



# Eminent Domain & Valuation: Representative Cases

## PUBLIC AGENCY REPRESENTATION

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***Action Sales and Metal Co., et al. v. Alameda Corridor Transportation Authority.*** Nossaman represented ACTA in this inverse condemnation action filed in connection with the construction of the Pacific Coast Highway Triple Grade Separation Project. Plaintiffs sought compensation of almost \$10 million for claims relating to construction related activities, temporary and permanent interference with access to their property, and loss of business goodwill and other business related losses. Following a six-week court trial, the court ruled plaintiffs were not entitled to any compensation. Plaintiffs' appeal of the ruling was recently dismissed in exchange for a waiver of costs claimed by ACTA.

***Alameda Corridor Transportation Authority v. Calmat Company, et al.*** Nossaman represented ACTA in a case where the opponent sought close to \$5 million for loss of business goodwill. The Agency did a full take of a large asphalt manufacturing plant in the City of Wilmington, a plant that had generated millions of dollars in revenue. Nossaman negotiated a settlement of the case for \$2.5 million one week before trial.

***Alameda Corridor Transportation Authority v. Fulofweal, Inc.*** Nossaman represented the condemning public agency in a case involving a substantial loss of business goodwill claim. The case settled the morning of trial for a small fraction of the claim.

***Alameda Corridor Transportation Authority v. Gautier Land Company.*** Nossaman represented ACTA in a three-week jury trial involving both real property and business goodwill claims. Nossaman obtained a favorable result on the real estate value and a complete victory on the tenant's business goodwill claim.

***Alameda Corridor Transportation Authority v. LeBata, et al.*** Nossaman represented ACTA in a case involving the partial taking of property occupied by a concrete batch plant. Nossaman successfully resolved this matter by negotiating a settlement that included "costs to cure" damages caused by the taking and the conveyance of adjacent property, allowing the business to continue its operations.

***Alameda Corridor Transportation Authority v. Santa Fe Liquor, et al.*** Nossaman represented ACTA in a case involving the taking of a leasehold interest covering a liquor and convenience store on the condemned property. Following a court trial, the judge determined the business was not entitled to any compensation for loss of goodwill.

***Alameda Corridor Transportation Authority v. Seven J. Coast Produce.*** Nossaman represented ACTA in a jury trial held on the claim for compensation for loss of business goodwill. The defendant contended that it would be required to relocate its entire business as the result of the taking of a small portion of the parcel and claimed goodwill damages of \$784,000. We contended that there would be no compensable loss of goodwill. Following a three-day trial, the jury determined that the defendant was not entitled to any compensation from ACTA.

***Alameda Corridor Transportation Authority v. Star Pacific Rim Industries, Inc., et al.*** Nossaman represented ACTA in a case involving the partial taking of property occupied by the defendant for a major grade separation. Part of the street on which the property was located was being lowered to create an underpass over which freight and passenger rail traffic would pass. The cross street was being reconstructed as an overpass, going over the rail lines. A portion of the reconstructed street and new sidewalks would be constructed on the northerly portion of the defendant's property. The defendant claimed damages of approximately \$2 million for the permanent and temporary taking of portions of its property. On the day of trial, Nossaman was able to negotiate a very favorable settlement, by which ACTA agreed to convey to the defendant a piece of excess adjacent property, resulting in the return of a portion of ACTA's initial deposit of compensation.

***Brumer v. Los Angeles County Metropolitan Transportation Authority*** (1995) 36 Cal.App.4th1738. Represented LA County Metropolitan Transportation Authority in inverse condemnation action filed by property owners alleging that the Authority's construction of a transit project caused a substantial impairment of access to the owners' property. The trial court determined that the property owners did not suffer a substantial impairment of access, and the Court of Appeal affirmed the trial court's decision, holding that the Authority's construction was a proper exercise of its police power that was not compensable.

***Exposition Metro Line Construction Authority v. 9000 Venice Partners.*** Represented the Expo Authority in the condemnation of a portion of a retail shopping center in which Nossaman served as lead trial counsel in a three-week jury trial as to a real estate claim by the property's owner and a goodwill claim by a Wendy's fast food restaurant. The jury verdict was exactly at Expo's damages figure as to the real estate, and only 5% of the goodwill claim presented by the business. The total verdict was far less than Expo had offered to settle for before trial.

***Exposition Metro Line Construction Authority v. Patchett.*** Represented the Expo Authority in the condemnation of the Bergamot Station Art Center in Santa Monica in which Nossaman secured favorable settlements with all but one business at the property which claimed damages of over \$10 million. As lead trial attorney, Nossaman successfully argued a legal issues motion and motions in limine to exclude the business' real estate, goodwill, and inventory experts, resulting in the case settling for less than 1% of the business' claims.

***Foothill/Eastern Transportation Corridor Agency v. Griswold, et al.*** Nossaman represented the condemning public agency. After nearly a month of trial, the court adopted our arguments that no substantial interference with access occurred. The case settled soon thereafter.

***Hercules v. Wal-Mart Stores / Wal-Mart Stores v. Hercules.*** Nossaman represents the City and Redevelopment Agency in two related cases involving the condemnation of unimproved land owned by Wal-Mart for redevelopment purposes. This litigation received international media attention, having been reported on by news outlets from Great Britain to Japan.

***Kord Group v. Fieldstone Company et al.*** Nossaman represented the City of Anaheim in a complex inverse condemnation/tort matter involving several dozen consolidated actions. The case arose after a landslide was alleged to have damaged dozens of properties, including the complete loss of approximately twenty homes. The jury trial lasted nearly three months. Successes included a peremptory writ of mandate from the Court of Appeal.

***Los Angeles County Metropolitan Transportation Authority v. Almo Enterprises.*** The MTA took an underground easement for the Red Line subway under the Almo property. The building on the property was supported by concrete caissons that were directly in the path of subway tunnels, and a new foundation system had to be constructed to replace these caissons. The property owner argued that the property had lost millions of dollars in value because of the subway tunnels and the altered foundation. After a month-long jury trial, the property owner was awarded less than the MTA's statutory pretrial offer.

***Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.*** (1997) 16 Cal.4th 694. Nossaman represented the Authority in this eminent domain case in which a small strip of property was being taken from a four-acre parcel owned by Continental for construction of the Green Line, an elevated transit line running between Norwalk and El Segundo. The major issues were Continental's claim of alleged severance damage from the elevated guideway and cars running on it and plaintiff's claim of offsetting benefits from proximity to a Green Line station. After a trial in which all evidence of benefits was excluded, the California Supreme Court granted review and reversed the judgment. That decision reversed a prior decision of the California Supreme Court and almost 100 years of Court of Appeal decisions, which had restricted offset of benefits to those that were "special." The case fundamentally changed California concerning law off-setting benefits.

***Los Angeles County Metropolitan Transportation Authority v. KBG Associates.*** Successfully represented the Authority at the Court of Appeal to defeat the property owner's multimillion-dollar severance damages claim based on the termination of a license to cross railroad tracks. The decision confirmed eminent domain law regarding the non-compensability of a license, the enforceability of a waiver of the right to just compensation, the scope of the "project influence rule," and the applicability of the substantial impairment of access test.

***Los Angeles County Metropolitan Transportation Authority v. L & R Investment Company.*** This case involved the taking of an underground easement for the Red Line subway. The property owners sought severance damages on the theory that the subway tunnels would damage their property. The jury rendered a verdict in the exact amounts testified to by the MTA's appraiser. (The best possible result in an eminent domain action, since the condemning agency always has to pay for the property interest taken.)

***Los Angeles County Transportation Commission v. Arno S. Prinz.*** Nossaman represented the plaintiff in this eminent domain case. The jury determined damages to be less than the pretrial statutory offer.

***Los Angeles Unified School District v. City National Bank.*** Nossaman represented the District in an eminent domain matter involving two vacant parcels of commercial property. The District was taking the

property to build education facilities in South Central Los Angeles. The property owner (Solita Road Properties LLC) sought over \$1.5 million in compensation. After a week-long trial, the jury reached a verdict of \$870,600.

***Los Angeles Unified School District v. Dara, et al.*** Nossaman represented the District in an eminent domain matter involving a clothing designer and wholesaler claiming loss of goodwill of more than \$1 million. After a week-long trial, the jury reached a verdict of \$298,800. Later, Nossaman successfully represented the District in an appeal brought by a business tenant.

***Los Angeles Unified School District v. Eshaghian.*** Nossaman represented the District in the condemnation of a large, multi-story book depository rented from the Eshaghians. The property owner's appraisal was over double the District's appraisal. We settled for \$2,650,000, nearly \$1 million less than the owner's appraisal.

***Los Angeles Unified School District v. Hill.*** Nossaman represented the District in a case involving a right to take challenge and real estate valuation over a residential property. After a trial, the court ruled the District had the right to take, and concluded the property's fair market value was the District's appraised amount.

***Los Angeles Unified School District v. HP Pharmacy (Partovi).*** Nossaman represented the District against a claim for \$2.9 million in lost business goodwill. The case settled fairly.

***Los Angeles Unified School District v. PC Crown Hill.*** Nossaman represented the School District in an action to condemn five acres of vacant land for a new high school. The land is adjacent to downtown Los Angeles, and the owners valued it at over \$13 million. The case involved complex valuation issues, including the impact of development constraints, such as severely hilly topography and an abandoned subway tunnel, and entitlement limitations. Nossaman negotiated a settlement of the action for millions of dollars below the owners' claimed value.

***Los Angeles Unified School District v. Petel.*** Nossaman represented the District in the condemnation of a commercial property with some residential units. The owner's appraiser valued the property at \$700,000. We settled the case for \$555,000.

***San Bernardino County Transportation Authority v. Luga.*** Represented SANBAG in the condemnation of a portion of a gas station where the property/business owner was seeking compensation for nearly 10 times SANBAG's appraised value. On the first day of trial, the court granted SANBAG's motions in limine and excluded the owner's appraisers' damages opinions. The case then resolved for a nominal amount above SANBAG's appraised value (an amount far less than SANBAG's previously exchanged final offer of compensation).

***San Joaquin Hills Transportation Corridor Agency v. Costco Wholesale Corporation.*** Nossaman represented the public agency in this condemnation trial. After a two-week trial during which Nossaman won key motions to exclude testimony, the case settled for the amount of the Agency's initial offer.

***San Joaquin Hills Transportation Corridor Agency v. Paul L. Root and Karen J. Root.*** Nossaman represented the condemning agency. Nossaman won a two-week "entitlement phase" trial, and defeated a goodwill loss claim of over \$1 million. We then successfully handled the real property claim.

***Southern California Edison v. Constant.*** Represented Edison in the condemnation of a transmission line easement over a portion of commercial property. The property owner sought compensation of over \$4

million. Nossaman secured a verdict at trial for Edison's appraised value of \$66,000.

***Southern California Rapid Transit District v. Bolen*** (1992) 1 Cal.4th 654, cert. denied sub. nom. ***Atchison, Topeka and Santa Fe Ry. Co. v. Southern California Rapid Transit Dist.*** 505 U.S. 1220, 120 L.Ed. 2d 901, 112 S.Ct. 3031. Represented the District as amicus curiae counsel at the California Supreme Court. The court upheld validity of special assessments to finance transit stations.

## PROPERTY OWNER REPRESENTATION

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***Alameda Corridor-East Transportation Authority v. Hartlieb Trust.*** Nossaman represented the owner of a commercial property condemned for a grade separation project. In its condemnation action, the government sought limited interests in the property, but actual construction greatly exceeded those interests. Nossaman thereafter raised right-to-take challenges and filed a separate suit for inverse condemnation and tort causes of action. Based on these challenges, the government agreed to acquire the entire property for \$3.55 million, seven times the initial offer for the partial acquisition.

***Caltrans v. Calvary Deaf Church and the Southern California Assemblies of God.*** Nossaman attorneys won a \$4.6 million dollar settlement for the defendant congregation and denomination, just one week before a scheduled three-week jury trial. Caltrans had previously offered no more than \$1.6 million and had planned to argue at trial for a \$770,000 value, less than a fifth of the final settlement.

***Caltrans v. Himmelstein.*** Nossaman represented property owners in a condemnation action initiated by Caltrans to acquire nearly 40 acres. The jury's verdict was six times Caltrans' initial offer for the property.

***Caltrans v. Northridge Properties.*** Represented Burbank property owner in an eminent domain action filed by Caltrans as part of its I-5 widening project. Caltrans initially offered \$1.8 million for the partial acquisition of the multi-acre property. The matter settled days before trial for \$4.5 million.

***City of Santa Ana v. Nikolic.*** Nossaman represented the landowner in a condemnation action by Caltrans, including a jury trial. The jury decision, together with a settlement amount and an award of attorneys' fees, resulted in a total award of \$674,000, more than twice the City's initial offer.

***City of Santa Ana v. Pacific Industrial.*** Represented owner of industrial site sought to be acquired for a new homeless shelter. After receiving an offer under threat of eminent domain for nearly \$10 million, Nossaman successfully convinced the city to shift its project to another location by demonstrating potential liability for precondemnation damages and a property value at more than double the city's offer.

***County of Contra Costa v. Pinole Point Properties*** (1994) 27 Cal.App.4th 1105. A Nossaman attorney represented property owner at trial and on appeal in a condemnation action in which the property owner was awarded in excess of \$6 million for the taking of unimproved land. The published appellate decision clarified California law on the use of a prior inconsistent appraisal for impeachment of an appraiser at trial. This rule was later codified by the legislature in a 2002 amendment to C.C.P. § 1255.060.

***Las Galinas Valley Sanitation District v. Silveira, et al.*** Nossaman trial attorneys won one of the largest jury verdicts (\$14.6 million) ever obtained in Marin County Superior Court. Our client, the Silveira family, had owned a 364-acre ranch on the border of the City of San Rafael since 1900. A nearby sanitary district sought to condemn a significant portion of the ranch, much of which would otherwise have been suitable for residential and mixed use development. The District tried to preempt any future development plans and

would have robbed much of the ranch of value, but it offered no compensation for severance damages. Nossaman lawyers won the three-week jury trial, including obtaining an award of more than \$8 million in severance damages. This result was so overwhelming that the District was forced to abandon the condemnation and pay the Silveira family's litigation expenses.

***Long Beach Redevelopment Agency v. Walker Trust.*** Nossaman represented the owner of a commercial property being condemned for a redevelopment project. Nossaman negotiated a settlement of \$3.5 million, more than double the Agency's original offer.

***Los Altos School District v. 201 San Antonio Circle.*** Represented Mountain View property owner in fending off school district's efforts to condemn property through various right-to-take challenges and CEQA-challenges. After rejecting the District's nearly \$90 million offer, the successful defense against condemnation allowed the owner to move forward with securing entitlements for a 450-unit mixed-use residential development.

***Marin Advisors Investors II v. California Department of Transportation.*** Nossaman, representing the owner, brought an inverse condemnation claim against Caltrans arising from its use of our client's property during seismic retrofit construction on Highway 101 and the partial taking of our client's parking lot. This case was settled beneficially on the eve of trial.

***The Metropolitan Water District v. First Industrial Realty Trust.*** Nossaman represented First Industrial in a condemnation action brought by a water district to acquire a portion of an industrial parcel owned by First Industrial. The water district had failed to recognize the enormous impact its taking would have on development of First Industrial's property. After educating the water district about these impacts through some aggressive early litigation activities, we negotiated a settlement quickly thereafter in which the water district paid roughly ten times the amount it originally offered to First Industrial.

***Napa County Flood Control and Water Conservation District v. Smith.*** Nossaman successfully represented the owners of a mobile home park in an eminent domain action. Our clients were faced with losing a portion of their business and land to the Napa County Flood Control and Water Conservation District for a Napa River flood control project. The District originally offered \$2.14 million for the property. Nossaman negotiated a \$4.3 million dollar settlement for the landowners.

***People of the State of California v. Imperial Terrace.*** Nossaman represented the owner of a 40-unit apartment building condemned by Caltrans for the realignment of a highway. After a nearly two-week trial, the jury awarded our client over \$9.5 million, about 75 percent higher than Caltrans' initial offer.

***People of the State of California, by and through the Department of Transportation v. B.H. & B.M. Woodson Family Trust, et al.*** (2001) 93 Cal.App.4th 954. Nossaman represented the the owners of a mobile home park condemned to make room for a freeway widening in this eminent domain action filed by Caltrans. Nossaman won a jury verdict for our clients in the full amount requested. Despite the jury's siding completely with our clients, the trial judge refused to award attorneys' fees and other litigation expenses. Nossaman appealed. In a published opinion, the Court of Appeal reversed the trial court, holding that our clients should have been awarded attorneys' fees because of Caltrans' unreasonable settlement position.

***People of the State of California, by and through the Department of Transportation v. International Church of the Foursquare Gospel, et al.*** Nossaman represented the congregation of the oldest church in

Orange County in a complex, multi-phase condemnation jury trial. The Agency's pre-litigation offer was \$726,000. The verdict and award of litigation expenses totaled \$1.9 million.

***Santa Barbara Flood Control & Water Conservation District v. Funk Youth Hostel.*** Represented property owner in an eminent domain action involving the acquisition of easements for a flood control project. Shortly before trial, Nossaman convinced the District to partially abandon the broad rights being acquired. Then it secured a court judgment awarding substantial attorneys' fees and litigation expenses. The matter ultimately settled with total compensation and litigation expenses in excess of \$1 million.

***Winchester 700 LLC v. RCA.*** Nossaman represented the owner of a 454-acre property in Riverside County that the Regional Conservation Authority (known as the "RCA") had deemed necessary for conservation as part of its Multiple Species Habitat Conservation Plan. The RCA caused the processing of Winchester's development entitlements to be frozen, but did not make a specific purchase offer. After threatening an inverse condemnation/precondemnation damages action, Nossaman negotiated a valuation/acquisition process with the RCA. Under that process, Nossaman represented Winchester in an arbitration in which the RCA presented appraiser testimony of a value below \$30 million. At the close of arbitration, but before an award was issued, the parties reached a settlement for more than \$70 million.

## **BUSINESS OWNER REPRESENTATION**

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***Caltrans v. Bayport Imperial Promenade.*** Represented several restaurants suffering loss of business goodwill as a result of Caltrans' Imperial Highway grade separation project. At trial, Nossaman successfully excluded Caltrans' goodwill appraiser. After a favorable jury verdict, the parties reached a settlement which included Caltrans paying the business' attorneys' fees.

***City of Corona v. Miguel Vasquez, et al.*** Nossaman represented the owners of a restaurant chain when the city attempted to acquire the landlord's property and evict our client. After trial, we vindicated the client's right to possession and won a substantial award of attorneys' fees.

***City of Santa Ana v. Atia Manmoud El Malki.*** Nossaman represented the landowner and business owner facing condemnation. The public agency offered \$680,000. Nossaman settled the matter for \$1.35 million.

***City of Santa Fe Springs v. Wilsonart International, Inc.*** Nossaman successfully represented business owner and landowner Wilsonart International in a threatened taking. The City ultimately dropped its eminent domain effort rather than face numerous right-to-take challenges raised by Nossaman.

***Emeryville Redevelopment Agency v. Harcros Pigments, Inc.*** (2002) 101 Cal.App.4th 1083. Represented owner of an industrial pigment plant in an eminent domain action in which the jury awarded compensation of \$12.5 million. The subsequent appellate decision clarified California law on various valuation procedures, including entitlement to goodwill.

***Garden Grove Agency for Community Development v. Dionisie and Daniela Goia, Garden Grove Auto Care and Care Rent-A-Car.*** Nossaman represented the land and business owners in a four-week condemnation jury trial. The Agency's pre-litigation offer was \$636,000. The verdict and attorneys' fees award totaled \$1.6 million.

***Kelly-Wright Hardwoods v. Placentia-Yorba Linda Unified School District.*** Nossaman represented a lumber company in an inverse condemnation case in which the District initially made no offer of

compensation despite having forced the business to relocate under threat of eminent domain. The business owner demanded \$400,000 before litigation; the parties ultimately settled for nearly three times that amount.

***La Mirada Redevelopment Agency v. Byon.*** Nossaman represented the owners of two businesses, a preschool and a choir group, whose property was threatened with condemnation for a redevelopment project. Before a condemnation action was filed, Nossaman negotiated a global settlement of \$1.3 million that was more than 175% of the Agency's initial offer.

***Lake Elsinore Unified School District v. Centex Homes.*** Nossaman represented a homebuilding company in connection with a condemnation action on 14 acres to be used for a new school. The District filed the condemnation action after allowing a contract to purchase the property for just a few million dollars to lapse. The District then claimed in the action that soil problems on the site made the property worth only about \$3 million. After debunking this claim, Nossaman negotiated a settlement for \$8 million.

***Makar Properties v. City of Huntington Beach.*** Represented developer in a dispute regarding the value of the "Pacific City" beachfront property, which value determined the park-in-lieu fee to be paid. The parties were nearly \$50 million apart in their valuation figures. Nossaman assisted the client at binding arbitration where the three-judge panel awarded a value exactly at the client's appraisal testimony, which saved the developer \$20 million in park fees.

***Merino v. City of Santa Ana.*** Nossaman represented the landowner and business owner facing condemnation. The public agency offered nothing. Nossaman settled this matter on the first day of trial for \$750,000.

***Portola Hotel & Spa v. City of Monterey.*** Represented owner of large hotel next to Old Fisherman's Wharf in an inverse condemnation and land use / zoning lawsuit related to the City of Monterey's \$60 million conference center renovation and its attempted changes to surrounding land uses. The matter settled shortly before trial with total monetary consideration and the restoration of significant property rights valued at over \$13 million.

***Rolfe v. California Transportation Commission*** (2002) 104 Cal.App.4th 239. Represented defendant California Transportation Ventures in challenge to the condemnation of a parkland. The trial court granted our motion for judgment on the pleadings. The decision was affirmed by the Court of Appeal.

***United State of America v. Alameda Gateway, Ltd.*** A Nossaman attorney represented the owner of a shipyard in the Oakland inner-harbor in action brought by the United States Government under the Rivers and Harbors Act of 1899 (33 U.S.C. §§ 403, 406), and represented the owner in a related action in the United States Court of Federal Claims.

***Val Verde Unified School District v. Perris Valley 50 SFR, LLC.*** Nossaman represented a development company in pre-condemnation proceedings, negotiating a settlement of over \$48 million in lieu of condemnation. In this matter, the School District sought to acquire 60 acres of an undeveloped 180-acre subdivision. Nossaman employed a multi-prong approach of litigating, lobbying and negotiating, ultimately persuading the District that just compensation for the property was many times higher than the District originally planned to pay.