

LEO N. CINQUINO'S OUTLINE FOR SEMINAR

I. Attacking the Government's Case from an Owner's Perspective

A. Steps in initially being retained to represent an owner in a Roadway Taking case.

1. The attorney should review the initial offer with the client;
2. Review the written appraisal accompanying the offer;
3. Review any engineering opinions, the parcel plat, the nature of the take, and highway plans;
4. Interview the owner and understand the owner's concerns;
5. Tell the owner the type of experts needed to make a defense and the projected costs;
6. Explain the process and the timing;
7. Explain quick-take;
8. Explain the type of issues that harm a property but are not compensable if at issue;
9. Usually calm the owner that the case is not a personal vendetta against the owner by the government;
10. Explain the very limited traverse and motion to dismiss options available: the chance of success and the limited relief;
11. The negotiator for the government is a key person to work with the owner's attorney;
12. Almost always let the government's appraiser inspect the property;
13. Prepare documents to give to the government appraiser or engineers that help explain the owners concerns.
14. As the attorney when can you tell an owner to settle before a complaint is filed.

II. Traverse on Motion to Dismiss

A. Against a highway taking:

- a. The only effect even if successful is delay;
- b. Judiciary has limited review of highway take;
- c. Bona fide attempt to agree can be reviewed;
- d. If successful it only delays the take without much benefit to the owner.

III. Selecting Experts

A. Type of expertise needed

1. A valuation witness who understands partial takings;
 - a. For a full take or a large acreage take:
 - A broker can be a great valuation witness but they cannot address damage to the remainder or easement value.
 - b. Local experience; experience for the government and owner;
 - c. Fees of the expert and the size of the case.
2. Engineering expert:
 - a. Access
 - b. Parking
 - c. Reviewing the government plans
 - d. Drainage
3. Land Planner
 - a. Highest and Best use (large vacant mostly)
 - b. Change of Highest and Best use
 - c. Reasonable probability of rezoning
4. After experts are selected there must be communication the appraisers need to know what the engineer's opinions; give your witnesses everything.

IV. Trial Pointers

- A. KISS Theory.
- B. The jury view is often very interesting.
- C. Should the owner testify at all; should the owner give an opinion of value.
- D. Mistakes are okay but presenting evidence that is clearly false is a disaster especially for the government.
- E. Owners do not exaggerate values.
- F. Make sure your valuation witness is on the same page as your engineer.
- G. Make sure everyone has seen the property and sales.