

**(PRACTICE AREA)**

Private: Eminent Domain and
Inverse Condemnation

Litigation

Eminent Domain

Jury Trial Victory in JPA Condemnation Case

SITUATION

Our client, a Southern California joint powers construction authority, required the condemnation of permanent and temporary easements along the front of a 67-unit apartment complex in order to construct a grade separation project, which placed a major street under an existing two-track railroad.

CHALLENGES

The apartment buildings themselves were not being affected by the taking. However, the grade separation project caused the buildings to lose direct access to the adjacent street and eliminated 22 existing parking spaces. To mitigate this loss of access and parking, the authority agreed as part of the project to convey additional property at no cost to the apartments to be used for substitute access and parking. However, construction in and around the apartment complex during the course of the 3-year project would undeniably be inconvenient for the tenants of the apartment. Trial was set to occur before construction of the grade separation project had begun, so it was unclear what actual effect the future construction would have on rents, expenses and vacancy rates.

PROCESS

The apartment complex sought hundreds of thousands of dollars based on its claim that, among other things, its vacancy rate would increase dramatically during construction of the project, and refused to acknowledge that the additional property for substitute access and parking constituted a benefit. On the other hand, the authority contended that the tight rental market in Southern California made it difficult for tenants to relocate or choose not to rent there, and that no other apartment complexes were located nearby that catered to the needs of lower-income renters. The authority's expert opined that these factors would result in little, if any, impact on the apartment's rents, expenses or vacancy rate. This was bolstered by five separate case studies of other similar apartments affected by similar nearby construction which showed no negative impacts.