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Condemnation and Eminent Domain

Condemnation and Eminent Domain

Government at every level have the power of eminent domain; the unilateral taking of private property for the benefit of the public. Under the pretense of having appraised the value of the property, however, the process is heavily weighted in favor of the government and against the landowner. When the process starts, the landowner loses title immediately and is forced to fight an uphill battle to try either to prevent the taking or to exact fair compensation for his property or his business.

Our lawyers have decades of experience in contesting condemnation actions by all levels of government agencies of Georgia. Whether at the state, county, city, or utility level, we are skilled in contesting the valuations presented by the government. Our lawyers have developed some of the key decisions in the area of eminent domain in Georgia. They have represented the interest of both the landowner and commercial tenants. For landowners, they have protected the interests by forcing the government to clearly state the extent of the interest being taken, which has often resulted in increased awards at trial. For commercial tenants, they have developed strategies for identifying and proving damages and losses suffered by businesses in property affected by condemnation.

Our experience and willingness to forcefully litigate condemnation cases through trial has given us the advantage of better settlements where possible. Absent pre-trial resolution, our lawyers will skillfully maneuver the defenses and arguments presented by the government and its appraisers to bring the landowner or the tenant the best possible outcome.

Representative Matters

Recovered at trial approximately 95% of an owner's loss of his property (a country store without any nearby competition) and his business. The DOT argued that our client had relocated his business by opening another store 18 miles away. The jury rejected that argument.

In the first case to be tried in Georgia arising from a new Displaced Left Turn intersection, we proved that our client's access to a prime commercial parcel on the corner was taken by the changes to the adjoining road. Our clients recovered all of the loss of value to the real estate as well as substantial business losses.

The Georgia DOT closed the street to a Bentley car dealership for one and a half years in December 2007. It refused to offer any compensation for business loss to our client, its rationale being that any potential customer would know before leaving his or her home that they wanted to purchase a Bentley and would find a way to get to the dealership. The other hurdle was the timing – the condemnation was filed as the

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recession was starting, making it difficult to argue that sales of Bentleys would remain high during the road closure. Our presentation at trial included testimony from a salesman and general manager of how professional athletes, musicians and high-income individuals would purchase new Bentleys after driving by the dealership. We also presented three different sales projections of new and used vehicles to counter the argument that the recession would have affected sales. The jury returned a verdict for one of the projections.

Challenged the description of an easement for the removal of "danger trees" in a condemnation petition, resulting in a later date of taking of the property and therefore a higher property value.

Challenged the description of a "temporary work easement" in a case where a commercial building had to be removed because of the project, resulting in the condemning authority's payment of additional funds for square footage contained in the easement, a new date of taking and therefore a higher value on the whole parcel.

Successfully tried a business loss claim of over \$2,000,000 before a jury on behalf of a commercial tenant against the Department of Transportation's argument that the business was worthless, resulting in a 100% recovery of the tenant's losses.

Contested the DOT's argument that property presently being used as residential could not be valued as commercial property, resulting in a valuation of over 250% more than what was presented by the government.

Represented a commercial landowner of a corner property on a heavily traveled state road against two separate takings, the first by the county and the second by the DOT, showing that the county was aware of the planned subsequent taking by the DOT and that the county's taking would eliminate access from the most visible and valuable part of the property.

Litigated the loss of a tract of property with an ongoing business on it to a settlement representing all of the landowner's appraisal and 90% of the interest that would have been recovered at trial if the jury result had been to accept the landowner's appraisal.

Challenged the taking of portions of an aging shopping center on behalf of a commercially successful business, forcing the recovery of a substantial settlement beneficial to the tenant.

Negotiated a change in the planned construction of a road, preserving a business owner's access to the property by either a right or left turn in and out.

Increased the award over the condemning authority's testimony of value at the Special Master's level of an office building in Midtown Atlanta and thereafter successfully negotiated a settlement for an additional \$1.5 million and an advantageous lease in the property pending the commencement of construction and use by the condemnor.

Government agencies against whom we have contested takings or value –

Georgia Department of Transportation

Board of Regents

Condemnation and Eminent Domain, *Continued*

Georgia Power

Georgia Transmission Co.

City of Atlanta

Several counties in the Atlanta metropolitan area

Several cities in the Atlanta metropolitan area

