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BY FEDERAL EXPRESS

Peter Urquhart
President
Rocla Concrete Tie, Inc.
701 West 48th Avenue
Denver, Colorado 80216

Re: Concrete Ties Used in Construction of the MBTA Old Colony Commuter Railroad Line

Mr. Urquhart:

This firm represents the Massachusetts Bay Transportation Authority (the "MBTA"). As you are aware, the MBTA is experiencing the deterioration and failure of the concrete ties manufactured by Rocla Concrete Tie, Inc. ("Rocla") used in the 1995-1997 construction of the MBTA Old Colony Commuter Railroad Line (the "Old Colony Line").

The MBTA procured 147,450 concrete ties for the Old Colony Line from Rocla at a cost of $9,001,823. The MBTA procured the concrete ties following various representations by Rocla regarding the viability and cost-effectiveness of the concrete ties. For example, in a February 15, 1993 letter referencing previous concrete tie failures and the MBTA's hesitancy to procure ties from Rocla for the Old Colony Line, you stated that "[T]he testing of cements now used in the production of concrete ties assures there will be no repetition of the previous problem." Similarly, in a letter dated November 9, 1992, Robert K. Andrews, then the Regional General Manager of Rocla, stated that concrete ties would be "durable, long-lasting and low-maintenance track structures," and that using concrete ties would be "the safest and most economically viable." Further, Rocla generally marketed the concrete ties as having a fifty-year lifespan. The foregoing representations were materially false and misleading. Within only thirteen years of installation, the MBTA has during the past two years experienced deterioration and failure of the concrete ties which has more recently accelerated.

In a June 5, 2008 meeting among the MBTA, Rocla, and the Massachusetts Bay Commuter Railroad Company, Rocla informed the MBTA that all concrete ties installed throughout the Old Colony Line will need to be replaced in the near-term. Additionally, Rocla admitted that the concrete ties should never have been marketed as having a fifty-year life span.

Pursuant to the contractual agreement with the MBTA, Rocla warranted the concrete ties to be free from defects in material and workmanship for a period of fifteen years. Further, Rocla agreed to provide replacements of the defective ties or a credit of the purchase price at the MBTA's option.

Rocla has failed to honor the contractual warranty. By letter dated June 11, 2008, Rocla submitted various prices to the MBTA for replacement ties for the Old Colony Line, ranging from $77.50 to $105.40 per tie (depending on the type of tie and fastening system), or approximately $11.4 million to $15.5 million for 147,450 ties. Despite a written request from the MBTA dated December 5, 2008, Rocla has to date failed and refused to honor its warranty.

The foregoing acts have caused monetary harm to the MBTA, including extraordinary maintenance costs pending replacement of the concrete ties installed throughout the Old Colony Line. The foregoing acts constitute, among others, breach of contract, negligent misrepresentations, and various violations of Massachusetts General Laws, Chapter 93A, Section 11 (the "Consumer Protection Act"). Therefore, the MBTA demands that Rocla: (i) provide the MBTA with a comprehensive strategy at Rocla's cost and expense for addressing the extraordinary costs required to remove and replace the concrete ties installed throughout the Old Colony Line, and (ii) at the option of the MBTA, refund to the MBTA the purchase price of $9,001,823.

This letter constitutes notice that the MBTA will seek relief pursuant to the Consumer Protection Act, among other claims, should Rocla refuse the demands listed herein for the stated relief, including damages, multiple damages, costs, and attorneys' fees.

Very truly yours,

Steven T. Hoort

cc: Eliseo Bandala