

**Strategies for Minimizing Litigation
Expenses in Property Acquisition
(While Getting Great Results):
An Eminent Domain Attorney's Perspective**

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When it comes to litigation . . .

“An ounce of prevention is worth a pound of cure.”

Henry de Bracton (13th Century)
Benjamin Franklin (18th Century)

Opportunities to Save

1. When selecting counsel
2. Pre-litigation
3. During litigation
4. Approaching trial / during trial
5. Post - resolution

Considerations in Selecting Counsel

- Retain counsel early – do *not* wait until you are ready to file eminent domain litigation
- Experience – look for counsel with significant experience in public property acquisition
- Reputation – make sure counsel has a history / reputation for working in client's best interest
- Rates – look for counsel with appropriate rates for the task at hand

Considerations in Selecting Counsel (cont.)

- Markups/admin costs – look for counsel who do not nickel and dime admin costs
- Firm size/staffing – size doesn't matter; appropriate staffing does
- Technology – look for counsel who utilize up-to-date, modern technology
- Experts/consultants – find out about experts with whom the counsel regularly deals

Pre-litigation Opportunities

- Consider having counsel conduct staff training
- Consult with counsel early re site selection and issue identification
- Have counsel review pre-litigation documents, appraisals and title documents
- Obtain realistic offer appraisals – *don't lowball*

Pre-litigation Opportunities (cont.)

- Allow sufficient time to undertake realistic negotiations – and in fact undertake realistic negotiations – before jumping in to litigation
- Consider obtaining goodwill appraisals and negotiating goodwill loss where appropriate
- Don't be afraid of going to litigation if you can't cut a complete deal – cutting a piecemeal deal can be *very* expensive in the end

During Litigation

- Be responsive to counsel – provide *all* documents when requested, and timely respond to questions/discovery
- Consider early mediation
- Review and require advance approval before allowing multiple attorneys to attend the same event
- Ask counsel for a discovery plan before extensive (and expensive) discovery is conducted

During Litigation (cont.)

- Ask counsel to provide a law and motion plan before extensive (and expensive) motions are pursued
- Allow counsel reasonable – but not unlimited – latitude in in-house collaboration
- Allow counsel reasonable latitude in retaining and working with appraisers and other experts – but get estimates or “not to exceed” prices up front

Approaching Trial / Trial

- Attend mediation following the exchange of appraisals – even if you attended mediation prior to exchange
- Prior to mediation, get a clear and complete analysis from counsel of the strengths and weaknesses of each side's case and appraisals
- Don't rush to trial. But don't be afraid of trial either. Sometimes, trials are necessary

Post-Resolution

- Make sure counsel has resolved *all* interests showing on title
- Make sure counsel has accounted for *all* monies on deposit
- If the matter is resolved through judgment, make sure counsel obtains – and records – a Final Order of Condemnation