

Seventh Circuit affirms exclusion of unreliable expert testimony on valuation in condemnation actions

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SUMMARY

On August 21, 2012, the Seventh Circuit Court of Appeals issued an opinion affirming the decision of the United States District Court for the Central District of Illinois to exclude the testimony of the landowners' expert in condemnation proceedings.

Interstate pipeline companies should take note of the Seventh Circuit's August 21, 2012 opinion in *Rockies Express Pipeline, LLC v. Burtle*, No. 11-1219, 2012 WL 3575279 (7th Cir. Aug. 21, 2012), which held that the district court did not abuse its discretion by excluding expert testimony on valuation. The expert testimony was excluded as unreliable pursuant to Federal Rule of Evidence 702.

Exclusion Of Expert Valuation Testimony Affirmed

The landowners' expert provided an opinion for each property as to the difference in fair market value before and after the taking of easements using the comparable sales method. The subject properties were not subdivided and were only permitted and used for agricultural purposes. Nonetheless, the expert used subdivided lots and commercially zoned lots in non-agricultural municipalities as comparable sales in his analysis. Additionally, the expert used a sale price of \$600,000 for a comparable sale that was never completed and later sold for \$250,000. The expert also concluded that the highest and best use for the subject properties was for commercial or residential use. The district court excluded the expert's opinion because it was based on unreliable evidence and did not satisfy the requirements of Federal Rule of Evidence 702.

On appeal, the Seventh Circuit determined that the district court had not abused its discretion and affirmed the decision to exclude the expert testimony. The Seventh Circuit agreed that the majority of the comparable sales used by the expert were too dissimilar and that the expert's opinion on value would have been substantially reduced if those comparable sales were not used. Likewise, the Seventh Circuit held that there was "nothing in the record to make us question the determination of the district court that the highest and best use of the four properties was agricultural" where the district court had found that there no reasonable certainty that the subject properties would be rezoned and later developed for commercial or residential purposes. Additionally, the Seventh Circuit held that the district court

was correct to exclude the testimony of the landowners themselves as to value because they had not provided an opinion on value during discovery and instead elected to rely on their expert.

More Information

For further information about interstate pipeline condemnations in Pennsylvania, contact Elizabeth U. Witmer at ewitmer@saul.com or Sean T. O'Neill at soneill@saul.com.

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