

# NJBIZ

ALL BUSINESS ♦ ALL NEW JERSEY

HAMILTON

## Driving Up the Costs of Eminent Domain

*Law firms win fatter payments for clients in condemnation cases*

By Shankar P.

Amid the growing furor over eminent domain, some law firms and clients are striking pay dirt. "Condemnation went from the back pages to the front pages with one decision of the Supreme Court," says Drew Kapur, a partner in the Duane Morris law firm, which has offices in Princeton and Philadelphia, and has seen eminent domain cases surge.

The landmark decision Kapur mentioned was last year's U.S. Supreme Court ruling that validated the right of New London, Conn., to seize non-blighted property for use by a private developer.

The decision outraged property owners and left open questions about the fairness of eminent domain that continue to find their way to court. Among the concerned parties has been Gov. Jon Corzine, who says many New Jersey towns abuse condemnation and has asked state Public Advocate Ronald Chen to investigate its use and suggest reforms.

Kapur and Duane Morris partner George Kroclic and associate Michael McCalley set up the firm's real estate litigation practice last November amid such second thoughts about eminent domain. They moved the practice as a team from the Philadelphia law firm of Ballard Spahr Andrews & Ingersoll, where all three had been employed.

"We have at least 50 open files involving eminent domain, 95% of which are in New Jersey," says Kapur, who represents both property owners and government bodies. As a

deputy state attorney general from 1987 to 2003, he handled condemnation actions on behalf of agencies like the New Jersey Department of Transportation.

Also seeing a jump in eminent domain cases has been attorney William Ward at the Florham Park law firm Carlin & Ward. "Business is up about 25% this year," he says.

Settlement amounts are increasing too. Attorney John Buonocore of McKirdy & Riskin in Morristown last month settled a case in which the city of Hoboken originally offered \$923,000 for a 15,000-sq.-ft. industrial building. The city agreed to fork over \$3.5 million after the owner chose to fight.

"In the past courts were likely to approve redevelopment designations [for eminent domain]," says Buonocore. "These days judges are paying closer attention to whether conditions in an area are truly blighted."

Marvin Brauth, attorney and shareholder at the Woodbridge law firm of Wilentz, Goldman & Spitzer, says it's hardly surprising that property owners are winning increased compensation amounts after contesting first offers. "Appraisal is an art, not a science," says Brauth.

But he sees little direct impact on cases from last year's Supreme Court ruling, which came in *Kelo v. City of New London*. "It is not my experience that [compensation] awards are any higher or that challenges have been more successful after *Kelo*," Brauth says.

With or without fallout from *Kelo*, some property owners are scoring big victories. Last August an Essex County court dismissed an eminent domain case brought by the city of Bloomfield against 100 Washington Street Associates, represented by Carlin & Ward. Developers Toll Brothers and Forest City Ratner wanted to build 650 condos and a 65,000-sq.-ft. retail center at the site, which houses a toy factory that has been vacant for years. ♦

Last February Carlin & Ward won \$2.1 million for an office building in Englewood Cliffs owned by physician Harris Soubliis. The city initially offered \$1.1 million after assessing the property at \$1.8 million. Ward says law firms typically take these cases on a contingency fee basis, collecting fees equal to one-third of the extra compensation they win for clients. They get nothing if they lose.

Ward currently represents property owners in high-profile condemnation actions in Asbury Park and Long Branch. He expects a ruling soon in a case in which developers want to build a housing project in Long Branch on a site now occupied by some 20 homes.

At Duane Morris, Kapur client Sunoco earlier this year got more than three times the amount it was originally offered for a gas station in Montgomery located on Rt. 206 across the street from Princeton. Montgomery first offered \$250,000 for the property, where it plans to build a ramp to connect a side street to Rt. 206.

After a fresh appraisal of the property, Montgomery agreed to buy it for \$800,000.

Kapur's team last year represented a Burlington County farmer when the New Jersey Department of Transportation tried to buy his 20-acre soybean farm for \$700,000 and turn it into a storm-water retention basin. After the farmer argued that the land would be worth more if it were developed as a shopping center, the state agreed to pay \$1.65 million.

In a case with a different kind of resolution, the New Jersey Turnpike Authority had sought to have Kapur client British Petroleum move one of four fuel tanks located near Exit 12 to make room for an interchange improvement. Following negotiations, the authority last year built a new tank for British Petroleum at a cost of \$6 million, instead of haggling over how much to pay the company in compensation. ♦



Robin Zieliński

Kapur courts land issues.