

practice chairs

John R. Casolaro / Partner
Michael H. Bauscher / Partner

Matthew D. Dunn / Partner
Lee A. Ohliger / Counsel
Madelyn K. White / Counsel

Representing most of the major public entities in the New York metropolitan region that exercise the eminent domain power, our highly-regarded lawyers draw on extensive experience and deep institutional knowledge to provide exemplary legal services. We often assist our clients with large-scale projects, many involving highly valued commercial properties, which frequently present challenging legal and valuation issues. They require us to craft thoughtful, creative approaches, often resulting in groundbreaking legal rulings that shape the contours of condemnation law while attaining optimal outcomes for our clients.

Our lawyers bring to this complex and dynamic area of practice the ability to see both the numerous, project-specific issues facing our clients, and the relevant institutional constraints to which our clients are subject, and we understand and apply the best customized methods to help our clients advance their interests. We handle a wide array of condemnation matters, including representing clients in the acquisition of:

- Full fee interests
- Partial takings
- Temporary and permanent easements
- Fee and easement interests in volumes of space above and below grade
- Real estate fixtures

We also help clients avoid condemnation proceedings by acquiring real property interests through negotiation.

Our lawyers defend against challenges to acquisitions based on alleged lack of a proper public purpose and lack of blight; claims of unconstitutionality of the statutes under which projects are undertaken, including challenges to enabling legislation creating public benefit corporations pursuing such projects; claims alleging excess takings; and claims alleging the unconstitutionality of various state laws affecting condemnation, including the N.Y. Eminent Domain Procedure Law. We also defend state and local governmental entities in trial and appellate courts at all levels of state and federal courts.

Our team also works with public and private utilities and pipeline companies, including those formed under the New York Transportation Corporations Law and interstate natural gas pipeline enterprises, in obtaining right-of-way access to construct new electric and gas transmission lines. In addition to commencing

condemnation actions in state court, our lawyers also obtain easements in eminent domain proceedings in federal courts for projects licensed by the Federal Energy Regulatory Commission under the Natural Gas Act. We also advise and represent clients in connection with project planning, public hearings, legal challenges before and after completion of public hearings, and relocation of tenants and utilities and other facilities necessary to effectuate a project plan. We have also provided legal advice on countering unique legal structures designed to limit the effectiveness of the eminent domain power. Our lawyers work closely with clients in matters involving valuation of property acquired by eminent domain, including efforts to avoid litigating valuation disputes and reach agreements where feasible. In addition to representing government agencies that have reached agreements to acquire property interests in lieu of condemnation and have settled claims, we have acted as trial counsel in connection with valuation of real estate acquired by condemnation (both fee and fixture claims).

Why Our Experience is a Right Fit

Our team cultivates and maintains relationships with the staffs of the governmental agencies that we advise and represent. In particular, we communicate frequently and collaborate closely with staff attorneys for those agencies and other outside counsel. In keeping with our firm's culture of cooperation, we often draw on the vast experience, broad base of knowledge, and skill sets of our colleagues in other practice groups, including real estate, construction, environmental impact review, environmental due diligence, land use, and zoning. This collaboration, both externally and internally, enhances our ability to effectively serve clients.

Our Innovative Approach

Breaking New Ground. In eminent domain matters, sometimes the fee owners and fixture owners are related entities but nevertheless submit separate, overlapping, and duplicate claims. We were the first legal team to focus on overlapping ownership and control and argue that these claims constituted improper duplication. We argued in court that it would be unfair to provide both sets of recoveries for claims by these closely related entities. The courts agreed and embraced this new legal concept of treating these closely related owners together, ruled that it would indeed be unfair, and declined to grant duplicative recoveries.

Ahead of the Curve. Clients value our ability to monitor the ever-changing regulatory framework, anticipate ways in which rules and laws evolve, and place our clients in the best position possible to adapt to the changes before they occur. For example, we correctly anticipated that a New York statute only requiring newspaper notification in a condemnation might someday be challenged and struck down. Consequently, we have always provided additional notice as a way to protect our clients.

A legal group eventually brought a federal court action to challenge the constitutionality of the state eminent domain law, claiming it didn't require enough notice. One of our clients was entangled as a defendant in the case but, because of our protective practice of additional notification, we won their dismissal from the case by summary judgment early in the litigation that lasted seven years for another defendant. Ultimately, the legislature changed the law to require notice by mail, essentially adopting our approach.

Unprecedented Decisions. Our long-time client, Empire State Development (an economic development agency of the State of New York), adopted a plan for the expansion of the Columbia University Manhattanville Campus. In a case that ultimately ended up before the New York Court of Appeals (New York's highest court), we successfully argued that our client was entitled to use its eminent domain powers for the Columbia project. The case involved many unique issues and appearances in the New York Supreme Court, the Appellate Division, and the Court of Appeals.

Representative Experience

Represent Suffolk County in connection with numerous claims related to the Fire Island Inlet to Moriches Inlet (FIMI) Project, a beach stabilization project undertaken by multiple governmental entities to create, restore, and maintain sand dunes damaged by Superstorm Sandy along the 12.5 mile coastline of Fire Island, New York. As of May 2022, we had conducted nine valuation trials for the purpose of determining just compensation for property owners who have had fee and easement interests acquired as part of the FIMI Project, including property

owners whose land was acquired but who chose to keep their house and relocate it to a nearby parcel. We have also assisted our client recover certain sums already paid to a Project claimant based upon the court's award of damages in an amount less than the advance payment.

Successfully obtained summary judgment dismissing claims in a federal court action alleging that Suffolk County violated the Due Process, Equal Protection and First Amendment rights of certain property owners in connection with the Fire Island Inlet to Moriches Inlet (FIMI) Project.

Represented a state agency in connection with various suits brought over a number of years to prevent the agency from proceeding with its Manhattanville – Columbia University Expansion Project in West Harlem. We represented the agency in various State Supreme Court proceedings to halt the project alleging failures to comply with the State Freedom of Information Law, with the Eminent Domain Procedure Law, and with the federal Due Process Clause. Thereafter, we represented the agency in appeals from certain of those decisions, including an appeal to the State's highest court. Finally, we represented the agency in an overall challenge to the project and to the legislation creating the agency and granting its powers. Ultimately, the case was resolved by the State's highest court, the challenges to the project were defeated, and the agency was able to proceed with the project.

Successfully defended a state agency against a constitutional challenge in federal court that sought to block a major development project in the East Harlem section of Manhattan based on our client's alleged failure to comply with the federal Due Process Clause and alleged failure to comply with state environmental laws (SEQRA). We also negotiated a net lease of the development site and helped coordinate financing for the project.

Represented a state agency in winning three significant lawsuits challenging development of the new headquarters site for The New York Times in the Times Square area. We later represented the same client as it relocated 70 commercial occupants from the site, obtaining possession of the entire site, and seeking Writs of Assistance where warranted. We also negotiated settlements of various fee and fixture claims in connection with those acquisitions beginning with an agreement with a property owner prior to any acquisition of title.

Represented a state agency in connection with a complex partial acquisition of a five-story commercial building, which had to be severed from 7 and 20-story buildings to which it was attached. In addition to acquisition of the building, we represented the agency in connection with construction agreements entered into to effectuate the severance of the three buildings. We also represented the agency in a trial to determine the value of the acquired property. After six days of trial, and an appeal, the property owner received an award less than 1% higher than the amount the agency had already paid the claimant at the outset, long before any trial.

Acting as Special Condemnation Counsel to the City of New York in connection with the Hudson Yards Rezoning and Development – No. 7 Subway Extension Project, we have represented the City beginning in 2005 with planning for a public hearing on the Project, then defending the City against six challenges to the Project based on various alleged constitutional violations. We also represented the City in connection with the outright dismissal of several claims based on acquisition of deep subsurface easements. We also negotiated settlements of various fee and fixture claims in connection with those acquisitions beginning with an agreement with a property owner in lieu of condemnation. We represented the City in connection with property valuation proceedings with respect to this Project, first in a bifurcated trial to determinate the proper zoning to apply in the valuation of properties acquired for the Project, then in trials valuing the various acquired properties. We also represented the City in connection with its acquisition of permanent easements for the purpose of constructing station entrances and a vent building and shaft for the Project. We currently represent the City in connection with Phase 2 of the project, acquisitions to extend Hudson Park and Boulevard three blocks north within the project area.

We have handled various condemnations for a state agency related to the post-9/11 redevelopment of the World Trade Center site.

Represented in federal and in New York State courts a governmental agency which exercised its eminent domain power in connection with the development of the Bank of America Tower at One Bryant Park in Manhattan, on 42nd Street.

We have represented state agencies in connection with fixture claim trials. One such trial resulted in an outright dismissal of the claim. In another trial, the fixture claim was substantially dismissed. The dismissal was affirmed on appeal in a leading decision on fixture law in New York.

Represented a public authority in trial level and appellate courts in connection with the termination of railroad easements in Queens. The project involved a conflict between New York's Eminent Domain Procedure Law and the federal Surface Transportation Board.

We represent a public authority in connection with the acquisition of 53 grade-level easements and one fee interest to enable the repair and rehabilitation of the adjacent subway stations. The representation also involves the negotiation and settlement of easement and fixture claims.

We represented the Port Authority of New York and New Jersey in its planning for possible condemnation in connection with its Access to the Region's Core ("ARC") project involving a new railroad tunnel under the Hudson River. The project involved unusual issues relating to acquisition of partial interests in existing buildings to create subway entrances as well as imposition of negative easements to limit construction near the proposed tunnel which could adversely affect the tunnel structures.

Represented a state agency in connection with a claim by a rent stabilized tenant alleging that his statutory right to occupy his apartment could not be terminated by eminent domain. The decision by the appellate court dismissing the claim is the leading case in New York establishing that rent stabilized tenants do not have property rights which survive acquisition of property by eminent domain. In connection with that project we represented the agency as it obtained possession of various premises through Writs of Assistance.

Successfully obtained easements on government-owned land to site and construct a new interstate natural gas pipeline in a federal condemnation proceeding under the Federal Rules of Civil Procedure 71.1.