

# In the United States Court of Federal Claims

No. 08-079 C  
(Filed: November 19, 2009)

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**PARSONS TRANSPORTATION** \*  
**GROUP, INC.,** \*

Plaintiff, \*

v. \*

**THE UNITED STATES,** \*

Defendant. \*

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## OPINION

This case is before the Court on cross motions for partial summary judgment. Parsons Transportation Group, Inc. (“Parsons”) alleges that the Government breached a railroad improvement contract by refusing to indemnify Parsons for losses beyond its \$1 million deductible. *Parsons Transp. Group, Inc. v. United States*, 84 Fed. Cl. 779 (2008). The Court has granted summary judgment to the Government on one of Parsons’ claimed losses—its Massachusetts Bay Transportation Authority (“MBTA”) claim—based on a release of liability that the parties executed when the MBTA litigation was settled. *Id.* at 784-85. The parties’ motions for partial summary judgment now present the question of whether, notwithstanding the grant of summary judgment, Parsons’ MBTA-related losses can be included toward the \$1 million deductible that Parsons must show it has met in order to recover its other claimed losses. The Court finds that losses incurred in connection with the MBTA litigation can be included toward the deductible.

Summary judgment is appropriate when there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c) of the Rules of the United States Court of Federal Claims; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Here, the parties’ cross motions require the Court to interpret the contract between them to determine whether the MBTA release they executed bars inclusion of Parsons’ MBTA-related losses toward the contract’s deductible. Contract interpretation is a question of law. *See, e.g., NVT Techs., Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004).

The indemnification provision of the parties’ contract provides in relevant part:

the Government shall hold harmless and indemnify the [ ] Contractor against [certain claims, losses, and damages] to the extent that such a claim, loss or

damage . . . is in excess of the first \$1,000,000 in the aggregate of all such claims, loss, or damage which aggregate amount of claims, loss, or damage shall be borne by the [ ] Contractor.

Pl.'s Resp. to Def.'s Proposed Findings of Uncontroverted Fact ¶ 3.

Parsons argues that the indemnification provision capped its liability at \$1 million, and any of its losses, including those related to the MBTA litigation, may be counted toward that deductible. Pl.'s Mem. 9-12, June 19, 2009. The Government argues that Parsons' MBTA-related losses cannot be counted toward the \$1 million deductible because the parties executed a release of liability regarding the MBTA litigation in 1995 and the Court has granted summary judgment for the Government regarding Parsons' MBTA claim. Def.'s Mot. 6-10, July 20, 2009. The 1995 release provides in relevant part:

Upon consideration of a reciprocal release from the United States . . . [Parsons] hereby releases and forever discharges the United States . . . of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, whether currently known or unknown, which [Parsons] has or may have that arise from or relate in any way to the design and construction, prior to the date of this Release, of renovations and improvements to the South Station and associated structures, platforms, track and rail yards in Boston, Massachusetts (the "South Station Project"), including, without limitation, matters that arise from or relate to claims or litigation brought against or involving the United States or any other parties in connection with the South Station Project, including, without limitation, claims or litigation brought by or involving the Massachusetts Bay Transportation Authority.

Def.'s App. 3. Based on the foregoing release, the Court granted summary judgment to the Government on Parsons' MBTA claim. *Parsons Transp. Group, Inc.*, 84 Fed. Cl. at 784-85.

However, the Court is not convinced that the release or the earlier grant of summary judgment bars Parsons from relying on its MBTA-related losses to show that the deductible has been met. The Government argues that money is fungible and to allow Parsons to include its MBTA-related losses toward the deductible would be the same as allowing it to recover those losses directly. Def.'s Mot. 8 ("Reliance upon MBTA-related expenses to recover other expenses is the same as relying upon other expenses to recover MBTA-related expenses."). However, the Court finds that the effect the Government complains of is a consequence of how it structured the contract to include a deductible, and not an indication that it would be deprived of any rightful benefit of having obtained summary judgment on this claim. The effect of summary judgment regarding the MBTA claims is that Parsons cannot recover those amounts. If, for example, Parsons' MBTA-related losses exceeded the deductible, Parsons could not recover the excess.

The Government also argues that Parsons seeks to litigate the issue of its MBTA-related expenses, while the release prohibits such litigation. Def.'s Mot. 8. The Government insists that Parsons released the Government from any claim or suit regarding the MBTA litigation, and cites various cases for the proposition that general releases put an end to "every matter arising under or by virtue of the contract." *United States v. William Cramp & Sons Ship & Engine Bldg. Co.*, 206 U.S. 118, 128 (1907); Def.'s Mot. 9. However, it is undisputed that the release at issue here was limited to the MBTA litigation, and did not apply to every matter arising under the parties' contract. Pl.'s Resp. to Def.'s Proposed Findings of Uncontroverted Fact ¶ 6. Given the Court's decision regarding the release, Parsons is no longer suing the government based on its MBTA-related losses. If the MBTA litigation were the only viable claim remaining in Parsons Amended Complaint, its suit could not be maintained. Parsons' suit is continuing based on separate claims. To recover on those claims, Parsons must prove several facts, one of which being that it has already borne the first \$1 million in covered losses, as required by the contract. In proving that fact, the Court finds nothing that would bar Parsons from relying on losses incurred in connection with the MBTA litigation. That the Government may, in the course of litigation on Parsons' other claims, have to address allegations that are incapable of supporting recovery alone does not violate the terms of the release.

The Court understands the release as an affirmation that the MBTA settlement represented a full and final resolution of the issues raised in the MBTA litigation. *See* Pl.'s App. 35-49. The release did not alter the parties' agreement that Parsons would bear only the first \$1 million in covered losses. As an element to its case for recovery on any claim, Parsons must prove that it has already borne the first \$1 million in covered losses. Parsons is free to present evidence that it bore all or part of that deductible in connection with the MBTA litigation. Accordingly, Parsons' June 19, 2009 Motion for Partial Summary Judgment is granted and the Government's July 20, 2009 Motion for Partial Summary Judgment is denied.

s/ Edward J. Damich  
EDWARD J. DAMICH  
Judge