

LOS ANGELES



IRWA
CHAPTER 1



June
2004

Upcoming Events

July 13

Board of Directors meeting:
11:30 AM to 1:00 PM Nossaman
offices: 445 S. Figueroa St, 31st
Floor, Los Angeles

July 27

Chapter 1 Membership meeting at Shanghai Red's, Marina Del Rey. The speaker will be Yogi Ramesh of Universal Yoga Center who will be speaking about Desk Yoga.

August

Dark (No meeting)

September

September's luncheon speaker will be Dawnna Lawrence of County of Los Angeles, Department of Public Works speaking on Contract Procurement.



President's Message

By: Linda Cunningham Esq.,
Nossaman, Guthner, Knox, & Elliott,
LLP

Annual Education Conference - Philadelphia

The 50th Annual International Education Conference will be held June 20-24 in Philadelphia. The conference promises to be an exciting and worthwhile event with a variety of panel discussions, courses and speakers, including keynote speaker Dr. Lowell Catlett and Olympic medal winner Michael Schlappi. Additional information is available online at www.irwaonline.org. We look forward to seeing you there!!

June Luncheon

Please note that the June membership luncheon will be held on the last Tuesday this month, rather than the fourth Tuesday, due to the Annual Education Conference in Philadelphia. The June luncheon will be held at Stevens Steak House on June 29. Our guest speaker will be Dan Leavitt, Deputy Director of the California High-Speed Rail Authority. Please RSVP to Tracy Washburn at twashburn@sphvalue.com.

Membership Luncheon

Date: June 29, 2004
(The 5th Tuesday of the month)

Time: 11:45am

Speaker: Mr. Dan Leavitt, Deputy Director of the California High Speed-Rail Authority will speak on the newest technologies in high-speed rail and how they could impact California!

Location: Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)

RSVP to Tracy Washburn, at (310) 571-3400 or twashburn@sphvalue.com

Please note: in order to cover increasing expenses charged by our luncheon venue, the cost for a luncheon will be increased to \$16, effective the May meeting. It is still one of the best values around!

July Luncheon at Shanghai Red's

Please join us for our annual "Summer Luncheon" on July 27 at Shanghai Red's in Marina Del Rey. As always, this event provides a change of pace and promises to be entertaining and enjoyable. Please RSVP to Tracy Washburn at twashburn@sphvalue.com.

Thanks to all of our new and continuing members for your support and participation in Chapter 1 luncheons, education courses and seminars. As always, we welcome your comments or suggestions for improving our membership services.

IRWA Chapter 1, Los Angeles
2004 Board Officers and Committee Chairs

President & International Director: Linda Cunningham Esq. Nossaman, Guthner, Knox, & Elliott, LLP 445 S. Figueroa St. Los Angeles, CA 90071 Phone (213) 612-7800 E-mail lcunningham@nossaman.com	President Elect & International Director: Holly Rockwell Epic Land Solutions, Inc. 24050 Madison St., Suite 205 Torrance, CA 90505 Phone (310) 378-0771 E-mail hollyrockwell@epicland.com	Vice President: Tom Hanley Southern Calif. Regional Rail Authority (Metrolink) 700 S. Flower St. Suite 2600 Los Angeles, CA 90017 Phone (213) 452-0256 E-mail hanley@scrta.net
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Newsletter Editor Chair: Natalie Michelson Riggs & Riggs, Inc. 4470 Libbit Ave. Encino, CA 91436 Phone (818) 634-6932 E-mail aunttalie@aol.com	Membership Co-Chair: William Larsen Integra Realty Resources 20720 Ventura Blvd., Suite 240 Woodland Hills, CA 91364 Phone (818) 593-7200 X 19 E-mail wlarsen@irr.com	Property Management Chair: Duncan Robb, SR/WA LA County Metro. Transp. Authority (MTA) One Gateway Plaza MS 99-13-08 Los Angeles, CA 90012 Phone (213) 922-2435 E-mail robdd@mta.net
Law Chair: Bradley Pierce Esq. Demetriou, Del Guercio, Springer & Francis 801 S. Grand Ave. 10th Flr Los Angeles, CA 90017 Phone (213) 624-8407 E-mail bpierce@ddsfirm.com	Environmental Chair: Mohammad Estiri Phd. Eco & Associates, Inc. 11262 Darlene Drive Santa Ana, CA 92705 Phone (714) 832-5427 E-mail mestiri@ips.net	Fall Seminar Co-Chair: Augusto Parcerero, SR/WA LA City Dept. of Public Works 600 S. Spring St., Suite 700 Los Angeles, CA 90014 Phone (213) 847-5580 E-mail aparcerero@eng.lacity.org
Pipeline Chair: Gary Valentine, MAI, SR/WA 23942 Lyons Avenue, Suite 212 Santa Clarita, CA 91321 Phone (661) 288-0198 E-mail: gsvalent@valentineappraisal.com	Relocation Chair & Relocation Seminar Cochair: Freddy Arevalo Community Development Commission of the County of Los Angeles 2 Coral Circle Monterey Park, CA 91755 Phone (323) 890-7473 E-mail fred.arevalo@lacdc.org	Luncheon Chair: Tracy Washburn Sanli Pastore & Hill, Inc. 1990 S. Bundy Drive, Suite 800 Los Angeles, CA 90025 Phone (310) 571-3400 Fax (310) 571-3420 Email twashburn@sphvalue.com
Valuation Seminar Chair: Elaine McDaniel Desmond, Marcello & Amster 6060 Center Drive, Suite 825 Los Angeles, CA 90045 Phone (310) 216-1400 E-mail emcdaniel@dmavalue.com	Title Chair: Teri Kortens Lawyers Title 19300 South Hamilton Ave. Suite 130 Gardena, CA 90248 Phone (310) 768-2000 E-mail terikortens@msn.com	Public Agency Liaison Chair: George Koury, SR/WA Property Management The Port of Los Angeles 425 S. Palos Verdes Street San Pedro, CA 90731 Phone (310) 732-3865 E-mail gkoury@portla.org
Engineering/Survey Chair: Tony Pratt, PLS City of Los Angeles Bureau of Engineering 201 N. Figueroa St., Suite 1100 Los Angeles, CA 90012 Phone (213) 482-7180 E-mail tp Pratt@eng.lacity.org	Relocation Seminar Chair: Bill Von Klug, SR/WA Community Development Commission of the County of Los Angeles 2 Coral Circle Los Angeles, CA 91755 Phone (323) 890-7434 E-mail bill.vonklug@lacdclorg	Valuation Committee: Paul Norlen, MAI Metropolitan Water District 700 N. Alameda St. Los Angeles, CA 90012 Phone (213) 217-7665 E-mail pnorlen@mwdh2o.com
Fall Seminar Chair Michael Fischer Community Development Commission of the County of Los Angeles 2 Coral Circle Los Angeles, CA 91755 Phone (323) 890-7250 E-mail Michael.fischer@lacdc.org	Past President; Nominations and Awards Chair; Region Spring Forum Chair: Michael Popwell, SR/WA Community Development Commission of the County of Los Angeles 2 Coral Circle Monterey Park, CA 91755 Phone (323) 890-7195 E-mail michael.popwell@lacdc.org	Region Spring Forum Co-Chair & Membership Co-Chair Henry Nunez Henry Nunez Coordinated Land Services 11 E. Huntington Drive Arcadia, CA 91006 Phone (626) 254-0524 E-mail henry@hnrealstate.com

June Luncheon

Please note that this month's luncheon is on the 5th Tuesday of the month (6/29) instead of the usual 4th Tuesday of the month. This is due to the IRWA Annual Conference being held in Philadelphia this week. In July we will be back to the 4th Tuesday of the month.

What hovers above the ground, moves at 220 miles an hour, and provides cell phone, computer and conference room facilities? The proposed California High-Speed Train System, of course! The planned system stretches from San Francisco, Oakland and Sacramento in the north – with service to the Central Valley -- to Los Angeles and San Diego in the south. With bullet trains operating at speeds over 200 mph, the express travel time from Los Angeles to San Francisco is anticipated to be just under 2 ½ hours. The planning, design, construction and operations of this state-of-the-art high-speed train system are being overseen by the California High-Speed Rail Authority. The comment period for the Draft EIR/EIS for the project is open until August 31, 2004. The Authority will also hold a meeting on June 23, 2004 in Los Angeles (see www.cahighspeedrail.ca.gov for more info). Our speaker for the June membership luncheon will be Mr. Dan Leavitt, Deputy Director of the California High-Speed Rail Authority. Plan on attending this luncheon and learning about the newest technologies in high-speed rail and how they could impact California!

Date: June 29th, 2004

Time: 11:45 am

Location: Steven's Steakhouse, 5332 Steven's Place, Commerce, CA 90040

Luncheon choice: Prime Rib and Chicken Piccata

Cost: \$16

To reserve your space and make your luncheon selection, please contact our Luncheon Chair, Tracy Washburn at twashburn@sphvalue.com or 310-571-3400.

If you wish to be taken off this e-mail distribution list, please notify Holly Rockwell at hollyrockwell@epicland.com.

**IRWA Chapter 1
2004 Calendar of Events**

June 20-24	IRWA International Education Conference Wyndham Franklin Plaza Hotel; Philadelphia, Pennsylvania
June 29	Membership Meeting Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
July 13	Board of Directors meeting: 11:30 AM to 1:00 PM Nossaman offices: 445 S. Figueroa St, 31 st Floor, Los Angeles
July 27	Chapter 1 Membership meeting Shanghai Red's, Marina Del Rey
August	Chapter 1 dark , No Membership Meeting
September 14	Board of Directors meeting: 11:30 AM to 1:00 PM Nossaman offices: 445 S. Figueroa St, 31 st Floor, Los Angeles
September 16 & 17	Education Course 800 (Principles of Real Estate Law) (SR/WA) Contact Deborah Martinez, Education Co-Chair, at (714) 379-3376; dmartinez@paragon-partners.com
September 28	Chapter 1 Membership Meeting (and SR/WA Free Lunch with RSVP) Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
October 12	Board of Directors meeting: 11:30 AM to 1:00 PM Nossaman offices: 445 S. Figueroa St, 31 st Floor, Los Angeles
October 14 & 15	Education Course 200 (Principles of Real Estate Negotiations) (SR/WA) Contact Deborah Martinez, Education Co-Chair, at (714) 379-3376; dmartinez@paragon-partners.com
October 26	Fall Seminar (and Membership Meeting) Quiet Cannon, 901 N. Via San Clemente, Montebello (636-A/7) Contact Michael Fischer, Fall Seminar Chair, at (323) 890-7250.
November 9	Board of Directors meeting: 11:30 AM to 1:00 PM Nossaman offices: 445 S. Figueroa St, 31 st Floor, Los Angeles
November 23	Chapter 1 Membership Meeting (and Past Presidents Free Luncheon) Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
December	Tri-Chapter Installation Banquet Chapter 57, Riverside, is Host

Welcome New Members of Chapter 1, IRWA

Virginia Garcia, Senior Real Estate Representative, MWD, Los Angeles

Ronald G. Maculans, Acquisition Specialist, MWD, Los Angeles

James L. Jacoby, Right of Way Coordinator, BP Pipelines, Long Beach

CASE OF THE MONTH

By: C. Alexei Brenot, Esq.
Graham Vaage & Cisneros

The Redevelopment Agency of the City of San Diego v. San Diego Specialty Produce, Inc.,

2004 Cal.App. Unpub. WL 435245

(Unpublished & Not to Be Cited as Legal Authority)

In this matter, the Redevelopment Agency of the City of San Diego (“Agency”) appealed a judgment awarding \$266,512 in goodwill compensation to defendant San Diego Specialty Produce, Inc. (“SDSP”). The Agency challenged the goodwill award on two grounds: (1) the trial court failed to decide the issue of entitlement to goodwill damages; and, (2) substantial evidence did not support the jury verdict. SDPD also appealed the trial court’s rejection of its post-judgment motion for its litigation fees pursuant to CCP §1250.410. In its unpublished and un-citable opinion, the Court of Appeal upheld the trial court’s decisions on all grounds. The opinion, however, highlights how the presentation of evidence and the outcome of a case can be affected when the factual issues in dispute related to the business owners’ entitlement to goodwill compensation are not bifurcated and separately determined by the trial court before the evidence of the value of said goodwill is submitted to the jury. The opinion also reveals to what great lengths the Court of Appeal went to uphold the lower court’s ruling, by concluding that there was an “implied determination” by the trial court of the issue of goodwill entitlement.

Factual Background

SDSP, a wholesaler, distributor, shipper, importer and exporter of fresh specialty produce throughout the United States and Canada, started its business in 1990, and from 1993 until the Agency’s acquisition in 2000, occupied a building in downtown San Diego that was close to the airport and freeways, and that also provided a staging area to sort and package the produce, cooler space, loading docks, level parking, security, fencing and office space.

In December 2000, after receiving a 90-day notice to vacate from the Agency, SDSP purchased a building in Chula Vista that had 12,500 square feet, plus an additional 2,500 square feet of un-permitted mezzanine space that was therefore not legal for occupancy.

The parties had resolved all issues before trial except SDPD’s entitlement to and the amount of goodwill compensation. The Agency first asserted that SDPD was not entitled to goodwill, but that in the event it was determined that SDPD was entitled to compensation for its lost business goodwill, its appraised value was \$37,000. SDPD, however, claimed it was entitled to payment of \$382,000 for its lost business goodwill.

The parties exchanged final statutory offers and demands per CCP §1250.410, with the Agency offering \$125,000, and SDPD demanding \$375,000.

Prior to trial, the Agency filed a motion in limine to have the issue of entitlement bifurcated from the determination of the amount of compensation SDPD was to receive. The trial court, however, denied the Agency’s motion and the matter proceeded to trial on both issues.

Implied Determination of Goodwill Entitlement

At trial, the Agency submitted evidence through expert testimony that SDPD was not entitled to recover goodwill compensation because it failed to meet its burden of proof under CCP §1263.510 that requires a dislocated business to prove that the “loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving goodwill.” Pivotal to its argument was the Agency’s claim that SDPD failed to mitigate its damages by not subdividing and subletting the unused portions of its relocation site, including the 2,500 square foot mezzanine area.

On appeal, the Agency contended that the trial court failed to decide this basic factual issue of SDPD’s entitlement to compensation for its lost business goodwill, and instead permitted the jury to decide the issue of entitlement along with the amount of compensation.

The Court of Appeal rejected the Agency’s contention and held that the trial court made the required determination of entitlement by implication when it denied the Agency’s motion for non-suit, by which the Agency asserted that SDPD had failed to present evidence that it had used reasonable measures to mitigate its loss. The Court of Appeal further held that substantial evidence supported the trial court’s implied ruling that subdividing and subleasing SDPD’s relocation site was not an act that a reasonably prudent person would undertake to preserve its business goodwill. The court further noted that it was undisputed that the new business location in Chula Vista was farther from San Diego airport and Los Angeles, had only two truck docks as compared to the three SDPD’s original business site provided, and that SDPD’s business site costs increased substantially due to the larger size of the relocation site, i.e., 12,500 square feet plus the 2,500 square foot mezzanine area versus the 7,100 square feet of the original site, with the price per square foot costs for the original and relocation site being the same.

Although there was no dispute amongst the parties that SDPD had not suffered a loss of revenues or patronage from its relocation, the experts diverged in their opinions regarding SDPD’s increased transportation costs and whether the increased building costs should be offset by its subletting of any unused portions of the relocation building.

SDPD’s expert testified that the subletting a portion of the building was not reasonable because: (1) SDPD was operating a business at a site with more operating constraints, and the business was not experienced in subdividing a warehouse and would have to become knowledgeable and address all legal issues of being a landlord and subletting space causing the venture to be “risky”; and, (2) the physical division of the building would require major expenditures because the mezzanine area could not be legally occupied due

to the lack of permitting when it was originally constructed, the area also did not provide a tenant with bathroom facilities, office space or a loading dock, and the wiring and sprinkler system would need substantial upgrading. SDPD's expert further testified that SDPD suffered a total loss of business goodwill of \$382,000 due to its increased costs at the new location, including site costs, increased travel distances resulting in more time on the road for trucks and drivers, along with associated increased fuel costs, maintenance and repair costs, and higher labor and wage costs.

The Agency's expert countered that SDPD should have mitigated its damages by subdividing and renting the excess property, that SDPD's transportation costs had not increased through its relocation, and that if SDPD suffered any goodwill the amount of its loss was limited to only \$37,000.

In upholding the trial court's and the juries rejection of the Agency's contentions, the Court of Appeal noted that the Agency's expert admitted that he had only factored into his build-out cost estimate the cost of constructing a partition wall and minor electrical work, but had failed to consider all the costs of building out and renting the additional space, including the costs of providing additional parking, building ramps, creating office access, and making the mezzanine area legal for use, including compliance with the Americans with Disabilities Act. Based on this record, the Court of Appeal also determined that the jury could reasonably have disregarded the Agency's opinion regarding the lack of SDPD's increased transportation costs, since it was an undisputed fact that SDPD's business was nine miles further from its downtown location and that its drivers would therefore have to travel greater distances.

Denial of SDPD's Claim for Litigation Expenses

The Court of Appeal upheld the trial court's denial of SDPD's claim for attorneys' fees, in which the trial court rejected SDPD's argument that a pure mathematical formula should be used to determine whether the Agency's final offer was reasonable, and instead applied the appropriate two prong analysis required of CCP §1250.410(b); i.e., that the final offer of the condemnor was unreasonable and the demand of the condemnee was reasonable, both viewed in the light of the evidence admitted and the compensation awarded.

In holding so, the Court of Appeal acknowledged that the Agency's final offer of \$125,000 was \$141,512 less than the jury's verdict of \$266,512, but that the offer was substantially higher than the Agency's expert's opinion that if any loss had occurred, that loss was limited in value to \$37,000. The Court of Appeal also noted that SDPD's final demand of \$375,000 was only \$7,000 less than its appraisal, indicating that SDPD was less willing to negotiate this remaining issue and therefore failed to give any weight to the opinions of the Agency's experts.

The Court of Appeal, accordingly, upheld the trial court's decisions on all grounds.

ARTICLE OF THE MONTH

Court Upholds Telecommunications Industry's Right to Use California Streets and Highways Free From Local Impositions

*By Fredric W. Kessler and Linda N. Cunningham
Nossaman, Guthner, Knox & Elliott, LLP*

Williams Communications, LLC v. City of Riverside, et al. ("Williams")

California Court of Appeal, Fourth Appellate District
114 Cal.App.4th 642
Filed December 18, 2003

Executive Summary A debate has been raging in California between the telecommunications industry and various local governmental entities. The debate is over whether rents, fees and other exactions can be imposed for the installation of fiber optic lines in California streets and highways. In recent years, some local entities have imposed heavy charges well beyond their own costs for such installations, despite statutory and case law that appeared to prohibit the practice, and over vociferous industry protests. On December 18, 2003 in the closely watched case of *Williams v. Riverside*, the California Court of Appeal resolved the debate in favor of Williams and the telecommunications industry. It is the first case of its kind since 1961, and a case of first impression applying California's Mitigation Fee Act to telecommunications facilities.

Pre-existing California Law Public Utilities Code section 7901 grants "telephone corporations" a right "to construct telephone lines along and upon any public road or highway ... in such a manner and at such points as not to incommode the public use of the road or highway..." In a series of decisions from the mid-20th century, the California Supreme Court firmly established that section 7901 is a matter of statewide concern, and gives a franchise from the state to telephone companies without the necessity for any grant from local government and thus without local power to charge compensation for such use. The cases broadly construed the statute, concluding among other things, that telephone lines can be used for a panoply of communications services. Section 7901, the Court held, is not limited to articulate speech, but reaches lines used for any transmission of intelligence by electrical impulses.

More recently, the Legislature enacted Public Utilities Code section 7901.1, confirming prior case law that local government authority is limited to reasonably regulating the time, place and manner of telephone line installations, and Government Code section 50030, limiting impositions in connection with permits for telecommunications installations to “the reasonable cost of providing the service for which the fee is charged” and prohibiting levies “for general revenue purposes.”

Recent Practices by Cities and Counties With the proliferation of fiber optic installations in the new competitive telecommunications environment, some cities and counties viewed their permitting authority as a new means to generate revenue. They began to insist on up-front or periodic payments of compensation, in various forms, for the use of local streets and highways for such installations, justifying these impositions on various lines of reasoning to deny the continuing applicability of section 7901.

Telecommunications companies, faced with fierce competition, revenue needs, contractual deadlines to deliver new service, and a clear pattern of rapidly eroding market share if not among the first to reach new markets, came under great pressure to accede to local demands. Few companies were in a position to halt construction and mount legal challenges before payment of the fees.

The City of Riverside was one of these cities. Williams requested a permit to install fiber optic conduit and lines in city streets. Riverside conditioned issuance of the permit on execution of a license agreement under which Williams had to pay more than \$750,000 (\$1.50 per lineal foot of conduit) as compensation for use of the streets, in addition to the usual permit fees and charges. Williams paid, but later protested under the Mitigation Fee Act and sued for a refund. Williams lost in the trial court but prevailed on appeal. The court awarded a full refund to Williams.

The Significance of Williams to the California Telecommunications Industry The *Williams* decision reinvigorates section 7901, breathes vibrancy into section 50030 and should end local agency attempts to extract fees and charges beyond costs. The greatest innovation in *Williams* is its use of the Mitigation Fee Act. This Act provides an exception to the general rule that a permit applicant who takes the benefit of a permit waives the right to subsequently challenge its terms. This rule generally requires the applicant to file legal action - *before receiving the permit* - for a writ of mandate or declaratory relief in order to rectify allegedly unlawful permit requirements. In the meantime, the project is halted. The Mitigation Fee Act allows the permit applicant to take the permit, pay fees, taxes and exactions, proceed with construction, and follow specified post-permit procedures to recover any unlawful amount while retaining the benefit of the permit.

The *Williams* decision unequivocally allows companies to use the Mitigation Fee Act, in particular Government Code sections 66000, 66020 and 66021, to recover charges in excess of reasonable costs. Companies can now pay if a city or county continues to insist on payment, and can subsequently protest and recover the unlawful charge through post-payment procedures.

Finally, the strength of the new *Williams* precedent should put an end to the primary negotiating tactic that cities and counties have utilized in the past. Many local government attorneys have couched agreements for access and use fees as settlements of supposedly debatable legal issues, with each side “compromising” claims regarding legal rights over the use of local streets for fiber optic installations. As part of the bargain, companies were forced to sign on to waivers and releases of whatever claims they believed they had under sections 7901 and 50030, not to mention federal law claims. The locality, in return, relinquished its alleged right to charge even higher amounts or impose even more stringent conditions. *Williams* rejected this characterization of the license agreement by Riverside. And now, city and county governments no longer have grounds to assert that legal issues in this area are debatable and properly the subject of settlement agreements. *Williams* ends the debate.

Fred Kessler is a partner with Nossaman, Guthner, Knox & Elliott, LLP, and can be contacted at (213) 612-7829, or fkessler@nossaman.com.

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Courses scheduled for 2004

Dates	Class code	Class Title	Instructor	Location	Coordinator	Phone	Email
Sep 16 & 17	800	Principles of Real Estate Law (SR/WA)	Ralph Brown	Torrance	Deborah Martinez	(714) 379-3376	dmartinez@paragon-partners.com
Oct 14 & 15	200	Principles of Real Estate Negotiations (SR/WA)	Ralph Brown	Torrance	Deborah Martinez	(714) 379-3376	dmartinez@paragon-partners.com

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