



Jury Trials: What You Should Know (But Probably Didn't)

A behind the scenes look at litigation

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'He will win who knows when to fight and when not to fight.' – Sun Tzu

Sometimes it is a good idea to peek around the corner to see what's ahead. Knowing there are obstacles allows for planning to manage or avoid them. Obstacles in eminent domain litigation are the issues concerning the property rights being acquired, general and special court rules, case preparation and the costs and fees involved.

Identify the Issues — Earlier the Better

Eminent domain litigation is more often simple yet can be very complex. Acquisitions are full or part-take. The property rights being acquired can be temporary and permanent. There are various rights such as: co-ownership, lessor-lessee, reversionary, mineral, water, access, airspace, probate, licensor-licensee, squatters, residential and business occupants and more.

Defendants may compete for just compensation among themselves. Competing rights can be an apportionment of rights, enforcement of contractual obligations, divorce or probate decrees, waivers, releases and assignment of rights to compensation including loss of business goodwill.

Courtroom — General and Special Rules and Requirements

Federal and state courts have a set of general rules of procedure that the parties must follow. Court rules of procedure include defined terms that provide both context and consistency in valuations and legal issues. This framework reduces the challenges of having to redefine words and phrases each time a case is presented.



Along with rules of procedure, there are standard rules of evidence that affect how, when and what can be considered by a jury in deciding the appropriate amount of the just compensation award. Valuation opinions are only presentable through court-qualified experts, with one exception where a non-expert property owner is allowed to testify on valuation.

Trial preparation includes compliance with the trial judge's special requirements for case management and presentation of documents, referred to as "local rules." Local rules are the specific courtroom requirements particular to a judge. Examples include: 1) attorneys must meet and confer on objectionable documents before presenting them to the court for consideration, 2) the availability of sidebar conferences during the active portions of trial and 3) the format and due dates for submission of documents to the court.

Each courtroom has a unique electronic display setup. Opposing parties agree in advance to share supplemental courtroom equipment and the costs, with most electing to bring their own technician to present the evidence. These technicians assist the attorneys to display the evidence including highlighting and focusing on important parts of documents, photographs and recalling deposition testimony from transcripts. Retaining your own technician for these tasks is best.

Case Preparation Basics

The lawsuit begins with a complaint in condemnation and the defendants' answering and demanding just compensation. The parties then enter the "discovery" phase exchanging formal written requests for documents and questions. Discovery includes scheduling depositions to preserve statements and testimony.

Both parties hire consultants to offer opinions concerning the issues of the case. Consultants are later designated as retained experts. Retained experts are qualified professionals paid for their opinions. After scheduling depositions, next are the expert witness preparation sessions with the attorneys.

Pre-trial preparation includes assembling jury instructions, verdict forms, legal issue motions, motions to exclude evidence, hearings with the court and identification of trial exhibits. Trial exhibits can only be used if authenticated as accurate, original and relevant to the legal issues.

Costs and Fees — Always More Than You Think

The most frequently asked question from clients, "How much will it cost to have a jury trial?" Let's go through the general categories of costs and fees for a jury trial.

The cost of initial case preparation includes attorney time and legal research. Legal research identifies the defendants' proper names and addresses. Retaining consultants for meetings, emails,

expert witness testimony are added costs. Depositions include the fees demanded by the experts for the time spent attending the deposition and answering questions, for the court reporter fees and copies of the official transcript. All deposed witnesses are entitled to reimbursement for one way mileage expense and parking. There will be document copy costs and also charges for the time spent reviewing the documents. As a side note, consultants dislike waiting to get paid for services already provided, but public agencies have no choice because there is an extended vetting process before invoice payment.

Be prepared to write checks for daily jury fees during the jury trial, court costs and expert witness time in attendance. Messenger fees and the transportation of equipment to and from the court room are another added cost. Each party will order and pay or rent equipment to connect with the courtroom system and then hire a technician to run the equipment. Courtroom display systems are essential to properly show exhibits. Large law firms supply their own equipment and technician, by contrast, public agency clients and property owners don't have access to those equipment resources.

Depending upon the level of case complexity and the advocacy of the opposition, costs of jury trials can range from \$150,000 to \$500,000 or more.

Fight to the End?

A jury trial always costs more than you think and will take more time than you initially budgeted. In condemnation cases, knowing when to fight and when to not to fight is key. Settlements invariably provide overall cost savings to the public agency and at the same time more net compensation to the property owners. ☺



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