

DC Circ. Backs Buy America Waiver For Brightline Trains

By **Tom Lotshaw**

Law360 (September 25, 2026, 6:28 PM EDT) -- The D.C. Circuit on Friday rejected Alstom Transportation Inc.'s challenge of a Buy America waiver approved for trains for a high-speed rail project linking Las Vegas to Southern California, holding that the waiver is reasoned and aligns with federal requirements.

A majority of a three-judge panel agreed with Alstom that a district court judge erred when she ruled the company lacked standing to challenge a waiver that allowed Brightline West to buy foreign-made trains from Siemens Mobility Inc. and still receive a \$3 billion federal grant for its rail project, but all the judges held that Alstom's challenge ultimately failed on the merits.

The panel said the Federal Railroad Administration correctly determined that a Buy America requirement applying to the grant funds could be waived due to the lack of domestic manufacturers able to supply "service proven" trains that could meet a 186 mph speed requirement for the 200-mile rail project.

The panel also held that the FRA reasonably explained its decision to approve the waiver.

Under the waiver, Siemens could supply Brightline West with two of its Velaro Novo trains that are used and built overseas and can exceed 186 miles per hour, with Siemens training U.S. workers on their manufacture and then supplying another eight trains for the project that would be made at a U.S. facility developed in New York.

"The FRA stressed that the waiver, limited to two trains and certain components that all agreed were not domestically available, was 'narrowly tailored and limited' as much as reasonably possible," U.S. Circuit Judge Gregory G. Katsas wrote for the panel. "That was more than enough to avoid arbitrary decision-making."

The panel held that Alstom had standing to challenge the waiver, having demonstrated that it likely caused Brightline West to select Siemens rather than Alstom for the trains.

"This conclusion seems to us apparent from the sheer size of the \$3 billion federal grant. Absent the waiver, Brightline could not have chosen Siemens trains for the project without losing this funding. Indeed, had Brightline agreed to purchase even one train from abroad without the waiver, it would have lost the entire \$3 billion," the panel said.

At oral arguments in April, judges on the panel questioned how competitive Alstom actually was in its

bid to supply trains for the project, with the FRA, Brightline West and Siemens all asserting that the company was not able to meet requirements for the project, and Alstom asserting that it was.

A lack of a waiver for Siemens would likely require Brightline West to move its business from Siemens to Alstom or lose out on a significant federal grant, the opinion said.

"Commonsense economic inferences — indeed obvious ones — make it substantially likely that Brightline would shift its business to Alstom if put to that choice. We therefore conclude that Alstom's lost-profits injury is redressable, and Alstom thus has Article III standing," Judge Katsas wrote.

The panel said it chose to reach the "relatively straightforward" merits of Alstom's case rather than remand the matter for additional proceedings based in part on extensive briefing that had already occurred, Alstom's request that it decide the merits, and the strong likelihood of an appeal.

"We add one final consideration: Two years into this \$12 billion infrastructure project, it is better for everyone to know sooner, rather than later, the basic rules governing the \$3 billion in federal funding," Judge Katsas said.

According to Brightline West, the total estimated cost for the rail project that will connect Las Vegas to Rancho Cucamonga, on the outskirts of Los Angeles, now sits at about \$21 billion.

In a partial dissent, Judge Walker disagreed that Alstom had standing to bring the challenge in the first place, noting that the company had proposed to supply Brightline West with a modified version of its Avelia Liberty train that had never been built before.

According to Judge Walker, Alstom failed to sufficiently demonstrate that vacatur of the waiver would likely cause Brightline West to either purchase trains from Alstom or forgo the \$3 billion in federal funding.

"The problem for Alstom is that the record provides little reason to assume that Brightline will face the binary choice that Alstom imagines," he said.

Brightline West "might well" be able to renegotiate its deal with Siemens to preserve the \$3 billion in federal funding by insisting that all 10 trains needed for the project are built in the U.S., reducing its order to the eight U.S.-made trains Siemens has agreed to provide, or seeking a Buy America waiver on a different ground.

"Brightline is unlikely to swap the supplier it already chose for the supplier it already rejected if any of those options is feasible — and ... Alstom has failed to sufficiently show that none is feasible," Judge Walker said.

A Brightline West spokesperson declined to comment Friday.

A spokesperson for Alstom said the company has invested in its American workforce, manufacturing facilities and suppliers because it believes that building trains domestically delivers the best value for riders, communities and taxpayers.

"While we are disappointed in today's outcome and are evaluating our options, our commitment to U.S. manufacturing remains unchanged," the spokesperson said. "We will continue working with our U.S.

customers and suppliers to deliver safe, reliable trains that are made in America."

U.S. Circuit Judges Gregory G. Katsas, Bradley N. Garcia and Justin R. Walker sat on the panel for the D.C. Circuit.

Alstom is represented by Vincent Levy, Jack Millman, Jessica Marder-Spiro, Daniel Fahrenthold and Nicholas H. Hallock of Holwell Shuster & Goldberg LLP.

The FRA is represented by Gabriel I. Schonfeld, Brett A. Shumate and August Flentje of the U.S. Department of Justice and Charles E. Enloe of the U.S. Department of Transportation.

Brightline West is represented by Alice E. Loughran and Paul R. Hurst of Steptoe LLP and Eugene E. Stearns, Matthew W. Buttrick and Veronica L. De Zayas of Stearns Weaver Miller Weissler Alhadeff & Sitterson PA.

Siemens Mobility is represented by Nicholas L. Schlossman, Philip J. Perry, Andrew D. Prins and Lia Rose Barrett of Latham & Watkins LLP.

The case is Alstom Transportation Inc. v. Federal Railroad Administration et al., case number 25-5456, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Additional reporting by Jared Foretek. Editing by Brian Baresch.