

JUAN B. COLÁS
CIRCUIT COURT, ER 10

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH __

DANE COUNTY

TALGO, INC.
505 Fifth Ave. S.
Suite 170
Seattle, WA 98104

Plaintiff,

v.

SCOTT WALKER,
in his official capacity as the
Governor of the State of Wisconsin
115 East State Capitol
Madison, WI 53702,

MARK GOTTLIEB,
in his official capacity as the
Secretary of the Wisconsin
Department of Transportation
4802 Sheboygan Ave.
Madison, WI 53707

Defendants.

12CV4340

Case No.: _____

Case Codes: 30303, 30701

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

CIRCUIT COURT
12 NOV -2 AM 8:59
DANE COUNTY, WI

SUMMONS

THE STATE OF WISCONSIN TO SAID DEFENDANTS:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the

requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Clerk of Courts, Dane County Courthouse, 215 South Hamilton Street, Madison, Wisconsin 53703-3285, and to Plaintiff's attorney, whose address is Cullen Weston Pines & Bach LLP, 122 West Washington, Suite 900, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real property you own now in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of Auxiliary Aides or Services because of a disability, call (608) 266-4678 (TDD (608) 266-2138)) and ask for the Court ADA Coordinator.

Dated this 2nd day of November, 2012.

CULLEN WESTON PINES & BACH LLP



Lester A. Pines, SBN 1016543

Tamara B. Packard, SBN 1023111

122 West Washington Avenue, Suite 900

Madison, WI 53703

Telephone: (608) 251-0101

Facsimile: (608) 251-2883

pin@cwpb.com

packard@cwpb.com

Attorneys for Talgo, Inc.

TALGO, INC.
505 Fifth Ave. S.
Suite 170
Seattle, WA 98104

Plaintiff,

v.

SCOTT WALKER,
in his official capacity as the
Governor of the State of Wisconsin
115 East State Capitol
Madison, WI 53702,

MARK GOTTLIEB,
in his official capacity as the
Secretary of the Wisconsin
Department of Transportation
4802 Sheboygan Ave.
Madison, WI 53707

Defendants.

12CV4340

Case No.: _____

Case Codes: 30303, 30701

CIRCUIT COURT
12 NOV -2 AM 9:00
DANE COUNTY, WI

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Talgo Inc., by its attorneys, Cullen Weston Pines & Bach LLP, alleges
against the Defendants as follows:

INTRODUCTION

This is an action for a declaratory judgment pursuant to Wis. Stats. §§ 806.04(1) &
(2) requesting that the court determine that Talgo, Inc. acted properly and lawfully

when it terminated the contract between Talgo, Inc. and the State of Wisconsin for the purchase by the State of Wisconsin of Intercity Passenger Rail Equipment from Talgo, Inc. as will hereinafter be described.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to Wis. Stat. §753.03.
2. Venue lies in this Court pursuant to Wis. Stat. §801.50(3), because the defendants are agents of the State of Wisconsin sued in their official capacities.

PARTIES

3. Talgo, Inc. ("Talgo") is a Washington corporation that manufactures and maintains passenger trains. Its principal address is 505 Fifth Ave. S., Suite 170, Seattle, WA 98104.
4. Defendant Scott Walker ("Walker") is the Governor of the State of Wisconsin who is sued in his official capacity and whose address is 115 E. State Capitol, Madison, WI 53702. As Governor, Defendant Walker is the chief executive officer of the State of Wisconsin ("the State") and is responsible for the activities of the Wisconsin Department of Transportation ("WDOT") through the supervision of his appointed cabinet secretary of that department Mark Gottlieb.
5. Defendant Mark Gottlieb ("Gottlieb") is the Secretary of the WDOT, who is sued in his official capacity, and whose address is 4802 Sheboygan Ave. Madison, WI 53707.

CLAIM FOR DECLARATORY RELIEF PURSUANT TO
WIS. STAT. §§ 806.04(1)&(2)

6. On July 15, 2009, Talgo entered into a contract with the State, which acted through the WDOT, for the purchase by the State of two sets of intercity rail cars (“the Purchase Contract”). The intercity passenger rail cars are collectively known as “trainsets” which were to be used for passenger rail service. The Purchase Contract as amended is incorporated by this reference as if fully set forth herein. At all times material to this complaint Gottlieb, under the direction of Walker, was responsible for the State’s activities and actions regarding the Purchase Contract.

7. Pursuant to the Purchase Contract, Talgo undertook obligations to build the trainsets and did substantially complete its work under the Purchase Contract.

8. Pursuant to Section 14.02 of the Purchase Contract, Talgo timely and appropriately notified the State that the trainsets were available for “pre-revenue service testing,” as defined in 49 CFR 238.111, meaning that the trainsets had been manufactured and were ready for the State to conduct any testing that it desired to do in order to be able to place the completed trainsets into revenue service (in other words, to operate the trainsets for passenger rail service). A copy of Talgo’s notice to the State dated April 4, 2012, is attached hereto as Exhibit 1 and incorporated herein by reference.

9. The State has failed and refused to conduct any testing on the trainsets, claiming that Talgo was responsible for such testing.

10. The State has failed to make the payment to Talgo as set forth in Talgo’s invoice dated April 23, 2012, in the amount of \$4,599,000.

11. On July 5, 2012, pursuant to Section 25.06 of the Purchase Agreement, Talgo served on Gottlieb a "Notice of Default," a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference.
12. The Notice of Default provided the State with the specific details of the State's default under the Purchase Contract and informed the State, as Talgo was required to do pursuant to Section 25.06 of the Purchase Contract, that the State had thirty days to cure the default or Talgo would have the right to terminate the Purchase Agreement and retain the trainsets.
13. More than thirty days have passed since the State was served by Talgo with the Notice of Default and the State has failed to remedy its default described therein.
14. Consequently, on November 1, 2012, Talgo terminated the Purchase Contract by personally serving Gottlieb with a letter informing him of the termination. A copy of the termination letter is attached hereto as Exhibit 3 and incorporated herein by reference.
15. On information and belief, the State disputes Talgo's claim that it defaulted on the Purchase Agreement and disputes Talgo's right to terminate the Purchase Contract.
16. Talgo, an entity that has interest "under a written contract," seeks, pursuant to Wis. Stat. § 806.04(2), a declaration of Talgo's rights and status regarding the Purchase Contract.
17. Specifically Talgo seeks a declaration that the State defaulted on the Purchase Agreement, that Talgo gave proper notice of the State's default, that the State failed to remedy its default and that Talgo was entitled to and did properly terminate the Purchase Contract.

WHEREFORE, Talgo requests that the Court issue a declaratory judgment as follows:

- A. The State of Wisconsin defaulted on the Purchase Contract;
- B. Talgo gave the State of Wisconsin proper notice of its default;
- C. The State of Wisconsin failed to remedy its default within thirty days of receiving the notice of default;
- D. Talgo was entitled to and did properly terminate the Purchase Contract;
- E. The Purchase Contract between Talgo and the State of Wisconsin was terminated on November 1, 2012;
- F. Talgo may seek any remedies it may have as a consequence of the State of Wisconsin's default on and Talgo's termination of the Purchase Contract;
- G. Talgo is entitled the costs, fees and disbursements of this action; and,
- H. For such other relief as the Court may deem just and proper.

Dated this 2nd day of November, 2012.

CULLEN WESTON PINES & BACH LLP



Lester A. Pines, SBN 01016543
122 West Washington Ave.
Suite 900
Madison, WI 53703
Telephone: (608) 251-0101
Facsimile: (608) 251-2883
pinest@cwpb.com

Attorneys for Talgo, Inc.



April 4, 2012

N. Ref.: TW-00499

John Oimoen
Passenger Rail Program Manager
Wisconsin Department of Transportation
4802 Sheboygan Ave, Rm 451
P.O Box 7965
Madison, WI 53707-7965

Transmitted electronically

Subject: Delivery for Pre-Revenue Service Acceptance Plan

Dear Mr. Oimoen,

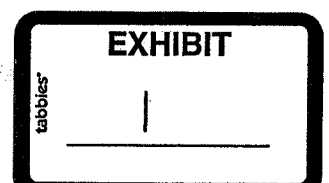
Pursuant to Section 14.02 of the Contract for Purchase of Intercity Rail Equipment (the Purchase Contract) dated July 15, 2009 between the State of Wisconsin acting through its Department of Transportation (the State) and Talgo, Inc. (Talgo), Talgo hereby submits this written notice to the State to inform the State that the Train Sets manufactured by Talgo at its Milwaukee facilities have been ready for the pre-revenue service acceptance testing plan required by 49 CFR 238.111 since January 13, 2012.

By this letter, I am advising you that the Train Sets are available for the State at any time to implement the pre-revenue service testing acceptance plan that the State may wish to conduct. The State is entitled to have and will have access to the Train Sets for a period of seven days to allow the State to make a technical inspection and testing of the Train Sets.

As Section 14.02 requires that the State have twenty days' notice of the availability of the Train Sets for testing, if the State prefers to wait twenty days, be advised that the State will have access to the Trains Sets for a period of seven days following April 24, 2012 to make a technical inspection and testing of the Train Sets.

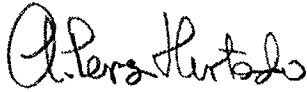
Kindly inform me of days on which the State wants to carry out the technical inspection and the testing of the Train Sets.

As further required by Section 14.02 of the Purchase Agreement, Talgo will diligently work with the State to ensure that the plan for the pre-revenue service acceptance plan is efficiently implemented by State. Be aware, however, that pursuant to Section 14.02 of the Purchase Contract, Talgo itself is not obligated to perform any testing activity included in the plan. Talgo will cooperate with the State but it is the State's responsibility to implement its pre-revenue service acceptance plan and conduct the technical inspection and testing of the Train Sets.



Kindly let me know when the State wants to proceed.

Sincerely



Antonio Perez
President & CEO

Copy: Kathleen Chung (WisDOT)
Nigel Davis (Interfleet)
Nora Friend (Talgo)
Felix Alvarez (Talgo)
Lester Pines (Cullen Weston Pines & Bach LLP)
Steve Kelley (Kelley, Donion, Gill, Huck & Goldfarb, PLLC)



July 5, 2012

Secretary Mark Gottlieb, P.E.
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 120B
Madison, WI 53707-7910

Transmitted electronically only

Re: Notice of Default

Dear Secretary Gottlieb:

I am in receipt of your letter dated June 27, 2012 wherein you express concern regarding train sets Talgo is building pursuant to the State of Wisconsin Department of Transportation Contract for the Purchase of Intercity Passenger Rail Equipment (the "Purchase Contract").

In your June 27 letter, you state that there is "lack of any significant progress in testing, and meeting federal safety and accessibility requirements." But the responsibility for any progress delays rests squarely with WisDOT, not Talgo. Wisconsin has ignored its duties under the Purchase Contract, which has in turn caused significant and costly delays in the testing process and, accordingly, Talgo's ability to achieve certain milestones and deliverables under the Purchase Contract.

Due to WisDOT's material breaches of the Purchase Contract, Wisconsin is in default of the Purchase Contract. This letter shall therefore serve as Talgo's Notice of Default under Section 25.06 of the Purchase Contract.

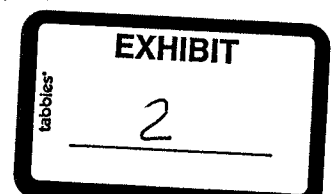
In your letter, and in previous communications from WisDOT, it is apparent that WisDOT has misconstrued the Purchase Contract in an attempt to require Talgo to perform, and bear the costs of performing, testing that is not, in fact, Talgo's obligation under the Purchase Contract's clear terms. WisDOT is demonstrably incorrect in saying that the Purchase Contract "provides that Talgo is responsible for testing costs and related activities." Your June 27 letter focuses on only portions of the relevant language, while ignoring the provisions that plainly impose upon the State of Wisconsin the testing duties and costs at issue.

Section 4.02 of the Purchase Contract begins the analysis but hardly ends it. Section 4.02 provides as follows (emphasis added):

The Contractor shall design, manufacture, deliver, test and commission Train Sets pursuant to the Contract Documents for purchase by Department hereunder.

Contrary to WisDOT's interpretation, this is not a blanket statement obligating Talgo to perform or pay for testing. Instead, this provision only requires any testing by Talgo to be "pursuant to the

505 5th Avenue South • Suite #170 • Seattle, Washington • 98104 • Tel: (206) 748-6140 • Fax: (206) 748-6147



Contract Documents," and does not otherwise require Talgo to perform, let alone pay for, any testing.

Specifically, Section 13.01 of the Purchase Contract provides that (emphasis added):

If the Contract Documents, or any laws, ordinances, rules, regulations or orders by any public authority having jurisdiction, permit any Work to be inspected, tested or approved, the Contractor shall give the Department reasonable prior written Notice of its readiness and of the date arranged (or in the case of inspections by governmental agencies, such lesser amount of notice as Contractor has been given) so the Department or its Representative or delegate or agent/representative may observe such inspection, testing or approval. The Contractor shall perform and bear all costs of performing such inspections, tests and approvals unless otherwise provided in the Contract Documents.

Thus, the Purchase Contract only contemplates Talgo bearing the costs of certain testing that Talgo elects to *itself perform*, and makes clear that Talgo is not responsible for testing *where the Contract Documents provide otherwise*.

Significantly, under Section 14.02 of the Purchase Contract, the testing at issue is not Talgo's responsibility (emphasis added):

All parties acknowledge and accept that 49 CFR 238.111 provides that the Operator (or railroad, as the case may be) and not the Contractor is responsible for performing a pre-revenue service acceptance testing plan. Contractor will diligently work with Department and any such Operator to ensure that the Operator's pre-revenue service acceptance testing plan is efficiently implemented. To this end, the Department shall have access to make a technical inspection and testing of such Train Set together with Contractor for a period of seven (7) days to determine whether the Train Set meets the requirements of the Contract. Contractor shall provide written Notice of not less than twenty (20) days to inform the Department of the date a Train Set is available for such inspection. ... The Department's inspection shall start on the date specified in the Contractor's Notice and continue for seven (7) days thereafter After the technical inspection and testing, Department shall provide a delivery report containing the findings in connection with the technical inspection and testing. A deadline shall be fixed in the report for the curing of defects, if any.

The Purchase Contract therefore clearly carves out all testing set forth in 49 CFR 238.111 from Talgo's responsibility. Talgo is not required to conduct or pay for such testing. Rather, Section 14.02's plain language contemplates the Operator (e.g., Amtrak) performing the testing at WisDOT's oversight, not Talgo's.

To understand the type of testing that is attendant to the manufacture of train sets, we have discussed testing in terms of "static" and "dynamic" testing, in addition to other phrases such as "endurance testing" and "corridor testing." It is important to note that none of these terms, however, are in the Purchase Contract. Moreover, the testing required in 49 CFR 238.111 includes these categories of testing, which are the Operator and WisDOT's responsibility under the Purchase Contract. Likewise, the Trainset Acceptance Testing Plan prepared by WisDOT for submission to the FRA, expressly to fulfill the requirements for pre-revenue testing under 49 CFR

238.111, identifies the "tests to be performed" under the plan as static testing, dynamic testing, and endurance running.

In contrast, the Purchase Contract does not have a single statement describing a test Talgo is required to perform at its expense. While the Purchase Contract has many references to "tests" and "testing" there is not one statement of a specific test Talgo must perform. Instead, the Purchase Contract obligates Talgo to manufacture train sets that comply with the Technical Specifications. If Talgo elects to perform tests — at Talgo's expense under Section 13.01 — to demonstrate this compliance to itself or to Wisconsin, that is Talgo's choice but not its obligation.

Meanwhile, the only testing required by any statute, regulation, or administrative authority are those tests set forth in 49 CFR 238.111. As discussed above, those tests are expressly not Talgo's obligation to perform under the Purchase Contract.

A careful review of 49 CFR 238.111 confirms that WisDOT's responsibilities include, among other things:

- Preparing the plan (per subsection(b)(1));
- Writing the test procedures (per subsections (b)(1)(i) to (xiv));
- Submitting the plan to the FRA (per subsection (b)(2));
- Fully executing the tests required by the plan (per subsection (b)(3)); and
- Documenting the results of the tests (per subsection (b)(4)).

Moreover, the understanding between Talgo and WisDOT with regard to WisDOT's testing obligations actually pre-dates the Purchase Contract. For instance, the Purchase Contract is largely the function of Talgo's response to WisDOT's Request For Information, including the Technical Description (Purchase Contract Exhibit 1, Attachment A) and the Delivery Schedule (Purchase Contract Exhibit 1, Attachment F). Tellingly, the last attachment within Talgo's response expressly excludes the static and dynamic testing from Talgo's scope of work.

The train sets have been ready for WisDOT to coordinate and perform the 49 CFR 238.111 testing since January 13, 2012. Talgo has informed WisDOT of this fact on several occasions, including via Talgo's formal letter (TW-00499) sent on April 4. Contrary to your suggestion in your June 27 letter, it is absolutely untrue that there are any safety issues causing a delay in the commencement of testing. Rather, the present delay exists solely because WisDOT has failed to act upon its obligations to plan and perform the 49 CFR 238.111 testing.

Moreover, the FRA concerns raised in your letter have nothing to do with testing. As you are aware, Talgo has diligently worked to resolve the minor issues identified by the FRA (based, it should be noted, only on informal feedback from one FRA local inspector). WisDOT's own team and WisDOT's own on-site consultant, Interfleet, are well aware of the status of the train sets, and, as you know, Talgo has modified certain appliances (based on the FRA inspector's informal feedback) to clear any *potential* exception the FRA *might* make. More importantly, Interfleet has further acknowledged that the train sets are ready for 49 CFR 238.111 testing. *You may rest assured that Talgo has no desire to manufacture or deliver train sets that are not safe and reliable.*

Your June 27, 2012 letter also expresses concern over progress regarding federal accessibility requirements. As you know, Talgo has been very proactive regarding this issue and is not the

cause of any delay. Rather, Talgo has already proposed three revisions and is waiting for WisDOT to confirm which one is acceptable. Of course, Talgo realizes that WisDOT's attempts to obtain any feedback from the federal agencies have not been entirely fruitful. Talgo has also tried in every possible way to promote meetings or a formal response from the federal agencies, who have expressed conflicting views as to whether the proposed revisions are suitable. It is therefore neither accurate nor fair to blame Talgo for any lack of progress regarding requirements for accessibility to the train sets. Even so, to be clear, the accessibility to the train sets with a lift is not delaying, in any way, the testing obligations under the Purchase Contract and 49 CFR 238.111.

The delays in testing are WisDOT's fault. WisDOT has abandoned any attempts to coordinate the testing. WisDOT at first tried to coordinate this testing by negotiating with Amtrak to obtain the necessary locomotive. But when Amtrak insisted on certain indemnities and insurance coverage, it became apparent that WisDOT was not able to easily arrange for an Amtrak locomotive to perform its required testing.

Instead of observing its obligations to contract with an Operator to perform the testing, WisDOT asked Talgo to contract with Amtrak for the locomotive. As Talgo endeavored to do this favor for WisDOT, while reserving its rights under the Purchase Contract, Talgo relied upon WisDOT's contractual obligation and repeated promises to pay for the costs of this testing and to compensate Talgo for its efforts. Talgo has spent an enormous amount of time and resources on such a workaround in reliance upon WisDOT's promises and for WisDOT's benefit, but WisDOT pulled its promise to pay for this testing at the last conceivable moment, effectively stopping the project. WisDOT's blatant breach of its obligations to handle the Section 14.02 testing has caused costly delays of the project, which has been extremely harmful to Talgo.

Despite WisDOT's recent attempts to state that Talgo must perform all testing at its expense, it is important to point out that WisDOT had until recently repeatedly confirmed its awareness of its obligations to perform and pay for such testing. WisDOT's staff has on many occasions *acknowledged and reaffirmed* Wisconsin's obligation to coordinate and pay for the testing activities at issue here. Indeed, Interfleet has prepared detailed budget estimates for WisDOT, so that WisDOT would know how much its testing obligations will cost. Further, as mentioned above, WisDOT had offered to pay Talgo for all the testing expenses if Talgo would contract directly with Amtrak for such testing. None of these events would have occurred if WisDOT was not aware of its true obligation to perform testing under the Purchase Contract.

Your June 27 letter also implies that Article 20 somehow obligates Talgo to obtain insurance regarding the Article 14.02 testing. But under Section 20.02.02, Talgo's insurance need only cover Talgo's liabilities under the contract. As discussed above, Talgo is not responsible for the Article 14.02 testing. It would be a contortion to argue that Talgo must insure Amtrak's locomotive or activities for testing Talgo had clearly excepted from its duties under the Purchase Contract. Talgo has fully complied with its obligations under Article 20.

In short, Wisconsin is in default of its testing obligations under Section 14.02 of the Purchase Contract, which has caused significant and costly delays on the project.

Talgo is also very concerned with WisDOT's stated intent to place the train sets into storage rather than in revenue service, which also constitutes a material breach and default under the Purchase

Contract, as the Purchase Contract clearly requires WisDOT to place the train sets into revenue service (see, for example, Article 9 of the Purchase Contract).

Still, Talgo intends to honor all of its obligations to the State of Wisconsin. This remains true despite Wisconsin's attempts to unjustly recast the Purchase Contract and the parties' obligations to each other.

Meanwhile, Wisconsin is also in default of its payment obligation regarding Invoice number 2012-16, dated April 23, 2012. Talgo has completed its obligations under the respective milestone for this invoice, and Wisconsin has no excuse for failing to pay the full invoiced amount. To no avail, Talgo has further demanded in writing that WisDOT process the due payment immediately (see letter TW-00586, dated May 31, 2012). The invoiced amount was due on May 22, 2012 and remains unpaid.

In addition, WisDOT has also wrongfully terminated the December 30, 2009 Maintenance Agreement between WisDOT and Talgo — constituting an Event of Default under both that agreement and the Purchase Contract — which Talgo will address by separate letter.

Accordingly, this letter constitutes Talgo's Notice of Default pursuant to Section 25.06 of the Purchase Contract. WisDOT has 30 days from the date of this letter to cure such defaults, and Talgo reserves its right to take all appropriate action in the event WisDOT fails to cure its defaults within the next 30 days, including without limitation terminating the Purchase Contract under Section 25.06 and retaining the train sets.

Please also note that under Article 30 (as well as WisDOT's legal duty of good faith and fair dealing in contracting with Talgo), WisDOT cannot impose any damages for late delivery under Article 22 resulting from WisDOT's own misconduct, including the defaults described above.

Finally, while we have received letters and emails from WisDOT setting forth a number of purported facts and legal conclusions regarding the train sets and the parties' obligations, Talgo disagrees with any attempt to construe Talgo in default of either the Purchase Contract or the Maintenance Agreement. In the interest of trying to keep the project moving forward as swiftly as possible, Talgo has not replied in kind. But please be aware that Talgo's silence with regard to WisDOT's understanding of the facts and law should not be construed as Talgo's acceptance of WisDOT's erroneous positions, nor Talgo's waiver of its remedies under its contracts with Wisconsin.

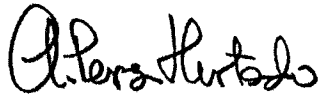
To this end, Section 2.07 of the Purchase Contract provides:

Any forbearance by the parties in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy at any other time or in any other circumstance.

To be clear, Talgo reserves all rights under Section 2.07.

I look forward to working with you to resolve these and any other disputes we may encounter as we pursue the mutually beneficial goal of delivering compliant, world-class Talgo train sets for the State of Wisconsin.

Sincerely,



Antonio Perez
President & CEO

cc: Ted Falk, Attorney, Oregon Department of Justice
Matthew Garrett, Director, Oregon Department of Transportation
Kathy Chung, Attorney, Wisconsin Department of Transportation
Steve Kelley, Kelley Goldfarb Gill Huck & Roth, PLLC
Lester Pines, Cullen Weston Pines & Bach, LLP



Talgo, Inc.
505 Fifth Avenue South, Suite 170
Seattle, WA 98104

Phone: (206) 254-7051
Fax: (206) 748-6147

November 1, 2012

Hand-Delivered to Recipient

Secretary Mark Gottlieb
Wisconsin Department of Transportation
4802 Sheboygan Ave.
Room 120B
Madison, WI 53705

Re: Talgo Trainsets

Dear Secretary Gottlieb:

I am writing as a follow up to my letter to you dated July 5, 2012, whereby Talgo, Inc. ("Talgo") had formally served its Notice of Default upon the State of Wisconsin, acting by and through its Department of Transportation ("Wisconsin"), pursuant to Section 25.06 of the State of Wisconsin Department of Transportation Contract to Purchase of Intercity Passenger Rail Equipment (the "Purchase Contract") between Talgo and Wisconsin.

It has been more than one hundred days since Talgo served its Notice of Default upon Wisconsin. Wisconsin has still not cured its default.

Accordingly, pursuant to the terms of the Purchase Contract, Talgo is hereby immediately terminating the Purchase Contract. Wisconsin remains obligated to pay all its "previously accrued liabilities" under the Purchase Contract. You have received invoices for the balance of the Purchase Contract prior to your receipt of this Notice of Termination.

As of this moment, Talgo is under no obligation to deliver the trainsets to Wisconsin. The trainsets shall remain the property of Talgo. If Wisconsin fails to pay for the outstanding invoices under the Purchase Contract, Talgo will take action to recover those damages.

Antonio Perez
President & CEO

