



David Skinner, Principal

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Practice Groups: Eminent Domain and Inverse Condemnation

Practicing Since: 1990

Education: Hastings College of the Law, JD, 1989
University of California at Berkeley, BA History and Political Science, 1984

SUMMARY

David Skinner is recognized statewide as one of the leading eminent domain practitioners in California, where he has specialized in representing public agencies in eminent domain and inverse condemnation matters for over 17 years. Mr. Skinner's practice is devoted to assisting public entities in developing and implementing cost-effective, time-sensitive land acquisition strategies.

Mr. Skinner's experience acquiring properties for public uses is almost unparalleled. He has acquired all types of properties for all types of uses, and has successfully tried numerous jury trials and bench trials in Superior Courts in Northern and Southern California. He has also handled appeals which have established important legal precedents for public entities. He frequently lectures on eminent domain topics in seminars for public officials, attorneys, appraisers and right-of-way professionals.

Mr. Skinner's highly regarded experience and expertise make him uniquely qualified to guide public entities through all facets of the eminent domain and relocation process.

APPROACH TO EMINENT DOMAIN LITIGATION

Eminent domain litigation can be extremely difficult. In the early stages of project planning, a public entity may have good reason to believe that a particular land acquisition should be relatively routine, and should result in a relatively low acquisition price. Unfortunately, the realities of eminent domain litigation can swiftly and unexpectedly shatter well-intended budget projections. These unwelcome "surprises" can substantially delay and even kill a much-needed project.

How does this happen? There are at least three reasons.

First: eminent domain valuation principles relating to "just compensation" can be very complex. There is a vast body of law (including but not limited to the California Code of Civil Procedure, Government Code Evidence Code and case law) which sets forth various valuation methodologies and the manner in which they may apply. Unfortunately, these rules are not always clear or consistent. Indeed, even judges in eminent domain trials often comment that these valuation principles can be very confusing. Certainly, project planners and attorneys who are not well versed in the intricacies and nuances of these valuation rules can easily oversimplify the issues and underestimate land acquisition budgets. When these issues are not spotted early in the project planning process, their late discovery can lead to drastically higher valuation estimates.

Second: while frustrating to public entities, it is a fact that there are some landowners' attorneys and appraisers who try to "game" the system. In other words, certain attorneys will work with certain appraisers to come up with the highest number possible. The statutory definition of "fair market value" in California does include the "highest price" that would be agreed to by a knowledgeable buyer and seller, but this definition assumes the buyer and seller are "reasonable." Some landowners' attorneys and appraisers seem to ignore this, and take an unreasonably speculative approach to valuation. In assessing their own potential exposure (including the value of the property and the risk of having to pay the landowners' litigation expenses after trial), public entities must consider the possibility that these tactics could succeed, and a jury could agree (at least partially) with the landowners' attorney and experts. Such assessment may induce public entities to substantially increase their land acquisition budgets.

Third: it is no secret that many people view eminent domain with a high degree of skepticism. Some people do not believe public entities should ever be able to acquire private property against the will of the landowner. Others believe that public entities have abused the public use doctrine, exercising their eminent domain authority for what they regard as "private uses." (Of course, such sentiment was expressed as part of the well-publicized backlash to the U.S. Supreme Court's decision in *Kelo v. New London*, and as part of the efforts to reform the California Constitution through Proposition 90 in 2006 and Proposition 98 in 2008.) Still others are inclined, on the question of "just compensation," to give the landowner the benefit of the doubt and to assume the public entity's appraised value is part of a "low ball" effort to acquire the property for less than its true fair market value.

For these reasons, a public entity may be shocked to learn after an eminent domain trial that the jury has awarded the landowner an amount which is several times higher than originally budgeted. Mr. Skinner's approach to eminent domain litigation is specifically tailored to helping his clients accurately budget for land acquisition costs and avoid surprises. In particular, when feasible, Mr. Skinner prefers to be involved in the land acquisition planning and budgeting process as early as possible. He has in-depth knowledge of eminent domain valuation principles, which enables him to identify issues at the outset and make recommendations to mitigate and minimize substantial valuation problems in the future.

In addition, while some attorneys may try to game the system no matter what the circumstances, most landowners' attorneys will carefully assess the condemning agency and its attorney before attempting such an approach. Mr. Skinner's reputation and trial experience is well known. Most, if not all, landowners' attorneys in the relatively small eminent domain practice in California know of Mr. Skinner and understand that any unsupported, speculative valuation opinions will not likely succeed.

Finally, Mr. Skinner has successfully tried numerous eminent domain jury trials on behalf of public entities. He understands that, in order to overcome juror skepticism against a public entity and win an eminent domain case for a public entity, he must establish credibility with the jury and convince the jury that the public entity is acting in a just and fair manner. Mr. Skinner has been very successful over the years in helping juries understand the important facts of each case, and reach a just and fair verdict to both sides.

REPRESENTATIVE EXPERIENCE

Experience in All Aspects of the Eminent Domain Process

Mr. Skinner has in-depth knowledge of all facets of the eminent domain process. He has extensive first-hand experience with issues relating to the following matters, and has litigated many cases in these areas. The following is a partial, representative list of Mr. Skinner's experience in aspects of the eminent domain process.

- Precondemnation Activities. Advising public entities on the do's and don'ts of precondemnation planning activities in order to avoid liability for unreasonable precondemnation conduct or delay under *Klopping v. City of Whittier* (1972) 8 C. 3d 39.

- Environmental Review Process. Providing advice and recommendations on necessity and type (EIR, negative declaration, etc.) of project review under CEQA, and on potential financial implications (i.e., payment of just compensation) for various project alternatives under consideration.
- Property Acquisition Team Selection. Providing advice and recommendations on retention of appraisers (including real estate appraisers, machinery/fixtures/equipment appraisers, and business goodwill appraisers), land use consultants, environmental (hazardous substance) consultants, right-of-way consultants, relocation consultants, etc.
- Legal Instructions to Appraiser. Providing legal instructions to real estate appraisers, machinery/fixtures/equipment appraisers, and business goodwill appraisers regarding proper valuation methodologies under eminent domain law and, where appropriate, regarding factual assumptions.
- Preparation of Offer Letter to Landowner. Drafting offer letter to landowner which complies with mandates of Government Code §7267.2; Negotiations With Landowner. Engaging in good faith negotiations with property owner.
- Compliance with Applicable Relocation Regulations. Ensuring that all necessary relocation plans, replacement housing plans, notices of eligibility of relocation assistance, etc. are reviewed and approved in a timely manner to comply with applicable relocation regulations.
- Preparation of Documentation Necessary to Commence Eminent Domain Proceeding. Preparation of documents such as the Notice of Intention to Adopt Resolution of Necessity, staff reports recommending adoption of Resolution of Necessity and the Resolution of Necessity.
- Preparation and filing of the Complaint in Eminent Domain and Lis Pendens.
- Preparation and Filing of all Declarations and Documentation Relating to Application for Order for Possession. Recent changes in the law have made orders for possession more difficult and time consuming.
- Discovery issues after Complaint in Eminent Domain has been filed, including disputes pertaining to relevance, privileges, etc. which require the filing of opposing of motions to compel with the Court.
- Resolution of "Right to Take Objections." Involves separate bench trial or Court hearing prior to trial on the question of compensation.
- Lists of Expert Witnesses and Statements of Valuation Data. This is a critical part of any eminent domain case because it is statutorily required, and because it may be the first opportunity for the public entity to know (finally) the amount of compensation claimed by the landowner.
- Depositions of all expert witnesses. This is also critical in eminent domain litigation, because experts will provide the factual basis for motions in limine which request the court to exclude improper valuation methodologies and/or other evidence at trial.
- Preparation of public entity's final offer. Required by statute to be filed and served 20 days before trial, and very important because it can be used (if deemed "unreasonable" by the Court after trial) as a basis to support a landowner's motion for litigation expenses.
- Hearings on Motions in Limine at Trial. Public entity's motions in limine (seeking to exclude improper appraisal methodologies and/or other evidence) may be key to the public entity's case.
- Jury Trial on Valuation Issues. Acting as lead trial attorney and advocating public entity's valuation case to juries across the State. Mr. Skinner has tried cases involving:
 - Right to take objections;
 - Application of "Porterville" valuation approach;
 - Value of improved and unimproved property;

- “Partial take” and “full take” acquisitions;
 - Whether a business tenant has a right to make a claim for compensation;
 - Valuation of leasehold bonus value;
 - Entitlement and valuation of loss of business goodwill; and
 - Post-trial motions, including motions for new trial and motions for litigation expenses.
- Appeals. Handling all aspects of an appeal of an eminent domain verdict, whether on behalf of the appellant or respondent.

Partial List of Public Projects Necessitating Use of Eminent Domain

Mr. Skinner has assisted public entities in acquiring property for a wide array of public uses and projects. Some of these public uses include (or have included) the following.

- Freeway and Interchange Projects. Responsible for acquiring numerous properties in San Diego for a 5-mile segment of State Route 56. Mr. Skinner was also responsible for acquiring numerous properties in the Cities of Pleasanton and Dublin for the Interstate 580-680 Interchange Improvement Project, and many properties in the Cities of Milpitas and Fremont for the I-880/Dixon Landing Interchange Improvement Project.
- Street and Road Projects. Represented many cities and counties in acquiring land for the construction of new streets and roads, or the improvement/widening/extension of existing streets and roads.
- Light-Rail Projects. Handled (through trial) two cases for the Santa Clara Valley Transportation Authority on their Vasona Light Rail Project.
- Water Projects. Mr. Skinner has been (and still is) responsible for acquiring numerous properties in Livermore, California for a water treatment plant and 11-mile water pipeline project on behalf of the Alameda County Flood Control & Water Conservation District, Zone 7. He has also handled several other water-related projects for other water districts over the years.
- Electric, Water and/or Gas Utility Projects. Acquired existing electric, water and/or gas utilities. Mr. Skinner represented the City of Redding in the acquisition of an electrical transmission facility owned and operated by PG&E. He represented California American Water Company in the acquisition of a water facility in Felton, California. He currently represents the Kirkwood Meadows Public Utility District in the acquisition of a gasoline/propane facility and electrical transmission system.
- Wastewater Treatment Plants and Sewer Trunkline Projects. Represented various cities and sanitation districts in acquiring properties for wastewater treatment plants and ponds, as well as sewer trunkline projects.
- Parks/Open Space/Conservation. Represented numerous public entities in acquiring properties for park purposes, open space purposes and/or conservation purposes.
- Hospital Expansion. Handled the acquisition of a large medical office building and the relocation of numerous physicians and dentists due to the Santa Monica / UCLA Hospital Expansion Project.
- Redevelopment. Acquired numerous properties for numerous redevelopment agencies, including developments for affordable housing in Sacramento, Walnut Creek, and San Leandro; a new downtown (Livermore); retail uses (Los Angeles and Walnut Creek); research & development and office uses (South San Francisco); auto mall use (San Leandro); and big-box retail (San Leandro).
- Convention Centers. Handled the acquisition of an existing convention center, in which a city had a leasehold interest, in order to allow the city to fully own and control the land and premises.

Partial List of Other Types of Properties Acquired by Eminent Domain

Mr. Skinner has acquired all types of properties by eminent domain, including the following.

- Improved commercial properties, involving “full” and “part” takes of properties improved with office buildings, retail buildings, industrial buildings, auto-mall facilities, auto-service buildings and hotel/motel buildings—many of these properties included owner-occupied businesses or business tenants and involved land valuation issues, leasehold valuation issues, relocation issues, and loss of business goodwill issues;
- Residential properties, including apartments, town homes, condominiums (and related homeowners association issues), and single-family residences;
- Agricultural and ranch properties with a “highest and best use” as agricultural and ranch use for the foreseeable future;
- Agricultural and ranch properties with a “highest and best use” of agricultural and ranch as a short-term, but a different and more profitable use in the foreseeable future;
- Unimproved, unentitled properties with low likelihood of development;
- Unimproved, unentitled properties with higher likelihood of development;
- Park/open space/conservation properties;
- Properties currently owned/operated by other public entities; and,
- Electric, water and/or gas utility properties;

EXPERIENCE EXAMPLES – EMINENT DOMAIN TRIALS

Speights v. City of Oceanside (2009)

Mr. Skinner obtained an important victory on behalf of the City of Oceanside. The case involved an inverse condemnation action brought by a developer of an apartment project. The developer challenged the City’s application of its conditions of development relating to the construction of off-site storm drainage improvements, allegedly based on physical conditions discovered on adjacent property after the developer obtained “vested rights” to develop. The developer argued that the City’s application of the condition of development forced him to incur unreasonable expenses and delays, and caused him to lose the property to his lender. The developer sought \$12 million in damages against the City, claiming that the City’s actions were part of a conspiracy to allow the City to acquire the property at less than its fair market value for affordable housing. The developer’s complaint alleged alternative inverse condemnation theories against the City, including regulatory taking, physical taking and taking based upon unreasonable precondemnation conduct.

The developer filed his lawsuit in August 2006. After two demurrers, extensive discovery efforts, and two motions for summary judgment, the trial court granted the City’s motion for summary judgment on October 7, 2008. The trial court held that, notwithstanding the developer’s allegations to the contrary, the gravamen of his inverse condemnation action was a regulatory takings claim. As such, the exhaustion of judicial remedies requirement applied, and the developer could not sue the City in inverse condemnation without first challenging the validity of the condition of development by way of a petition for writ of mandamus. The developer appealed, but (in an unpublished opinion dated June 19, 2009) the Court of Appeal affirmed the trial court’s ruling. The Court of Appeal held not only that the developer was subject to the exhaustion requirement, but also that the developer had not in fact obtained “vested rights” to develop his apartment project without complying with condition of development relating to off-site storm drainage improvements. As a result, the developer’s entire \$12 million lawsuit against the City was dismissed.

Santa Clara Valley Transportation Authority v. Patel (2001)

This was an eminent domain action. Plaintiff Santa Clara Valley Transportation Authority (VTA) sought to acquire fee title in and to a 23,837-square-foot parcel located at the northeast corner of West San Carlos Street and Delmas Avenue in the City of San Jose. VTA sought to acquire the subject property for the Vasona Light Rail Project. The property was unimproved but had entitlements for a motel. The issue at trial related to the fair market value of the property. VTA's appraiser valued the property at \$1,835,000. The property owner's appraiser valued the property at \$3,200,000. The jury found that the fair market value the property, as of October 2, 2000, was \$1,835,000—the exact figure urged by VTA. The trial in this matter commenced on September 4, 2001 and took approximately a week and a half to conclude.

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY V. R & S PROPERTIES, INC. (2003)

This was an eminent domain action. Plaintiff Santa Clara VTA sought to acquire fee title in and to a 67,902-square-foot parcel of property located in the City of Campbell for the Vasona Light Rail Project. The subject property was an approximate 1.5-acre parcel improved with automobile-repair-related uses. The issues at trial related to the highest and best use and fair market value of the property taken. The property owner's total appraised value was \$5,260,000. VTA's total appraised value was \$2,852,000. The jury verdict was \$2,852,000—right on VTA's numbers. The trial in this matter commenced on July 28, 2003 and took approximately one week to conclude.

Alameda County Flood Control & Water Conservation District, Zone 7 v. Ferreri Family Trust (2008)

This was an eminent domain action. The property was a 34-acre parcel. The landowner had previously taken steps to obtain entitlements for a "business park." Zone 7 sought to acquire a 1.41-acre strip of land for a permanent pipeline easement and a 2.8-acre strip of land for a 39.5-month temporary construction easement (TCE). The primary valuation issue was whether (in the wake of the California Supreme Court's decision in *Metropolitan Water District v. Campus Crusade for Christ* [2007] 41 Cal.4th 954 and the appellate court's decision in *City of Fremont v. Fisher* [2008] 160 Cal.App.4th 666) there were "temporary severance damages" to the remainder parcel caused by the TCE and, if so, the amount of temporary severance damages.

The landowner's appraiser initially valued temporary severance damages at \$2.35 million. After legal rulings by the trial court, the landowner's appraiser reduced his opinion of temporary severance damages to \$1.89 million. Zone 7's appraiser found no temporary severance damages. Before trial, the landowner's total "final offer" was \$2 million. The issue was tried before a jury, and the jury completely agreed with Zone 7's appraiser, finding that there were no temporary severance damages caused by the TCE.

Alameda County Flood Control & Water Conservation District, Zone 7 v. Land Factors, Inc. (2008)

This was an eminent domain action. The property was a 10.8-acre parcel which the landowner had previously obtained conditional approvals to construct a self-storage facility. Zone 7 sought to acquire a 12,311-square foot pipeline easement, and a 2.65-acre, 39.5-month TCE. The issues at trial related to the subject property's highest and best use; the value of the permanent pipeline easement; the value of the TCE; severance damages, if any, to the remainder parcel caused by the pipeline easement; and "temporary severance damages," if any, to the remainder parcel caused by the TCE. This case was tried prior to the Ferreri case listed above, but also involved application of the recent holdings in the Campus Crusade for Christ and Fisher cases relating to the temporary severance damages.

The landowner had two appraisers who offered total appraised values of \$3.82 million and \$3.93 million, respectively. Zone 7's appraiser offered a total appraised value of \$593,000. The landowner's "final offer" was \$3.5 million. The total amount awarded by the jury was \$1,351,344. This was \$2,468,656 and \$2,586,656 lower than the landowners' appraised values, and \$758,344 higher than Zone 7's appraised value.

(Mr. Skinner represented, and still represents, Zone 7 in acquiring numerous properties for the Altamont Water Treatment Plant and 11-mile water pipeline project in the City of Livermore.)

Sacramento Housing and Redevelopment Authority v. Rashid, et al. (2006)

Sacramento Redevelopment Agency sought to acquire several parcels for redevelopment purposes. In one case, the site was improved with a former gasoline service station and mini-mart business. Valuation issues included highest and best use, the value of the real estate and improvements, and entitlement to loss of business goodwill. The landowner's total appraised value at trial was \$919,000. After a bench trial on entitlement to loss of business goodwill, and a jury trial on the value of the land and improvements, the jury awarded \$492,000. The landowner's motion for litigation expenses for over \$250,000 was also denied.

City of San Diego v. Gondor (2004)

This was an eminent domain action. Plaintiff City of San Diego sought to acquire fee title in and to a portion of a larger parcel for the State Route 56 Freeway Project. The subject property was a 32.5-acre parcel of unimproved land which was entitled for suburban density development. The City sought to acquire 5.21 acres. The issues at trial related to highest and best use and fair market value of the property taken, severance damages, and project benefits.

The property owner's total appraised value was \$15,980,000. The City's total appraised value was \$2,605,000. The jury verdict was \$7,166,755. This was \$8,813,245 lower than the property owner's appraisal and \$4,561,755 higher than the City's appraisal. The trial in this matter occurred in March 2004, and took approximately two and a half weeks to conclude.

(From approximately 2000 to 2005, Mr. Skinner represented the City of San Diego in acquiring numerous properties for a 5-mile segment of the State Route 56 Freeway Project. Mr. Skinner filed 17 separate eminent domain actions on behalf of the City. Of those, six cases settled early on for small amounts. In another six cases, the landowners' appraisers valued the properties at over \$35 million, and the City's appraised value was \$14 million. These cases settled for \$24 million. The remaining five cases went to trial. The landowners' appraisers valued these properties at \$62.5 million, and the City's appraisers valued them at \$15.75 million. The juries combined awards in these five cases were in the sum of \$28.5 million).

City of San Diego v. D.R. Horton San Diego Holding Co. (2003)

This was an eminent domain action. Plaintiff City of San Diego sought to acquire fee title in and to a portion of a larger parcel for the State Route 56 Freeway Project. The subject property was a 39.38-acre parcel of unimproved land which was entitled for suburban density development. The City sought to acquire 12.69 developable acres. The issues at trial related to the highest and best use and fair market value of the property taken, severance damages, and project benefits.

The property owner's total appraised value was \$16,000,000. The City's total appraised value was \$4,925,000. The jury verdict was \$5,589,200. This was just \$664,200 higher than the City's appraised value and \$10,410,800 less than the owner's appraised value. The trial in this matter commenced on August 18, 2003, and took approximately two weeks to conclude. The landowner subsequently appealed this case, and the case was settled later for a higher amount.

Aetna Realty v. City of South San Francisco (2003)

This was an inverse condemnation / regulatory takings case. Aetna Realty, a developer, owned an approximate 25-acre parcel on Sign Hill in South San Francisco. The subject property includes slopes on Sign Hill in excess of 35 percent. Over a period of approximately 10 years, Aetna submitted three applications for a general plan amendment, zoning change and tentative map approval with the City. Aetna sought to build a 93-185 unit condemnation project on the steep slope of Sign Hill. The City deemed each of Aetna's applications as incomplete. Aetna failed to provide sufficient engineering and other information in any of its three applications. Aetna filed suit against the City, claiming that the City effectuated a regulatory taking without just compensation.

The trial court issued a written decision in favor of the City. The court found that Aetna's claim was not ripe for review. The court held that Aetna never submitted a meaningful application, which was finally decided on by the City, and that Aetna's claim of "futility" was without merit. The court trial in this matter commenced on June 23, 2003, and took approximately four weeks to conclude.

City of San Diego v. Barratt/Barczewski (2003)

This was an eminent domain action. Plaintiff City of San Diego sought to acquire fee title and temporary construction easements in and to a portion of a larger parcel for the State Route Freeway Project. The subject property was an approximate 26.3-acre parcel of unimproved land which was entitled for suburban residential density development. The City sought to acquire 8.32 acres in fee and 3.25 acres for temporary construction easements. The issues at trial related to the fair market value of the property taken, severance damages, and project benefits. The property owner's total appraised value was \$15,200,000. The City's total appraised value was \$3,845,000. The jury verdict was \$7,500,000. This was \$7,700,000 less than the owner's appraised value. The trial in this matter commenced on March 21, 2003, and took approximately two and a half weeks to conclude.

The Regents of the University of California v. Aaron Sheily, DDS (2002)

This was an eminent domain action. The Regents of the University of California sought to acquire the leasehold interest of a dental practice operating at a medical office building located at 1502 Wilshire Boulevard, Santa Monica, California. The Regents needed the property for the Santa Monica / UCLA Hospital Expansion Project.

The issue in the first phase of a bifurcated trial related to the dental practice's claim for loss of business goodwill. The dental practice had plans to open a new and separate practice in Marina Del Rey prior to obtaining knowledge of the Hospital Expansion Project. After the Regents filed its eminent domain action, the dental practice expended considerable time, effort and money in opening the new practice. While other medical offices located near the 1502 Wilshire Boulevard office were available, the dental practice chose not to consider them for purposes of relocating the Santa Monica practice.

Ultimately, the dental practice argued that its new Marina Del Rey practice was the relocation site for purposes of its loss of business goodwill claim. The dental practice claimed that it had \$451,000 in business goodwill at 1502 Wilshire Boulevard, and that it lost \$423,000 in goodwill as a result of moving to Marina Del Rey. The Regents, on the other hand, argued that the dental practice was not "entitled" to make a claim for loss of business goodwill under Code of Civil Procedure 1263.510(a). The Regents argued that the purported loss could have been prevented by (1) a relocation of the business in Santa Monica, and/or (2) taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill. A bench trial was held from April 9-12, 2002. The Court entered judgment in favor of The Regents, finding that the dental practice was not "entitled" to make a claim for loss of business goodwill. The trial court's ruling in this case was recently affirmed by the appellate court in a published decision. (2004) 19 Cal.Rptr. 3d 84.)

The Redevelopment Agency of the City of Livermore v. Jung H. Choi, et al. (2002)

This was an eminent domain action. The Redevelopment Agency of the City of Livermore sought to acquire the leasehold interest of a dental practice operating at a medical office building located at 1221 East Stanley Boulevard, Livermore, California. The Agency needed the property for the construction of the Valley Care Health System Expansion Project. The primary issue at trial related to the dental practice's claim for loss of business goodwill. The dental practice claimed it had \$167,000 in business goodwill, and lost it all as a result of the Agency's project. The Agency argued that the dental practice had \$220,000 in business goodwill, but lost just \$28,000 in business goodwill as a result of the project. Trial in this matter began on February 5, 2002 and lasted for one week. The jury verdict for loss of business goodwill was \$40,000. This was \$127,000 less than the dental practice's appraised value and \$12,000 more than the Agency's appraised value.

The Redevelopment Agency of the City of South San Francisco v. Kaul/Rizzetto (2002)

This was an eminent domain action. The Redevelopment Agency of the City of South San Francisco sought to acquire property located at 169 Harbor Way in order to proceed with the City of South San Francisco Downtown Central Redevelopment Project. The sole issue at trial related to the claim for loss of business goodwill of a welding and metal sales business. The welding business' goodwill appraiser valued the loss of goodwill at \$900,000. The Agency's business goodwill appraiser believed there was no loss of business goodwill. The parties stipulated to a bench trial. After trial, the Court agreed with the Agency that the welding business had no loss of business goodwill. The trial in this matter commenced on September 24, 2001 and took approximately a week and a half to conclude.

City of San Diego v. Rancho Penasquitos Partnership (2001)

This was an eminent domain action. Plaintiff the City of San Diego sought to acquire fee title in and to a certain portion of property for the State Route 56 Freeway Project. The subject property was an approximate 106.80-acre parcel of unimproved land owned by Rancho Penasquitos Partnership (RPP). Of the approximate 106.80-acre parcel, the City sought to acquire a 10.94-acre portion in fee. The issues at trial related to the fair market value of the property taken, severance damages, and project benefits. RPP's total appraised value was \$8,450,000. The City's total appraised value was \$2,406,200. RPP's last settlement demand was \$6,300,000. The City's last settlement offer was \$3,750,000. The jury's total award was \$3,906,210. This was \$4,543,790 less than RPP's appraised value, as compared to \$1,500,010 more than the City's appraised value. The jury verdict was also \$2,393,790 less than RPP's last settlement demand, as compared to just \$156,210 more than the City's last settlement offer. After the jury trial, RPP filed a motion for over \$500,000 in litigation expenses. The motion was denied. The trial in this matter commenced on January 8, 2001, and took approximately five weeks to conclude.

City of Livermore v. Miklyn Development (1999)

This was an eminent domain action. The City sought to acquire a portion of an unimproved parcel for the Vasco Road Widening and Improvement Project. The sole issue at the jury trial related to the property owner's claim for severance damages. The City's appraiser believed there were no severance damages. The owner's appraiser opined that there was over \$400,000 in severance damages. The jury verdict was for zero severance damages.

City of South San Francisco v. Mayer (1998)

This was an eminent domain action. Plaintiff City of South San Francisco was a lessee of a convention center. The City sought to acquire the lessor's interest and own the site outright. The City's appraiser valued the lessor's interest at approximately \$5,000,000. The lessor's appraiser valued the lessor's interest at approximately \$10,000,000. The correct valuation approach depended upon the interpretation of a lease. The trial court ruled in favor of the City's interpretation. In a published decision, the appellate court affirmed the trial court's decision. (See *City of South San Francisco v. Mayer* (1998) 67 Cal.App.4th 1350.)

City of Suisun City v. Suisun Shores Development (1997)

This was an eminent domain action. Plaintiff City of Suisun City sought to acquire approximately 11 acres of unimproved property for the Highway 12 Improvement and Wetlands Mitigation Project. The City's appraiser estimated total compensation at approximately \$1,290,000. The owner's appraiser estimated total compensation at over \$3,320,000. The jury verdict was \$1,300,000.

City of Salinas v. Swanson (1996)

This was an eminent domain action. Plaintiff City of Salinas acquired a portion of unimproved property for the expansion of a stormwater retention/detention basin. The case went to trial over the owner's Klopping claim (i.e., alleging that the City engaged in unreasonable precondemnation conduct which caused the owner to suffer precondemnation damages). The trial court found in favor of the City of Salinas.

Scotts Valley Water District v. Barnett (1995)

This was an eminent domain action. Plaintiff Water District sought to acquire a portion of a residentially zoned site for the expansion of its water treatment facilities. The property owner asserted a “right to take objection,” challenging the District’s ability to exercise its eminent domain authority. A court trial was held in Santa Cruz County. The trial court found in favor of the Water District.

PARTIAL LIST OF APPELLATE COURT DECISIONS

City of San Diego v. Barratt American (4th Dist. 2005) 128 Cal.App. 4th 917)

The Eminent Domain Law includes complex rules for the valuing of property in the “before condition.” One rule is that an appraiser must generally disregard the influence of the public project on the value of the property. In other words, the appraiser must assume—in a hypothetical analysis—that there is no public project. A second and related rule is that a landowner is generally not entitled to any increase in value (or “project enhanced” value) to his/her property caused by the public project. However, there is an exception to this rule: a landowner may obtain “project enhanced” value up to the point when it became probable that the property would be needed for the public improvement. This has been referred to as the date of “probable inclusion.” In practice, the application of these complicated valuation principles by attorneys and appraisers in eminent domain litigation has been difficult and at times contradictory. How can an appraiser assume a long-planned public project was never planned? If an appraiser must assume a public project was never planned, how can he/she argue that there was in fact “project enhanced” value up to the date of “probable inclusion”? The Barratt American case was the first published decision to recognize these practical difficulties.

City of San Diego v. Barratt American (4th Dist. 2005) Appeal Action No. D042582

In order to be entitled to compensation in an eminent domain proceeding, a person (1) must have an ownership interest in the property as of the date of the taking, and (2) must not have waived his/her right to compensation.

In the Barratt American case, a developer who had purchased the property from an individual contractually agreed that, if the City were to exercise its eminent domain authority in the future, only the individual would be entitled to compensation. However, when the City filed its complaint in eminent domain, the developer tried to make a claim for \$1.3 million in “severance damages,” suggesting that its waiver of compensation should not be construed as a waiver of severance damages.

The trial court ruled in favor of the City, holding that the developer was not entitled to make a claim for severance damages because the developer did not own the “part taken” and because the developer waived its right to claim any compensation. The appellate court affirmed. This case was not certified for publication in the official reports.

City of San Diego v. D.R. Horton Holding Company (4th Dist. 2005) 126 Cal.App. 4th 668)

When a public entity acquires a portion of a larger parcel in an eminent domain proceeding, the landowner may make a claim for severance damages (i.e., the diminution in value to the remainder parcel caused by the severance of the part taken, and/or caused by the public project). However, severance damages must be offset by benefits to the remainder parcel caused by the public project.

In rendering its verdict, a jury in an eminent domain case generally may award the amount of compensation requested by the landowner, the amount of compensation requested by the public entity, or anywhere in between. The D.R. Horton case addressed a situation where the jury verdict as to severance damages and benefits was within the range of values testified to by the landowner’s appraiser and the City’s appraiser, but where there was an alleged inconsistency in the special verdict in that the jury based its opinion of severance damages on the City’s appraiser’s conclusion, and its opinion of benefits on the landowner’s appraiser’s conclusion. The appellate court was asked to clarify whether this alleged inconsistent verdict was properly within the range of values testified to by the appraisers.

Regents of the University of California v. Sheily (2nd Dist. 2004) 122 Cal.App.4th 824)

In order to claim entitlement to loss of business goodwill, a business owner in an eminent domain proceeding must prove that he/she acted "reasonably" in attempting to relocate the business, or by taking steps and adopting procedures to preserve the goodwill. (CCP 1263.510(a)(2).) This statutory requirement has been in existence in California since 1975, yet there had been no published decision interpreting it.

The Sheily case involved the acquisition of a medical office building for the expansion of the UCLA / Santa Monica Hospital. A dentist made a claim for loss of business goodwill. The case went to trial over whether the dentist acted "reasonably" in attempting to relocate his practice. The trial court held that the dentist failed to prove that he acted reasonably and, therefore, that the dentist was not entitled to compensation for loss of business goodwill. In the first published decision interpreting CCP §1263.510(a)(2), the appellate court affirmed.

City of Saratoga v. Hinz (6th Dist. 2004) 115 Cal.App.4th 1202)

Local street and roadway improvement projects are commonly funded through the formation of assessment districts. Proposition 218 (approved by the voters of the State of California in November 1996) added Article XIII to the California Constitution. Under Proposition 218, along with prior decisional law, a public improvement that is funded by a special assessment must specially benefit the assessed property. The amount of the assessment cannot exceed the special benefit to the property. For this reason, a determination must be made as to whether properties within the proposed assessment district will receive a special benefit from the project, or merely a general benefit.

Hinz involved an eminent domain action to acquire an easement for ingress and egress over a portion of property that was already subject to an easement for a private road. Prior to the eminent domain action, the City had determined that some of the properties along the roadway (and within the assessment district) would receive a special benefit from the new public easement. After the City commenced the eminent domain action, a property owner who was not within the assessment district asserted a right to take objection challenging the City's ability to exercise its eminent domain authority. The owner argued (in part) that there was no public use necessitating the acquisition of his property because the City had already determined (in the formation of the assessment district) that only a few properties would specially benefit from the public right-of-way.

The trial court rejected this right to take objection, and the appellate court affirmed. Mr. Skinner was not lead counsel on this case, but provided assistance with regard to the appellate briefs.

City of San Diego v. Rancho Penasquitos Partnership (4th Dist. 2003) 105 Cal.App.4th 1013)

Established eminent domain case law requires an appraiser to consider lawful land use regulations in valuing the property that is the subject of the eminent domain action. However, statutory law (CCP §1263.330) requires an appraiser to disregard the influence of the public improvement project (necessitating the acquisition) in valuing the property.

This was an eminent domain action for a freeway project. The question on appeal was whether the parties' respective appraisers could consider a lawful land use regulation which conditioned suburban density development on the selection of the final alignment of the freeway in valuing the property. The appellate court affirmed the trial court's ruling that the appraisers could not consider the land use regulation under CCP §1263.330 because it contemplated the freeway project.

City of South San Francisco v. Mayer (1st Dist. 1998) 67 Cal.App.4th 1350)

Under established eminent domain case law, a public entity can acquire (by eminent domain) a lessor's interest in property and/or a lessee's interest in property, so long as the elements of public use and necessity are established.

In this eminent domain action, the City was the lessee of a conference center. The City sought to acquire the lessor's interest so that the City could own the conference center outright. The legal issues at trial related to (1) whether the

City's contractual obligation (as a lessee) impaired its ability to exercise its eminent domain authority to acquire the lessor's interest, and (2) assuming the City could exercise its eminent domain authority to acquire the lessor's interest, whether the property owner was entitled to compensation (for the land and the conference center improvements) based on its fee value (i.e., as unencumbered by the lease) or based on its leased fee value (i.e., as encumbered by the lease). The fee value was approximately \$10,000,000. The leased fee value was approximately \$5,000,000.

The trial court held that, notwithstanding the City's lease of the conference center site, the City could exercise its eminent domain authority to acquire the lessor's interest. The trial court further held that, since the City was only acquiring the lessor's interest in the property (not fee title), the owner was entitled to the leased fee value of the property. The appellate court affirmed.

City of Hollister v. McCullough (6th Dist. 1994) 26 Cal.App.4th 289)

In eminent domain cases there is a special rule of valuation relating to a portion of property which would have to be dedicated for infrastructure purposes in order for the remainder parcel to be developed to a higher and better use. Under this rule of valuation (known as the "Porterville" rule based on *City of Porterville v. Young* (1987) 195 Cal.App.3d 1260), that portion of property must be valued based upon the highest and best use of the property which would not trigger a dedication requirement.

In this case, the appellate court clarified that application of the Porterville rule can only be made if there is a reasonable probability that the plaintiff would probably have imposed the dedication condition if defendants had sought to develop the property and that the proposed dedication requirement would have been constitutionally permissible.

Mr. Skinner was not lead counsel on this case, but provided assistance on the legal arguments at the appellate stage.

Contra Costa County Flood Control and Water Conservation District v. Lone Tree Investments (1st Dist. 1992) 7 Cal.App.4th 930)

This was another eminent domain action involving the Porterville rule of valuation. The trial was bifurcated. The first phase involved a bench trial on the question of whether the subject property would have to be dedicated to the city in which the property was located as a condition of development approval. The trial court found that there was a reasonable probability that the city could and would require dedication of the property.

The second phase of the trial involved a jury trial on the question of valuation. The plaintiff requested that one of the jury instructions make it clear that the use that could be made of the condemned parcel without triggering a dedication requirement is agricultural. The trial court refused to give this instruction, but the appellate court reversed.

Mr. Skinner was not lead counsel on this case, but provided assistance on the appeal.

PRESENTATIONS AND PUBLICATIONS

Below is a partial list of Mr. Skinner's speaking engagements.

- Speaker, "Implications of Proposition 98 and Proposition 99 on Eminent Domain Law," International Right of Way Association Chapter 2 Meeting, Pleasanton, CA, May 2008
- Speaker, "New Standards for Acquiring "Probability of Rezoning" Under Campus Crusade for Christ case and Trial Preparation," Northern California Appraisal Institution Annual Retreat, Woodside, CA, May 2008

- Testimony before California State Senate Judiciary Committee, "Implications of Proposition 98 on Eminent Domain Law," Sacramento, CA, April 2008
- Speaker, "Implications of Proposition 98 on Eminent Domain Law," Meyers Nave seminar, April 2008
- Speaker, "Trial Strategies in Eminent Domain Law," California Continuing Legal Education Seminar, San Francisco, CA, December 2007
- Speaker, "Trial Preparation," Northern California Appraisal Institute Presentation, San Francisco, CA, October 2007
- Organizer of agenda, presenter (multiple sessions) and moderator of day-long seminar on "Eminent Domain in California," Lorman Education Services, Eminent Domain Seminar, Oakland, CA, May 2007
- Speaker, "New Requirements for Obtaining Orders for Possession," International Right of Way Association, Chapter 2 Meeting, Pleasanton, CA, March 2007
- Speaker, "New Requirements for Obtaining Orders for Possession," International Right of Way Association, Chapter 27 Meeting, Sacramento, CA, February 2007
- Speaker, "Opening Statement and Closing Argument at Trial," California Continuing Legal Education Seminar on Eminent Domain in California, San Francisco, CA, December 2006
- Speaker, "Implications of Proposition 90 on Eminent Domain Law," National Airport Association Annual Seminar, Reno, Nevada, September 2006
- Co-author, "Will Eminent Domain for Redevelopment Purposes Survive Legislative Changes After Kelo?," *California Real Property Journal* (Vol. 24, No. 2), April 2006
- Speaker, "Challenges facing Public Entities in Eminent Domain Litigation," California Special Districts Association Annual Retreat, Sonoma, CA, March 2006
- Organizer of agenda, presenter (multiple sessions) and moderator of day-long seminar on "The Future of Eminent Domain for Redevelopment Purposes in California after 'Kelo' and Update on Recent Eminent Domain Decisions," Lorman Education Services Seminar on Eminent Domain, Oakland, CA, December 2005
- Speaker, "Trial Preparation," Northern California Appraisal Institute Seminar, San Francisco, CA, October 2005
- Speaker, "Update on 'Project Benefits' in Valuation Analysis," California Continuing Legal Education Eminent Domain Seminar, San Francisco, CA, October 2004
- Speaker, "Legal Issues on Entitlement to and Valuation of Loss of Business Goodwill," International Right of Way Association Chapter 27 Meeting, Sacramento, CA, May 2004
- Speaker, "Trial Tactics," California Continuing Legal Education Eminent Domain Seminar, San Francisco, CA, October 2003
- Speaker, "Trial Tactics," California Continuing Legal Education Eminent Domain Seminar, San Francisco, CA, October 2002
- Speaker, "Eminent Domain for Redevelopment Purposes," California Redevelopment Association Seminar on Eminent Domain, Pleasanton, CA, September 2002
- Speaker, "Loss of Business Goodwill in Eminent Domain Proceedings," County Counsel's Association of California Public Works and Contracts Annual Retreat, Palm Springs, CA, May 2002
- Speaker, "Overview of Substantive Law of Regulatory Takings," California Continuing Legal Education Regulatory Takings Seminar, Los Angeles, CA, March 2002

- Speaker, "Discovery Process in Eminent Domain Litigation," California Continuing Legal Education Eminent Domain Seminar, San Francisco, CA, October 2001
- Speaker, "Update on Eminent Domain Valuation Issues," Northern California Appraisal Institute Annual Seminar, Sacramento, CA, March 2001