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COVID-19 cooling hot heads - by Jason Scopa

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Filling my gas tank for \$25.00 is certainly a silver lining in this Coronavirus cloud.

To this civil litigation attorney, another seems to be the changes in many litigants. Whether the specific cause is the judicial system grinding to a halt, financial suffering, or the new mantra of “together we are better”, the effect we are seeing in litigation is a sight for sore eyes. That is, parties and attorneys finding a way to work things out. Somewhere along the road, litigation became the go-to move for anyone with a dispute.

For years our office has tried to help our clients by first trying to reach an agreement with the opposing party in some manner short of litigation. Lawsuits are expensive, protracted, unpredictable and, of course, adversarial. This includes real estate disputes and even eminent domain takings. For the most part, so as long it serves a legitimate public purpose, government has the power to take private property by eminent domain.

Typically, the landowner’s only recourse is challenging the amount of compensation and, typically, a lawsuit is filed to do so. However, the smart play for both sides would be hiring experienced eminent domain attorneys to find a middle ground to avoid litigation. The landowner is made whole much more quickly and at far less cost, and the taking authority can move forward with its public project without having to look over its shoulder for litigation initiated by the landowner to obtain additional compensation, to invalidate the taking, etc. These so-called “friendly takings” are too rare.

NEREJ readers may recall a recent story about a notable settlement our office obtained for a religious order in Waltham, MA. The property was taken for \$18 million but our office, together with real estate consultants, determined that the property could be worth nearly twice as much. Unfortunately, the City would not play ball and initiated litigation. After dedicating significant money and time in the court system, the parties reached a settlement at mediation.

The clients received an additional \$12 million, for a total of \$30 million.

Had cooler minds prevailed at the time of the taking, litigation could have been avoided. We are certainly finding more cool heads around in the past few weeks.

Mediations via video conference have surged in popularity, with great success in ending lawsuits. It would be nice to see a trend here. We also practice insurance defense litigation and see a similar trend with personal injury plaintiffs and their attorneys sharpening their pencils and negotiating much more reasonably to end some ongoing lawsuits and to avoid filing suit in other claims. Let's keep it up after the pandemic dust settles.

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