



Court Clarifies Rules for Recovery of Attorneys' Fees in Eminent Domain Actions

05.04.2015 | By [Bradford B. Kuhn](#)

In California eminent domain actions, the parties are required to exchange formal settlement proposals 20 days before trial. If the case proceeds to trial, the property owner may recover litigation expenses if its demand was reasonable while the condemning agency's final offer was unreasonable. In making this reasonableness determination, the judge may only consider the statutory offer and demand exchanged 20 days before trial (although prior offers and demands can be considered for purposes of assessing the amount of the owner's attorneys' fees award).

This procedure seems straightforward. But in reality, the statutory procedure does not consider the practical situations often faced in eminent domain actions. What if the trial is continued after the exchange is made? What if some issues are tried to the judge before the jury assesses just compensation? What if one party makes multiple offers in advance of the new or second trial? In a recent Court of Appeal decision, *People ex rel. Dept. of Transportation v. Hansen's Truck Stop* (April 24, 2015), the Court explained that for purposes of determining an owner's entitlement to litigation expenses, the settlement proposals to be considered are the ones exchanged 20 days before the jury trial actually commences to determine just compensation.

Background

In *Hansen's Truck Stop*, Caltrans acquired a portion of a truck stop property owned by the Hansens. The Hansens claimed compensation for severance damages, loss of business goodwill and impairment of access. Caltrans challenged the Hansen's entitlement to goodwill and access claims and sought to bifurcate those issues from the just compensation trial. The trial court granted Caltrans' motion and set the entitlement issues for trial in March 2009. Caltrans and the Hansens exchanged their statutory offers and demands 20 days prior to the March 2009 trial date (Caltrans offered \$784,000, and the Hansens demanded \$5 million). Trial was continued several times with the court trial finally happening in September 2009. The trial court ruled in favor of the Hansens, and the jury trial was finally set for April 2010.

20 days before the new trial date, the Hansens served a statutory final demand for \$2.99 million. Caltrans did not make a new offer. The jury trial did not take place until January 2011, with the verdict awarding the Hansens a judgment of \$2.53 million -- much closer to their 2010 demand and for nearly three times Caltrans' 2009 offer.

The Hansens moved for an award of attorneys' fees under Code of Civil Procedure section 1250.410, which provides that if, after trial, the property owner's statutory demand for compensation is found to be reasonable and the condemning agency's statutory offer unreasonable, then the property owner is entitled to recover litigation expenses. The Hansens argued that their 2010 demand was reasonable and Caltrans' 2009 offer was unreasonable in light of the jury's award. The trial court denied the motion, finding that it could only consider the 2009 offer and demand (not the Hansens' 2010 demand), and that the Hansens' 2009 demand for \$5 million -- nearly double the jury's verdict -- was unreasonable, precluding recovery of fees.

The Court of Appeal Decision

On appeal, the Hansens argued that the demand exchanged before the continued jury trial should have been considered. Caltrans countered that the trial court was correct in that only the offer and demand filed prior to the first date of trial could be considered by the court.

The Court noted that the statutory scheme for final offers and demands (Code of Civil Procedure section 1263.410) is "specific" but "not entirely clear." When determining entitlement to litigation expenses, the law instructs the judge to consider *only* the final offer and demand that were made "[a]t least 20 days prior to the date of the trial on issues relating to compensation," but the Court considered the language "trial on issues relating to compensation" and "date of trial" subject to interpretation, especially where there were bifurcated issues and continued trials. The Court found these phrases must be interpreted to accord with the purpose of the statute -- to encourage settlement and avoid trial.

With this in mind, the Court found "it makes little sense to limit the operative statutory offer and demand to those made prior to the first trial date." Instead, allowing later offers and demands to be considered would promote refinement of the offers and demands as more information becomes available to the parties, while still avoiding a costly trial. The Court found that statutory offers and demands may be considered as long as they are exchanged within 20 days before the date trial actually commences -- regardless of whether offers and demands were filed before previous trial dates.

Having settled the question of what happens when trial dates are continued, the Court then turned to the question of what happens when cases are bifurcated. In other words, what is the "trial on the issues relating to compensation" that triggers the need for the statutory exchange of offers and demands? The Court concluded "issues relating to compensation" meant those issues that pertain to the amount of compensation to be awarded, i.e., fair market value of the property taken and the amount of damages, if any. For purposes of awarding attorneys' fees, therefore, the operative offers and demands are those made 20 days prior to the jury trial on compensation.

The Court also expressed concern that delaying offers and demands until the trial on compensation would hinder early settlement efforts. But the Court reasoned that a later offer and demand would be more reliable if made after preliminary issues are decided, and would therefore promote actual resolution. The opinion concluded with a note to the Legislature, raising the question of whether it makes sense to limit consideration of reasonableness to a single offer and demand. The Court notes that a condemning agency could make an artificially low offer, then bifurcate proceedings and make a later, more reasonable offer prior

to the compensation trial. On the other hand, by allowing multiple statutory offers, the parties could adjust their settlement positions in light of rulings on preliminary issues.

Conclusion

This decision provides some much-needed clarity for the statutory offer and demand procedure. We now know that (1) in determining the reasonableness of a final offer or demand, a trial court may use the statutory final offer and demand made 20 days before the actual trial date; and (2) when the trial is bifurcated, the exchange made 20 days before the jury trial on compensation are the operative offer and demand.

To avoid these types of issues in the future, the best practice is to have the parties agree to an exchange of final offers and demands that makes sense in a particular case.