

## RESOLUTION 08-04-2013

### DIGEST

#### Civil Procedure: Calculation of Goodwill for Eminent Domain Purposes

Amends Code of Civil Procedure section 1263.510 to clarify the burden of proof required on the valuation of goodwill of a business in eminent domain cases.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

Similar to Resolution 02-04-2004 which was withdrawn.

#### Reasons:

This resolution amends Code of Civil Procedure section 1263.510 to clarify the burden of proof required on the valuation of goodwill of a business in eminent domain cases. This resolution should be approved in principle because the recent case of *People ex. Rel. Department of Transportation v. Dry Canyon Enterprise LLC* (2012) 211 Cal.App.4th 486 has created a conflict in the burden of proof required as to the finding and valuation of goodwill of a business in an eminent domain proceeding.

Prior case law held that proof of the value of goodwill of a business in an eminent domain proceeding is a preponderance of the evidence or more likely than not standard. The recent case of *People ex. Rel. Department of Transportation v. Dry Canyon Enterprise LLC*, as cited by proponent, requires that proof be presented by clear and convincing evidence. Very few civil findings must be supported by clear and convincing evidence. The recent case is a deviation from the majority of the prior case law and creates confusion among the appellate districts. The change proposed will resolve the confusion and bring the statute and burden of proof in accord with the majority of the prior cases and other similar civil subjects.

### TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Code of Civil Procedure section 1263.510, to read as follows:

- 1 § 1263.510
- 2 (a) The owner of a business conducted on the property taken, or on the remainder if the
- 3 property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves
- 4 all of the following:
- 5 (1) The loss is caused by the taking of the property or the injury to the remainder.
- 6 (2) The loss cannot reasonably be prevented by a relocation of the business or by taking
- 7 steps and adopting procedures that a reasonably prudent person would take and adopt in
- 8 preserving the goodwill.
- 9 (3) Compensation for the loss will not be included in payments under Section 7262 of the
- 10 Government Code.

11 (4) Compensation for the loss will not be duplicated in the compensation otherwise  
12 awarded to the owner. The owner’s proof shall be deemed sufficient to present to a jury or other  
13 trier of fact so long as the court finds that it is more likely than not that qualified goodwill exists.  
14 This is intended to overrule the “clearly” standard applied by the case of People ex rel.  
15 Department of Transportation v. Dry Canyon Enterprise LLC, (2012) 211 Cal.App.4th 486.

16 (b) Within the meaning of this article, “goodwill” consists of the benefits that accrue to a  
17 business as a result of its location, reputation for dependability, skill or quality, and any other  
18 circumstances resulting in probable retention of old or acquisition of new patronage.

19 (c) If the public entity and the owner enter into a leaseback agreement pursuant to Section  
20 1263.615, the following shall apply:

21 (1) No additional goodwill shall accrue during the lease.

22 (2) The entering of a leaseback agreement shall not be a factor in determining goodwill.  
23 Any liability for goodwill shall be established and paid at the time of acquisition of the property  
24 by eminent domain or subsequent to notice that the property may be taken by eminent domain.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** San Diego County Bar Association

## **STATEMENT OF REASONS**

The Problem: Current Section 1263.510 of the Code of Civil Procedure does not specify the legal standard for a showing of lost goodwill. The proper standard of proof in a civil case is ordinarily, “more likely than not.” Earlier cases applied that general standard to claims of lost good will. (See Inglewood Redevelopment Agency v. Akilu (2007) 153 Cal.App.4th 519; People ex rel. Dept. of Transportation v. Muller (1984) 36 Cal.3d 263.) However, the recent decision in People ex rel. Dep’t of Transportation v. Dry Canyon Enterprise LLC (2012) 211 Cal.App.4th 486, raised the bar for a finding of lost goodwill to an inappropriate level. It held the standard of proof for an award of lost goodwill to a condemned business requires proof that “clearly” the goodwill existed and was lost before submitting the issue to the jury for resolution.

This Solution: This resolution amends Section 1263.510 of the Code of Civil Procedure to codify the general civil standard of “more likely than not” for showing loss of good will, as the statute was previously understood. This resolution legislatively disapproves of the decision rendered in the Dry Canyon Enterprise case.

## **LEGISLATIVE HISTORY**

Not known

## **IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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