

# Bankruptcy judge removes El Dorado County from transit case; gives credence to conspiracy

By Kathryn Reed

RENO – Even though plaintiffs wanted to draw El Dorado County back into the fray of the MV Transportation-STATA lawsuit, a bankruptcy court judge on Monday granted the county's motion to dismiss.



Sallie Armstrong, outside counsel for the county, argued that the county's payment of \$160,000 to MV two years ago satisfied its obligation. U.S. Bankruptcy Court Judge Gregg Zive agreed.

David Thompson, the federal bankruptcy trustee appointed by Zive, had sought to bring El Dorado County back into the mix.

But the other attorneys representing a multitude of defendants are still on the hook for what could be millions of dollars if the Fairfield-based transit company prevails in its quest to have member agencies and their respective board members of the now defunct and bankrupt South Tahoe Area Transit Authority honor the contract that was in place.

Thompson is essentially representing STATA even though it doesn't really exist. And in turn he represents another plaintiff for the gaggle of defendants to fight. But the judge has made it clear there will not be double recovery.

In 2010, MV filed a lawsuit for a number of reasons; most having to do with not being paid the nearly \$3 million it claims it was owed to run the BlueGo bus system on the South Shore.

STATA, a nonprofit conglomerate of private and public entities, was the parent operation of the BlueGo system.

To be determined are what assets belonged to STATA, the value of them, where they are now, how to handle third party beneficiaries, successor liability, and whether conspiracy was involved.

Zive said his tentative ruling is that that conspiracy was plausible.

"I'm going to find out what happened even if I have to use an element of authority of this court," Zive said. "That more than anything is of particular concern of this court. It's almost like someone tried to fool me."

Zive is referring to the approximately \$1.6 million that was moved from STATA's bank account to the Feldman Client Trust Account. STATA didn't include that cash when it filed for bankruptcy.

Thompson in his September report to the court called it fraud.

The judge took great issue also with the fact that the participation agreement between the member agencies and STATA said that if it didn't have the money to pay its bills, it must reduce service. The STATA board never reduced service, racked up bills and ended up bankrupt. But the member agencies and the people who were on the board at the time could collectively be held financially responsible.

Zive read from the agreement, emphasizing the word shall.

"Shall makes it mandatory and not discretionary," the judge said. "You either decrease service levels or pay more."

Zive said he didn't understand why the STATA board didn't reduce service when MV officials were calling for that.

He went on say STATA would have been better off had it followed its own rules and hired an executive director instead of allowing a Tahoe Regional Planning Agency employee to run things.

Joan Wright, representing Ridge Tahoe, said because her client wasn't part of STATA when it was created in 1998, it should not be held liable. Zive wasn't buying that line of thinking because Ridge Tahoe had a member on the board, benefited from the contract and was a member when MV was hired.

Lou Bubala, the outside attorney representing South Lake Tahoe, tried to make a case that California law precludes the city from being held liable under the Government Claims Act. That theory has not been ruled upon.

Bubala also tried to convince the judge there was never a contract between the city and STATA because the mayor at the time, Hal Cole, didn't sign a contract.

"If the city reaps the benefit of a coordinated transit and made payments, how can it disavow its responsibility?" the judge asked. He said maybe with MV the city could weasel out of its obligation, but not to STATA.

As of the end of August, South Lake Tahoe had paid Bubala more than \$75,000. City Attorney Patrick Enright did not respond to *Lake Tahoe News'* request asking for the current dollar amount.

Douglas County has spent approximately \$47,000 on legal costs related to the STATA litigation, according to County Manager Steve Mokrohisky.

"The county has a \$50,000 deductible for legal costs, so insurance will cover any legal costs over \$50,000," Mokrohisky told *Lake Tahoe News*.

With the next court date set for Jan. 17, all entities will continue to rack up attorney costs. MV and the court trustee have indicated they will both be going after defendants to recover their legal fees.