 22, 1997, or if the Facility does not meet or exceed the Performance Guarantees, then PMI shall pay liquidated damages to Ponderosa ("Liquidated Damages").

26. The EPC Contract, at Paragraph 19.D., requires PMI to maintain care, custody and control of the Facility until the Facility achieves Commercial Operation, and to be "responsible for and obligated to replace, repair or reconstruct any portion or all of the Work which is lost, damaged or destroyed" prior to achieving Commercial Operation.

27. The EPC Contract, at Paragraph 3.G., provides that "[PMI's] obligation to perform the Work and complete the Facility in accordance with the Contract Documents shall be absolute."

28. The EPC Contract also provides, at Paragraph 14.C., that PMI is required to continue to carry out the Work and maintain progress during the course of any dispute with Ponderosa.

29. In return for the full and faithful discharge by PMI of all of its duties and obligations under the EPC Contract, Ponderosa agreed to pay PMI $122,800,000, plus up to $2,550,000 in additional compensation derived from revenue from the Facility once it achieved Commercial Operation.

C. Engineering, Design and Construction of the Facility; Failed Attempts to Start-Up the Facility and Abandonment of the Facility by PMI.

30. On or about March 23, 1995, and pursuant to the terms of the EPC Contract, Ponderosa issued a Notice to Proceed to PMI.

31. PMI commenced engineering and design of the Facility in or about January 1995. Such engineering and design proceeded continuously through at least June 1996.

110x

32. PMI's engineering and design work and project management for the Facility were conducted primarily by individuals located in Massachusetts.

33. Unknown to Ponderosa, PMI's engineering and design of the Facility were defective and deficient in that a plant built in accordance with PMI's design drawings and specifications could never achieve the requirements of the EPC Contract.

34. Construction of the Facility commenced in or about May 1995. Construction proceeded through the remainder of 1995 and into November 1996.

35. In the period May-July 1996, PMI and Parsons became aware that the Project was far behind schedule. At that time, Parsons placed one of its own senior level executives over PMI's Project management team. Upon information and belief, it was in that time period that Parsons, through its Parsons Power Group, took over control of the Project.

36. In the period July 1996 through January 1997, PMI and Parsons became aware of delays to the Project schedule which were caused by PMI or its subcontractors and also became aware of serious problems with PMI's project management staff. In that same time period, PMI and Parsons replaced PMI's project manager, PMI's construction manager and PMI's operations manager for the Project.

37. On or about October 29, 1996, PMI introduced waste paper into the pulping and forming systems for the first time, bypassing the deinking portion of the plant. Over the course of the next two months, Parsons began to run pulp through the deink equipment and systems as they came on line.

38. Between November 1996 and February 1997 or earlier, Parsons and PMI became aware of, or recklessly or negligently failed to become aware of, numerous, major defects and deficiencies in the engineering, design, equipment selection, equipment operation and construction of the Facility (collectively, the "Defects"). At that time, Parsons and PMI also

111x

knew and understood or should have known and understood that the Defects were so major and so fundamental to the overall operation and performance of the Facility that major reengineering, redesign and retrofitting of the Facility would be required in order for the Facility to achieve the requirements of the EPC Contract, including Mechanical Completion, Commercial Operation, Final Completion, and the Performance Guarantees.

39. By mid-January 1997, Parsons was attempting to run the Facility on a continuous basis 24 hours per day. At that time, major deficiencies in the operation and performance of the Facility were noted by Ponderosa and Brown & Root.

40. During the period from November 1996 to May 1997, Parsons and PMI continued to work on the Facility in accordance with its defective design (with only minor design adjustments) and continued periodic efforts to start-up and run the Facility without attempting to address and correct many of the Defects. During this period, the Facility continued to exhibit major deficiencies in engineering, design, equipment and construction which precluded it from achieving Mechanical Completion.

41. On information and belief, in or about May 1997 or earlier, the senior level management of Parsons, including the President and the Chairman of the Board of Parsons, became directly involved in the management of the Project and were involved in major decisions and positions taken by Parsons and PMI from that point forward.

42. In meetings between January 1997 and May 1997, PMI and Parsons made representations to Ponderosa's management and to the bondholders that PMI and Parsons were committed to completing the Project and that PMI would fulfill its obligations under the EPC Contract, including the payment of Liquidated Damages to Ponderosa.

43. In June 1997, after the Guaranteed Commercial Operation Date of May 22, 1997 had passed with the Facility having failed to achieve the EPC Contract requirements for this milestone, Parsons and PMI unilaterally ran an unsanctioned "performance test" of the Facility.

The results of that test showed that the Facility was incapable of producing pulp which met the Performance Guarantees specified in the EPC Contract and that many Defects still existed in the Facility. In fact, imbalances in the water system and major equipment malfunctions caused massive water and pulp overflows inside the Facility and significant loss of operating time, and excessive heat inside the Facility endangered the health and safety of Ponderosa's employees.

44. On June 27, 1997, Ponderosa gave written notice to PMI that: (1) the Facility had failed to achieve Mechanical Completion; (2) the Facility had not met any of the Performance Guarantees; and (3) Ponderosa wanted a realistic plan of action from PMI to address the deficiencies and reasonable assurances that the Facility would achieve Mechanical Completion and Commercial Operation as defined in the EPC Contract. A true and correct copy of Ponderosa's June 27, 1997 letter is attached hereto as Exhibit "C".

45. By letters dated June 5, 1997 and July 2, 1997, Ponderosa demanded that PMI pay Ponderosa the amounts due Ponderosa for Liquidated Damages for delay in achieving Commercial Operation and demanded payment for the cost of waste paper, chemicals, labor and other consumable items which Ponderosa had provided to PMI prior to Mechanical Completion – amounts which were then due and owing to Ponderosa under the terms of the EPC Contract. True and correct copies of Ponderosa's June 5, 1997 and July 2, 1997 letters are attached hereto as Exhibits "D" and "E", respectively.

46. Upon information and belief, PMI and Parsons decided prior to June 30, 1997 that they would abandon the Project after the completion of the unsanctioned performance test. In fact, at sometime prior to June 30, 1997, PMI and Parsons advised their subcontractors and employees that their services in Northampton would no longer be needed after June 30, 1997.

47. At 4:30 p.m., on July 2, 1997, despite the fact that Parsons' and PMI's unsanctioned "performance test" had demonstrated that the Facility was incapable of achieving the Performance Guarantees (a prerequisite to Commercial Operation), and despite the fact that

113x

Parsons and PMI had wholly failed to demonstrate that any of the other prerequisites to Commercial Operation had been achieved, Parsons and PMI unilaterally, abruptly and without forewarning declared that the Facility had achieved Commercial Operation and notified Ponderosa that PMI was turning over to Ponderosa care, custody, and control of the Facility as of 6:00 p.m. that same day.

48. Parsons' and PMI's abrupt abandonment of the Facility without notice, just before the long Fourth of July holiday weekend, jeopardized the safety and integrity of the Facility and placed critical systems and processes in the Facility at risk of damage. Indeed, shortly after PMI abandoned the Project, part of the effluent treatment plant was damaged, apparently by sabotage. The damage to the effluent treatment plant put the Facility's operation at risk and put Ponderosa at risk of losing environmental permits necessary to run the Facility.

49. In order to protect and safeguard the Facility, Ponderosa had no choice but to accept care, custody, and control of the Facility. That was done, under protest, on July 3, 1997.

50. Since July 2, 1997, PMI has refused to complete the work required under the EPC Contract, has refused to provide a plan of action as requested by Ponderosa, and has, as of that date, abandoned the Project.

51. As of the date Parsons and PMI abandoned the Project, and despite the fact that Ponderosa has paid PMI in excess of $103,000,000 for the design and construction of the Facility, the Facility had not produced one pound of pulp which met the requirements of the EPC Contract.

D. Parsons' Breach of the Guaranty

52. By letter dated July 11, 1997, which was sent pursuant to the notice requirements of the EPC Contract and the Guaranty, Ponderosa gave written notice to Parsons

that PMI had breached the EPC Contract and that PMI had failed to pay Ponderosa amounts due under the EPC Contract for Liquidated Damages and other costs incurred by Ponderosa for the benefit of PMI. In its July 11, 1997 letter, Ponderosa made a demand on Parsons to: (1) remedy PMI's breaches of the EPC Contract; and (2) to pay the amounts due and owing by PMI to Ponderosa. A true and correct copy of Ponderosa's July 11, 1997 letter is attached hereto as Exhibit "F."

53. Parsons has failed and refused to remedy PMI's breaches of the EPC Contract, and has failed and refused to pay Ponderosa the amounts due from PMI under the EPC Contract. In fact, Parsons has, to date, failed and refused to provide any response – oral or written – to Ponderosa's July 11, 1997 demand letter.

E. PMI's and Parsons' Misrepresentations and Failures To Disclose the Defects to Ponderosa

54. In or about May 1996, PMI and Parson became aware that the Project was significantly and irretrievably behind schedule. At that time, PMI and Parsons also knew or should have known that the Facility would not achieve the EPC Contract milestone of Commercial Operation on or before the Guaranteed Commercial Operation Date.

55. Despite the fact that, as of May 1996, PMI and Parsons knew that the Project was significantly behind schedule, PMI and Parsons failed to disclose the status of the Project, and affirmatively misrepresented to Ponderosa that the design, engineering and construction of the Project was proceeding on schedule in accordance with the EPC Contract requirements.

56. Through its own engineering analysis and/or notice from its own subcontractors and equipment suppliers, PMI and Parsons became aware of the Defects sometime between November 1996 and February 1997 or earlier. At that time, PMI and Parsons also knew that the Defects were so major and fundamental to the overall performance and operation of the

Facility that: (1) the Facility would never be able to achieve Mechanical Completion, Commercial Operation, Final Completion, or the Performance Guarantees without significant reengineering, redesign and/or retrofitting; (2) the Facility would not achieve Commercial Operation on or before the Guaranteed Commercial Operation Date; and (3) continued attempts to start-up and run the Facility, without first addressing and correcting the Defects, were futile, and would merely result in the useless consumption of millions of dollars of Ponderosa's money which was being spent on consumables and waste paper to support PMI's attempts to start-up the Facility.

57. Despite the fact that, as of February 1997 or earlier, PMI and Parsons knew of the Defects and that, due to the Defects, PMI would not fulfill its obligations under the EPC Contract, PMI and Parsons failed to disclose to Ponderosa the existence of many of the Defects. After becoming aware of the Defects and PMI's inability to fulfill its obligations under the EPC Contract, PMI and Parsons not only failed to disclose such material facts to Ponderosa, but also affirmatively and repeatedly misrepresented to Ponderosa that the Facility's engineering, design and construction work were proceeding on or ahead of schedule in accordance with the EPC Contract.

58. Despite the fact that, as of May 1996, PMI and Parsons knew that the Project was significantly behind schedule and that, as of February 1997 or earlier, PMI and Parsons knew that the Facility's engineering, design, equipment selection, and construction work were defective and that PMI would not be able to meet its obligations under the EPC Contract, PMI continued to submit monthly invoices, through and including Invoice Number 31 for June 1997, seeking additional payments of millions of dollars from Ponderosa. In connection with each invoice, PMI falsely represented and falsely warranted as follows:

> (1) "The Work included in each milestone for which payment is requested has been performed."
>
> (2) "The Facility is being built in accordance with the Construction Contract and the quality of the Work completed to date is in accordance with the Construction Contract."

(3) "To the best of [PMI's] knowledge, no event, including an Uncontrollable Circumstance, has occurred which would prevent Commercial Operation from occurring on or before the Guaranteed Commercial Operation Date."

(4) "[PMI] has not failed to perform in a timely manner any material obligation of [PMI] under the Construction Contract as of the date hereof."

(5) "All Subcontractors, suppliers and materialmen have been paid all amounts due for work performed and materials furnished through the date of the proceeding invoice for payment and to the best of [PMI's] knowledge, there are no liens outstanding for labor, materials and services furnished by subcontractors, suppliers and materialmen."

59. Between the time PMI and Parsons became aware that the Project was significantly and irretrievably behind schedule (mid-1996) and the time PMI and Parsons first became aware of the Defects (February 1997 or earlier), and the time PMI abandoned the Project (July 1997), Ponderosa: (1) paid millions of dollars in progress payments to PMI; and (2) spent additional millions of dollars of its own money buying consumables and waste paper in an effort to support what Ponderosa unknowingly believed were good faith efforts by PMI to start-up and run the Facility – efforts which were in fact futile and which PMI and Parsons knew were futile. Ponderosa made such progress payments and supplied such consumables to PMI in reliance on PMI's and Parsons' false representations that the Project was proceeding on schedule and in accordance with the EPC Contract.

60. Upon information and belief, as of February 1997 or earlier, when PMI and Parsons learned of the Defects, PMI and Parsons intentionally, knowingly and maliciously discontinued any good faith efforts to fulfill PMI's obligations under the EPC Contract, and intentionally, knowingly and maliciously undertook a course of action to misinform Ponderosa, conceal the true state of affairs on the Project and, ultimately, extract themselves from the Project while shirking their respective duties and obligations under the EPC Contract and the Guaranty.

61. Upon information and belief, Parsons' and PMI's efforts to start-up and run the Facility between January 1997 and the time they abandoned the Project in July 1997 were not

aimed at fulfilling PMI's obligations under the EPC Contract or addressing and correcting the Defects, but instead were nothing but a sham and were aimed solely at better positioning Parsons and PMI for the dispute which they knew would inevitably result from PMI's failure to design and build the Facility in accordance with the EPC Contract.

62. Upon information and belief, PMI's management in Boston, Massachusetts and Parsons' upper management in Pasadena, California knew about the Defects as of February 1997 or earlier.

63. Upon information and belief, PMI's management and Parsons' upper management intentionally, knowingly and maliciously conspired with and/or directed PMI's personnel connected with the Project to: (1) conceal information regarding the Defects from Ponderosa; (2) affirmatively misrepresent to Ponderosa the status and progress of the engineering, design and construction of the Facility; and (3) orchestrate sham efforts to start-up and run the Facility between November 1996 and June 1997 for the sole purpose of better positioning PMI and Parsons for the dispute that they knew would inevitably result from PMI's failure to design and build the Facility in accordance with the EPC Contract and Parsons' failure to fulfill its obligations under the Guaranty.

COUNT I

(Breach of Contract Against PMI)

64. Ponderosa hereby incorporates by reference Paragraphs 1 through 63 as if fully set forth herein.

65. PMI has materially breached the EPC Contract. Its material breaches include, but are not limited to:

a) wrongfully and prematurely abandoning the Project despite having failed to complete the Work in accordance with the EPC Contract;

b) failing and refusing to design and build the Facility so that it could achieve the requisite Performance Guarantees;

c) failing and refusing to achieve Mechanical Completion;

d) failing and refusing to achieve the Performance Guarantees;

e) failing and refusing to achieve the Effluent Discharge Guarantee;

f) failing and refusing to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date;

g) failing and refusing to achieve Final Completion;

h) failing and refusing to pay Liquidated Damages due and owing to Ponderosa under the EPC Contract;

i) failing and refusing to pay other amounts due and owing to Ponderosa under the terms of the EPC Contract;

j) failing and refusing to continue with the Work during disputes;

k) wrongfully and prematurely relinquishing care, custody, and control of the Facility prior to achieving Commercial Operation;.

l) failing to exercise reasonable skill and expertise in the design of the Facility;.

m) improperly and/or deficiently staffing the Project;

n) performing the Work deficiently, negligently, and/or improperly;

o) failing and refusing to supply equipment and materials in a proper and timely fashion;

p) failing and refusing to properly and reasonably plan, monitor, and/or coordinate the Work;

q) failing and refusing to adhere to plans and specifications;

r) improperly deviating from plans and specifications;

s) delaying the Project's schedule and critical path;

t) delaying, hindering and/or interfering with the work cf its subcontractors;

u) failing and refusing to prosecute the Work aggressively, vigorously and/or in a timely manner;

v) failing and refusing to properly repair and/or correct its deficiencies and improper workmanship.

w) failing and refusing to turn over to Ponderosa all information and documents as is required by the EPC Contract;

x) failing and refusing to repair or replace deficient and/or improper equipment;

y) failing and refusing to administer the Project work with reasonable diligence and care;

z) failing and refusing to work with Ponderosa to make a saleable product; and

aa) failing to comply with applicable laws and regulations in the design, construction and operation of the Facility.

66. Despite repeated demands by Ponderosa, PMI has failed and refused to remedy its material breaches of the EPC Contract and has failed and refused to provide adequate assurances of its intent to remedy or cure its material breaches of the EPC Contract.

67. As a result of PMI's material breaches of the EPC Contract, and its defective design, engineering, supply and installation of the Facility, Ponderosa was forced to incur additional costs, including, but not limited to, costs to procure waste paper, chemicals and other consumables, excessive sludge disposal costs, engineering costs, labor costs, maintenance costs, costs to repair and replace defective equipment and other costs.

68. In addition to the above costs, PMI's breaches of the EPC Contract have caused Ponderosa to suffer lost profits and other damages.

69. As the direct result of PMI's material breaches of the EPC Contract, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

70. All conditions precedent under the EPC Contract to the relief requested by Ponderosa against PMI have been fulfilled, excused or otherwise satisfied.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI for all damages, costs, and payments and any and all other sums incurred or which may be incurred as a result of PMI's breaches of the EPC Contract, pre- and post-judgment interest, for reasonable costs of prosecuting this litigation, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

COUNT II

(Negligence and Misfeasance Against PMI)

71. Ponderosa hereby incorporates by reference Paragraphs 1 through 70 as if fully set forth herein.

72. PMI owed a duty to Ponderosa to act reasonably in carrying out its obligations on the Project.

121x

73. PMI breached its duty to act reasonably by the following actions, failures to act, negligence and/or misfeasance of its duties:

a) failing to exercise reasonable skill and expertise in the design of the Facility.

b) failing to exercise reasonable skill and expertise in the engineering of the Facility;

c) failing and refusing to achieve Mechanical Completion;

d) failing and refusing to achieve Commercial Operation;

e) failing and refusing to achieve Final Completion;

f) improperly and/or deficiently staffing the Project;

g) performing the Work deficiently, negligently, and/or improperly;

h) failing to supply equipment and materials in a proper and timely fashion;

i) failing to properly plan, monitor, and/or coordinate its work with the work of other contractors and subcontractors;

j) failing to properly schedule the Work of the Project;

k) failing and refusing to adhere to plans and specifications;

l) improperly deviating from plans and specifications;

m) failing to comply with OSHA standards in the design, construction and operation of the Facility;

n) delaying the Project's schedule and critical path;

o) delaying, hindering and/or interfering with the work of other contractors and/or subcontractors;

p) failing to comply with Pennsylvania state environmental regulations in the design and operation of the Facility;

q) failing and refusing to prosecute the Work aggressively, vigorously and/or in a timely manner;

r) failing and refusing to properly repair and/or correct its deficiencies and improper workmanship;

s) failing and refusing to repair or replace deficient and/or improper equipment;

t) failing and refusing to administer the Project work with reasonable diligence and care;

u) failing and refusing to achieve the Performance Guarantees;

v) failing and refusing to achieve the Effluent Discharge Guaranty;

w) failing to work with Ponderosa to make a saleable product; and

x) failing to share proper and realistic time schedules with Ponderosa.

74. As a result of PMI's negligence and misfeasance, and its defective design, engineering, supply and installation of the Facility, Ponderosa was forced to incur additional costs, including, but not limited to, costs to procure waste paper, chemicals and other consumables, excessive sludge disposal costs, engineering costs, labor costs, maintenance costs, costs to repair and replace defective equipment and other costs.

75. In addition to the above costs, PMI's negligence and/or misfeasance, have caused Ponderosa to suffer lost profits and other damages.

76. As a direct and proximate result of the above-described negligent acts, failures to act, neglect and defaults, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI for all damages, costs, and payments and any and all other sums incurred or which may be incurred because of PMI's negligence and/or misfeasance, pre- and post-judgment interest, reasonable costs of prosecuting this litigation, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

COUNT III

(Rescission Against PMI)

77. Ponderosa hereby incorporates by reference Paragraphs 1 through 76 as if fully set forth herein.

78. PMI breached its fundamental obligations under the EPC Contract by failing to achieve Mechanical Completion, failing to achieve Commercial Operation, failing to achieve Final Completion, failing to achieve any of the Performance Guarantees and failing to remedy the Defects.

79. As a result of PMI's breach of its fundamental obligations under the EPC Contract, and its defective design, engineering, supply and installation of the Facility, Ponderosa was forced to incur additional costs, including, but not limited to, costs to procure waste paper, chemicals and other consumables, excessive sludge disposal costs, engineering costs, labor costs, maintenance costs, costs to repair and replace defective equipment and other costs.

80. In addition to the above costs, PMI's breaches of the EPC Contract have caused Ponderosa to suffer lost profits and other damages.

81. The above-described Defects, problems and deficiencies in PMI's design, engineering, procurement and construction of the Facility are material breaches which go to the essence of the EPC Contract and/or destroy the foundation of the EPC Contract.

82. As a result of the aforementioned problems, deficiencies and material breaches of the EPC Contract, Ponderosa has received no consideration for the $103,687,921.80 which it has paid to date to PMI.

83. Accordingly, because there was a total failure of consideration on the part of PMI, the EPC Contract is null and void.

84. The EPC Contract is additionally null and void because Ponderosa was induced to enter into the EPC Contract by material misrepresentations made by PMI and Parsons.

85. In connection with the negotiation and execution of the EPC Contract, PMI and Parsons represented that PMI and PMI's major subcontractor, Alfa Laval Celleco, Inc. ("Celleco") had the expertise and experience necessary to successfully engineer, procure, construct, commission, test and start-up the Facility in accordance with the EPC Contract. These representations were material and were false when made.

86. Ponderosa reasonably relied upon the material misrepresentations made by PMI and Parsons in connection with its decision to enter into the EPC Contract with PMI.

87. Accordingly, Ponderosa is entitled to an order rescinding the EPC Contract.

88. As the direct result of PMI's breach and abandonment of its fundamental obligations under the EPC Contract and the material misrepresentations made by PMI and Parsons, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

WHEREFORE, Ponderosa respectfully requests that the Court: (1) declare the EPC Contract null and void; (2) order PMI to return all monies paid to it by Ponderosa for the Project; and (3) award Ponderosa all of its damages and lost profits, in an amount in excess of $50,000, together with costs, pre- and post-judgment interest, reasonable costs of prosecuting this litigation, including reasonable attorneys' fees, and such other relief as the Court deems just and proper.

COUNT IV

(Breach of Contract Against Parsons)

89. Ponderosa hereby incorporates by reference Paragraphs 1 through 88 as if fully set forth herein.

90. Pursuant to the Guaranty, Parsons unconditionally guaranteed to Ponderosa the full and punctual performance of each and every obligation of PMI under the EPC Contract and further guaranteed full payment of all amounts due and owing by PMI under the EPC Contract.

91. Ponderosa has made a demand on Parsons to: (1) remedy PMI's breaches of the EPC Contract; (2) perform all of PMI's obligations which PMI failed to perform; and (3) pay all sums due Ponderosa from PMI in accordance with Parsons' obligations under the Guaranty.

92. Parsons has failed and refused, despite Ponderosa's demands, to remedy PMI's various material breaches of the EPC Contract, and has failed and refused to pay the amounts due and owing by PMI under the EPC Contract.

93. Parsons' failure and refusal to perform PMI's obligations under the EPC Contract and its failure and refusal to pay all amounts due Ponderosa from PMI constitute material breaches of the Guaranty.

94. As the direct result of Parsons' material breaches of the Guaranty, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

95. All conditions precedent under the Guaranty to the relief requested by Ponderosa have been fulfilled, excused or otherwise satisfied.

WHEREFORE, Ponderosa prays for judgment in its favor against Parsons for all damages, costs, and payments and any and all other sums incurred or which may be incurred because of the breach by Parsons of its obligations under the Guaranty, pre- and post-judgment interest, all costs of prosecuting this litigation, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

COUNT V

(Declaratory Judgment Against Parsons)

96. Ponderosa hereby incorporates by reference Paragraphs 1 thorough 95 as if fully set forth herein.

97. Pursuant to the Guaranty, Parsons unconditionally guaranteed the full and prompt performance of each and every obligation of PMI under the EPC Contract.

98. Parsons further agreed that the performance of its obligations under the Guaranty were: (1) absolute, (2) unconditional, and (3) not conditioned or contingent upon any attempt to collect amounts due from PMI, or to enforce performance by PMI, or on any other condition or contingency.

99. PMI has materially breached its obligations under the EPC Contract as more fully set forth above.

[illegible] made a demand on Parsons to remedy PMI's various breaches [illegible] otherwise fulfill its obligation under the Guaranty by causing all of PMI's obligations under the EPC Contract to be performed.

101. Parsons has failed and refused to remedy PMI's breaches, and denies that it has any obligation to Ponderosa under the Guaranty.

102. An actual controversy currently exists between Ponderosa and Parsons with respect to Parsons' obligations under the Guaranty and whether Parsons has materially breached those obligations.

103. Declaratory relief from this Court will terminate all of the disputes and controversies between Ponderosa and Parsons regarding the Guaranty. Pursuant to the provisions of the Pennsylvania Declaratory Judgments Act, 42 Pa. C.S.A. § 7531, et. seq., Ponderosa is entitled to a declaration by this Court of the obligations of Parsons under the Guaranty.

WHEREFORE, Ponderosa prays for judgment in its favor against Parsons:

(a) declaring and adjudging that Parsons' obligations under the Guaranty are absolute and unconditional;

(b) declaring and adjudging that Ponderosa's rights to enforce performance by Parsons of its obligations under the Guaranty are <u>not</u> conditioned or contingent upon any attempt by Ponderosa to enforce performance by PMI of its obligations under the EPC Contract, through arbitration or otherwise;

(c) declaring and adjudging that Parsons is in material breach of its obligations under the Guaranty;

(d) declaring and adjudging that Parsons is liable to Ponderosa for all damages suffered as a result of PMI's breaches of the EPC Contract, including, but not limited to: (i) all

amounts paid to PMI; (ii) all amounts necessary to re-engineer, rebuild or re-construct the Facility in accordance with the requirements of the EPC Contract; (iii) all amounts due and owing under the EPC Contract, including unpaid Liquidated Damages and/or consequential damages; (iv) pre- and post-judgment interest on sums due and owing; and (v) costs of prosecuting this action including reasonable attorneys' fees; and

(e) for such other and further relief as the Court may deem just and proper.

COUNT VI

(Fraud Against PMI and Parsons)

104. Ponderosa hereby incorporates by reference Paragraphs 1 thorough 103 as if fully set forth herein.

105. In connection with the negotiation of the EPC Contract, PMI and Parsons represented to Ponderosa that PMI and its major subcontractor, Celleco, had the capability, experience and expertise to engineer, procure, construct, commission, test and start-up the Facility in accordance with the requirements of the EPC Contract. These representations were material and were false when made.

106. Parsons further represented to Ponderosa that it would stand behind PMI and honor its guaranty unconditionally if PMI failed. These representations were material and, upon information and belief, were false when made.

107. In addition to the initial misrepresentations described above in Paragraphs 105 and 106, starting in February 1997 or earlier, PMI and Parsons knowingly, intentionally or recklessly concealed the Defects from Ponderosa. Additionally, as early as May 1996, PMI and Parsons knowingly, intentionally or recklessly misrepresented to Ponderosa that the engineering, procurement and construction of the Facility was proceeding on schedule in accordance with the EPC Contract.

108. On information and belief, Parsons took over direct control of the Project in [illegible] the Summer of 1996. [illegible]

109. In meetings beginning, in the Summer of 1996 and continuing through March 1997, Parsons' senior level executives represented to Ponderosa that Parsons was committed to completing the Project and seeing to it that PMI would fulfill its obligations under the EPC Contract, including the payment of Liquidated Damages to Ponderosa. These representations were material and, upon information and belief, were false when made.

110. PMI and Parsons made the material misrepresentations and omissions described above intentionally, maliciously and with the intent to injure Ponderosa by inducing it to enter into the EPC Contract and by inducing Ponderosa to pay PMI tens of millions of dollars in progress payments which would not have been made had the true status of the Project been disclosed by PMI and/or Parsons to Ponderosa.

111. When PMI and Parsons made the material misrepresentations and omissions described above, PMI and Parsons knew the representations were false or made them recklessly knowing there was substantial probability that they were false.

112. Ponderosa, in reasonable reliance on PMI's and Parsons' material misrepresentations and omissions and in ignorance of their falsity: (1) entered into the EPC Contract; (2) funded a portion of the Project costs through equity contributions of its general partners; (3) obtained primary financing for the Project from the bondholders; and (4) made progress payments to PMI in excess of $103,000,000.

113. As a result of PMI's and Parsons' fraudulent conduct, Ponderosa was forced to incur additional costs, including, but not limited to, costs to procure waste paper, chemicals and other consumables, excessive sludge disposal costs, engineering costs, labor costs, maintenance costs, costs to repair and replace defective equipment and other costs.

114. In addition to the above costs, PMI's and Parsons' ... caused Ponderosa to suffer lost profits and other damages.

115. As a direct and proximate result of its reasonable reliance on PMI's and Parsons' material misrepresentations and omissions, Ponderosa has suffered damages in an amount to be proven at that, but which exceeds the compulsory arbitration limit of $50,000.

116. PMI's and Parsons' fraudulent conduct was intentional, willful and malicious. Punitive damages should thus be imposed to punish PMI and Parsons, and to deter others from engaging in such wrongful conduct.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI and Parsons for all damages, costs and payments and any and all other sums incurred or which may be incurred as a result of PMI's and Parsons' tortious conduct, for punitive damages, for pre- and post-judgment interest, for reasonable costs of prosecuting this action, including attorneys' fees, and for such other relief as this Court deems just and proper.

COUNT VII

(Negligent Misrepresentation Against PMI and Parsons)

117. Ponderosa hereby incorporates by reference Paragraphs 1 through 116 as if fully set forth herein.

118. In the alternative, PMI and Parsons made the material misrepresentations to Ponderosa described in Count VI above negligently and without exercising a reasonable degree of care and competence.

119. Each of the material misrepresentations made by PMI and Parsons to Ponderosa were made in the course of a transaction in which PMI and Parsons respectively had a pecuniary interest.

120. Ponderosa, in reasonable reliance on PMI's and Parsons' material misrepresentations and in ignorance of their falsity: (1) entered into the EPC Contract; (2) funded a portion of the Project costs through equity contributions of its general partners; (3) obtained primary financing for the Project from the bondholders; and (4) made progress payments to PMI in excess of $103,000,000.

121. As a result of PMI's and Parsons' tortious conduct, Ponderosa was forced to incur additional costs, including, but not limited to, costs to procure waste paper, chemicals and other consumables, excessive sludge disposal costs, engineering costs, labor costs, maintenance costs, costs to repair and replace defective equipment and other costs.

122. In addition to the above costs, PMI's and Parsons' tortious conduct has caused Ponderosa to suffer lost profits and other damages.

123. As a direct result of its reasonable reliance on PMI's and Parsons' material misrepresentations, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI and Parsons for all damages, costs and payments and any and all other sums incurred or which may be incurred as a result of PMI's and Parsons' tortious conduct, for pre- and post-judgment interest, for reasonable costs of prosecuting this action, including attorneys' fees, and such other relief as this Court deems just and proper.

COUNT VIII

(Collusive Tort – Concert of Action – Against PMI and Parsons)

124. Ponderosa hereby incorporates by reference Paragraphs 1 through 123 as if fully set forth herein.

125. In connection with the Project, PMI and Parsons conspired and agreed to act in concert and/or pursuant to a common design to deceive and defraud Ponderosa by fraudulently inducing Ponderosa to enter into the EPC Contract and, thereafter, to fraudulently induce Ponderosa to pay PMI tens of millions of dollars in progress payments.

126. PMI and Parsons each engaged in various tortious acts in furtherance of the common design or scheme to defraud Ponderosa as set forth in this Complaint. The tortious acts of PMI and Parsons include, but are not limited to:

(a) In connection with the negotiation of and entry into the EPC Contract, PMI and Parsons, in concert with one another, misrepresented to Ponderosa that PMI and Celleco had the expertise and ability to engineer, procure, construct, commission, test, and start-up the Facility in accordance with the requirements of the EPC Contract. Upon information and belief, PMI and Parsons made such material misrepresentations to Ponderosa with the intent to fraudulently induce Ponderosa to enter into the EPC Contract and, thereafter, to fraudulently induce Ponderosa to pay PMI tens of millions of dollars in progress payments.

(b) In connection with the negotiation and entry into the EPC Contract, Parsons represented to Ponderosa that it would stand behind PMI and honor its Guaranty unconditionally if PMI failed to fulfill its obligations. These representations were material and, upon information and belief, were false when made.

(c) Between the time PMI and Parsons first became aware of the Defects (February 1997 or earlier) and first became aware that the Project was significantly and irretrievably behind

schedule (mid 1996) and the time PMI abandoned the Project (July 1997), PMI and Parsons, pursuant to the common design to defraud Ponderosa, concealed the Defects from Ponderosa and misrepresented to Ponderosa that the engineering, procurement and construction of the Facility was proceeding on or ahead of schedule in accordance with the EPC Contract. PMI and Parsons, in concert with one another, concealed and misrepresented the true status of the Project with the intent to fraudulently induce Ponderosa to continue making progress payments, which amounted to tens of millions of dollars.

(d) When PMI and Parsons first learned of the Defects (February 1997 or earlier), they conspired together to undertake a course of action to misrepresent to Ponderosa and to conceal from Ponderosa the true status of the Project and, ultimately, to extract themselves from the Project while shirking their respective duties and obligations under the EPC Contract and the Guaranty. Specifically, they conspired and agreed that PMI would undertake fraudulent and deceptive efforts to start-up, run, and continue to run the Facility – efforts which both PMI and Parsons knew were a sham due to the Defects – for the sole purpose of better positioning PMI and Parsons for litigation which they knew would inevitably result from PMI's failure to fulfill its obligations under the EPC Contract and Parsons' failure to perform its obligations under the Guaranty.

127. The conduct of PMI and Parsons constitutes a collusive tort as set forth in Restatement (Second) of Torts § 876(a).

128. As a direct and proximate result of the collusive conduct of PMI and Parsons, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds $50,000.

129. By reason of their collusive conduct in defrauding Ponderosa which was undertaken in concert with one another and/or pursuant to a common design, PMI and Parsons are jointly and severally liable to Ponderosa for all damages incurred by Ponderosa as a result of the collusive conduct of PMI and Parsons.

130. Because PMI's and Parsons' collusive conduct to defraud Ponderosa was intentional, malicious, and done with the intent to injure Ponderosa, Ponderosa is entitled to recover punitive damages.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI and Parsons for all damages, costs and payments and any and all other sums incurred or which may be incurred as a result of the collusive conduct of PMI and Parsons, for punitive damages, for pre- and post-judgment interest, for reasonable costs of prosecuting this action, including attorneys' fees, and such other relief as this Court deems just and proper.

COUNT IX

(Collusive Tort – Aiding and Abetting – Against PMI and Parsons)

131. Ponderosa hereby incorporates by reference Paragraphs 1 through 130 as if fully set forth herein.

132. PMI was aware of and knew that Parsons' conduct, as detailed in this Complaint, was tortious and constituted breaches of the duties which Parsons owed to Ponderosa.

133. As detailed in this Complaint, PMI gave Parsons substantial assistance and/or encouraged Parsons in its tortious conduct and breaches of duties which Parsons owed to Ponderosa.

134. Parsons was aware of and knew that PMI's conduct, as detailed in this Complaint, was tortious and constituted breaches of duties which PMI owed to Ponderosa.

135. As detailed in this Complaint, Parsons gave PMI substantial assistance and/or encouraged PMI in its tortious conduct and breaches of duties which PMI owed to Ponderosa.

136. The conduct of PMI and Parsons constitutes a collusive tort as set forth in Restatement (Second) of Torts § 876(b & c).

137. Ponderosa suffered damages as a direct and proximate result of the collusive conduct of PMI and Parsons in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

138. Because of the collusive conduct of PMI and Parsons was intentional, malicious, and done with the intent to injure Ponderosa, Ponderosa is entitled to recover punitive damages.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI and Parsons for all damages, costs and payments and any and all other sums incurred or which may be incurred as a result of the collusive conduct of PMI and Parsons, for punitive damages, for pre- and post-judgment interest, for reasonable costs of prosecuting this action, including attorneys' fees, and such other relief as this Court deems just and proper.

COUNT X

(Civil Conspiracy Against PMI and Parsons)

139. Ponderosa hereby incorporates by reference paragraphs 1 through 138 as if fully set forth herein.

140. As detailed in this Complaint, PMI and Parsons conspired and agreed to act in concert and/or pursuant to a common design to deceive and defraud Ponderosa by fraudulently

[illegible] the EPC Contract and other [illegible]

[illegible] PMI [illegible] millions of dollars in progress payments. [illegible]

141. PMI and Parsons knowingly and intentionally entered into the conspiracy with the intent to injure Ponderosa by defrauding it of millions of dollars.

142. As a result of acting together to defraud Ponderosa, PMI and Parsons had additional and peculiar power of coercion over Ponderosa that neither PMI nor Parsons would have had acting alone.

143. As a direct and proximate result of the conspiracy and agreement of PMI and Parsons to defraud Ponderosa, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

144. Because PMI's and Parsons' conduct in entering into and furthering the conspiracy to defraud Ponderosa was intentional, malicious, and done with the intent to injure Ponderosa, Ponderosa is entitled to recover punitive damages.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI and Parsons for all damages, costs and payments and any and all other sums incurred or which may be incurred as a result of the wrongful civil conspiracy of PMI and Parsons, for punitive damages, for pre- and post-judgment interest, for reasonable costs of prosecuting this action, including attorneys' fees, and such other relief as this Court deems just and proper.

COUNT XI

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against PMI and Parsons)

145. Ponderosa hereby incorporates by reference paragraphs 1 through 144 as if fully set forth herein.

146. As a matter of law, the EPC Contract contained an implied covenant of good faith and fair dealing. This implied covenant required, among other things, that PMI not deny, destroy or injure Ponderosa's rights or benefits under the EPC Contract.

147. As a matter of law, the Guaranty contained an implied covenant of good faith and fair dealing. The implied covenant required, among other things, that Parsons not deny, destroy or injure Ponderosa's rights or benefits under the EPC Contract or the Guaranty.

148. PMI and Parsons breached the implied covenant of good faith and fair dealing contained in the EPC Contract and the Guaranty, respectively. Their breaches include, but are not limited to:

(a) Beginning as early as May 1996, PMI, in conspiracy with and/or at the direction of Parsons, knowingly, intentionally and in bad faith misrepresented to Ponderosa that the engineering, design and construction of the Facility was proceeding on schedule in accordance with the EPC Contract, when, in truth and in fact, PMI and Parsons knew that the Project was significantly behind schedule.

(b) Beginning in February 1997 or earlier, PMI and Parsons, pursuant to their conspiracy to defraud Ponderosa, knowingly, intentionally and in bad faith concealed the Defects from Ponderosa, and affirmatively and repeatedly misrepresented to

Ponderosa that the engineering, design and construction was proceeding in accordance with the EPC Contract, when, in truth and in fact, PMI and Parsons knew of the Defects and that as a result of the Defects PMI would not fulfill its obligations under the EPC Contract.

(c) Beginning in February 1997 or earlier and continuing through June 1997, PMI and Parsons, pursuant to their conspiracy to defraud Ponderosa, knowingly, intentionally and in bad faith submitted monthly invoices to Ponderosa which contained false representations and warranties. PMI and Parsons submitted such invoices in order to defraud Ponderosa of additional millions of dollars.

(d) Between the time PMI and Parsons learned of the Defects (February 1997 or earlier) and the time PMI abandoned the Project (July 1997), PMI and Parsons, pursuant to their conspiracy to defraud Ponderosa, knowingly and intentionally undertook a bad faith course of action to conceal and misrepresent the true state of affairs on the Project and, ultimately, to extract themselves from the Project while shirking their respective obligations under the EPC Contract and the Guaranty. PMI's and Parsons' efforts on the Project during this time period were not aimed at fulfilling PMI's obligations under the EPC Contract, but, instead, were a sham aimed solely at better positioning PMI and Parsons for disputes which they knew would inevitably result from their failure to fulfill their respective obligations under the EPC Contract and the Guaranty.

(e) [illegible] orchestrated by PMI [illegible] February 1997 or earlier and June 1997 included their efforts during that time period to start-up and run the Facility. In an effort to support what Ponderosa unknowingly believed were good faith efforts by PMI, Ponderosa paid for and supplied all waste paper and other consumables necessary for PMI's start-up efforts. PMI and Parsons accepted and utilized such consumables, all the while: (1) knowing that the start-up efforts were futile due to the Defects, (2) knowing that the start-up efforts would result in the needless consumption of millions of dollars of Ponderosa's money, (3) intending never to reimburse Ponderosa for such consumables, despite their clear contractual obligation to do so, and (4) intending to use the start-up efforts to better position themselves for the disputes which they knew would inevitably result.

(f) Upon information and belief, in or about June 1997, PMI, in conspiracy with and/or at the direction of Parsons, destroyed or deleted data from the Facility's computer control systems – data which PMI was contractually obligated to make available to Ponderosa – in a bad faith effort to conceal information which demonstrated that the Facility had failed to achieve and could never achieve the required Performance Guarantees. PMI and Parsons, in bad faith, refused to turn over other information and documents which it was obligated to make available to Ponderosa pursuant to the terms the EPC Contract.

149. Parsons also breached its implied covenant of good faith and fair dealing by: (1) arbitrarily and in bad faith refusing to make any efforts to remedy PMI's breaches of the EPC

[illegible] good [illegible]

[illegible] refusing to respond to Ponderosa's July 11, 1997 demand

[illegible]

150. PMI engaged in the bad faith conduct described above in order to permanently deny or deprive Ponderosa of the benefits of the EPC Contract by, among other things, orchestrating a sham aimed at better positioning PMI and Parsons for disputes with Ponderosa that PMI and Parsons knew were inevitable.

151. Parsons engaged in the bad faith conduct described above in order to: (1) conceal from Ponderosa PMI's material breaches of the EPC Contract and, thereby, prevent Ponderosa from rightfully calling on the Parsons Guaranty; and (2) permanently deny or deprive Ponderosa of the benefits of the EPC Contract and the Guaranty by, among other things, orchestrating a sham aimed at better positioning PMI and Parsons for disputes with Ponderosa that PMI and Parsons knew were inevitable.

152. As a direct and proximate result of PMI's and Parsons' breaches of their respective duties of good faith and fair dealing, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI and Parsons for all damages, costs, and payments and any and all other sums incurred or which may be incurred as a result of PMI's and Parsons' breaches of their duties of good faith and fair dealing, pre- and post-judgment interest, reasonable costs of prosecuting this litigation, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

Contract, (2) refusing and failing to make a good faith effort to investigate PMI's breaches of the EPC Contract; and (3) failing and refusing to respond to Ponderosa's July 11, 1997 demand letter.

150. PMI engaged in the bad faith conduct described above in order to permanently deny or deprive Ponderosa of the benefits of the EPC Contract by, among other things, orchestrating a sham aimed at better positioning PMI and Parsons for disputes with Ponderosa that PMI and Parsons knew were inevitable.

151. Parsons engaged in the bad faith conduct described above in order to: (1) conceal from Ponderosa PMI's material breaches of the EPC Contract and, thereby, prevent Ponderosa from rightfully calling on the Parsons Guaranty; and (2) permanently deny or deprive Ponderosa of the benefits of the EPC Contract and the Guaranty by, among other things, orchestrating a sham aimed at better positioning PMI and Parsons for disputes with Ponderosa that PMI and Parsons knew were inevitable.

152. As a direct and proximate result of PMI's and Parsons' breaches of their respective duties of good faith and fair dealing, Ponderosa has suffered damages in an amount to be proven at trial, but which exceeds the compulsory arbitration limit of $50,000.

WHEREFORE, Ponderosa prays for judgment in its favor against PMI and Parsons for all damages, costs, and payments and any and all other sums incurred or which may be incurred as a result of PMI's and Parsons' breaches of their duties of good faith and fair dealing, pre- and post-judgment interest, reasonable costs of prosecuting this litigation, including reasonable attorneys' fees, and such other relief as this Court deems just and proper.

COUNT XII

(Violation of State Law Declaring Unlawful Unfair Methods of Competition and Unfair and Deceptive Trade Practices Against PMI and Parsons)

153. Ponderosa hereby incorporates by reference Paragraphs 1 through 152 as if fully set forth herein.

154. Ponderosa is a person engaged in trade or commerce within the meaning of Mass. Gen. Laws, ch. 93A, § 1.

155. PMI is a person engaged in trade or commerce within the meaning of Mass. Gen. Laws, ch. 93A, § 1.

156. The goods, services and other promises and performance made and provided by PMI under the EPC Contract constitute trade or commerce within the within the meaning of Mass. Gen. Laws, ch. 93A, § 1.

157. Parsons is a person engaged in trade or commerce within the meaning of Mass. Gen. Laws, ch. 93A, § 1.

158. The promises of performance and payment made by Parsons in the Guaranty constitute trade or commerce within the meaning of Mass. Gen. Laws, ch. 93A, § 1.

159. By their acts and conduct as set forth above, PMI and Parsons have engaged in unfair methods of competition or unfair and deceptive acts or practices in the conduct of trade or commerce in violation of Mass. Gen. Laws, ch. 93A, § 2.

160. Ponderosa has suffered the loss of money or property as a direct and proximate result of the use or employment by PMI and Parsons of unfair methods of competition and unfair and deceptive acts or practices prohibited by Mass. Gen. Laws, ch. 93A, § 2.

[illegible] 161. Ponderosa is entitled, pursuant to Mass. Gen. Laws, ch. 93A, § 11, to [illegible] recover the damages it has suffered as the result of the acts and conduct of PMI and Parsons set forth above.

162. The acts and conduct of PMI and Parsons, as set forth above, constitute willful and knowing violations of Mass. Gen. Laws, ch. 93A, § 2.

163. As a result of PMI's and Parsons' use or employment of unfair methods of competition and unfair and deceptive acts or practices, Ponderosa was forced to incur additional costs, including, but not limited to, costs to procure waste paper, chemicals and other consumables, excessive sludge disposal costs, engineering costs, labor costs, maintenance costs, costs to repair and replace defective equipment and other costs.

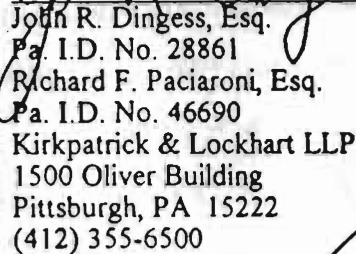
164. In addition to the above costs, PMI's and Parsons' use or employment of unfair methods of competition and unfair and deceptive acts or practices, have caused Ponderosa to suffer lost profits and other damages.

WHEREFORE, Ponderosa prays that the Court: (1) award judgment in its favor against PMI and Parsons for all damages it as suffered as the result of PMI's and Parsons' respective violations of Mass. Gen. Laws, ch. 93A, § 11; (2) treble such damages; (3) award

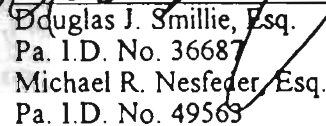
Ponderosa pre- and post-judgment interest together with its costs and expenses in this action, including reasonable attorneys' fees; and (4) award Ponderosa such other relief as the Court deems just and proper.

Respectfully submitted,

Date: September 4, 1997

By: 

John R. Dingess, Esq.
Pa. I.D. No. 28861
Richard F. Paciaroni, Esq.
Pa. I.D. No. 46690
Kirkpatrick & Lockhart LLP
1500 Oliver Building
Pittsburgh, PA 15222
(412) 355-6500



Douglas J. Smillie, Esq.
Pa. I.D. No. 36687
Michael R. Nesfeder, Esq.
Pa. I.D. No. 49563

Fitzpatrick Lentz & Bubba, P.C.
Saucon Valley Road at Route 309
P. O. Box 219
Center Valley, PA 18034-0219
(610) 797-9000

Attorneys for Plaintiffs Ponderosa Fibres of Pennsylvania, Inc. and Appleton Recycled Fibres, Inc., t/d/b/a Ponderosa Fibres of Pennsylvania Partnership

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF NORTHHAMPTON)

Before me, the undersigned Notary Public, personally appeared Thomas Meersman, Project Manager, for Ponderosa Fibres of Pennsylvania Partnership after being duly sworn and deposed and says that as such he is authorized to make this Affidavit on behalf of Ponderosa Fibres of Pennsylvania Partnership and that the facts contained in the foregoing Complaint are true and correct, according to the best of his knowledge, information and belief.

By: Thomas Meersman
Thomas Meersman

Sworn to and subscribed by
me this 26th day of August, 1992.

Marilyn M. Minder-Dolzani
Notary Public

My Commission Expires:

Notarial Seal
Marilyn M. Minder-Dolzani, Notary Public
Upper Saucon Twp., Lehigh County
My Commission Expires April 27, 1998
Member, Pennsylvania Association of Notaries

1464

WORKING COPY

1 COUNTY OF LOS ANGELES
DeWitt W. Clinton, County Counsel, SBN 32095
2 David Kelsey, Assistant County Counsel, SBN 66400
Charles Safer, Deputy County Counsel, SBN 82771
3 One Gateway Plaza, Twenty-Fifth Floor
Los Angeles, California 90012
4 Telephone: (213) 922-2511

5 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
Alvin S. Kaufer, State Bar No. 30694
6 Thomas D. Long, State Bar No. 105987
Scott N. Yamaguchi, State Bar No. 157472
7 445 South Figueroa Street, Thirty-First Floor
Los Angeles, California 90071
8 Telephone: (213) 612-7800
Facsimile: (213) 612-7801
9
Attorneys for Plaintiff Los Angeles
10 County Metropolitan Transportation Authority

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF LOS ANGELES

13 LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, 14 a public corporation, 15 Plaintiff, 16 v. 17 PARSONS-DILLINGHAM METRO RAIL CONSTRUCTION JOINT VENTURE 18 aka PARSONS - DILLINGHAM; THE RALPH. M. PARSONS COMPANY 19 aka PARSONS INFRASTRUCTURE AND TECHNOLOGY CORP.; 20 PARSONS DE LEUW, INC. aka DE LEUW, CATHER, INC.; and 21 DILLINGHAM CONSTRUCTION INC. aka DILLINGHAM CONSTRUCTION, N.A., INC., 22 Defendants. 23	Case No. BC 179 027 FIRST AMENDED COMPLAINT FOR: (1) BREACH OF CONTRACT, (2) SPECIFIC PERFORMANCE, (3) AN ACCOUNTING, (4) DECLARATORY RELIEF, AND (5) FRAUD

24 Plaintiff, for causes of action against defendants and each of them, alleges:

25 **INTRODUCTORY ALLEGATIONS**

26 1. Plaintiff, Los Angeles County Metropolitan Transportation Agency,
27 ("MTA") is a public corporation duly organized and existing under the laws of the State of
28 California.

1 2. Defendant Parsons-Dillingham Metro Rail Construction Manager Joint
2 Venture also known as Parsons-Dillingham ("P-D") is a joint venture consisting of the
3 defendants identified in paragraph 3, 4 and 5. P-D was formed in order to enter into and
4 execute the contract with the MTA hereafter described. The joint venture and each of the
5 joint venturers are liable for the matters herein alleged and will be referred to jointly as
6 defendants.
7 3. Defendant the Ralph M. Parsons Company is a corporation with its
8 head-quarters in Pasadena, California and one of the joint venturers of P-D. Plaintiff is
9 informed and believes and on said information and belief alleges that the Ralph M Parsons
10 Company changed its name to Parson's Infrastructure and Technology Corp. (hereafter
11 "Parsons").
12 4 Defendant Parsons De DeLeuw, Inc. is a wholly owned subsidiary of
13 the Parsons Corporation and one of the joint venturers of P-D. Plaintiff is informed and
14 believes and on said information and belief alleges that Parson DeLeuw Inc. changes its
15 name to DeLeuw Cather Inc. (hereafter "DeLeuw").
16 5 Defendant Dillingham Construction Inc. is a corporation with its
17 headquarters in Pleasanton, California and is one of the joint venturers of P-D. Plaintiff is
18 informed and believes and on said information and belief alleges that Dillingham
19 Construction Inc. changed its name to Dillingham Construction N.A., Inc. ("Dillingham").
20 6. In 1984, plaintiff and defendants entered into an agreement pursuant
21 to which defendants were going to be the "consultant" and "construction manager" for the
22 Los Angeles Metro Red Line Rail Project. The agreement is commonly known as Contract
23 3369.
24 7. In 1991, plaintiff and defendants entered into an amendment to
25 Contract 3369 by an agreement entitled "Amendment 13/14" which added Segment 2 to the
26 Metro Rail Red Line project.
27 8. In 1993, plaintiff and defendants entered into an amendment to
28 Contract 3369 by an agreement entitled "Amendment 17" which added Segment 3 to the

1 Metro Rail Red Line project. (The contract and all of the amendments thereto will hereafter
2 be referred to collectively as the "Agreement" or "Contract 3369.")

3 9. Said Agreement consists of hundreds of pages and is too bulky to
4 attach. In substance or effect, said Agreement provided that defendants would be the
5 consultant/construction manager for the Metro Rail Red Line and that plaintiff would pay
6 P-D its "Recoverable Costs" plus a fixed fee, all in accordance with the terms of the
7 Agreement. Individual portions of said Agreement that are pertinent to this case will be set
8 forth in the respective causes of action.

9 10. On May 20, 1996, Martin Gerlinger, a former finance manager of P-D
10 and a former employee of Parsons, as a qui tam plaintiff, filed a false claims action against
11 defendants alleging that defendants filed false claims with the MTA under Contract 3369.
12 The action was filed on behalf of the United States of America, the State of California, the
13 County and City of Los Angeles and the plaintiff. The United States and the State of
14 California as well as the City of Los Angeles elected not to be the prosecuting office. The
15 County of Los Angeles and the plaintiff elected to join and prosecute the false claim action.

16 11 Defendants in this case are the same defendants as in the false claim
17 action. For about one year defendants refused to allow discovery in the false claims action
18 which prevented the MTA from ascertaining the truth or falsity of the qui tam plaintiff's
19 allegations, however based on information obtained from other sources, plaintiff believes
20 that significant parts of the qui tam allegations are meritorious. Defendants have also
21 refused to submit statements regarding actual overhead rates as required by the contract,
22 or to allow plaintiff its contractual rights to audit the books and records of defendants which
23 denial also prevented plaintiff from ascertaining the true facts. Because defendants have
24 possession of the essential evidence and refuse to disclose said evidence either voluntarily,
25 or pursuant to their contract obligations or pursuant to discovery requests in the false claim
26 action, plaintiff has been forced to file this complaint.

27 ////

28 ////

FIRST CAUSE OF ACTION FOR RECOVERY OF ALL AMOUNTS PAID TO DEFENDANTS AS PROVISIONAL OVERHEAD RATES.

12. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 11 hereof.

13. Contract 3369 provides and requires that each defendant, on an annual basis, submit its actual overhead rates on an annual basis together with a statement of the methodology used to determine actual overhead rates and the identity of the person who computed the rates. Specifically paragraph CP-3E provides in part that:

> "After the close of each Joint Venturer's fiscal year, that Joint Venturer shall submit to the AUTHORITY [now MTA] a statement setting forth its interim determination of its Actual Overhead Rates for Home Office, Field Offices, and Project offices for that fiscal year, together with a statement of the method by which those rates were determined and by whom."

14. Since the inception of the contract, no defendant ever submitted a computation of its "actual overhead rates" in compliance with Contract 3369 nor did any defendant submit a statement of methodology by which said actual overhead rates could be computed or the name of any person who computed such rates.

15, Contract 3369 provides and requires each defendant to allow plaintiff to audit its books and records at reasonable times. Specifically, the pertinent paragraphs provide:

> "CONSULTANT and each Joint Venturer may be audited, if the AUTHORITY in its sole discretion deems it necessary or desirable, and Home Office, Project Office, and Field Office "Actual Overhead Rates" for each Joint Venturer shall be established and determined, as provided in Article CP-6 below.]" (Contract 3369 ¶ CP-3C.)

1 "CONSULTANT and each Joint Venturer shall permit
2 authorized representatives of the AUTHORITY, and any
3 other agency as directed by the AUTHORITY, in its sole
4 discretion and at its sole cost, to inspect and audit all of
5 CONSULTANT'S and each Joint Venturer's records relating
6 to its performance under this Contract and its
7 Subcontractors' performance under this Contract from the
8 date of this Contract through and until expiration of three
9 years after acceptance of the Services by the AUTHORITY
10 under this Contract. Any such audit may be required by the
11 AUTHORITY at reasonable times upon reasonable notice to
12 CONSULTANT and each Joint Venturer during the Contract
13 term and within the three year period thereafter, and audits
14 held no more frequently than once per year shall be per se
15 reasonable." (Contract 3369:¶ CP-6.)

16 16. Plaintiff demanded of defendants that plaintiff have the right to
17 unconditionally audit defendant's books and records. Defendants failed and refused to
18 allow such an audit.

19 17. Plaintiff is informed and believes and on such information and belief
20 alleges that defendants' actual overhead rates are substantially below the provisional
21 overhead rates paid by MTA to defendants.

22 18. In order to prevent plaintiff from discovering the true amount of over-
23 charges, defendants:

24 (a) refused to allow plaintiff its contractual right to audit defendants'
25 books and records in order to determine their actual overhead rates;

26 (b) refused to submit actual overhead rate statements as required
27 by the contract; and

28 ////

1 (c) refused to respond to discovery requests regarding overhead
2 rates in the related false claims action.
3 19. Because of defendants refusal to honor its contractual obligations,
4 plaintiff has no ability to determine defendants' actual overhead rates and therefore seeks to
5 recover all overhead previously paid by MTA to defendants in the approximate amount of
6 $65,000,000, except to the extent that defendants can prove to this Court then actual
7 overhead rate.

8 SECOND CAUSE OF ACTION TO RECOVER UNAUTHORIZED CHARGES.

9 20. Plaintiff realleges and incorporates herein by reference each and every
10 allegation contained in paragraphs 1 through 19 hereof.
11 21. Contract 3369 provides that plaintiff would pay to defendants only their
12 "Recoverable Costs" as defined in the Agreement. In addition, the Agreement does not
13 allow recovery of certain specific costs or costs in excess of a certain amounts all as
14 specified therein.
15 22. Plaintiff is informed and believes and on such information and belief
16 alleges that defendants charged and received unauthorized costs in many ways including,
17 but not limited to, the following, each of which is alleged on information and belief:

18 Improper Overbilling to MTA by Failing to Adjust Provisional Overhead
19 Rates to Actual Overhead Rates.

20 (a) P-D and each joint venturer was required, by both the
21 contract and by FAR 16.307-A which incorporates FAR 52.216-7 into all contracts
22 which involve federal funds, to determine their respective actual overhead rates each
23 year and to adjust the provisional rates to the actual rates at that time. Defendants
24 failed and refused to adjust their provisional overhead rates to their actual overhead
25 rates.

26 Improper Overbilling Because of Failure to Properly Credit Refunds.

27 (b) P-D was required by law and by the contract to credit or
28 pay to MTA any and all credits and/or reimbursements it received which previously

152x

1 were charged to MTA and paid by MTA. P-D received a credit from a subcontractor
2 named CCSC because of overcharges by CCSC on segment 1, but failed and
3 refused to credit or pay to MTA in the time and manner required by the Agreement.
4 As a direct and proximate result of the foregoing, MTA is entitled to all refunds
5 received plus interest on said amounts at the rate of 10% per annum from and after
6 the date said sums were paid by MTA. Said credits should be applied to reduce the
7 authorized maximum allowed for Segment 1.

8 (c) In addition to the foregoing, Parsons did not credit to MTA
9 the forfeitures in its ESOP plan while billing as fringe benefits the maximum allowed
10 to be put into the ESOP Plan. As a result of the foregoing, defendant Parsons
11 realized profits by overcharging fringe benefits for its ESOP Plan in excess of its
12 actual costs, and MTA is entitled to a refund in the amount of said forfeitures.

13 <u>Improper Overbilling by Including Reimbursed Costs in Overhead.</u>

14 (d) Defendants billed MTA for direct costs and were paid for
15 those direct costs. Defendants also billed certain identical functions as both direct
16 costs and as a part of overhead/G&A (general and administrative) thereby receiving
17 excess recovery of said costs. For example defendant Dillingham charged for
18 estimators working on Contract 3369 as direct costs and also charged for estimators
19 working on non-MTA contracts as a part of overhead.

20 <u>Improper Overbilling In Excess of Maximum Contract Price.</u>

21 (e) P-D is limited in the amount of charges it may charge to
22 each segment of the Metro Rail Red Line as set forth in Contract 3369. P-D charged
23 costs to Segments 1 and 2 in excess of the amount allowed by Contract 3369. To
24 the extent that P-D charged costs in an amount in excess of that authorized by the
25 contract, MTA is entitled to recover those costs plus interest at the rate of 10% on
26 said sums from and after the date of payment of each excess sum.

27 ////

28 ////

1 **Improper Overbilling for Legal Fees.**

2 (f) P-D charged legal fees in the approximate amount of
3 $300,000 to Contract 3369 which were not allowed by the contract or the FARs. As a
4 result of the foregoing, MTA is entitled to recover said legal fees plus interest in the
5 amount of 10% from the date of payment of each such reimbursement for legal fees.

6 **Improper Overbilling Because of Los Angeles City Business Tax.**

7 (g) Contract 3369 provides the Los Angeles City Business
8 Tax would not be charged as a direct expense but would be charged as overhead
9 which meant that said tax would be allocated to other contracts as well as Contract
10 3369. In breach of Contract 3369, defendants charged the Los Angeles City
11 Business Tax as a burden on labor thereby effectively charging said tax as a direct
12 expense rather than an overhead expense as provided and required by Contract
13 3369.

14 **Improper Overbilling Because of Insurance, Telephone, Labor Allocation**
15 **and Sub-Contractor Profits.**

16 (h) P-D charged MTA for workers compensation and other
17 insurance in excess of that which is allowed by Contract 3369.

18 (i) P-D charged MTA for long distance telephone calls that
19 were made by employees for jobs unrelated to MTA, and which were reimbursed by
20 the employees to P-D. P-D did not reflect the credits for those reimbursements from
21 employees resulting in P-D getting paid twice for such phone expenses.

22 (j) Defendant Parsons, through P-D, charged for profits on
23 subcontractors which were wholly owned subsidiaries. Such charges are not
24 authorized by the contract or the FARs.

25 (k) Employees of P-D did not allocate their time correctly to
26 the various segments on which they worked and billed time to MTA that was
27 improper because not allocated or authorized by Contract 3369.

28 ////

154x

23. Plaintiff is entitled to recover all costs charged by defendants and paid by MTA which were not "Reimbursable Costs" under Contract 3369.

THIRD CAUSE OF ACTION FOR AN ACCOUNTING.

24. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 23 hereof.

25. By reason of Contract 3369, defendants undertook to be the MTA's consulting manager on the Metro Rail Red Line and, among other things:

(a) To bill the MTA only for Recoverable Costs as defined in Contract 3369; and

(b) To submit a statement of Actual Overhead Rates as defined in Contract 3369 and to readjust the provisional overhead rates and payroll burden rates each year based upon their respective actual overhead rates.

26. At no time did defendants submit the statement of Actual Overhead Rates together with a statement of methodology and at no time did defendants adjust the provisional overhead rates specified in Contract 3369 to their actual overhead rates.

27. Plaintiff is informed and believes and on such information and belief alleges that the actual overhead rates and actual payroll burden of defendants is substantially lower than the provisional overhead rates (including payroll burden) paid by MTA to defendants. Plaintiff is informed and believes that defendants billed the MTA for costs that were not "Recoverable Costs" under Contract 3369.

28. The amount of money due to plaintiff from defendants is unknown to plaintiff and cannot be ascertained without an accounting of the actual overhead rates and cost of defendants.

29. Plaintiff has demanded that defendants provide plaintiff with the required statement of overhead rates and methodology but defendants have failed and refused to do so. Plaintiff demanded of defendants that they allow an audit as required by Contract 3369, but defendants have failed and refused to allow such audits.

////

1 30. Plaintiff has no remedy at law and is unable to determine exactly how
2 much is owed by defendants to plaintiff without an accounting.
3 FOURTH CAUSE OF ACTION TO RECOVER ON A
4 SPECIFIC CONTRACT FOR REFUND OF $1,461,857.
5 31. Plaintiff realleges and incorporates herein by reference each and every
6 allegation contained in paragraphs 1 through 8 hereof.
7 32. On or about March 22, 1994, plaintiff and defendants entered into
8 an agreement a copy of which is attached hereto as Exhibit A and incorporated herein by
9 reference.
10 33. Said agreement provides that defendants will pay to plaintiff the sum
11 of $1,461,857.
12 34. Plaintiff has duly performed all of the conditions contained in said
13 agreement on its part to be performed.
14 35. Defendants have not performed the covenants contained in said
15 agreement on their part to be performed in that defendants have failed and refused to pay
16 the full amount owing pursuant to said agreement, all to plaintiff's damage in a sum subject
17 to proof at trial, plus interest at the rate of 10% per annum from April 1, 1994.
18 FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF.
19 36. Plaintiff realleges and incorporates herein by reference each and every
20 allegation contained in paragraphs 1 through 28 hereof.
21 37. Plaintiff claims and contends that it is not obligated to pay any overhead
22 payments under the Agreement to defendants and is entitled to recover all overhead costs
23 previously paid to Parsons-Dillingham until and unless defendants:
24 (a) Submit their Actual Overhead Rates for each year of Contract
25 3369 together with a statement of methodology and the identity of the person making
26 such calculations as required by Contract 3369;
27 (b) Allow plaintiff to perform the audit that Contract 3369 authorizes
28 plaintiff to perform; and

1 (c) Defendant Parsons-Dillingham certifies the invoices submitted by
2 Parsons-Dillingham to plaintiff as required by the contract.
3 38. Plaintiff is informed and believes and on such information and belief
4 alleges that defendants contend in all respects to the contrary.
5 39. Plaintiff prays for a declaratory judgment declaring the rights of the
6 parties under and pursuant to Contract 3369 with regard to the issues identified herein and,
7 if the court determines that plaintiff is entitled to an audit, for a judgment ordering
8 defendants to make all books and records available to plaintiff and its agents at reasonable
9 times as specified by the court.
10 SIXTH CAUSE OF ACTION FOR FRAUD AND DECEIT.
11 40. Plaintiff realleges and incorporates herein by reference each and every
12 allegation contained in paragraphs 1 through 23 hereof.
13 41. Plaintiff is informed and believes and on such information and belief
14 alleges that defendants and each of them, conspired to do the acts herein alleged and each
15 knew that the other defendants were overcharging the MTA in one or more of the specific
16 ways herein alleged and acquiesced in such overcharges.
17 42. Plaintiff is informed and believes and on such information and belief
18 alleges that defendants fraudulently and deceitfully overcharged their indirect expenses,
19 i.e., "overhead" in several ways including the following:
20 (a) Pursuant to Contract 3369, defendants agreed to act as the
21 Construction Manager for MTA and to do all things necessary (as specified in the
22 Agreement) to cause the Metro Rail Red Line to be constructed. Defendants thereby
23 assumed both a contractual and fiduciary duty to MTA.
24 (b) Contract 3369 specifically provided that it was a "cost-plus"
25 Agreement which meant that, among other things, defendants were not permitted to
26 reap profits from said Agreement greater than the amounts specified in the
27 Agreement. Defendants were entitled to recover their Actual Recoverable Costs as
28 defined and certain designated amounts as profits.

1 (c) One of the "cost" items defendants were permitted to recover
2 was their "actual overhead." In general terms, the "actual overhead costs" are
3 determined by a formula pursuant to which each defendant was required to total all
4 overhead costs incurred in a given year and allocate those costs fairly to all contracts
5 on which the defendant was working in that year. After allocation of all overhead
6 costs among all contracts, each defendant should not receive more than 100% of all
7 of its overhead costs.
8 (d) The intent of Contract 3369 was that each defendant would
9 charge no more than their actual overhead costs to MTA.
10 (e) However, actual overhead costs would not be known until after
11 the bills for any given year had already been submitted. Therefore, Contract 3369
12 provided for "provisional" overhead rates which defendants were authorized to
13 charge. As alleged in paragraph 13, the contract also provided that defendants
14 would submit to MTA, after the first year and after the close of each fiscal year
15 thereafter, a statement setting forth its interim determination of its actual overhead
16 rates together with other information.
17 (f) By virtue of their contractual and fiduciary obligations to MTA,
18 defendants had a duty to disclose to MTA their actual overhead rates after the first
19 year and at the close of such fiscal year thereafter.
20 (g) Although defendants had a duty to disclose their interim
21 determination of their actual overhead rates to MTA, defendants conspired with each
22 other to refuse to disclose their actual overhead rates to MTA.
23 (h) After the first year of the contract, defendants were obligated to
24 charge no more than their interim determination of actual overhead rates unless,
25 after disclosing their interim determination of their actual overhead rates, the MTA
26 authorized a higher rate.
27 (i) Instead of charging their actual overhead rates after the first
28 year, defendants conspired with each other to charge a rate that was in excess of

1 their actual overhead rates. Defendants charged their overhead rates as follows:

2 (i) Each joint venturer would invoice P-D and said invoice
3 would show an overhead rate in excess of actual overhead rates;

4 (ii) A representative of P-D would compile one total bill,
5 usually for a period of one month, and submit the bill to MTA together with a
6 cover letter signed by a designated person from P-D.

7 (iii) There were over 1200 invoices submitted to MTA. Each
8 invoice usually consisted of several binders of papers. It would be too
9 burdensome and cumbersome to attach each invoice to this complaint but
10 examples of cover letters are attached hereto marked as Exhibits B-1, B-2, B-
11 3, B-4, B-5 or B-6. Those cover letters are signed by the person who sent the
12 invoice to MTA.

13 (j) Contract 3369 provides that employees of MTA could not change
14 the terms of the agreement.

15 (k) In reliance on the belief that defendants were complying with the
16 terms to the contract, MTA employees and the Board of Directors authorized
17 payments of invoices from P-D and even authorized over 490 change orders.

18 (l) Until recently, MTA paid said overhead charges in full.

19 (m) As a result of the foregoing, MTA has been damaged in an
20 amount equal to the amount of overhead charged to and paid by MTA in excess of
21 defendants actual overhead rates.

22 43. As a part of their scheme to defraud the MTA, MTA alleges on
23 information and belief, that defendants also did the following:

24 **P-D, joint venture:**

25 (a) The joint venturers used the joint venture entity as a vehicle to
26 charge indirect or overhead rates in excess of their actual rates. For example, one or
27 about June I, 1993, George Morschauser, in his capacity as construction manager of
28 the joint venture, wrote a letter to Charles Stark of MTA with regard to an amendment

to Contract 3369. In said letter he represented that: "As an entity, the joint venture's indirect costs approximate 115.6% . . ." and attached a schedule which purported to support that statement. The schedule states that the rates of Dillingham and DeLeuw were based on "audited" rates thereby implying that the MTA performed an audit and validated said overhead rates. In amendment 17, MTA in fact agreed to pay actual overhead rates not to exceed110%.

(b) In truth and in fact, the indirect costs of each joint venturer and therefore of the joint venture was less than 110% and the rates of Dillingham and DeLeuw were not MTA audited rates.

(c) On or about June 18, 1996, Richard S. Enriquez in his capacity as Business/Administration Manager for the joint venture wrote to Joe Mathis of the MTA, also represented that the joint venture overhead rate was 115.6% and requested that the MTA pay 115% for overhead after December 1995. MTA paid 115% as requested.

(d) In truth and in fact, the overhead rates of the joint verturers and therefore the joint venture was not 115%.

Parsons:

(e) Defendant Parsons represented to MTA that its payroll burden was in excess of 55%. Said representation was made by, among other ways, in the schedule attached to the letter from Richard Enriquez to Joe Mathis dated June 18, 1996.. MTA relied on said representation and agreed to pay provisional rates based on said representations. In fact, Parsons knew that its actual payroll burden rate was approximately 45% and intended to deceive MTA.

(f) By reason of the foregoing, MTA was overcharged at least 10% and is entitled to recover said overcharges with interest at the rate of 10% per annum from and after the date of overpayment.

Dillingham Construction N. A., Inc.

(g) Defendant Dillingham submitted records to MTA and to MTA

1 outside accountants which represented that the overhead rates of Dillingham were
2 higher than in fact they were. Among other records, Dillingham submitted through
3 Mr. Yaekel, its controller, a statement which purported to be a statement from Arthur
4 Anderson & Co. certifying that Dillingham's overhead rate was 156% for the year
5 ended October 31, 1985. Also, Dillingham submitted a statement which purported to
6 be a statement of KPMG Peat Marwick, representing that the total revenues, costs
7 and profits for the fiscal year ending 1987 was $269,171,451, $268,054,314 and
8 $1,117,137 respectively whereas for the same fiscal year it represented to
9 Washington Metropolitan Area Transit Authority that said revenues and expenses
10 were much lower resulting in a lower overhead rate of 8.05% for WAMATA.

11 (h) MTA relied on the representations made by Defendant
12 Dillingham and paid provisional rates base on the rates represented by Dillingham,
13 all to MTA's damage in an amount to be determined.

14 <u>DeLeuw Cather, Inc.</u>

15 (i) Defendant DeLeuw Cather submitted records to MTA purporting
16 to be a report of Price Waterhouse LLP representing that the overhead rates for
17 DeLeuw Cather were over 140%. Plaintiff is informed and believes that in fact,
18 DeLeuw Cather computed it actual Overhead Rates at approximately 88%.

19 (j) MTA relied on the alleged rate of 140% in approving the
20 provisional rates under Contract 3369. MTA paid the provisional rates and was
21 thereby damaged in an amount to be determined.

22 42. In addition to the foregoing, plaintiff is informed and believes and on
23 such information and belief alleges that each defendant knew that it was making profits
24 greatly in excess of the amount of profits allowed under Contract 3369 and that each
25 defendant intentionally refused to deliver its statement of actual overhead as required by
26 Contract 3369 with the intent and for the purpose of defrauding MTA into paying monies
27 greatly in excess of that allowed under the contract. Defendants each had a duty to provide
28 the statement required by Contract 3369 and breached said duty by intentionally refusing to

1 provide said statements so that it could overbill MTA.

2 43 By reason of the foregoing, MTA was overcharged for overhead costs
3 and is entitled to recover all overhead paid to defendants less such overhead as defendants
4 can prove was its actual overhead for the periods of time in question.

5 44. Defendants' fraud and deceit was intentional and they were guilty of
6 oppression, fraud and malice entitling plaintiff to exemplary and punitive damages pursuant
7 to Civil Code section 3294 in an amount to be determined.

8 WHEREFORE, plaintiff prays for judgments as follows:

9 1. On the First Cause of Action, for the sum of $65,000,000 representing
10 all payments of provisional overhead rates, unless, prior to judgment, (a) defendants prove
11 their actual overhead rates and (b) allow plaintiff a full and unconditional audit to verify said
12 overhead rates, and then judgment should be against defendants for the amount paid in
13 excess of actual overhead rates plus interest thereon at the rate of 10% per annum from the
14 date of payment of each excess overhead rate.

15 2. On the Second Cause of Action, for the total amount of overcharges
16 paid by MTA to defendants and the total amount of credits received by defendants and not
17 given to plaintiff, plus interest thereon at the rate of 10% per annum.

18 3. On the Third Cause of Action, for an accounting and for judgment in
19 favor of plaintiff for all amounts owed by defendants to plaintiff for any reason as a result of
20 Contract 3369.

21 4. On the Fourth Cause of Action, for the sum of at least $1,161,857,
22 subject to proof at trial, plus interest thereon at the rate of 10% per annum from April 1,
23 1994.

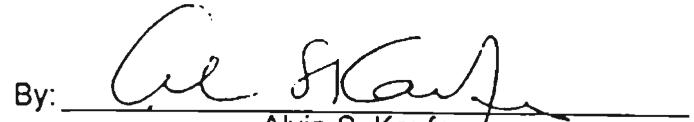
24 5. On the Fifth Cause of Action, for a declaration by the Court that plaintiff
25 need not pay any overhead to defendants until they have complied with the terms of the
26 contract requiring that each defendant provide a statement of its actual overhead rates and
27 allow an audit and for a judgment of specific performance allowing plaintiff an audit.

28 6. On the Sixth Cause of Action, for a joint and several judgment that

1 defendants defrauded plaintiff in the amount to be proved at trial together with exemplary
2 and punitive damages from each defendant in an amount not less than 10% of their
3 respective net worth.
4
5 DATED: March 16, 1998

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
Alvin S. Kaufer
Thomas D. Long

6
7
8

By: 

9
Alvin S. Kaufer
Attorneys for Plaintiff
10
Los Angeles County
Metropolitan Transportation Authority

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

164x

nklin E. White
f Executive Officer

ngeles County
Metropolitan
ransportation
Authority

Seventh Street
Suite 300
geles CA 90017

213.623.1194

March 22, 1994

Mr. Leonard J. Pieroni
The Parsons Corporation
100 West Walnut Street
Pasadena, California 91124

Dear Mr. Pieroni:

This is to confirm our conversation of Thursday, March 10, 1994, wherein we agreed to accept your offer that Parsons-Dillingham (P-D) will: 1) supervise, at no cost to the Los Angeles County Metropolitan Transportation Authority (MTA), all remedial construction work recommended by the Cording Tunnel Panel Report of February, 1994; and 2) reimburse the MTA up to a total of $1,461,857 for the following:

- costs of the Cording Tunnel Panel Report;
- costs of the Barba-Arkhon audit.

In addition, P-D will reimburse the MTA the costs of the Wiss, Janney, Elstner Associates quality assurance work directly associated with the remedial construction work defined by the Cording Tunnel Panel Report.

The areas to be repaired will be defined by the MTA based upon the specific recommendations for remedial construction work specified by the Cording Tunnel Panel Report. Repair design procedures will be prepared by the Engineering Management Consultant (EMC) and submitted to P-D. The Cording Tunnel Panel will review the EMC generated specifications.

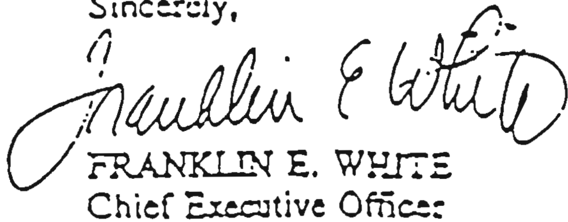
In its construction management function, P-D will perform the work usually undertaken by a construction manager including the preparation of a work plan and a schedule for the repairs. P-D will also coordinate inspection, testing, documentation and staffing plans in connection with the remedial construction work.

CA_GER v. Parsons, et al.
7/9/97 # 158

Mr. Leonard J. Pieroni
March 22, 1994
Page two

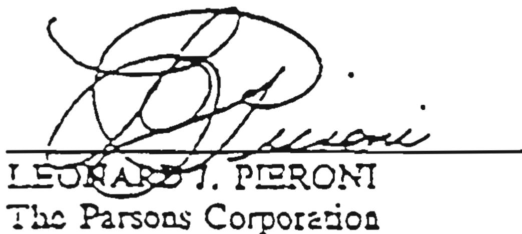
We hope to complete the implementation of the Report recommendations in a high quality, thoroughly documented and expeditious manner. MTA appreciates your prompt actions in the performance of this work.

Sincerely,



FRANKLIN E. WHITE
Chief Executive Officer

ACKNOWLEDGED AND ACCEPTED



LEONARD J. PIERONI
The Parsons Corporation

cc: E. McSpedon (RCC)
G. Morschauser (P-D)

CA_GER v. Parsons, et al.
7/9/97 # 159

Exhibit A, page 2 of 2

1664

EXHIBIT B

167x

PDCD

600 SOUTH SPRING STREET
SUITE 1200
LOS ANGELES, CALIFORNIA 90014
(213) 489-4950

REF. Contract No. 3369
CM-MR-5627

June 25, 1990

Southern California Rapid Transit District
425 South Main Street
Los Angeles, California 90013

Attention: Mr. Samuel K. Louis
Director, Construction Management

Subject: Request for Payment No. 151

Gentlemen:

Attached is our Request for Payment No. 151 for the period ending June 22, 1990. Upon your approval, please wire funds to:

PDCD
c/o Bank of America, A/C No. 6003-01361
525 South Flower (L.A. Main Office)
Los Angeles, California 90071

Thank you.

Very truly yours,

Melvin L. Polacek
Construction Manager

Attachment
As noted above

cc: Calvin Louie (Original)
A. H. Perdon
TSD-DCC (w/o attachment)

Exhibit B-1, page 1 of 5

5195O5

METRO RAIL PROJECT

FILE COPY

INVOICE APPROVAL SHEET

DATE INVOICE RECEIVED 6/25/90

CONTRACT # 3369
DESCRIPTION POCD
PAYMENT NO. 151

	INITIAL	DATE	
ACCOUNT DISTRIBUTION	[illegible]	6/27/90	COST ANALYST
TECHNICAL REVIEW	[illegible]	7/2/90	DIRECTOR
AUTHORIZATION FOR PAYMENT	[illegible]	7/3	ASSIST. GEN. MANAGER
CONTRACTUAL COMPLIANCE	[illegible]		CONTRACT ADMIN. OCPM

PAYMENT SCHEDULE

ACCT NO.	AFE	INVOICE AMOUNT	LINE #
10583	15111	699,000.00	27

TOTAL $ 699,000.00

COMMENTS:

☑ PO Line Report attached ☐ Retention Analysis attached

VERIFIED [illegible]
ENTERED
RELEASED
ACCOUNT
OVERRIDE

TSD CLEARED

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

169x

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT
ACCOUNTS PAYABLE— CONTRACTS

Route To: | Date Rec'd. | Contact Person
1) Dept. No. 81CC | | K Buddy
2) OCPM — CMF Building | | B [illegible]
3) Accounts Payable for payment | | [illegible]

VENDOR PDCD CONTRACT NO. 3369
VOUCHER NO. 519 505 INVOICE NO. 151

$ 699,000.00

Please provide the following information and approve the invoice for payment.

35671

Accounting Distribution

Account No.	W.O./AFE No.	Dept. No.	Amount	Line No.

Approval

Date Approved by: Signature

Project Manager

7/2/90 Department Head [signature]

Contract Adm. Mgr.

From Accounts Payable Date Rec'd 6/25/90
Clerk Name: [illegible] Date Mailed 6/25/90
Extension # 6879

170Y

(06/27/90) * * * MILLENNIUM ONLINE PRINT: * * *

PO NBR	LN	PART NBR/DESC	ACCOUNT	AFE	TOT AMOUNT	INV AMOUNT
3369	01	CONTRACT	10583	06611	1.00	
3369	02	AMENDMENT 1	10583	06611	1.00	
3369	03	AMENDMENT 2	10583	06611	1.00	
3369	04	AMENDMENT 3	10583	06611	1.00	
3369	05	AMENDMENT 4	10583	02111	1.00	
3369	06	AMENDMENT 4	10583	98103	37,000.00	1,215.40
3369	07	AMENDMENT 4	10583	98003	350,000.00	68,394.63
3369	08	ADJUSTMENT	10583	06611	1.00	
3369	09	ORIG CONTRACT	10583	02111	206,329.00	206,329.00
3369	10	ORIG CONTRACT	10583	02111	5,740,671.00	5,740,671.00
3369	11	ORIG CONTRACT	10583	06611	642,849.00	642,849.00
3369	12	ADJUSTMENT	10583	06611	1.00	
3369	13	AMENDMENT 02	10583	06611	4,357,151.00	4,357,151.00
3369	14	ADJUSTMENT	10583	06611	1.00	
3369	15	AMENDMENT 03	10583	15111	1,586,898.00	1,586,898.00
3369	16	ADJUSTMENT	10583	02111	1.00	
3369	17	AMENDMENT 04	10583	15111	12,122,392.00	12,122,392.00
3369	18	ADJUSTMENT	10583	15111	1.00	
3369	19	AMENDMENT 04	10583	20911	55,000.00	38,786.00
3369	20	AMENDMENT 06	10583	15111	13,197,938.00	8,641,527.00
3369	21	AMENDMENT 06	10583	20911	63,000.00	10,687.00
3369	22	AMENDMENT 06	10583	20711	15,000.00	
3369	23	AMENDMENT 06	10583	21203	463,000.00	
3369	24	AMENDMENT 06	10583	98111	35,000.00	
3369	25	AMENDMENT 07	10583	15111	17,625,378.00	16,024,911.97
3369	26	ADJUSTMENT	10583	15111	1.00	
3369	27	AMENDMENT 08	10583	15111	16,872,967.00	14,773,295.00
3369	28	CHG ORDER 009	10583	15111	1,860,175.00	
1 3369					75,230,759.00	64,215,107.00
*					75,230,759.00	64,215,107.00

PARSONS–DILLINGHAM

METRO RAIL CONSTRUCTION MANAGER

REF. Contract No. 3369
R80-CM-RC-1976

April 30, 1993

Mr. Richard Bennett
Project Accounting
Los Angeles County Metropolitan Transportation
Authority
818 West Seventh Street, Suite 1100
Los Angeles, California 90017-4606

Subject: Transmittal of Segment 1 Invoice No. 110

Dear Mr. Bennett:

Enclosed is one fully supported original and one unsupported copy of Parsons-Dillingham's Invoice No. 110 for the period ending February 26, 1993.

This invoice is for record purposes only. Do not pay from this document.

The attachments to this invoice contain confidential payroll information. We will appreciate your discretion in handling these documents.

If you have any questions on this invoice, please contact Douglas K. Ho at (213) 362-6033.

Sincerely,

George B. Morschauser
Construction Manager

GBM:sgz
Enclosures
As noted

cc: J. J. Adams - RCC (w/o enclosures)
RCC - RMC (w/o enclosures)

TRANSPORTATION COMMISSION

FOR PAYMENTS THRU 02/26/93

PARSONS-DILLINGHAM
INVOICE NO. 110

NO.	DESCRIPTION	TOTAL CURRENT	PREVIOUS	CUMULATIVE TO DATE
LABOR & RELATED COSTS:				
A1	LABOR-FIELD STAFF	57,888.83	29,856,765.75	29,914,654.58
A2	LABOR-HOME OFFICE	32,325.14	1,759,831.30	1,792,156.44
A3	FIELD LABOR-PREMIUM	3,804.25	225,256.57	229,060.82
A4	HOME OFFICE LABOR-PREMIUM	0.00	4,206.77	4,206.77
B1	PAYROLL BURDEN	54,555.39	16,758,206.47	16,812,761.86
C1	OVERHEAD-FIELD	21,814.20	10,268,231.07	10,290,045.27
C2	OVERHEAD-HOME OFFICE	17,038.36	1,148,421.44	1,165,459.80
D1	SUBCONTRACT COSTS	147,782.13	36,783,663.53	36,931,445.66
	TOTAL LABOR & RELATED COSTS	335,208.30	96,804,582.90	97,139,791.20
OTHER DIRECT COSTS:				
B2	INSURANCE	0.00	193,697.81	193,697.81
E1	REPRODUCTION	4,286.92	615,562.91	619,849.83
E2A	TELEPHONE & TELEX	2,528.66	708,401.87	710,930.53
E2B	FREIGHT & POSTAGE	368.65	72,073.03	72,441.68
E3A	TRAVEL EXPENSES	18,517.95	593,071.77	611,589.72
E3B	TRANSPORTATION	3,983.76	317,034.61	321,018.37
E4	CAPITAL & SPEC EQUIP	0.00	1,876,204.01	1,876,204.01
E5	FIELD OFFICE EXPENSES	1,925.38	5,262,119.57	5,264,044.95
E6	TEMPORARY HELP	0.00	988.00	988.00
E7	GROSS RECEIPTS TAX & PERMITS	0.00	417,739.80	417,739.80
E8	MOB & RELOCATION EXPENSES	0.00	890,911.38	890,911.38
E8A	GEN. CONDITIONS ITEMS-OTHER	0.00	61,496.03	61,496.03
E8B	GCI - TESTING PROGRAM	(774.00)	1,940,920.39	1,940,146.39
E8C	GUARD SERVICE	0.00	819,023.96	819,023.96
E8D	CONSTRUCTION PHOTOGRAPHY	2,174.65	346,497.09	348,671.74
E8E	WATER QUALITY DESIGN & MISC.	2,300.00	873,983.92	876,283.92
E9	COMPUTER EXPENSES	938.08	230,920.91	231,858.99
E10	MARK UP	4,544.48	327,050.23	331,594.71
	TOTAL OTHER DIRECT COSTS	40,794.53	15,547,697.29	15,588,491.82
F	FEE	0.00	5,070,837.59	5,070,837.59
	TOTAL INVOICED AMOUNT	376,002.83	117,423,117.78	117,799,120.61
	TOTAL OLD CONTRACT P/E 05/01/91	0.00	87,526,409.95	87,526,409.95
	TOTAL NEW CONTRACT P/E 05/01/91 - CURRENT	376,002.83	29,896,707.83	30,272,710.66
	TOTAL OLD & NEW CONTRACT	376,002.83	117,423,117.78	117,799,120.61

173x

LOS ANGELES COUNTY
TRANSPORTATION COMMISSION

FOR PERIOD ENDING 02/26/93
FOR PAYMENTS THRU 02/26/93

INVOICE NO. 110

PARSONS - DILLINGHAM

SCHEDULE A
RECONCILIATION

DESCRIPTION	TOTAL CURRENT	INCEPTION TO DATE
FUNDS RECEIVED THRU PAYMENT 214 AS OF 01/29/93		116,666,000.00
ADD: FUNDS RECEIVED FOR CURRENT PERIOD:		
	0.00	0.00
	0.00	0.00
	0.00	0.00
	0.00	0.00
TOTAL FUNDS RECEIVED AS OF 01/29/93	0.00	116,666,000.00
LESS: FUNDS APPLIED THROUGH INVOICE NO.110	376,002.83	117,799,120.61
AMOUNT OVER/(UNDER) FUNDED:	(376,002.83)	(1,133,120.61)

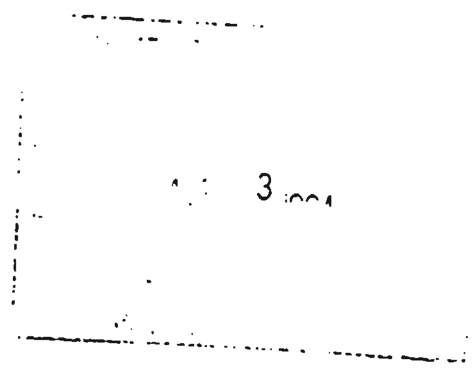
RECAP OF INVOICES

DESCRIPTION	CURRENT	PREVIOUS	TOTAL
FIRST ANNUAL WORK PLAN	$0.00	4,982,353.16	4,982,353.16
SECOND ANNUAL WORK PLAN	0.00	5,581,693.80	5,581,693.80
THIRD ANNUAL WORK PLAN	0.00	7,444,327.84	7,444,327.84
FOURTH ANNUAL WORK PLAN	0.00	12,646,784.83	12,646,784.83
FIFTH ANNUAL WORK PLAN	0.00	17,313,752.35	17,313,752.35
SIXTH ANNUAL WORK PLAN	0.00	17,661,741.22	17,661,741.22
SEVENTH ANNUAL WORK PLAN	0.00	26,041,922.94	26,041,922.94
EIGHTH ANNUAL WORK PLAN	0.00	19,240,379.39	19,240,379.39
NINETH ANNUAL WORK PLAN	376,002.83	6,510,162.25	6,886,165.08
TOTAL AMOUNT INVOICED	$376,002.83	117,423,117.78	117,799,120.61

174x

PARSONS–DILLINGHAM

METRO RAIL CONSTRUCTION MANAGER



REF. Contract No. 3369
R81-CM-RC-2804
SQ020.2-PA600

Mr. Richard Bennett
Project Accounting
Los Angeles County Metropolitan Transportation Authority
818 West Seventh Street, Suite 1100
Los Angeles, California 90017-4606

Subject: Transmittal of Segment No. 2 Invoice No. 39 and Funds Request No. 89

Dear Mr. Bennett:

Enclosed please find one fully supported original and one unsupported copy of Parsons-Dillingham's Invoice No. 39 for the period ending June 24, 1994.

Enclosed is a funds request totaling ~~$4,558,427~~.15 2,908,427.15 as per attached schedule.

Upon your approval of funds request, please mail funds to our address shown below.

Please note that this submission includes $1,658,427.15 previously requested. These funds are sorely needed to meet ongoing obligations.

The attachments to this invoice contain confidential payroll information. We will appreciate your discretion in handling the documents.

If you have any questions on this invoice contact Douglas K. Ho (213) 362-6033.

Sincerely,

George B. Morschauser
Construction Manager

GBM:pws

Enclosures
As noted

cc: Joel Sandberg (w/o enclosures)
RCC-RMC (w/o enclosures)

A joint venture of
The Ralph M. Parsons Company
De Leuw, Cather & Company
Dillingham Construction N.A., Inc.

523 West Sixth Street
Suite 400
Los Angeles, California 90014
(213) 362-6000

Exhibit B-3, page 1 of 4

175x

PARSONS-DILLINGHAM
REQUEST OF FUNDS
P/E 07/29/94

JOB TO DATE COSTS BILLED THROUGH P/E 05/27/94	59,036,252.94
ADD: COST FOR P/E 06/24/94 INVOICE NO. 28	2,443,174.21
TOTAL JOB TO DATE COSTS BILLED THROUGH 06/24/94	61,479,427.15
LESS: FUNDS RECEIVED CUMULATIVELY THROUGH P/E 06/03/94	61,471,000.00
BALANCE DUE	8,427.15
ADD FUNDS REQUEST NO. 89 ESTIMATED COSTS FOR P/E 07/29/94	2,900,000.00
TOTAL AMOUNT DUE	$2,908,427.15

DETAIL OF OUTSTANDING AMOUNTS

ESTIMATED COSTS FOR REQUEST NO. 89 P/E 07/29/94	2,900,000.00
DIFFERENCE BETWEEN EST/ACTUAL FOR JUNE 94	8,427.15
TOTAL AMOUNT DUE	$2,908,427.15

176x

INA100S2

CONTRACT NO. 3369 R81-MC-001
LOS ANGELES METROPOLITAN
TRANSPORTATION AUTHORITY

PERIOD ENDING 06/24/94

INVOICE NO. 39

PARSONS - DILLINGHAM

SCHEDULE A
RECONCILIATION

DESCRIPTION	TOTAL CURRENT	INCEPTION TO DATE
FUNDS RECEIVED THROUGH PAYMENT 84 AS OF 05/27/94		$55,421,000.00
ADD: FUNDS RECEIVED FOR CURRENT PERIOD:		
PAYMENT NO 85 P/E 05/16/94, REC'D 05/31/94	1,520,000.00	1,520,000.00
TOTAL FUNDS RECEIVED AS OF 06/24/94	$1,520,000.00	$56,941,000.00
LESS: FUNDS APPLIED THROUGH INVOICE NO.39	2,443,174.21	61,479,427.15
AMOUNT OVER/(UNDER) FUNDED:	($923,174.21)	($4,538,427.15)

RECAP OF INVOICES

DESCRIPTION	CURRENT	PREVIOUS	TOTAL
SIXTH ANNUAL WORK PLAN	0.00	96,742.73	96,742.73
SEVENTH ANNUAL WORK PLAN	0.00	2,084,438.15	2,084,438.15
EIGHTH ANNUAL WORK PLAN	0.00	11,067,136.32	11,067,136.32
NINTH ANNUAL WORK PLAN	0.00	19,244,123.53	19,244,123.53
TENTH ANNUAL WORK PLAN	2,443,174.21	26,543,812.21	28,986,986.42
TOTAL AMOUNT INVOICED	$2,443,174.21	$59,036,252.94	$61,479,427.15

177x

LOS ANGELES METROPOLITAN
TRANSPORTATION AUTHORITY

FOR PERIOD ENDING 08/24/94

PARSONS-DILLINGHAM
INVOICE NO. 39

NO.	DESCRIPTION	TOTAL CURRENT	PREVIOUS	CUMULATIVE TO DATE
	LABOR & RELATED COSTS:			
A1	LABOR-FIELD STAFF	508,888.15	13,184,102.37	13,692,788.52
A2	LABOR-HOME OFFICE	0.00	446,943.21	446,943.21
A3	FIELD LABOR-PREMIUM	0.00	84,383.90	84,383.90
A4	HOME OFFICE LABOR-PREMIUM	0.00	959.54	959.54
B1	PAYROLL BURDEN	299,272.03	7,756,408.68	8,055,680.71
C1	OVERHEAD-FIELD	180,936.07	4,955,937.89	5,136,874.56
C2	OVERHEAD-HOME OFFICE	0.00	175,948.57	175,948.57
D1	SUBCONTRACT COSTS	789,200.02	19,858,743.90	20,647,943.92
D2	SUBCONTRACT ODC'S & FEES	102,575.71	638,642.88	741,218.59
D3	OTHER SUBCONTRACT COSTS	174,503.44	418,415.50	592,918.94
	TOTAL LABOR & RELATED COSTS	2,055,174.02	47,520,486.44	49,575,660.46
	OTHER DIRECT COSTS			
B2	INSURANCE	3,908.88	86,105.76	90,014.64
E1	REPRODUCTION	1,940.84	210,669.61	212,610.45
E2A	TELEPHONE & TELEX	20,743.14	381,186.40	401,929.54
E2B	FREIGHT & POSTAGE	1,410.10	38,946.77	40,356.87
E3A	TRAVEL EXPENSES	14,244.75	182,308.21	196,552.96
E3B	TRANSPORTATION	16,952.54	439,695.12	456,647.66
E4	CAPITAL & SPEC EQUIP	47,196.17	3,031,637.47	3,078,833.64
E5	FIELD OFFICE EXPENSES	129,290.32	2,238,863.03	2,368,153.35
E7	GROSS RECEIPTS TAX & PERMITS	0.00	11,861.82	11,861.82
E8	MOB & RELOCATION EXPENSES	(2,700.00)	300,355.68	297,655.68
E8A	GEN. CONDITIONS ITEMS-OTHER	0.00	0.00	0.00
E8B	GCI - TESTING PROGRAM	4,441.88	288,582.93	293,024.81
E8D	CONSTRUCTION PHOTOGRAPHY	0.00	164,703.20	164,703.20
E8E	WATER QUALITY DESIGN & MISC.	27,730.20	935,412.43	963,142.63
E9	COMPUTER EXPENSES	887.23	96,902.94	97,790.17
E10	MARK - UP	32,953.54	659,827.97	692,781.51
	TOTAL OTHER DIRECT COSTS	290,999.05	9,067,050.32	9,368,050.87
F	FEE	78,111.50	2,205,588.07	2,284,700.56
F	FEE INCENTIVE	9,888.85	243,118.21	253,007.16
	TOTAL AMOUNT INVOICED	2,443,174.21	59,030,252.94	61,478,427.15
	TOTAL OLD CONTRACT P/E 05/01/91	0.00	1,471,730.13	1,471,730.13
	TOTAL NEW CONTRACT P/E 05/01/91- CURRENT	2,443,174.21	57,564,522.81	60,007,697.02
	TOTAL AMOUNT INVOICED	2,443,174.21	59,030,252.94	61,478,427.15

958,354.55

27,553,879.01

1,066,279.17

21,982,081.45

178x

PARSONS-DILLINGHAM

METRO RAIL CONSTRUCTION MANAGER

REF. Contract No. 3369
R81-CM-RC-3003
SQ020.2-PA600

November 30, 1994

Mr. Jon Sotero
Project Accounting
Los Angeles County Metropolitan Transportation Authority
818 West Seventh Street, Suite 1100
Los Angeles, California 90017-4606

Subject: Transmittal of Segment No. 2 - Invoice No.43 and Funds Request No. 93

Dear Mr. Sotero,

Enclosed please find one fully supported original and one unsupported copy of Parsons-Dillingham's Invoice No. 43 for the period ending October 28, 1994.

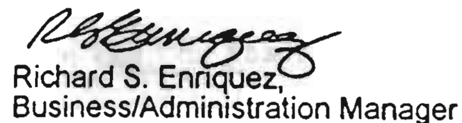
We are requesting $2,311,795.97 (Request No. 93) for the month of November 1994. The cumulative outstanding balance owed to date totals $2,311,795.97.

Upon your approval of funds request, please mail funds to our address shown below.

The attachments to this invoice contain confidential payroll information. We will appreciate your discretion in handling these documents.

If you have any questions on this invoice contact Douglas K. Ho at (213) 362-6033.

Sincerely,



Richard S. Enriquez,
Business/Administration Manager

RSE:pws

Enclosures
As noted

cc: Charles Stark (w/o enclosures)
RCC-RMC (w/o enclosures)

A joint venture of
The Ralph M. Parsons Company
De Leuw, Cather & Company
Dillingham Construction N.A., Inc.

523 West Sixth Street
Suite 400
Los Angeles, California 90014
(213) 362-6000

Exhibit B-4, page 1 of 3

179x

PARSONS-DILLINGHAM
REQUEST FOR FUNDS NO. 93
SEGMENT-2 P/E 11/25/94

JOB TO DATE COSTS BILLED THROUGH P/E 09/30/94	$70,525,349.94
ADD: COST FOR P/E 10/28/94 INVOICE NO. 43	2,411,795.97
TOTAL JOB TO DATE COSTS BILLED THROUGH 10/28/94	72,937,145.91
LESS: FUNDS RECEIVED CUMULATIVELY AS OF 11/18/94	73,125,349.94
BALANCE DUE	(188,204.03)
ADD - ESTIMATED COSTS FOR P/E 11/25/94	2,500,000.00
TOTAL AMOUNT DUE	$2,311,795.97

DETAIL OF OUTSTANDING AMOUNTS

ESTIMATED COSTS FOR P/E 11/25/94	$2,500,000.00
DIFFERENCE BETWEEN EST/ACTUAL FOR OCTOBER 94	(188,204.03)
TOTAL OF REQUEST NO. 93 P/E 11/25/94	2,311,795.97
PREVIOUS REQUEST OUTSTANDING DATED 10/25/94	0.00
TOTAL AMOUNT DUE	$2,311,795.97

C: DOCS/EXCEL
NEWFREQ

180x

LOS ANGELES METROPOLITAN
TRANSPORTATION AUTHORITY

FOR PERIOD ENDING 10/28/94

PARSONS-DILLINGHAM
SEGMENT - 2
INVOICE NO. 43

NO.	DESCRIPTION	TOTAL CURRENT	PREVIOUS	CUMULATIVE TO DATE
	LABOR & RELATED COSTS:			
A1	LABOR-FIELD STAFF	564,821.07	15,606,722.45	16,171,543.52
A2	LABOR-HOME OFFICE	202.70	446,943.21	447,145.91
A3	FIELD LABOR-PREMIUM	0.00	84,383.80	84,383.80
A4	HOME OFFICE LABOR-PREMIUM	0.00	959.54	959.54
B1	PAYROLL BURDEN	331,035.94	9,176,607.83	9,507,643.77
C1	OVERHEAD-FIELD	204,212.34	5,834,062.98	6,038,275.32
C2	OVERHEAD-HOME OFFICE	60.83	175,948.57	176,009.40
D1	SUBCONTRACT COSTS	872,181.39	23,789,104.54	24,661,285.93
D2	SUBCONTRACT ODC'S & FEES	38,381.54	1,093,998.26	1,132,379.80
D3	OTHER SUBCONTRACT COSTS	33,845.84	1,228,354.37	1,262,200.21
	TOTAL LABOR & RELATED COSTS	2,044,551.73	57,437,285.85	59,481,837.58
	OTHER DIRECT COSTS			
B2	INSURANCE	7,642.08	105,738.00	113,380.08
E1	REPRODUCTION	30,153.89	219,841.14	249,995.03
E2A	TELEPHONE & TELEX	24,553.85	480,500.51	505,054.36
E2B	FREIGHT & POSTAGE	1,405.61	46,718.44	48,124.05
E3A	TRAVEL EXPENSES	26,909.83	251,274.74	278,184.57
E3B	TRANSPORTATION	17,825.81	535,575.09	553,400.90
E4	CAPITAL & SPEC EQUIP	70,207.00	3,132,749.44	3,202,956.44
E5	FIELD OFFICE EXPENSES	29,003.70	2,578,079.82	2,607,083.52
E7	GROSS RECEIPTS TAX & PERMITS	117.96	12,495.21	12,613.17
E8	MOB & RELOCATION EXPENSES	(42,451.44)	305,492.18	263,040.74
E8A	GEN. CONDITIONS ITEMS-OTHER	0.00	0.00	0.00
E8B	GCI - TESTING PROGRAM	0.00	293,824.81	293,824.81
E8C	GUARD SERVICE	33,681.73	0.00	33,681.73
E8D	CONSTRUCTION PHOTOGRAPHY	0.00	195,582.14	195,582.14
E8E	WATER QUALITY DESIGN & MISC.	38,335.94	1,131,557.04	1,169,892.98
E9	COMPUTER EXPENSES	425.42	183,192.08	183,617.50
E10	MARK - UP	30,490.69	822,633.67	853,124.36
	TOTAL OTHER DIRECT COSTS	268,232.27	10,214,454.11	10,482,686.38
F	FEE	88,010.64	2,583,280.52	2,671,291.16
F	FEE INCENTIVE	11,001.33	290,329.06	301,330.39
	TOTAL AMOUNT INVOICED	2,411,795.97	70,525,349.84	72,937,145.81
	TOTAL OLD CONTRACT P/E 05/01/91 - CURRENT	0.00	1,471,730.13	1,471,730.13
	TOTAL NEW CONTRACT P/E 05/01/91 - CURRENT	2,411,795.97	69,053,619.71	71,465,415.68
	TOTAL AMOUNT INVOICED	2,411,795.97	70,525,349.84	72,937,145.81

PARSONS-DILLINGHAM

METRO RAIL CONSTRUCTION MANAGER

REF. Contract No. 3369
R81-CM-RC-2845
SQ020.2-PA600

AUG 2 9 1994

August 10, 1994

Mr. Richard Bennett
Project Accounting
Los Angeles County Metropolitan Transportation Authority
818 West Seventh Street, Suite 1100
Los Angeles, California 90017-4606

Subject: Transmittal of Segment No. 3 Invoice No. 09 and Funds Request No. 14

Dear Mr. Bennett:

Enclosed please find one fully supported original and one unsupported copy of Parsons-Dillingham's Invoice No. 09 for the period ending June 24, 1994.

Enclosed is a funds request totaling $395,940.75 as per attached schedule.

Upon your approval of funds request, please mail funds to our address shown below.

The attachments to this invoice contain confidential payroll information. We will appreciate your discretion in handling the documents.

If you have any questions on this invoice contact Douglas K. Ho (213) 362-6033.

Sincerely,

George B. Morschauser
Construction Manager

GBM:pws

Enclosures
As noted

cc: Joel Sandberg (w/o enclosures)
RCC-RMC (w/o enclosures)

PARSONS-DILLINGHAM
REQUEST OF FUNDS NO. 14
P/E 07/29/94

JOB TO DATE COSTS BILLED THROUGH P/E 05/27/94	3,116,700.74
ADD: COST FOR P/E 06/24/94 INVOICE NO. 9	246,877.76
TOTAL JOB TO DATE COSTS BILLED THROUGH 06/24/94	3,363,578.50
LESS: FUNDS RECEIVED CUMULATIVELY THROUGH P/E 08/05/94	3,339,637.75
BALANCE DUE	23,940.75
ADD-FUNDS ESTIMATED COSTS FOR P/E 07/29/94	372,000.00
TOTAL FUNDS REQUEST NO. 14	395,940.75

DETAIL OF OUTSTANDING AMOUNTS

ESTIMATED COSTS P/E 07/29/94	372,000 00
DIFFERENCE BETWEEN EST./ACTUAL CUMULATIVE	23,940.75
TOTAL FUNDS REQUEST NO. 14	395,940.75

183y

CONTRACT NO. 3369
LOS ANGELES METROPOLITAN
TRANSPORTATION AUTHORITY

SEGMENT 3
FOR PERIOD ENDING 06/24/94

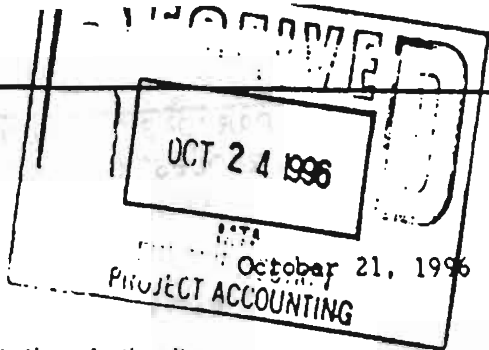
PARSONS-DILLINGHAM
INVOICE NO. 09

NO.	DESCRIPTION	TOTAL CURRENT	PREVIOUS	CUMULATIVE TO DATE
LABOR & RELATED COSTS:				
A1	LABOR-FIELD STAFF	54,510.71	765,684.33	820,195.04
A2	LABOR-HOME OFFICE	0.00	11,245.93	11,245.93
A3	FIELD LABOR-PREMIUM	0.00	0.00	0.00
A4	HOME OFFICE LABOR-PREMIUM	0.00	0.00	0.00
B1	PAYROLL BURDEN	32,350.67	468,458.14	500,808.81
C1	OVERHEAD-FIELD	27,611.05	380,628.83	408,239.88
C2	OVERHEAD-HOME OFFICE	0.00	4,032.52	4,032.52
D1	SUBCONTRACT COSTS	65,516.47	691,125.02	756,641.49
D2	SUBCONTRACT ODC/FEES	12,190.82	29,598.51	41,789.33
D3	OTHER SUBCONTRACTS	0.00	119,506.90	119,506.90
	TOTAL LABOR & RELATED COSTS	192,179.72	2,470,280.18	2,662,459.90
OTHER DIRECT COSTS:				
B2	INSURANCE	483.12	1,292.48	1,775.60
E1	REPRODUCTION	1,646.59	13,892.13	15,538.72
E2A	TELEPHONE & TELEX	2,488.35	10,200.42	12,688.77
E2B	FREIGHT & POSTAGE	156.74	1,121.21	1,277.95
E3A	TRAVEL EXPENSES	26.39	8,419.82	8,446.21
E3B	TRANSPORTATION	16,615.61	101,982.75	118,598.36
E4	CAPITAL & SPEC EQUIP	5,488.58	263,751.54	269,240.12
E5	FIELD OFFICE EXPENSES	16,290.11	36,559.82	52,849.93
E7	GROSS RECEIPTS TAX & PERMITS	0.00	0.00	0.00
E8	MOB & RELOCATION EXPENSES	0.00	31,045.89	31,045.89
E8B	GCI - TESTING PROGRAM	0.00	0.00	0.00
E8C	GUARD SERVICE	0.00	0.00	0.00
E8D	CONSTRUCTION PHOTOGRAPHY	0.00	0.00	0.00
E8E	WATER QUALITY DESIGN & MISC.	0.00	10,370.49	10,370.49
E9	COMPUTER EXPENSES	13.54	14,330.28	14,343.82
E10	MARK UP	2,331.22	23,049.75	25,380.97
	TOTAL OTHER DIRECT COSTS	45,540.25	516,016.58	561,556.83
F	FEE	9,157.79	130,403.98	139,561.77
	TOTAL INVOICED AMOUNT	246,877.76	3,116,700.74	3,363,578.50

INOS3

184x

PARSONS-DILLINGHAM



REF. Contract No. 3369
R81-CM-RC-4237
SQ020.2-PA600

October 21, 1996

Mr. Jon Sotero
Project Accounting
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, 20th Floor
Los Angeles, California 90012

Subject: Transmittal of Segment No. 3 Invoice No. 36 and Funds Request No. 41

Dear Mr. Sotero:

Enclosed please find one fully supported original and one unsupported copy of Parsons-Dillingham's Invoice No. 36 for the period ending September 27, 1996 and a separate report detailing CCR information that you requested.

We are requesting $500,072.78 for the month of October. A cumulative balance of $1,264,181.22.

Upon your approval of funds request, please mail funds to our address shown below.

The attachments to this invoice contain confidential payroll information. We would appreciate your discretion in handling these documents.

If you have any questions on this invoice contact Robert G. Lansley (213) 362-6112.

Sincerely,

Richard S. Enriquez
Business/Administration Manager

DLD:pws
Enclosures as noted

cc: C. Stark (w/o enclosures)
J. Mathis (w/o enclosures)

A joint venture of
Parsons Infrastructure & Technology Group Inc.
De Leuw, Cather & Company
Dillingham Construction N. A., Inc.

523 West Sixth Street
Suite 400
Los Angeles, California 90014
(213) 362-6000

Exhibit B-6, page 1 of 3

185x

PARSONS-DILLINGHAM
REQUEST OF FUNDS NO. 41
P/E 10/25/96

JOB TO DATE COSTS BILLED THROUGH P/E 08/30/96	$20,665,332.97
ADD: COST FOR P/E 09/27/96 INVOICE NO. 36	$525,072.78
TOTAL JOB TO DATE COSTS BILLED THROUGH 10/25/96	$21,190,405.75
LESS: FUNDS RECEIVED CUMULATIVELY THROUGH P/E 10/18/96	$20,551,224.53
BALANCE DUE	$639,181.22
ADD - ESTIMATED COSTS FOR P/E 10/25/96	$625,000.00
TOTAL AMOUNT DUE	$1,264,181.22

DETAIL OF OUTSTANDING AMOUNT

OCT 21

ESTIMATED COSTS FOR P/E 10/25/96	$625,000.00
VARIANCE BETWEEN EST /ACTUAL SEPTEMBER 1996	($124,927.22)
TOTAL OF REQUEST NO. 41 P/E 10/25/96	$500,072.78
OUTSTANDING FUNDS REQUEST 40 P/E 09/27/96	$764,108.44
TOTAL AMOUNT DUE	$1,264,181.22

186x

TRANSPORTATION AUTHORITY

SEGMENT 3
FOR PERIOD ENDING 09/27/96

PARSONS-DILLINGHAM
INVOICE NO. 36

NO.	DESCRIPTION	TOTAL CURRENT	PREVIOUS	CUMULATIVE TO DATE
LABOR & RELATED COSTS:				
A1	LABOR-FIELD STAFF	109,954.66	4,207,342.70	4,317,297.36
A2	LABOR-HOME OFFICE	2,514.60	39,536.01	42,050.61
A3	FIELD LABOR-PREMIUM	6,340.09	77,669.86	84,009.95
A4	HOME OFFICE LABOR-PREMIUM	0.00	0.00	0.00
B1	LABOR BURDEN	60,808.25	2,423,544.19	2,484,352.44
C1	OVERHEAD-FIELD	72,471.48	2,328,735.45	2,401,206.93
C2	OVERHEAD-HOME OFFICE	1,233.87	13,611.02	14,844.89
D1	SUBCONTRACT COSTS	93,639.11	5,272,686.12	5,366,325.23
D2	SUBCONTRACT ODC/FEES	11,297.94	443,423.07	454,721.01
D3	OTHER SUBCONTRACTS	132,254.57	2,642,413.21	2,774,667.78
	TOTAL LABOR & RELATED COSTS	490,514.57	17,448,961.63	17,939,476.20
OTHER DIRECT COSTS:				
B2	INSURANCE	0.00	25,085.07	25,085.07
E1	REPRODUCTION	(9,295.01)	64,962.35	55,667.34
E2A	TELEPHONE & TELEX	5,999.77	133,884.01	139,883.78
E2B	FREIGHT & POSTAGE	320.50	7,815.33	8,135.83
E3A	TRAVEL EXPENSES	1,221.03	54,742.74	55,963.77
E3B	TRANSPORTATION	2,838.65	326,320.06	329,158.71
E4	CAPITAL & SPEC EQUIP	2,032.34	1,041,298.12	1,043,330.46
E5	FIELD OFFICE EXPENSES	11,200.39	438,371.14	449,571.53
E7	GROSS RECEIPTS TAX & PERMITS	0.00	0.00	0.00
E8	MOB & RELOCATION EXPENSES	446.51	69,644.35	70,090.86
E8B	GCI - TESTING PROGRAM	0.00	23,790.79	23,790.79
E8C	GUARD SERVICE	0.00	0.00	0.00
E8D	CONSTRUCTION PHOTOGRAPHY	0.00	21,914.46	21,914.46
E8E	WATER QUALITY DESIGN & MISC.	11.78	23,690.13	23,701.91
E9	COMPUTER EXPENSES	0.00	14,467.46	14,467.46
E10	MARK UP	7,116.10	250,369.20	257,485.30
	TOTAL OTHER DIRECT COSTS	21,892.06	2,496,355.21	2,518,247.27
F	FEE	12,666.15	653,873.29	666,539.44
F	FEE INCENTIVE	0.00	66,142.84	66,142.84
	TOTAL INVOICED AMOUNT	525,072.78	20,665,332.97	21,190,405.75

187x

1 **DECLARATION OF PROOF OF SERVICE BY MAIL**

2

3 I, Joan Standafer, declare:

4 1. I am employed in the County of Los Angeles, State of California, by

5 Nossaman, Guthner, Knox & Elliott, LLP, 445 South Figueroa Street, 31st Floor, Los

6 Angeles, California 90071-1602. I am over the age of 18 and not a party to this action.

7 2. On today's date, I served FIRST AMENDED COMPLAINT FOR:

8 (1) BREACH OF CONTRACT, (2) SPECIFIC PERFORMANCE, (3) AN ACCOUNTING,

9 (4) DECLARATORY RELIEF, AND (5) FRAUD by placing true and correct copies of said

10 complaint in sealed envelopes addressed as stated on the attached service list,

11 5. I then placed said envelopes for collection, processing and mailing by

12 Nossaman, Guthner, Knox & Elliott, LLP personnel with the United States Postal Service on

13 today's date, following Nossaman, Guthner, Knox & Elliott, LLP's ordinary business

14 practices. Pursuant to these practices, with which I am readily familiar, sealed, addressed

15 envelopes are deposited in the ordinary course of business with the United States Postal

16 Service on the same date they are collected and processed, with postage thereon fully

17 prepaid.

18 I declare under penalty of perjury under the laws of the State of California that

19 the foregoing is true and correct and that this declaration was executed this 16th day of

20 March 1998, at Los Angeles, California.

21 [signature]

22 Joan Standafer

23

24

25

26

27

28

1
SERVICE LIST

2
STATE OF CALIFORNIA, et al. v. PARSONS-DILLINGHAM METRO RAIL
CONSTRUCTION MANAGER JOINT VENTURE, et al.
3
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC179027

4
Steven G. Madison, Esq.
William O. Stein, Esq.
5
Phyllis Kupferstein, Esq.
Sandra L. Rierson, Esq.
6
Quinn Emanuel Urquhart & Oliver, LLP
865 South Figueroa Street, Tenth Floor
7
Los Angeles, CA 90017-2543

Attorneys for Defendants

8
Daniel Robert Bartley, Esq.
Post Office Box 686
9
Novato, CA 94948-0686

Attorneys for Plaintiff
Martin Gerlinger

10
Sharon Green, Esq.
1721 Waldman Avenue
11
Las Vegas, Nevada 89102

Attorneys for Plaintiff
Martin Gerlinger

12
Hong Dea, Esq.
Assistant United States Attorney
13
300 North Los Angeles Street
Federal Building, Room 7516
14
Los Angeles, CA 90012

Attorneys for
United States of America

15
Larry G. Raskin, Esq.
Office of the Attorney General
16
Post Office Box 944255
1300 I Street, Suite 125
17
Sacramento, CA 94244-2550

Attorneys for
State of California

18
Jerome Montgomery, Esq.
Office of the Los Angeles City Attorney
19
200 North Main Street, Room 1800
Los Angeles, CA 90012

Attorneys for
City of Los Angeles

20
21
Eric R. Havian, Esq.
Phillips & Cohen
22
131 Steuart Street, Suite 501
San Francisco, CA 94105

Co-Counsel for the
County of Los Angeles and the
Los Angeles County
Metropolitan Transit Authority

23
24
25
26
27
28

189x

21-Jun-90

PDCD,
A JOINT VENTURE

519505 JUN 25 90

LETTER REQUEST FOR PAYMENT NO. 151 — 21-Jun-90
FOR PERIOD ENDED 06/22/90

	DESCRIPTION		AMOUNT
o	FIELD STAFF SALARIES	$193,135.00	
	PAYROLL BURDEN	104,293.00	
	FIELD OVERHEAD	65,666.00	
		----------	$363,094.00
o	HOME OFFICE LABOR		15,964.00
o	SUBCONTRACT/CONSULTANT COSTS:		
	DIRECT COSTS	91,314.00	
	INDIRECT COSTS AND FEES	123,397.00	
		----------	214,711.00
o	VARIOUS FIELD EXPENSES (PHOTOS, TESTING, GUARD SERVICE, EQUIPMENT, SIGNAGE, ETC.)		32,000.00
o	OFFICE RENT (MAIN AND FIELD)		45,000.00
o	MISC. OFFICE EXPENSES (REPRODUCTION, SUPPLIES, COMPUTERS, TELEPHONES, ETC.)		8,000.00
o	PARTNERS' ODC'S (TRAVEL EXP., COMPUTER, RELOCATION ETC.)		20,000.00
o	FEE		0.00
	TOTAL.....		$698,769.00
	USE.......		$699,000.00

RECAP:		
	PREVIOUS FUNDS RECEIVED	$64,262,000.00
	ADD: REQUEST FOR PAYMENT NO. 151	699,000.00
	TOTAL FUNDS REQUESTED TO DATE	$64,961,000.00

190x

Document 3 of 3.

Copyright 1989 U.P.I.

April 11, 1989, Tuesday, BC cycle

SECTION: Financial

DISTRIBUTION: Texas

LENGTH: 58 words

HEADLINE: Texas Business Briefs

DATELINE: BEAUMONT, Texas

PARSONS SUBSIDIARY

BODY:

The Port of Beaumont has settled a $175,000 **lawsuit** it filed in June 1985 against **Deleuw Cather and Co.** of Chicago.

The suit claimed **Deleuw Cather** failed to comply with the specifications of a contract to rebuild the port's grain wharf.

Louis Nelson, the attorney who handled the case for the port, did not release details of the settlement.

LANGUAGE: ENGLISH

Copyright© 1998 LEXIS-NEXIS, a division of Reed Elsevier Inc. All rights reserved.

This page has been accessed 146 times.

LA Times Article 11/27/96

MTA Chief Withdraws Pick for Subway Job

By JON D. MARKMAN, RICHARD SIMON, Times Staff Writers

Acknowledging that the MTA's contracting process is seriously flawed, county transit chief Joseph ED. Drew on Tuesday withdrew his recommendation of a business team to supervise subway tunneling on the Eastside because it failed to fully disclose its legal troubles and a political contribution.

Drew took the surprise action after he received a report from the Metropolitan Transportation Authority's chief auditor that rebukes the agency's system for checking bids, saying that uncovering deception is "left mainly to chance."

The current process "lacks adequate internal controls," auditor Tony Padilla wrote, noting that the agency relies on contractors respecting "the honor system."

In seeking to exclude Metro East Consultants from getting the contract, Drew noted that one of the consortium's partners failed to disclose that it had been sued in federal court for allegedly overcharging the MTA for previous work. Another partner failed to disclose a $1,000 contribution made by one of its executives to Mayor Richard Riordan, an MTA board member, who returned the contribution.

Officers of both companies certified the veracity of their statements under penalty of perjury.

Transit officials are now hoping for speedy action on the contract amid word that federal officials are growing weary of delays in the project, already a year behind schedule. Three members of Congress from the Eastside wrote to Drew last week urging him to proceed quickly to award the contract to a qualified bidder noting that the agency's credibility with federal officials was at stake.

The federal government is paying about half of the nearly $1-billion subway extension from Union Station to 1st and Lorena streets in Boyle Heights.

MTA board member Gloria Molina applauded Drew's decision to withdraw his controversial recommendation on the $65-million subway contract but ridiculed his reasoning.

"Pleading ignorance when you have a staff that costs the taxpayers millions of dollars is not a good excuse," said Molina, a Los Angeles County supervisor. "I can't tell you how disappointed I am.'

Drew said the involvement of DeLeuw, Cather & Co. in the lawsuit was not discovered by MTA

192x

contract administrators in a search of legal and newspaper databases, even though The Times reported on the lawsuit May 21.

The MTA chief executive officer said that while some staff members, including the agency's construction chief, were aware that a lawsuit had been filed against Parsons-Dillingham, they were not aware that DeLeuw, Cather was a subsidiary of Parsons Corp. and a full partner in the joint venture. The MTA has paid more than $300 million to Parsons-Dillingham to manage subway tunneling over the past decade.

Drew also said the agency did not learn that another partner, TELACU Industries, made the campaign contribution to Riordan until questioned by The Times.

It was not immediately clear whether the MTA board-which appeared ready to award the contract to Metro East until the agency's inspector general launched a criminal investigation into the bidding process-can still award the contract to Metro East.

Drew said the inspector general has cleared the way for the MTA board to vote on the contract at its next meeting on Dec. 18, even as the investigation continues. He said he has not decided whether to recommend one of the other two bidders, both of whom he described as qualified.

His action probably will not end the controversy that has rocked the agency for nearly two months and threatened its political support in Washington.

A Metro East spokesman said the consortium will keep fighting for the contract, disputing the auditor's report as being "wrong as a legal and practical matter" and will ask Drew to reconsider his disqualification of its bid.

"The purpose of disclosure is to inform the MTA of any pending lawsuits, and the agency was already informed. There was no surprise," said Neil Papiano, a Los Angeles attorney. "If the MTA officials had any problem with the suit, they were obligated to bring it to DeLeuw's attention during the bid process, and they didn't. It's too late now."

Officials from DeLeuw, Cather and TELACU referred all questions to Papiano. DeLeuw, Cather had disputed the fraud allegations in the lawsuit. James F. McNulty, president of Parsons, said the failure to disclose the lawsuit was "an honest mistake."

MTA officials said they checked computer databases; for any lawsuits filed . against DeLeuw but turned up nothing. Said Papiano "These people couldn't find an elephant in the snow if they couldn't find the Times article."

The bitter controversy over the Eastside contract erupted in October when Drew recommended Metro East even though it was ranked last among three bidders by the agency's panel of outside tunneling experts. Several of the business team's executives have either worked or raised money for Los Angeles City Councilman and MTA board member Richard Alatorre.

Alatorre decided to comment Tuesday.

James Cragin, a Gardena city councilman and MTA board member who criticized Drew's original recommendation, expressed fear that the board may still choose Metro East.

"There is so much money. involved, I think that integrity, logic and common sense are going to be thrown in the heap," he said.

A spokesman for Riordan said the mayor did not want to "micro manage" the agency and believes the auditor's findings demonstrate the need for greater accountability at the MTA.

Zev Yaroslavsky, an MTA board member and Los Angeles County supervisor, ripped Drew's decision making and called on the board to "urgently review the crisis of management" at the agency.

"Drew's back back pedalling on his recommendation does not address the fundamental issue that a cancer is growing at the executive offices of the MTA," he said.

But Nick Patsaouras, another board member, disagreed. "I won't think an isolated incident should penalize Joe Drew," he said. "He has been so far an open, accessible leader, and if a leader makes one mistake and you kick him out, it would suppress initiative and risk taking and creativity."

Dennis O'Connor, a spokesman for JMA, the consortium rated first by the outside panel of experts, said he was "stunned" by the latest turn of events. "We hope to take the opportunity to regain Drew's confidence," he said.

Drew had rejected JMA, expressing concern that the business team was busy enough supervising tunneling on the North Hollywood leg of the subway.

Copyright Los Angeles Times

Testimony Of CWA District One Research Director
Dr. Kenneth R. Peres
Before the New Jersey Senate Legislative Oversight Committee
July 29, 1998

My name is Kenneth R. Peres, I am Research Director for CWA District One and have a Ph.D. in economics.

I appreciate the opportunity to address this committee concerning the Parsons proposal to privatize New Jersey's motor vehicle inspection program.

The State Treasurer has stated that the citizens of New Jersey will save money if enhanced motor vehicle inspections are privatized. In support of this statement the State Treasurer provided New Jersey legislators with figures which purported to show that it would cost the State $26.32 per car while the Parsons bid amounted to just $24.25 – a savings of $2.07 per car.

However, our analysis of the figures supplied by the State and by Parsons does not substantiate the State's conclusions. On the one hand, the Parsons bid actually will cost the State an additional $8.87 million a year or $4.39 per car. On the other hand, the state overestimated its own costs for enhanced inspections by at least $7.6 million or $3.76 per car. Thus, the revised State cost for enhanced inspections is at most $22.56 per car while the cost of the Parsons contract is at least $28.64 per car. Rather than benefiting taxpayers with savings, the Parsons contract will actually cost taxpayers an additional $6.08 per car or $12.28 million per year.

PART ONE: THE COSTS OF THE PARSONS BID ARE UNDERESTIMATED BY $8.87 MILLION A YEAR OR $4.39 PER CAR

1) **The Parsons Bid Overbills The State $24.28 Million In Just The First Year of The Proposed Contract.**

   Non-enhanced inspections will cost the state 232% more under the Parsons contract than the non-enhanced inspections currently done by state workers. This amounts to an additional $1.72 per car when spread over the 7 year term of the contract.

   The State never has supplied CWA with a figure for the current cost of non-enhanced inspections. We calculated a State cost of $6.30 per car - the result of dividing the entire cost of the current vehicle inspection program by the number of cars inspected. Parsons proposes to charge the state $20.61 for each non-enhanced inspection - $14.31 more per car than the current cost to the State.

   CWA calculates that the Parsons proposal will cost taxpayers an additional $24.28 million in the first year of the contract. This figure is based on the state's own estimate of the number of expected annual inspections - and assumes that there are no delays in the implementation schedule.

2) The Parsons Bid Does Not Include $5.4 Million In Annual Ongoing Operational And Indirect Costs That The State Will Still Be Required To Pay

The State included $7.169 million for additional operating costs and other indirect expenses. The Parsons bid included $1.764 million of these expenses for routine facility maintenance and the maintenance of safety inspection equipment. This leaves a balance of $5.4 million in other operational and indirect costs that are in addition to those specified by the Parsons bid.

Unless the State proves otherwise, CWA assumes that this $5.4 million includes operational costs for which the state – not Parsons – continues to be responsible by the terms of the RFP namely,

> "The state will continue payment of utilities and facility maintenance, except as stated above [which we mentioned above] for all retrofitted facilities."

The continued payment of utilities by the State could be substantial. One can imagine that the State will have to pay substantial electric bills in order to run the electronic enhanced emissions equipment, etc.

These costs, which are to be borne by the State, must be added to the Parsons bid to obtain a true figure for the cost of the contract to New Jersey taxpayers.

3) There Are Other Costs Which The State Will Incur Because Of The Parsons Bid

The State also has not included other costs that the State will incur even if the Parsons bid is accepted. These costs include items such as the cost of preparing, administering and negotiating the contract and the on-going costs of monitoring the contract. The State should add these additional State costs to the overall cost of the Parsons bid.

PART TWO: THE STATE HAS OVERESTIMATED ITS OWN COSTS BY AT LEAST $7.6 MILLION OR $3.76 PER CAR

4) The State Has Overestimated Its Salary And Wage Costs By $3.63 Million.

The state, in work papers supplied to CWA, stated that "Salary and Wages for 94 supervisors and 470 safety specialists including salary adjustments to 1/99" amounts to $18,997,795.

CWA believes the State is overestimating its labor costs by $3.63 million.

The state has overestimated its wage and salary costs for safety specialists by $3.03 million. The state has concluded that it will need 94 lanes with five safety specialists each. This results in a total requirement of 470 safety specialists. However, each lane

will require only 3 safety specialists on the line. Thus, the state has factored an additional 2 safety specialists per lane to cover for absences, etc. This results in a 67% increase in the number of safety specialists. However, based on historical experience CWA knows that only 1 extra safety specialist should be required per lane. This still leaves the state with a very comfortable buffer of 33% more safety specialists.

The state has also overestimated its wage costs for supervisors by $613,000. The state assumes it will need 94 supervisors or one supervisor per lane. However, based on historical experience the state will only need 79 supervisors – one supervisor and assistant for every two lanes with an additional supervisor to cover for absences, etc.

5) **The State Has Overestimated Its Overtime Requirements By Over $2.92 Million.**

The state calculated 10 hours overtime for every worker for every week. Yet, there are just three safety specialists working at any one time on each lane. The state has calculated that it will pay overtime to the two workers who are not even on the line or working. Thus, even using the state's own assumptions – the state has overestimated its overtime requirements for safety specialists by $2.2 million.

In addition, the state assumes that it will pay all of 94 supervisors overtime every week – even those who are not working. CWA assumes that there will be 47 supervisors working at any one time – there is no need to pay overtime for the other 47 supervisors if they are not working. The state, thus, overestimates supervisor overtime by $705,705.

6) **The State Has Overestimated Its Employee Benefits By $984,388**

Since the state overestimated its salary and wages and overtime, it has also overestimated it employee benefits. CWA calculates that the state overestimated its benefits cost by $984,388. This figure was calculated by using the same benefits rate as the Treasury (20.95% of base wage) and applying it to the State's $3.63 million overestimate for wages & salaries and using the same overtime rate as the Treasury (7.65%) and applying it to the $2.2 million overestimate for overtime.

7) **The State Has Overestimated The Clothing Allowance By $59,950.**

As previously explained, the State analysis overestimates the number of workers required for the motor vehicle inspection program by 109 workers. This results in an overestimation of $59,950 for the clothing allowance which is $550 per worker.

8) **The State Accepts Unverified Figures Supplied by Parsons.**

The State has no basis to accept unverified figures contained in the Parsons bid. The Parsons bid does not contain the detail to adequately judge its stated costs. Parsons even recognizes this when it stated that

"...all budget categories that would be required to provide the State with a full cost breakdown have not been requested [by the state]."

Yet, even without this detail, the State has accepted a number of costs from the Parsons bid and includes these in its calculation of what costs the State would incur if it were to run the enhanced inspection program. This assumption by the State calls its entire calculation of State costs into question.

The example of emissions equipment maintenance will show how the State's decision to accept Parsons unverified costs results in wildly unrealistic costs to the state. The Parson's bid states that emissions equipment will cost a total of $19.28 million. This amounts to a straight-line depreciation cost of $2.75 million per year over the seven-year life of the contract. Yet, the Parson's bid also stated that it would cost $7.29 million per year to maintain the emissions equipment. Thus, the Parson's bid calculates the cost of maintenance to be 2.64 times the purchase cost of the equipment in the first place. This would be comparable to buying a car for $15,000 and expending $39,701 or $5,672 per year just for maintenance.

The State's acceptance of the unverified Parsons maintenance cost figures calls into question the State's acceptance of the Parsons Data System Operations & Maintenance costs and Public Information cost figures.

EXHIBIT #1: CWA WORKPAPERS

First Year Taxpayer Loss on Non-Enhanced Inspections
Using The State's Assumption of 2,020,000 Inspections Per Year

Scheduled Time Period	% Non-Enhanced	Projected Inspections non-enhanced	State Cost $6.20	Contracted Cost $20.61	Loss to Taxpayers
Oct '98-May '99	100%	1,347,340	$ 8,353,508	$ 27,768,677	$ (19,415,169)
June - July '99	70%	236,138	$ 1,464,056	$ 4,866,804	$ (3,402,749)
Aug - Sep '99	33%	101,202	$ 627,452	$ 2,085,773	$ (1,458,321)
TOTAL		1,684,680	$10,445,016	$ 34,721,255	**$ (24,276,239)**

Assumptions & Calculations

1) we use the state's FY 1999 projected initial inspections of 2,020,000
2) current cost of non-enhanced inspections is obtained by dividing total state cost of vehicle inspection program by number of inspections
3) the number of non-enhanced inspections for Oct - May is calculated by multiplying 2,020,000 by .667
   (the portion of the year represented by the 8 month Oct-May period)
4) the number of non-enhanced inspections for June & July is calculated by multiplying 2,020,000 by 0.167
   (the portion of the year represented by the 2 month June-July period)
   and multiplying this by .7 which is the portion on non-enhanced inspections for this period
5) the number of non-enhanced inspections for June & July is calculated by multiplying 2,020,000 by .167
   (the portion of the year represented by the 2 month Aug-Sept period)
   and multiplying this by .3 which is the portion on non-enhanced inspections for this period

Contract Cost According to Parsons & State Assumptions

Operations		**# inspections**		**cost per**		**Total**		
Year 1	non enhanced	1,684,680	$	20.61	$	34,721,255		
	enhanced	335,320	$	24.25	$	8,131,510		
Year 2-7	all enhanced	12,120,000	$	24.25	$	293,910,000		
total		14,140,000					**$**	**336,762,765**
Capital								**$63,155,836**
Total							**$**	**399,918,601**

Note:The Parsons contract allows for vehicle inspection fees to escalate with the NY and Philadelphia CPI after the first year.

Capital & Maintenance Costs of Emissions Testing Equipment

Capital Costs		**Total**		**Per Year**
Emissions Equipment	$	16,527,948	$	2,361,135
Leased Emissions Equipment	$	2,754,492	$	393,499
Total	$	19,282,440	**$**	**2,754,634**

Maintenance Costs		**Per Month**		**Per Year**
Emissions Equipment	$	585,000	$	7,020,000
Leased Emissions Equipment	$	22,500	$	270,000
Total	$	607,500	**$**	**7,290,000**

STATE OVERESTIMATES OF ITS OWN COSTS

WAGE & SALARY

state projections	**# workers**	**rate**	**annual wage**	**total**	
safety specialists 1	193	$ 18.84	$ 38,434	7,417,685	
safety specialists 2	277	$ 13.54	$ 27,622	7,651,183	
supervisors	94	$ 20.02	$ 40,841	3,839,035	
				18,907,903	
cwa projections					
safety specialists 1	154	$ 18.84	$ 38,434	5,924,924	
safety specialists 2	222	$ 13.54	$ 27,622	6,127,576	
supervisors	79	$ 20.02	$ 40,841	3,226,423	
total	455			**15,278,923**	
state overestimates					
safety specialists 1	39	18.84	$ 38,434	$ 1,498,910	
safety specialists 2	55	13.54	$ 27,622	$ 1,519,188	
supervisors	15	20.02	$ 40,841	$ 612,612	**$ 3,630,710**

OVERTIME		**500 hours**	**rate**		
safety specialists 1	78	39,000	28.26	$ 1,102,140	
safety specialists 2	110	55,000	20.31	$ 1,117,050	
supervisors	47	23,500	30.03	705,705	**$ 2,924,895**

BENEFITS	**base**	**rate**	**benefits**	
State Calculation	$18,997,795	0.2095	$ 3,980,038	
Overtime	$ 6,951,435	0.0765	$ 531,785	
Extra Wage	$ 3,630,710	0.2095	$ 760,634	
Extra Overtime	$ 2,924,895	0.0765	$ 223,754	**$ 984,388**

CLOTHING	**people**	**allowance**	**cost**	
extra	109	$550	$59,950	**$59,950**

TOTAL OVERESTIMATE	**$ 7,599,944**
ADDITIONAL PER CAR COST	**$ 3.76**

EXHIBIT #2: STATE COST ESTIMATES FOR STATE OPERATED ENHANCED INSPECTIONS

203x

State of New Jersey

OFFICE OF THE GOVERNOR
OFFICE OF EMPLOYEE RELATIONS
PO BOX 228
TRENTON NJ 08625-0228

CHRISTINE TODD WHITMAN
Governor

JOHN F. DEFILIPPIS
Director

July 9, 1998

Robert Angelo, Lobbyist
109 Connolly Drive
Milltown, New Jersey 08850

Robert Pursell, Area Director
Communications Workers of America
10 Rutgers Place
Trenton, New Jersey 08616

Dear Gentlemen:

In our recent meetings to discuss the privatization of the Enhanced Vehicle Inspection and Maintenance System, you requested clarification and additional information pertaining to the informational response dated June 29, 1998 sent to you via fax on June 30, 1998. Accordingly, I provide the following information in reply to your questions.

In my June 29, 1998 letter, the cost of performing an enhanced inspection if the State operated and maintained the enhanced inspection system was estimated to be $26.32 per enhanced inspection. You requested that this figure be broken down `into its component costs. The State utilized in part RFP requirements and Parsons' bid response to determine the State's cost of performing an enhanced inspection. Using Parsons' throughput and efficiency assumptions, the State concluded that 94 3-position lanes would handle the 2,020,00 inspection per year specified in the RFP. Specific cost items are:

1. Salary and Wages for 94 supervisors and 470 safety specialists, including salary adjustments to 1/99 — $18,997,795;

2. Overtime for 10 hrs./wk for 50 wks/yr = a total 500 hrs/yr/employee at the specified overtime rate for 94 supervisors @ $30.03/hr, 193 safety specialist 1 @ $28.26/hr and 277 safety specialist 2 @ $20.31/hr. — $6,951.435;

204x

3.	Employee Benefits at a rate 20.95% of base salary and 7.65% of overtime rate per Treasury Circular letter 98-98-OMB	$4,511,823;
4.	Clothing allowance per negotiated agreements	$310,200;
5.	CIF Data System Operations and Maintenance, per Parsons' bid	$5,247,396;
6.	Maintenance of Emissions Equipment, per Parsons' bid	$7,290,000;
7.	Public Information per Parsons' bid	$2,144,568;
8.	Customer Complaint Resolution/Telephone Center: salary, fringes and operating costs for 20 employees	$542,778;
9.	Additional operating costs and other indirect expenses	$7,168,599;
	Total Costs	$53,164,599

Section 3.4.7 of the RFP specified that Parsons shall be responsible for the maintenance and upkeep of all inspection facilities and the maintenance, repair, upkeep and replacement of all inspection equipment utilized for vehicle inspection during the term of the contract. Item 9 includes these costs.

Finally, the members of the Treasurer's Bid Evaluation Team were John Kennedy and Paul Shidlowski, Treasury; David West, Environmental Protection; and Thomas Wright, Thomas Bednarz, William Donahue, Richard Dube and Tim McGough, Transportation.

Sincerely yours,

Ilse F. Goldfarb
Employee Relations Coordinator

c: Arnold Cohen
Kevin Mattis
Dominick Critelli

205x

EXHIBIT #3: PARSONS CAPITAL & OPERATIONAL COSTS

"DBOM" CAPITAL COSTS

In the spaces provided below the Bidder is required to fill in the capital cost portion of its bid submission. The total capital cost category (Line 18 below) is designated as an evaluation item. This cost represents the only capital cost category that will be compared with DBOM proposals from other Bidders. The other categories listed below (Lines 1-17) have been established for budget purposes to distinguish between costs which are eligible for Federal funding and costs which are not eligible and to verify the establishment of the total capital cost price.

All costs associated with the retrofit/construction of any leased facilities are not eligible for Federal funding and must be separately identified below. There are five (5) leased facilities which are included in the project: Jersey City, Montclair, Plainfield, Ridgewood and Somerville. (See Exhibit 2, Section 3.3). Also Federal funding can not pay for safety inspection equipment.

All prices submitted in the following budget categories must add up to the total submitted in Line 18 below. In the event the budget categories do not add up to Line 18, the State will adjust the total on Line 18 to correctly add up to the sum of the various budget categories and this corrected total shall be used to evaluate the Bidder's proposal.

"DBOM" CAPITAL COSTS

Line		Phase I	Phase II	Phase III	Phase IV
	Federal Participation				
1.	Emissions Equipment Required to Conform to the Clean Air Act at State-Owned Facilities (includes Tom River, Freehold, and Specialty Sites, but does not include Toms River, Freehold and the five leased sites).	$7,556,176	$4,721,985	$3,305,390	$944,397
2.	Retrofit Of State-Owned Inspection Facilities (includes Specialty Sites, but does not include Toms River, Freehold and the five leased sites)	$12,268,257	$6,605,985	$7,549,697	X
3.	Site Work and Related Costs at State-Owned Facilities (includes Specialty Sites, but does not include Toms River, Freehold and the five leased sites)	$742,646	$399,887	$457,013	X

"DBOM" CAPITAL COSTS					
Line		Phase I	Phase II	Phase III	Phase IV
4.	Construction of New Inspection Facilities (Toms River & Freehold)	X	X	X	$3,912,446
5.	Access Roads (at Toms River & Freehold, if applicable)	X	X	X	$125,701
6.	Design & Implementation of the CIF Data Communications System	$800,000	$450,000	$487,930	X
7.	Design & Implementation of Wait Time System	$685,714	$428,571	$385,714	X
8.	**Subtotal Federal Participation Budget Categories Listed Above**	$22,051,793	$12,606,428	$12,185,744	$4,982,544
9.	Equipment Required for Safety Testing at State-Owned Facilities (includes Toms River & Freehold, Specialty Sites and five leased sites)	X	X	X	$7,043,992
10.	Retrofit of the 5 Leased Inspection Facilities	$873,937	$582,625	$0	X
11.	Emissions Equipment Required to Conform to the Clean Air Act at the Five Leased Facilities	$1,652,695	$1,101,797	$0	X
12.	Site Work and Related Costs at the Five Leased Inspection Facilities	$0	$39,282	$0	X
13.	Relocation of Two (2) Full Chassis Vehicle Lifts at Specialty Sites	$35,000	X	X	X
14.	**Subtotal State-Only Budget Categories Listed Above**	$2,561,632	$1,723,704	$0	$7,043,992
15.	**Subtotal Federal Participation Budget Categories Line 8 Above**	$22,051,793	$12,606,428	$12,185,744	$4,982,544

208x

"DBOM" CAPITAL COSTS					
Line		Phase I	Phase II	Phase III	Phase IV
16.	Subtotal State Only Budget Categories Line 14 Above	$2,561,632	$1,723,703	$0	$7,043,992
17.	Subtotal Federal Participation and State Only Budget Categories add Line 15 and Line 16	$24,613,425	$14,330,131	$12,185,744	$12,026,536
18.	Total Capital Costs DBOM Proposal Add Line 18 Across Evaluation Item	X	X	X	$63,155,836 (fixed price lump sum)

Note: In preparing the Total Capital Costs be sure to add all categories across and all categories down in order to come to a total cost. Be sure to include both the section reporting Federal Participation Costs and State Only costs.

"DBOM OPERATIONAL COSTS:

In the spaces provided below the Bidder is required to fill in the Operational Cost portion of its bid submission. The categories designated as Enhanced Emissions Inspections (Line 1 below) and Non-Enhanced Emissions Inspections (Line 2 below) are designated as evaluation items. These costs, expressed as per transaction fees, represent the only Operational Cost categories that will be compared with proposals from other Bidders.

"DBOM" OPERATIONAL COSTS		
1.	Enhanced Emissions Inspections (EEI)* EVALUATION ITEM	$ 24.25 (Express as Per Inspection Cost)
2.	Non-Enhanced Emissions Inspections (NEEI)* EVALUATION ITEM	$ 20.61 (Express as Per Inspection Cost)

*The State considers the per-inspection rates bid under 1 and 2 above, to be the first year cost. Please see Section 8.10.2, "Adjustment of Costs for Operation and Maintenance", of the RFP for specific information pertaining to the adjustment of these rates.

209x

"DBOM OPERATIONAL COSTS-DETAIL

The budget categories listed below (Lines 1-6) have been established for budget purposes to distinguish between costs which are eligible for Federal funding and costs which are not eligible and to verify the establishment of the total Operational Costs price.

Because all budget categories that would be required to provide the State with a full cost breakdown have not been requested, the State understands that the sum total of these Operational Costs-Detail categories do not add up to the NEEI or EEI inspection rates.

"DBOM" OPERATIONAL COSTS-detail		
1.	CIF Data System Operation & Maintenance	$ 437,283 Per month cost
2.	Maintenance of Emissions Equipment (at all sites excluding the 5 Leased Inspection Facilities)	$ 585,000 Per month cost
3.	Maintenance of Emissions Equipment (at the 5 Leased Inspection Facilities)	$ 22,500 Per month cost
4.	Maintenance of Safety Inspection Equipment (at all sites including the 5 leased facilities).	$ 135,000 Per month cost
5.	Public Information	$ 178,714 Per month cost
6.	Routine Facility Maintenance (Sealing floors, maintenance of parking areas, cleaning supplies, lawn maintenance, maintenance of signs)	$ 12,000 Per month cost

"DBOM" PIF DATA COMMUNICATION SYSTEM

All costs associated with the development, operation and maintenance of the PIF Data Communications System shall be billed by the Contractor directly to the PIFs and shall not be a cost obligation to the State. PIF costs will be evaluated, however, as they will have a material effect upon the cost of inspections in the private sector and thus upon the total cost of inspections paid for by the State. These fees shall be presented as a per inspection fee even though there may be multiple connections associated with the data transfer that is necessary to complete one inspection.

210x

EXHIBIT #4: STATE RESPONSIBILITY FOR UTILITY & OTHER COSTS UNDER PARSONS PROPOSAL

3.4.7 Maintenance of Inspection Facilities and Equipment

A "DBOM" Contractor shall be responsible for the maintenance and upkeep, of all inspection facilities during the entire term of the contract. Both a "DBOM" and a "DB" Contractor shall be responsible for the maintenance, repair upkeep and replacement, when necessary, of all inspection equipment utilized for the inspection of vehicles, during the entire term of the contract.

All existing inspection facilities and equipment are and shall remain the property of the State, inclusive of any and all repairs, alterations and modifications made to them during the term of either a "DBOM" or "DB" contract. All newly constructed facilities shall become the property of the State upon acceptance and all equipment purchased by the Contractor in furtherance of the requirements of the contract shall become the property of the State upon installation. All such facilities and equipment shall remain the property of the State after expiration or termination of the contract.

3.4.7.1 Maintenance of Inspection Equipment ("DBOM" and "DB" Contracts)

One of the most important ongoing tasks associated with maximizing motorist convenience and maintaining lane throughput is to ensure that all emission, safety and data processing equipment remains in proper working condition. Equipment breakdowns and scheduled maintenance calibrations during motorist hours shall be kept to a minimum and lane availability up-time kept to a maximum. All scheduled maintenance at single-lane facilities shall be conducted outside the posted station hours. The Contractor will be responsible for performing or ensuring that timely repairs and the appropriate maintenance calibrations are performed on all installed equipment. The Contractor shall submit a maintenance schedule (within 30 days from the Contract Start Date), to be approved by the State, to establish a mutually agreed upon plan for assuring timely, but not intrusive maintenance.

The Contractor shall be required to utilize reliable and durable equipment (as specified in Section 3.6.5), establish an effective ongoing program of preventive maintenance (in accordance with the manufacturer's standards), insure the availability of sufficient spare parts and repair or replace defective or worn out equipment. For each piece of equipment purchased by the Contractor, the State shall be provided with both a bill of sale sufficient to show the price paid for it and a Release of Lien signed by the supplier of each piece of equipment.

Preventive maintenance on all inspection equipment necessary to insure accurate and consistent operation shall be performed on a periodic basis by the Contractor. The State requires that the Contractor submit a maintenance plan, to be coordinated with the State

3.4.7.2 Maintenance of Inspection Facilities ("DBOM" Contract Only)

Under a "DBOM" proposal, the Contractor shall be responsible for the upkeep, for the entire term of the contract, of all inspection facilities, buildings, and grounds, including, but not limited to:

a. Cleaning and maintenance of building interiors, exteriors, and all public spaces (including customer waiting areas, the customer service area, public restroom, etc.).

b. Periodic sealing/painting of the inspection lane floor, as necessary to provide adequate surface protection, and to facilitate cleaning and removal of accumulated oil/fluid leaks and material

tracked-in by vehicles.

c. Regular maintenance of queuing, parking, entrance and exit driveways, and all walkways. All paved areas shall be adequately maintained. During winter months, these areas shall be plowed, salted and/or sanded, as necessary.

d. Regular maintenance of all landscaping, including the regular mowing of grass and the removal of trash, litter and other accumulated debris.

e. Maintenance, repair/replacement, as necessary, of all signs and other required items (i.e. traffic control devices, flags/flagpoles, etc.).

The State will continue payment of utilities (gas, electric, water, sewer, trash) and facility maintenance, except as stated above, for all retrofitted facilities. The Contractor shall be responsible for the payment of all utilities and all maintenance tasks at each newly constructed facility.

The Contractor shall be responsible for the maintenance/upkeep, as described in this section, with respect to all shared facilities, including those sections of shared facilities utilized by the State.

3.4.7.3 Return of Facilities to State ("DBOM" Contract Only)

At the inception of the Contract, the State and the Contractor shall perform a detailed inspection of each State facility that the Contractor shall use. Photographs will be taken of each component of the facility, and agreements will be reached and recorded, as to the condition of each component of the facility. At the termination or expiration of the Contract, either at the end of the anticipated seven years, or earlier if such should be the case, an inspection shall be made by the State and the Contractor, to determine if the Contractor has maintained the buildings and their systems in a satisfactory condition. Any deficiencies shall be repaired by the Contractor, or the State shall make a deduction from any monies the State owes the Contractor, in an amount sufficient to repair, replace, or correct, the noted deficiencies in any equipment, or fixtures, in order to maintain full and uninterrupted operation of the facilities in their post-improvement condition.

The Contractor shall be responsible for all upkeep maintenance and operating expenses for equipment, facilities and lanes at the State-owned facilities. Structural repairs to the facilities will be the responsibility of the State, to be coordinated with the Contractor as necessary. See Section 8.9.8, "Facility Repair Reimbursement".

3.5 OPERATE A TEST-ONLY INSPECTION PROGRAM – ("DBOM" ONLY)

3.5.1 Program Management

3.5.1.1 Monthly Status Meetings

The Contractor shall conduct monthly operations status meetings with the State's Project Manager and the State's management team, after the Contract Start Date, at a time and location to be set by the State. At these meetings, the Contractor and State representatives shall discuss operational issues and concerns. Minutes of the meetings shall be compiled and transmitted by the Project Manager

NEW JERSEY CITIZENACTION

Phyllis Salowe-Kaye/Executive Director

ard of Directors
: De Luca, (Chair)
Stern, (Vice Chair)
Jnion of Needletrades, Industrial &
extile Employees, NJ Council
ni-anne Shuchter, (Secretary/Treasurer)
nternational Union of Electronic Workers,
District 3
tty Rosenstein
elegate to national organization)
Communications Workers of America,
Local 1037
iyne Smith
elegate to national organization)
Black Urban Alliance
Evanoff
Jnited Senior Alliance
erryl Gordon
e F. Lang (Alternate)
American Federation of State, County &
Municipal Employees, Administrative Council 1
borah Hanwell Piggins
WCA State Council
wis Hurd
Jniversal Improvement Association
chael Johnson
NJ Education Association
ch Kahn
tthew B. Shapiro (Alternate)
NJ Tenants Organization
heedah Muhammad
nternational Federation of Professional
Technical Engineers, Local 195
Schulman
Communications Workers of America,
Local 1034
v. Ronald Tuff
Paterson Task Force for Community Action
ink Viggiano
in M. Abeigon (Alternate)
NJ State Federation of Teachers

ard of Trustees
in Atlas
National Housing Institute
iam Dickman
Older Women's League (OWL)
chael Doklia
k Kourambis (Alternate)
Bergen County Central Trades & Labor
Council, AFL-CIO
rothy Emerson
Communications Workers of America,
Local 1031
v. F. E. Gilliard
Community Urban Renewal Enterprise
May Hollinshead
ward J. Purtill (Alternate)
Gray Panthers of Northern NJ
v. Reginald Jackson
St. Matthew A.M.E. Church
Kane
nk DeMaria (Alternate)
NJ Industrial Union Council
n Kaufman
Communications Workers of America,
District 1
rold Morrison
nternational Union of Electronic Workers,
District 3
rick Morrissy
Housing & Neighborhood Development
Services, Inc.
iam G. Terrell
United Auto Workers, Region 9
Twomey
nne Otersen (Alternate)
Health Professionals & Allied Employees
NJ, AFT
inia Wolf
Communications Workers of America,
Local 1038
holas Yovnello
Council of NJ State College Locals, AFT

Testimony to the Senate Legislative Oversight Committee
Regarding the Parsons Corp. Contract for Emissions Testing Equipment
Staci A. Berger, NJCA Organizer (732) 246-4772
July 29, 1998

Good morning. My name is Staci Berger, and I am here on behalf of New Jersey Citizen Action's 60,000 family members and 85 affiliated community, labor, tenant and senior organizations. I want to thank Sen. Mattheussen and the members of this committee for holding this hearing. It is crucial that taxpayers have the opportunity to exercise their rights in a representative democracy – and in this case, that right is to have decisions that are made fairly and with the best interest of the majority in mind.

It is painfully clear that State Treasurer DiEluetorio's decision to award the contract to the Parsons Corporation was made without full disclosure by the bidder and serves a very well entrenched minority of the population. It is disgraceful that the Treasurer seems uninterested in investigating legal action pending against Parsons in other states. But more importantly, it is illegal for Parsons purposefully to exclude that information from its application. On that basis alone, the Administration must be prevented from awarding the contract.

Main Office
400 Main Street
Hackensack, New Jersey 07601
(201) 488-2804
Fax: (201) 488-1253

Central Jersey
85 Raritan Avenue, Suite 100
Highland Park, New Jersey 08904
(732) 246-4772
Fax: (732) 214-8385

South Jersey
556 Haddon Avenue
Collingswood, New Jersey 08108
(609) 869-0007
Fax: (609) 869-0111

Shore Office
707 Arnold Avenue, Suite E
Point Pleasant Beach, New Jersey 08742
(732) 714-5330
Fax: (732) 714-5386

New Jersey elections have become increasingly expensive. In the last Gubernatorial election, the majority of contributions came from large corporations. Business interests outspent labor six times over. Nationally, only a fraction of the population makes campaign contributions. The Parsons contract is further proof of the chilling effect that excessive private money has on the political process. Last year alone, Parsons contributed over $60,000 to the Republican campaign committees, virtually sealing their sweetheart deal. Instead of open competition and fair play, this deal represents closed-door politicking and foul play.

NJCA urges the Legislative Oversight committee to do all in its power to stop Parsons from receiving this contract. In addition, we hope that the Legislature will take this opportunity to craft and pass a bill that puts an end to the revolving door at the State House. The public deserves to know that its appointed and elected officials will not jump ship to the highest bidder, only to use their inside knowledge to that bidders benefit. Taxpayers already feel isolated from their government, but the Legislature can help by putting a block in the pathway.

We suggest a five-year ban on state staff and officials from working in the industries they oversaw while in public service. Such a law might return the public confidence to some small degree. Otherwise, you may as well hang a "For Sale" sign in the middle of West State Street.

New Jersey State Motor Vehicle Employees Union Local No. 518

SERVICE EMPLOYEES INTERNATIONAL UNION
Affiliated with the AFL-CIO-CLC
609-764-0902
Consultant: ROBERT ANGELO, 908-821-9622

President
KEVIN P. MATTIS
880 E. 5th St., Florence, NJ 08518
Fax/Voice 609-499-9729

Secretary-Treasurer
MICHAEL CANNAROZZI
62 Washington St.
Hoboken, NJ 07030

Vice President-North
NICK MINUTILLO

Vice President-South
MIKE FALCO

Recording Sec'y.-North
MOE DECANDIA

Recording Sec'y.-South
RICHARD JAROCKI

Executive Board
JOSEPH CATENA
NICK LUCIVERO
KEITH LONEY
DAN BOGNANNO
JIM LETA
TONY NAPUTANO

Trustees
EDLYN JONES
BERNARD GRECO
ROBERT SYREK

Sgt.-At-Arms
RONALD CANNICI

TO: Senator John Matheussen, Chair
Legislative Oversight Committee

FROM: Bob Angelo, Legislative Representative *RA*
SEIU, AFL-CIO

DATE: July 29, 1998

Here are two documents you requested from Local 518 at today's hearing on the proposed DMV Inspections contract. They are: 1) Side Letter of Agreement between the State and Local 518 regarding a procedure to conduct cost savings alternatives to privatization, and 2) the <u>cost savings and productivity improvements</u> given to the State in August of 1997 that have been totally and intentionally ignored!

Please contact me if you have any questions. Thank you for your interest.

DMV IMPROVEMENT AND EFFICIENCY RECOMMENDATIONS

SEIU, Local 518 and IFPTE, Local 195

(FOR DISCUSSION PURPOSES)

These suggestions are put forth with the understanding that by improving auto inspection services and effectiveness, it will be in the best interests of the state government, the citizens of New Jersey and the members of Locals 518 and 195 for the DMV Inspection system remain state-operated.

REVENUE ENHANCEMENTS

* Collect Fines from PIC and Diesel Operators
* Increase PIC and Diesel Teams to increase revenue from fines
* Increase PIC and PIF License Fees
* Collect full permit and Test Fees Upfront ($2 extra for picture ID)
* Increase fee for dealer plates to same fee as all others
* Increase fines for misuse of dealer plates
* Sell advertising in and around inspection stations (billboards, wall signs, etc)
* Increase Driver Training School fees
* Charge $1.00 for new car stickers
* Collect additional fees for inspection of "Monster Trucks"
* Assess charges for In-terminal Bus Inspections
* Seek federal funding

PRODUCTIVITY IMPROVEMENTS

* Supervisors to cover breaks and other shortages
* Reduce sticker scrapping
* Initiate pre-printed inspection card
* Cap number of supervisors per station
* Eliminate Regional structure
* Revise Uniform distribution process
* Eliminate 2nd shift Coordinators
* Re-assign Diesel and PIC teams as needed, especially during peak periods
* Voluntary option for employees to work vacations
* Review Comp Time Policies

DIRECT COST SAVINGS

* Eliminate Holiday Saturday hours
* Eliminate Outside contractor snow-plowing
* Eliminate contract maintenance
* Eliminate Failure Stickers
* Increase use of trainee title
* Use Interim titles

SIDE LETTER OF AGREEMENT #2

(Not included in Contract)

JOB SECURITY - JANITORIAL SERVICES FOR STATE HOUSE COMPLEX, MARLBORO AND NORTH PRINCETON; ENHANCED MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM

This side letter will confirm the understanding between the parties regarding some of the efforts the State of New Jersey (State) will undertake to lessen the impact of future privatization initiatives or the closing of State facilities that occur during the period from ratification of this contract through June 30, 1999, and which impact on employees in IFPTE and SEIU bargaining units. This letter refers to bargaining unit employees who are ultimately laid off at the conclusion of the State's layoff procedures, but the layoff would have to be the result of the State's decision to privatize a function or to close a facility.

In the event the State seriously considers privatization of a facility or function for purely fiscal or economic reasons impacting bargaining unit employees, the State agrees to give the Union reasonable advance notice and, upon request, to meet with the Union to give the Union an opportunity to present its position on the economic issues. The Union shall be given the opportunity to demonstrate that unit employees will do the same work more efficiently than a private contractor. The State agrees to provide the Union with relevant cost information to enable the Union to develop its economic position, including public documents involving the RFP, once issued.

When the privatization decision is based upon policy reasons, and will result in a layoff or job displacement of bargaining unit employees, the State will give the Union reasonable advance notice of its decision and, upon request, meet with the Union to explain its rationale and discuss the impact on affected employees. It is understood that in any event, the decision to privatize is a managerial prerogative that may not be subject to the negotiation process.

The efforts the State will undertake to alleviate the impact on employees laid off as a result of such actions shall include one or more of the following as appropriate under the existing circumstances:

1. Establishing preferential hiring lists with the private employer;

2. Establishing hiring freezes for positions determined by the Department of Personnel to have the same or similar duties and responsibilities at other state locations within the department affected to create openings which will be filled by qualified laid off employees and, if practicable, by employees targeted for layoff, all in accordance with DOP and SAC rules and regulations;

3. Continuing health coverage under COBRA which the State will pay for a certain limited transition period but not less than three months in duration; and

4. Provide training for qualified employees to the extent there are openings and laid off employees requiring training to fill them.

The State agrees to make good faith efforts which shall include compliance with all DOP regulations to lessen the possibility of the layoff or demotion-in-lieu-of layoff of employees in the bargaining units. Where practicable, these efforts will be made whenever workers are placed at risk through privatization, or program reductions or eliminations for reasons of economy, efficiency, or other reason. The efforts the State may take to lessen the possibility of layoff or demotion may include, wherever practicable voluntary reduced work time and voluntary layoff or demotion which shall be offered to employees before the employer takes involuntary action to reduce the workforce.

Consistent with DOP regulations, the State will consider the following pre-layoff actions prior to any permanent employees being laid off or demoted:

1. Hiring and promotion freezes;
2. Separation of non-permanent employees;
3. Returning provisional employees to their permanent titles;
4. Securing of transfers and reassignment to other employment; and
5. Filling of existing vacancies.

Good faith attempts will be made to fill positions determined by the Department of Personnel to have substantially the same or similar duties and responsibilities at other State locations by qualified laid off or demoted employees and, if practicable, by employees targeted for layoff. As practicable, the State shall train "at risk" employees to allow movement from the "at risk" location to work locations within or outside the appointing authority where positions are available. It is understood

that all such actions must be consistent with operative law and DOP regulations.

For the State:

For Local 195, International Federation of Professional and Technical Engineers, AFL-CIO:

For Local 518, New Jersey State Motor Vehicle Employees Union, SEIU, AFL-CIO:

Date

New Jersey State Motor Vehicle Employees Union Local No. 518

SERVICE EMPLOYEES INTERNATIONAL UNION
Affiliated with the AFL-CIO-CLC
609-764-0902
Consultant: ROBERT ANGELO, 908-821-9622

President
KEVIN P. MATTIS
880 E. 5th St., Florence, NJ 08518
Fax/Voice 609-499-9729

Secretary-Treasurer
MICHAEL CANNAROZZI
62 Washington St.
Hoboken, NJ 07030

Vice President-North
NICK MINUTILLO

Vice President-South
MIKE FALCO

Recording Sec'y.-North
MOE DECANDIA

Recording Sec'y.-South
RICHARD JAROCKI

Executive Board
JOSEPH CATENA
NICK LUCIVERO
KEITH LONEY
DAN BOGNANNO
JIM LETA
TONY NAPUTANO

Trustees
EDLYN JONES
BERNARD GRECO
ROBERT SYREK

Sgt.-At-Arms
RONALD CANNICI

TESTIMONY OF KEVIN P. MATTIS, PRESIDENT

Local 518, SEIU, AFL-CIO

Before the Senate Legislative Oversight Committee

July 29, 1998

223x

STATEMENT OF KEVIN P. MATTIS, Pres. L. 518 SEIU

For most the past decade, the men and women of Local 518 SEIU have lived with the threat of privatization hanging over their heads.

Governors, Commissioners, and Legislators of both political parties have from time to time called for the contracting out of motor vehicle inspections. Now it appears, that barring action by this Committee, a decision to privatize the state-operated auto inspection system will be carried out in the immediate future.

Local 518 opposes this decision.

The members of our union strongly believe that motor vehicle inspections play a critical role in maintaining the quality of life in New Jersey. As such, auto inspections should be maintained and operated by government, not by a for-profit entity. Since 1938 the State of New Jersey has had an aggressive inspection program aimed at preventing unsafe vehicles from causing accidents, injuries and deaths on our heavily congested roads.

Our members take their jobs very seriously. They know the danger that an unsafe vehicle presents to unsuspecting motorists.

As a state-operated program, our motive is the safety and health of the public, not the concerns and interests of stockholders.

The Safety Specialists working in inspection lanes, as we sit in this hearing room, are an experienced and dedicated group of public servants. Six days a week, fifty-two weeks a years, on the coldest days of winter and in the heat and humidity of a day like today, these state employees, with only a bare minimum of training and support, are saving lives by keeping dangerous and polluting autos off the roads.

***We can, and are, doing the job efficiently and effectively*. As we saw prior to the election last year, with the hiring of 120 interim employees, when given enough staff, there are virtually no waiting lines and the system operates conveniently and in a customer-friendly manner.**

Much of the support for the privatization of public services comes from those who claim that it will magically save the taxpayers money. In the case of the proposed privatization of New Jersey's auto inspection program, THIS IS ABSOLUTELY UNTRUE.

Privatization of motor vehicle inspection will be MORE costly than continued state operation.

The Economic Analysis prepared by the Treasurer's Office raises more questions than it answers. The cost comparison of state operation, and that of Parsons, is faulty in a number of areas. The overtime hours are inaccurate, the cost of consultant contracts are inappropriately added to the cost of state operation, and the equipment prices may or may not be the most competitive.

But more importantly, over the past few months, Local 518 and the Governor's Office of Employee Relations has held a series of so-called "cost savings" meetings. Our contract with the State of New Jersey provides for this process, so that taxpayers can get the best deal for their money, and so state employees have an opportunity to ward off privatization by becoming more cost competitive. At the first session, almost one year ago, Local 518 presented a three page list of revenue enhancing suggestions and productivity improvements. In addition, our union agreed to consider any and all cost saving proposals or other concessions that would prevent the contemplated privatization of auto inspections.

THE STAE REJECTED EACH AND EVERY SUGGESTION WE OFFERED AND NEVER MADE A SINGLE PROPOSAL OR REQUEST FOR A COST SAVING CONCESSION AT ANY MEETING !!!

In fact, they refused to provide the current cost of state operations until *after* the Treasurer had announced his intent to award the contract to Parsons.

It is important that the Committee and the taxpayers of New Jersey understand that, despite representations to the contrary, continued state operation could and would be more cost effective.

The safety and health of every New Jersey resident is impacted by the vehicle inspection program.

It can and should be one of our most protected public services.

Instead, it has become a coveted enterprise.

I urge the Committee to use their oversight powers to protect the public interest and keep motor vehicle state-operated.

Thank you for your time and interest.