

VALOREM PRINCIPIA

The Principles of Value

Volume 10 Issue 1 July 2002

Another Resounding Victory For Cities, Redevelopment Agencies And Other Condemning Entities

An \$18,000,000 Claim is Withered Down to \$0
Regency Outdoor Advertising, Inc. v. The City of Los Angeles

BACKGROUND OF THE CASE

Regency claimed that it suffered damages as a direct result of the planting of palm trees (the "Gateway LAX project") along Century Boulevard. Regency stated that palm trees caused an obstruction/loss of visibility to four of its billboards (the "Billboards") and therefore it was unable to rent these Billboards. The plaintiff's initial damage claim was over \$18,000,000. However, after the intensive and diligent discovery orchestrated by Ms. Amy Gonzales, the City Attorney, Regency's appraiser revised her total damages down to \$6,150,000.

CITY RETAINS SANLI PASTORE & HILL, INC.

The City retained SP&H to:

- 1) Provide expert witness analysis to determine whether Regency suffered any economic damages or loss of goodwill value as a result of the Gateway LAX project; and

- 2) Determine whether Regency engaged in reasonable efforts to mitigate its damages, if any, and/or preserve its goodwill, if any.

SP&H assembled a team consisting of Nevin Sanli, ASA, president, two experienced analysts and one researcher. The SP&H team worked diligently and efficiently in performing many tasks including:

- ◆ Research (industry, economic, and competitive);
- ◆ Providing support for discovery;
- ◆ Assisting in writing declarations;
- ◆ Inspections and photos of the Billboards (a total of 4 billboards and 6 faces) and comparable billboards;
- ◆ Creating and managing PowerPoint presentations; and Deposition and trial preparation.

Conclusion on Page 2

GOODWILL LOSS SEMINAR 2002 SERIES BEGINS

THE 2-LEVEL SERIES STARTS WITH
 LEVEL I IN:

Los Angeles on August 22
Sacramento on September 5

MCLE CREDITS

Customized, on-site seminars are available for single agency groups larger than 20 people.

Since 1975, California business owners can recover lost "goodwill" as a result of condemnation. Assessing and paying these claims represent substantial costs to agencies involved in redevelopment or right-of-way projects.

Who should attend?

- ◆ Government Appraisers
- ◆ Redevelopment Agency Staff
- ◆ Eminent Domain and Public Agency Attorneys (Private and Public Practice)
- ◆ Transportation Agency Employees
- ◆ Public Entities Involved in Commerical Real Estate Acquisition

For further information or to request a general brochure and registration form, please contact Christine Albino at (310) 571-3400 or calbino@sphvalue.com

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During discovery, SP&H provided Ms. Gonzales assistance by preparing deposition questions, information requests, reviewing previous depositions for follow-up questions, inspecting the allegedly damaged Billboards and taking photos of other billboards (some owned by Regency) throughout the Los Angeles basin.

All this work and research was necessary for the City to present credible opinions and deposition and trial testimony and to effectively undermine Regency's and their expert's credibility.

Mr. Sanli, in his declaration dated October 22, 2001, stated: "Regency suffered no damages as a result of the project"

"It is clear that Regency was capable of continuing the operation of the Billboards subsequent to the project. By not continuing to market the Billboards, Regency failed to mitigate its potential damages as required by law."

In a second declaration dated October 27, 2001, Mr. Sanli stated:

"...Regency of its own volition took the Billboards out of inventory or simply ceased marketing them. Regency did not attempt to market the Billboards at lower rates, nor did Regency attempt to apply for a modification from the Los Angeles Municipal Code's sign regulations, which potentially would have allowed Regency to alter or slightly move the Billboards such that they could be seen more clearly."

During a bench trial, Mr. Sanli testified that:

- 1) If there was a loss, the loss was not caused by the taking;
- 2) Even if there were a taking, Regency's damages were \$0; and
- 3) Regency was not entitled to compensation even if there was a taking because of its failure to mitigate.

All of Mr. Sanli's opinions were well documented and substantiated. Ms. Gonzalez and SP&H worked very well as a team preparing intensely for trial. Ms. Gonzales' court papers and her direct and cross-examination of all witnesses were

very effective. SP&H's PowerPoint presentation had over 40 exhibits. In contrast, Regency's case presentation failed to impress the judge.

RULING

On March 6, 2002 Judge Jean Matusinka issued her ruling: "The plaintiff has failed to prove that loss of visibility decreased the fair market value of it's [sic] property by reliable, non hearsay and non speculative evidence."

"Loss of visibility is not compensable where the loss is caused by the construction of a public improvement on land not taken from the landowner."

During trial Judge Matusinka determined that, among other deficiencies, the documents relied upon by the plaintiff's expert were inadmissible. This ruling essentially excluded the plaintiff's expert opinion as her opinion was now unsubstantiated.

Furthermore, the judge stated that even if the loss of visibility impacted the value of the Billboards, the loss is not compensable because the palm trees that were planted as part of the Gateway LAX project were a public improvement on the City's own land.

The plaintiff's legal effort in an attempt to win over \$18,000,000, an amount that would have significantly impacted the City's budget, utterly failed.

The City Attorney and SP&H proved that team work, thorough research and analysis of facts and circumstances, can thwart substantial but unsubstantiated claims that so often cause financial difficulties for government entities and, ultimately, taxpayers.

For questions on the Regency v. LAX case or other work by SP&H please contact Nevin Sanli, ASA, or Tom Pastore, ASA, at 310/571-3400

In Northern California, please ask for Forrest Vickery, ASA, at 916/614-0530

In San Diego, please ask for Peter Butler, ASA, at 619/233-1801



SANLI PASTORE & HILL, INC. **IS PLEASED TO ANNOUNCE THE RELOCATION OF OUR SAN DIEGO OFFICE**



Peter J. Butler, ASA, CFA

Management and Research. Additionally, Peter obtained his MBA, with an emphasis in finance, from San Diego State University.

Peter specializes in securities and business valuation, litigation support, economic and financial research and statistical analysis. He has extensive experience in performing due diligence and valuations of early stage-high technology firms in his role as managing director of a venture capital fund.

Peter, Manager of Sanli Pastore & Hill, Inc.'s San Diego office, has been in the business valuation field since 1995. He is an accredited senior appraiser (ASA) in business valuation of the American Society of Appraisers. He also earned his Chartered Financial Analyst (CFA) designation sponsored by the Association for Investment

Peter is a graduate of the U.S. Naval Academy graduate and spent eight years in the Navy, leaving the service with the rank of Lieutenant. While in the Navy, he held various leadership positions on board a naval warship and taught engineering principles to recently commissioned naval officers.

Peter, his wife Jennifer and their 2 year old son, Connor, live in a suburb of San Diego.

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QUALIFYING THE EXPERT WITNESS

by: William E. Weinberger, Attorney at Law



Unless an attorney pays careful attention (1) to the necessary steps to qualify an expert witness and his/her testimony for presentation to the jury and (2) to extracting the expert testimony in the most persuasive manner, the testimony of an expert can be rendered useless. Not only must an expert be qualified in the area in which he/she may

be testifying; the methods and analysis used by the expert in coming to his/her conclusion must also pass a standard of acceptability and the opinion must be shown to be relevant to the matters at issue in the proceeding. Moreover, the entire manner in which the expert testifies could mean the difference between jurors either fixing their eyes on the expert in rapt attention or merely rolling their eyes.

In California state courts, a person may be qualified as an expert if he/she "has special knowledge, skill, experience training or education sufficient to qualify him/her as an expert on the subject to which his/her testimony relates." A proposed expert witness may testify concerning his/her own qualifications, and this is the manner in which an expert's qualifications are usually introduced.

Once an expert has been qualified, he/she will be permitted to offer his/her opinion, within his/her area of expertise, "related to a subject that is sufficiently beyond common experience that such opinion would assist" the jury (in jury trials) or the court (in non-jury trials). The expert's opinion may be based upon matters that he/she personally knows or has perceived, or upon facts related to him/her by someone else, provided those are the kind of facts and matters experts in his/her field reasonably rely

to the expert are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences on the subject. In determining the second issue, the judge must assess the principles and methodologies used by the expert against one or more of the following criteria: whether they are accepted in the field in which the expert works, have been tested by practitioners in that field, have been subjected to peer review, have an acceptable error rate or are conducted with proper standards and controls. The third factor is based upon a determination of how the witness has applied his/her principles and methods to the case.

Effective trial testimony by an expert requires careful preparation. Not only must the expert's conclusions and analysis be clear; his/her presentation must be persuasive to the jury. The most erudite and leading expert in a particular field could be a disaster at trial if the jury does not believe him/her.

Thus it is important to humanize the expert to the jury. The initial testimony by the expert usually is about his/her background and expertise. The testimony can also be used to help the jury relate to the expert; questions can elicit information about the expert that will show the jury that he/she is a person worthy of their trust. For example, while asking an expert about his/her educational and professional background, questions can also elicit information about why the expert went into a particular field and why he/she finds the field interesting or rewarding.

When presenting his/her opinions and the facts on which they were based, the expert needs to educate the jury. The attorney and the expert must strategize not just about what are the strongest opinions the expert can state, but also about what form of presentation of the opinion will be most persuasive to the jury.

The expert must also be prepared for cross-examination by the opposing counsel. Other opinions rendered by the expert must be gathered and reviewed, and, to the extent any appear not to support the conclusions of the expert in the case, the expert must be prepared about how he/she can honestly distinguish those opinions or explain why they do not contradict his/her opinions in this case. The expert and attorney must also prepare for any other matters in the expert's background that might be used to attack his/her credibility. These may include professional disciplinary proceedings, license suspensions or revocations, or even any advertisements by the expert or his/her company that might be used to taint the expert's opinion.

Conducting a trial is, in essence, telling a compelling story with an ending that the jury can be persuaded to reach. Expert testimony is one chapter - a very important chapter - in that story, and must be made as moving and stirring as the rest of the chapters. Assuring that the expert's testimony will be admitted is just as important as making sure that his/her testimony is compelling. Careful attention to both these important aspects of the witnesses' testimony is critical.

William Weinberger, a partner at Christa & Jackson, specializes in complex business, real estate and land use litigation. He has litigated and successfully resolved numerous eminent domain matters and other business cases involving valuation issues. Mr. Weinberger was recently appointed by Governor Gray Davis to the California Law Revision Commission. He may be reached at (310) 282-8040 phone, (310) 282-8421 facsimile, or wweinberger@christalaw.com.

GOOD BUSINESS LEADERS CREATE A VISION, ARTICULATE THE VISION, PASSIONATELY OWN THE VISION, AND RELENTLESSLY DRIVE IT TO COMPLETION

- Jack Welch

upon in forming an opinion of the type the expert is going to offer. The expert may also rely upon his/her own special knowledge, skill, experience, training and education in rendering his/her opinion.

The foundation for qualifying an expert witness in federal court is similar to that in the California courts, but before expert testimony may be presented to the jury, the judge must make a preliminary determination of whether the testimony meets the requirements under the applicable evidence rule for expert testimony. Thus, the trial judge must assess (1) whether the expert testimony is based upon sufficient facts and data, (2) whether the expert testimony is the product of reliable principles and methods, and (3) whether the expert witness has applied the principles and methods reliably to the facts of the case.

The determination of the first issue, whether the expert testimony is based upon sufficient facts and data, involves an evaluation by the trial judge of whether the facts made known

NEWSFLASH

May 6th - 10th Anaheim

CRA Redevelopment Institute Southern Session

Nevin Sanli presented "Property Acquisition & Relocation"

May 11th - Los Angeles

34th LACBA Family Law Symposium

SP&H was a sponsor

May 13th - Irvine

Harvard Business School Entrepreneur Conference

SP&H sponsored this event and Nevin Sanli presented

"Buy, Build & Sell"

May 23rd - Irvine

Tech Coast Venture Network's Forum

Thomas Pastore presented "How to Negotiate Valuation"

June 20th - 21st - Los Angeles

CLE International Marital Agreements Conference

Thomas Pastore presented "The Use of Business Valuation Experts in Litigation"

August 7th - Los Angeles

The Blaine Group

Nevin Sanli will be presenting to CEOs from Finland

"Valuing the Business"

August 14th - 15th Monterey

CRA Legal Issues Symposium

Nevin Sanli will be a moderator "The Entitlement Battle: Case Studies of Successful Challenges to Large Goodwill Claims"

Thomas Pastore will be a moderator "Inverse Condemnation: - How to Minimize or Avoid Damage Claims"

August 22nd - Los Angeles/September 5th - Sacramento

Introductory Goodwill Loss Seminar I -

"Introduction to Understanding and Identifying Goodwill Loss Issues"

September 23rd - Los Angeles

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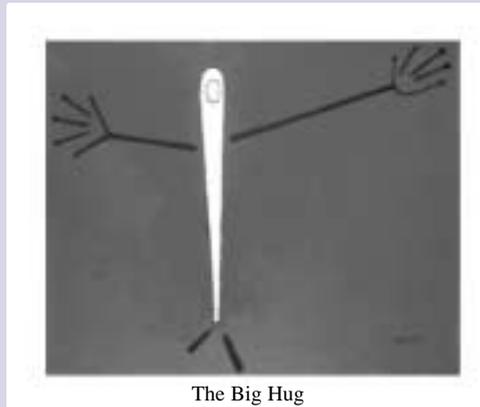
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SPECIAL EVENT

April 11, 2002

SP&H sponsored an art exhibit at the AZ Gallery on La Brea Boulevard, Los Angeles.

Over 300 guests joined us to admire the extensive, varied and enlightening work of Marques de Jadraque.



The Big Hug

Marques de Jadraque

www.marquesdejadraque.com

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SP&H does not accept responsibility for statements or opinions advanced in articles appearing herein, and their appearance does not necessarily constitute an endorsement by SP&H.

Articles, letters, comments and suggestions are welcome.

Please contact Christine Albino at 310/571-3400 or calbino@sphvalue.com ♦

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