The Override

Every Landman Wants One!

Volume 1, Issue 2 | September, 2006

Los Angeles Association of Professional Landmen

INSIDE THIS ISSUE:

President's Message

Kevin Rupp, CPL
Independent

Again, succinct and to the point, the September luncheon is a meeting not to miss. Edward S. Renwick, Esq. of Hanna and Morton LLP, will address the membership and guests on the issue of the 99 year limitation affecting leases. Not that any of us were around a century ago negotiating these instruments, but we are sure in need of understanding the limitations of a 99 year oil and gas lease, should it become an issue. Rest assured, there are those who are looking to break a lease on any grounds they can find to get "big" oil out of the picture.

I hope you all had a great summer. I look forward to our meetings ahead and am sure enjoying the price of oil these days as I am sure you are too!

See you at the meeting.
Best regards.
Kevin Rupp

Nice addition to a beautiful sunset!

Keeping Connected

Take advantage of these LAAPL resources.

- Website - www.laapl.com
- The Override newsletter
- Meetings
- Activities
- Membership Directory

2006 MICKLESON GOLF CLASSIC A SUCCESS

Edgar G. Salazar
Plains Exploration & Production Company
Golf Committee Chairperson

The 2nd annual LAAPL Mickelson Golf Classic held at the Malibu Country Club on August 4 was a rousing success. 28 golfers, numerous sponsors, generosity and assistance from many supported the LAAPL in raising over $4000 to the benefit of the R.M. Pyles Boys Camp.

After a brief morning overcast, the fog dissipated for a perfect day of golf; 85 degrees and a slight breeze. The ideal conditions led to low scores posted by at least two scramble teams; 1st place, Gary Plotner, Mike McPhetridge, Jim Drennan and Dan Sparks with the incredible score of 59; 2nd place Joel Miller and Larry McCamish (Kevin Rupp in spiritual support) with a "not to shabby" 61. Individual honors, Gary Plotner, longest drive and Joel Miller, closest to the pin.

Stephen Makoff, Executive Director of R.M. Pyles Boys Camp, addressed the dinner crowd, citing moving examples of the successes of his outstanding organization.

Then on with the raffle where outstanding prizes were provided, including airline tickets, vacation stays to beach destinations, and many more. Though Gary Plotner didn't win any of the big ticket prizes, he seemed to be in the receiving end of golf honors and several other prizes; congratulations Gary on a big day.

Once again, the LAAPL thanks everyone for their support and generous contributions to this fundraiser. We look forward to the 3rd Annual Michelson Golf Classic in 2007.

Editor's Corner

Joe Munsey, Newsletter Chair, Sempra Energy - Utilities

Summer has ended, company vacation times have been depleted and the end of the year is fast approaching. How many days left to Christmas? OK – let's get the Thanksgiving Holidays celebrated before we zero in on the end of the year celebrations. Other than that.....how's your professional life going since our last meeting? You can email with your answers or see me at the meeting with your responses. Would prefer to see you at the September meeting!

We would like to welcome Randy Taylor of Taylor Land Services as our publisher of the "Override." Randy stepped up to the plate and informed me he would hit the ball out of the park with his expertise in newsletter publishing. What enthusiasm this landman has for the Los Angeles Chapter! I believe his gusto to do the impossible results from i.) A sore arm from being twisted, ii.) The prestige of holding the duties of being the publisher, iii.) Did not have the heart to tell his close professional colleague (me?) to look elsewhere, iv.) The Editor would not take no for an answer. I think we heard of these tactics before.

We may have a few "kinks" to work before we resume a perfected publication, so we apologize in advance in the event some our fine advertisements are dropped this month. Randall is truly an expert with programs and will resume all advertisement in the next issue. Like any other professional landman, he has found himself fully billable *somewhere* in Colorado. As such, packing 'em up and unpacking came at a time when this newsletter was ready to go out to the members.

This month, we are pleased our guest writer, Keith McCollough, Esquire, of the Law Firm of Adornoa Yoss Alvarado & Smith, has submitted his article, "Eminent Domain: One of State's Most Expensive Takings Presents Novel Issues." Keith and I have served together on the Board of Chapter 67 – International Right of Way Association. Not only is Keith an expert on eminent domain, but he has an extensive water rights background.

We have a wonderful speaker lined up for our September luncheon, the respected Edward S. Renwick, Esq. of Hanna and Morton LLP, will once again address the membership and guests with his much anticipated subject on the issue of the 99 year limitation affecting leases. When your 99 year oil and gas lease reaches that last year and still is producing….what next?

Look forward to seeing everyone at the Long Beach Petroleum Club for our September meeting.

LOCAL LAAPL MEMBERS RECEIVE AWARDS

It is with great pleasure in announcing to the LAAPL membership that two our members received awards during the summer. Please offer "kudos" to these individuals:

Jack Quirk, Esq., of Bright & Brown, was recipient of the AAPL 2006 Education Award at the AAPL's annual meeting held in San Diego.

Joe Munsey, Sempra Energy – Utilities, was recipient of the First Place Newsletter (Editor) for chapters with more than 100 members at the IRWA's annual education seminar held in Denver.

Lawyer's Joke of the Month

Jack Quirk, Esq.
Bright and Brown

A glowering adverse counsel began his questioning of petite young women, appearing as a witness in a complicated divorce, by asking what she did for a living.

"I'm an attorney," she said."

To which he replied, "Why I could pick you up and put you in my back pocket."

"Perhaps you should," she replied, "and then you would have more legal knowledge in your pants than you ever had in your head."

NEW MEMBERS

No New Members

TRANSFERS

No Member Transfers

Taylor Land Service

Randall Taylor
Petroleum Landman
949-235-7307
randall@taylorlandservice.com

Case of the Month

Lease Operators Beware:

Drilling Contract Can Shield Drilling Contractor From Liability

For Negligence and Regulatory Violations

By: L. Rae Connet, Esq.

Petroland Services

CAZA DRILLING (CALIFORNIA), INC. v. TEG OIL & GAS U.S.A., INC.,

(Slip Opinion, August 29, 2006, B182892, Calif. Court of Appeal, Second Appellate District, Fourth Appellate Division)

In 2002, TEG Oil & Gas U.S.A., Inc. ("TEG") hired CAZA Drilling (California), Inc. ("CAZA") to drill a well at the Tapia oil field, located in Castaic, California. The parties entered into CAZA's standardized contract entitled "Daywork Drilling Contract - U.S." The same document also included CAZA's "Drilling Bid Proposal." During drilling, there was a blowout, resulting in the death of a CAZA employee, injury to others, and complete destruction of the well. TEG contended that the blowout was the result of the negligence of CAZA's crew in pulling the drillstring out of the well hole too quickly (referred to as "swabbing in"), which caused a fire to ignite. TEG further contended that CAZA's crew committed further negligence by failing to close the blowout preventer after the fire began.

CAZA sued TEG for breach of contract to collect on unpaid fees. TEG filed a cross-complaint for breach of contract, negligence, and negligence per se based on violations of various safety provisions contained in state and federal regulations. TEG alleged that it suffered "damage to the Well and the hole, as well as unexpected and otherwise unnecessary cleanup and remediation damage, and losses to [its'] business operations." TEG was also sued by the survivors of the deceased CAZA worker (Currington et al., v. TEG Oil & Gas U.S.A. et al. (Super. Ct. Los Angeles County, 2003, No. PC033424). However, in its cross-complaint TEG did not seek recovery from CAZA for damages paid to the plaintiffs in the Currington lawsuit, as CAZA, through its insurer, had accepted liability for the bodily injury that occurred as the result of the blowout, and had defended and indemnified TEG in that litigation.

The trial court entered summary judgment in favor of CAZA on TEG's cross-complaint and TEG appealed. At issue were the exculpatory and limitation of liability provisions in the CAZA drilling contract.[2] CAZA argued that said provisions precluded recovery of the

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[1]**Under the 2002 CAZA Daywork Drilling Contract, CAZA charged approximately $7,780 per day, plus approximately $6,000 for mobilization and demobilization costs. In 2006, the per day charge for a drilling rig is upwards of $40,000.**

[2]**Paragraph 14 of CAZA's standard contract described in detail the parties' respective "RESPONSIBILITY FOR LOSS OR DAMAGE, INDEMNITY, RELEASE OF LIABILITY AND ALLOCATION OF RISK." Therein, each party agreed to be liable for damage to its own equipment, with certain limited exceptions, and for injury to its own employees. The Operator accepted responsibility for damage to the hole and the underground minerals and for regaining control of a "wild well." The parties allocated liability for "Pollution and Contamination" between themselves, depending on the cause. Both parties agreed to limited liability for the other's consequential damages. Paragraph 14 made clear the parties' intention to limit TEG's ability to recover for injury resulting from accidents, even those caused by the negligence of CAZA.**

In subparagraph 14.4 the operator assumed liability "for damage to or destruction of Operator's equipment...regardless of when or how such damage or destruction occurs," and agreed to "release Contractor of any liability for any such loss or damage."

Under subparagraph 14.5, the operator agreed to "be solely responsible for ...damage to or loss of the hole, including the casing therein" and agreed to "release Contractor [CAZA] of any liability for damage to or loss of the hole" and further agreed to "protect, defend and indemnify Contractor from and against any and all claims, liability, and expense relating to such damage to or loss of the hole."

In subparagraph 14.6, the operator released the contractor from liability for, and agreed to indemnify the contractor from and against claims "on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water" unless "reduced to physical possession above the surface of the earth," and for "any loss or damage to any formation, strata, or reservoir beneath the surface of the earth."

In subparagraphs 14.8 and 14.9 the parties agreed to indemnify each other for claims based on injuries to their own employees "without regard to the cause or causes thereof or the negligence of any party or parties."

In subparagraph 14.10 the operator agreed to accept liability "for the cost of regaining control of any wild well, as well as for cost of removal of any debris."

Subparagraph 14.11 covered "Pollution and Contamination," and provided as follows: "Notwithstanding anything to the contrary contained herein, except the provisions of Paragraphs 10 and 12, it is understood and agreed by and between Contractor and Operator that the responsibility for pollution and contamination shall be as follows: [¶] (a) Unless otherwise provided herein, Contractor [CAZA] shall assume all responsibility for, including control and removal of, and shall protect, defend and indemnity Operator from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination, which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Contractor's possession and control and directly associated with Contractor's equipment and facilities. (b) Operator [TEG] shall assume all responsibility for, including control and removal of, and shall protect, defend and indemnify Contractor from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly from all other pollution or contamination which may occur during the conduct of operations hereunder, including, but not limited to, that which may result from fire, blowout, cratering, seepage of any other uncontrolled flow of oil, gas, water or other substance, as well as the use or disposition of all drilling fluids, including, but not limited to, oil emulsion, oil base or chemically treated drilling fluids, contaminated cuttings or cavings, lost circulation and fish recovery materials and fluids. Operator shall release Contractor of any liability for the foregoing."

In subparagraph 14.12 the parties agreed that neither party is liable to the other for "special, indirect or consequential damages resulting from or arising out of this Contract, including, without limitation, loss of profit or business interruptions including loss or delay of production, however same may be caused."

Finally, in subparagraph 14.13 entitled "Indemnity Obligation," the parties agreed that: "Except as otherwise expressly limited herein, it is the intent of parties hereto that all releases, indemnity obligations and/or liabilities assumed by such parties under terms of this Contract, including, without limitation, Subparagraphs 14.1 through 14.12 hereof, be without limit and without regard to the cause or causes thereof (including preexisting conditions), strict liability, regulatory or statutory liability, breach of warranty (express or implied), any theory of tort, breach of contract or the negligence of any party or parties, whether such negligence be sole, joint or concurrent, active or passive."

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types of damages TEG sought in its cross-complaint. TEG argued that the exculpatory and limitation of liability provisions in the parties' agreement were invalid under California Civil Code section 1668 (section 1668), which prohibits enforcement of contracts that have for their object the exemption of parties from responsibility for fraud, willful injury, or violations of law.

The Court of Appeal affirmed the trial court's judgment, holding that the contractual provisions in CAZA's standard drilling contract represented a valid limitation on liability. Further, the Court of Appeal held that TEG failed to identify a specific law or regulation potentially violated by CAZA. Moreover, the Court of Appeal held that "there is no reason to interpret [California regulations designed to prevent blowouts] as imposing legal responsibility on a contractor like CAZA, when all the other statutes and regulations in this area are clearly directed at the owner or operator." (CAZA, Slip Opinion, pp. 32-33.)

The Caza decision is important with respect to interpretation of exculpatory and limitation of liability contractual provisions, and is certainly a decision that oil operators should be aware of and use to guide their actions. However, the Court's far-reaching, broad-stroke analysis of various statutory and regulatory provisions regarding safety in drilling operations was unnecessary and is disturbing in its simplicity, as the Court's holding may, in the long run, prove detrimental to oil and gas operators throughout California.

I.

Exculpatory and Limitation of Liability Provisions

An exculpatory clause is one that relieves a party from the consequences of its own negligence. A limitation of liability clause is one that limits the amount and/or type of damages that a party may recover from another party to the contract. In the CAZA case, the Operator, TEG, argued that the exculpatory and limitation of liability provisions in the CAZA contract were against public policy because they allowed a party to a contract to avoid the consequences of its own negligence. TEG's argument did not prevail and the Court in CAZA stated, "there is nothing to hinder a 'voluntary transaction in which one party, for a consideration, agrees to shoulder a risk which the law would otherwise have placed upon the other party.' (*Tunkl*, *supra*, 60 Cal.2d at p. 101.) Such an agreement may, however, run afoul of section 1668…." (CAZA, Slip Opinion, p. 17.)

California Civil Code Section 1668 provides, in pertinent part, as follows:

> "[a]ll contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

Early interpretations of section 1668 held that it absolutely prohibited contractual provisions whereby a party attempted to limit its liability for its own negligence. (*England v. Lyon Fireproof Storage Co.* (1928) 94 Cal.App. 562.) However, citing the case of *Tunkl v. Regents of University of California* (1963) 60 Cal.2d 92 the Court in CAZA found that such early interpretations do not represent the current state of the law, and held that a party may limit its liability for a contractual duty it has undertaken to perform even when that duty is negligently performed. (CAZA, Slip Opinion, p. 16.)

In *Tunkl*, the California Supreme Court concluded that exculpatory clauses relieving a party from the consequences of its own negligence cannot be enforced where the public interest was involved, even if the conduct did not involve a violation of law. There, the Court announced six factors to consider in determining whether a particular transaction implicates the public interest: (1) the transaction "concerns a business of a type generally thought suitable for public regulation"; (2) "[t]he party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public"; (3) "[t]he party holds himself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards"; (4) "[a]s a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services"; (5) "[i]n exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence"; and (6) "[a]s a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents." (*Tunkl*, *supra*, 60 Cal.2d at pp. 98-101, fns. Omitted.)

The Operator, TEG, argued that the factors listed in *Tunkl* were present in the CAZA transaction, but the Court of Appeal disagreed, stating:

> "it is difficult to imagine a situation where a contract [between relatively equal business entities] would meet more than one or two of the requirements discussed in *Tunkl*. With respect to the second and third factors, for example, CAZA did not hold itself out as performing services for the public, but only for the small number of entities that happened to be oil field operators. While the production of oil is of great importance to the public, the drilling of a particular oil well is generally only important to the party who will profit from it. With respect to the fourth and fifth factors, appellants' argument that it was forced into an adhesion contract boils down to this: 'Although two provisions in the agreement were altered during negotiations, we did not know

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> we could alter any provisions during negotiations.' The fact that TEG found itself backed into a corner in late 2002 as a result of failure to plan ahead and had no choice but to deal with the only company that had a suitable drill rig available at that specific point in time, is not the sort of unequal bargaining power to which the court in *Tunkl* referred." (CAZA, Slip Opinion, p. 19.)

"CAZA's services may have been essential to TEG, but the agreement between the parties did not implicate the public interest in the way required to abrogate exculpatory provisions limiting liability for negligence under *Tunkl* " (CAZA, Slip Opinion, p. 20.) The Court's holding in this respect is noteworthy because the only evidence as to the relative strength of the two parties before the Court was the fact that TEG's parent company, Sefton Resources, Inc., "had a market capitalization between $3 and $4 million." (CAZA, Slip Opinion, p. 9.) No evidence was before the Court as to the economic size or strength of CAZA. Even by 2002 standards, an oil operator of such size would be considered a very small operator on the California landscape and would not likely have been in position to have negotiated any substantial alterations to CAZA's standard drilling contract.

II.

Contractual Provisions Limiting Liability Based on Violations of Law Are Permissible

TEG further argued that section 1668 invalidates any exculpatory language that would relieve CAZA of liability for performing drilling operations in violation of law "without regard to whether any public interest [was] involved." (*Emphasis added*.)

The Court distinguished the cases relied on by TEG by the fact that the contract here was between two business entities and the damages claimed are entirely economic. (CAZA, Slip Opinion, p. 22.) The Court further distinguished the recent case of *Health Net of California, Inc. v. Department of Health Services* (2003) 113 Cal.App.4th 224, where section 1668 was applied to invalidate provisions in a contract between business entities on the grounds that the exculpatory clause at issue in that case prohibited the recovery of any damages at all for the party's statutory or regulatory violations and exempted the party completely from responsibility for its wrongs. (CAZA, Slip Opinion, p. 22.)

> "[W]e conclude that the challenged provisions in the 2002 Daywork Drilling Contract represent a valid limitation on liability rather than an improper attempt to exempt a contracting party from responsibility for violation of law within the meaning of section 1668. CAZA did not seek or obtain complete exemption from culpability on account of its potential negligence or violation of any applicable regulations. It merely sought to limit its liability for economic harm suffered by TEG. The parties foresaw the possibility that a blowout could occur and agreed between themselves concerning where the losses would fall." (CAZA, Slip Opinion P. 28-29.)

III.

Drilling Contractors Not Liable for Violations of Statutes and Regulations Governing Blowout Prevention

The Operator, TEG, also alleged that CAZA had violated various safety provisions contained in state and federal regulations and, accordingly, should not be able to avoid liability for its own violations. Having reached the conclusions stated above, the Court of Appeal did not need to decide this issue at all, as the Court had already concluded that the CAZA drilling contract was a valid limitation on liability and even if CAZA had violated a statute or regulation TEG was prevented from recovering damages against CAZA. Nevertheless, the Court of Appeal proceeded to analyze TEG's contentions with respect to the claimed regulatory violations.

First, the Court criticized TEG for failing to properly cite the relevant statutes and regulations. Then, the Court went on to analyze portions of the Public Resources Code and the California Code of Regulations, and based on such analysis concluded, generally, that the statutory and regulatory scheme governing drilling operations does not impose a duty to prevent blowouts, explosions, and fires on a drilling company hired on a daywork basis, that this duty is imposed solely on the lease operator. The Court considered Public Resources Code section 3219, which provides that: "*Any person engaged in operating any oil or gas well* wherein high pressure gas is known to exist, *and any person drilling for oil or gas* in any district where the pressure of oil or gas is unknown shall equip the well with casing of sufficient strength, and with such other safety devices as may be necessary, in accordance with methods approved by the supervisor, and shall use every effort and endeavor effectually to prevent blowouts, explosions, and fires." (Empahsis added.) The Court focused on the words "*any person engaged in operating any oil or gas well*" and completely ignored the phrase "*and any person drilling for oil or gas*."

Then, the Court applied the definition of an "operator" found in Public Resources section 3009 as "any person who, by virtue of ownership, or under the authority of a lease or any other agreement, has the right to drill, operate, maintain, or control a well" and concluded that "[i]t would be stretching the definition of 'operator' to include a company performing drilling work by the day." (CAZA, Slip Opinion p. 31.)

The Court went on to analyze a number of statutes and regulations, including Public Resources Code sections 3203, 3204, 3210, 3211, 3220, 3227, 3228, 3229. 3230 and 3232 and California Code of Regulations, title 14, sections 1722, 1722.1.1, 1722.2, 1722.3, 1722.4, 1722.5 and 1722.6. The Court concluded that "while not specifically referencing owners or operators, [these provisions] impose duties that a drilling company hired on a daywork basis could not reasonably be expected to

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undertake."
(CAZA, Slip Opinion p. 32.)
The broad and overly generalized conclusions reached by the Court with respect to the duties imposed on drilling contractors under the Public Resources Code and title 14 of the Code of Regulations are unfortunate judicial pronouncements that may have far reaching and unintended consequences. The issue of whether or not CAZA had violated any statutory or regulatory provisions was not necessary to a resolution of the case, and the Court was not required to reach this issue. It is therefore, arguably, mere dicta. However, it is not hard to envision the absolute liability shield that drilling contractors will argue comes out of the CAZA case. Moreover, it is probable that other subcontracting entities in the oil and gas industry will seek shelter under this shield and attempt to avoid all liability for any violations of the Public Resources Code or title 14 of the Code of Regulations, and shift all burden for complying with the Code and Regulations to lease operators. California operators should beware and take a hard look at all contractual provisions in their subcontractor agreements.

SPEAKER FOR *SEPTEMBER* LUNCHEON

WHAT ABOUT THAT 99 YEAR LEASE?
(Can I Produce After 99 Years?)

Edward S. Renwick specializes in trying cases and arguing appeals, in representing clients before administrative and legislative bodies, in helping clients settle and avoid disputes, including acting as a mediator, and in counseling clients in transactional matters, particularly in the energy and oil and gas industries

He is experienced in natural resources and environmental matters such as contaminated property, ground-water problems, air quality matters, CERCLA, RCRA, toxic torts, natural gas pricing, geothermal resources, oil and gas, zoning, title matters, alternative energy, renewable energy and land use. He also has handled cases involving contract disputes, constitutional issues, antitrust law, partnership accounting, trusts and estates, income taxation and property taxation.

In addition to maintaining his law practice, Mr. Renwick served as vice president and general counsel of a California independent oil and gas company from 1973 through 1991.

Since 1974, Mr. Renwick has been a Fellow of the American College of Trial Lawyers, to which admission is by invitation only and is "limited to those trial lawyers who are outstanding and considered the best in a state."

CHAPTER RESUMES BUSINESS MEETINGS

The Chapter's Executive Board begins its quarterly board meetings as we head into the Fall Season on September 21st at 11:00 AM. We encourage members to attend and see your Executive Board in full action.

The Executive Board meets the third Tuesday of our quarterly month at 11:00 AM at the Long Beach Petroleum Club.

Guest Article

Eminent Domain: One of State's Most Expensive Takings Presents Novel Issues

By Keith McCullough, Esquire
Adorno Yoss Alvarado & Smith

What is a property owner entitled to be paid when eminent domain is used to take a development project already under construction? Does the notion of "fair market value" provide sufficient constitutional protections? Is the property owner entitled to be compensated for the value of construction, financing and other contracts already in place? The Hemisphere high rise condominium project was to be built on a .75 acre parcel between 1st and 2nd Streets just south of Market Street in San Francisco; until, that is, the City and County of San Francisco and the Transbay Joint Powers Agency determined the property should be used to expand a regional transportation terminal.

Through the efforts of the owner, Myers Development Company, the Hemisphere project was fully entitled, building permits had been issued, and pile driving activities for foundation support were nearing completion when the City passed a resolution to condemn the property. Keith McCullough of Adorno Yoss Alvarado & Smith was lead eminent domain counsel for Myers Development in this taking that became one of the highest-valued single parcel public acquisitions in state history.

Construction financing, architectural and design teams, a prime contractor, material suppliers, and a host of other project support contracts and consultants were already in place and operating by the time condemnation proceedings commenced. With the adoption of a condemnation resolution by the City, work and progress on the project immediately ceased. But what was Myers entitled to in compensation for the taking of the property? Never before in California has the appropriate measure of eminent domain compensation for a project of such magnitude and progress been examined in the reported cases of the State's appellate courts. There was no direct legal precedent addressing the elements of compensation to which Myers Development was entitled beyond the generic "fair market value".

There have been reported cases addressing the statutory prohibition against compensation for improvements to property commenced or completed after the issuance of summons in eminent domain litigation (See *California Code of Civil Procedure §1263.240*). One such recent action involved the post-summons construction of a satellite campus of Azusa Pacific University. (See *Mt. San Jacinto Comm. College District v. Superior Court* (2005) 126 Cal.App.4th 619; Supreme Court review granted on other grounds and therefore not citable) However, no statute or reported case gave direction as to whether Myers was entitled to be compensated for anticipated project profits proportionate to the level of project completion at the time of the lawsuit. Nor did reported cases address whether Myers should be compensated for the value of the many contracts in place for the assembled project. There was no direct legal precedent mandating that Myers be paid all or some portion of a "going concern value" of the residential high rise project that was underway. Nor did cases or statutes address specifically whether Myers was to be reimbursed for the $100,000s in interest that was accruing monthly on construction financing while the eminent domain action was pending. The City had made no deposit of probable compensation and had sought no order for possession of the property, but the effect of Section 1263.240, *supra*, and the Notice of Pendency of Action recorded against the property had caused progress on the project to come to a crashing halt.

The City's initial offer was $32.5 million; the parties settled at $58 million. What remains to be seen is how the courts will treat the elements of compensation that were pertinent to the City/Myers Development settlement. In this era when infrastructure in the state is groaning under the weight of years of neglect, when our urban centers continue to expand, and when residential developments have gone vertical even in San Jose and Orange County, the necessary public acquisition of private property to build and improve infrastructure will necessarily be more complex. Issues of proper compensation in this climate will be the subject of judicial opinions in the years to come. What strategies will your organization employ to address these issues?