

Pre-Trial Discovery Tactics

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• Pre-trial discovery is something that has saved the State Roads Commission in the State of Maryland a considerable amount of money. I will preface my remarks by saying that a few years ago some of the attorneys for the property owners began requesting us to furnish them the appraisers' reports prior to trial. We, of course, resisted. They became more persistent. We then developed the position that if they would give us their report we would give them ours. That worked for a while, but eventually they got tired of that and applied formal interrogatories upon us to require that we furnish them the data that our experts had compiled for us.

We found out in the lower courts that they could do this. We did not take it to the Appellate Court because we became convinced it was a two-edged sword. If they could obtain from us information that we thought was our prerogative to keep, since we had paid for it in the service, then we could obtain theirs from them. As a result of the experience, it appears that it works to the disadvantage of the property owner rather than to the disadvantage of the State to be required to exchange this information either through interrogatories or depositions.

Now, we have even gone a step further in Maryland. In large cases and particularly in some of the counties where we know we are going to run into very heavy and strong opposition by property owners' attorneys, even if they do not demand copies of our appraisals and engineering reports through interrogatories, we demand it of them. We have drawn up a set of interrogatories which is rather inclusive and

which we have used to our distinct advantage on a number of occasions.

There have been exceptions taken to these interrogatories in the law courts, but the courts have upheld them. We now make it a general practice in large cases to file this kind of interrogatory and demand that it be answered.

In Maryland, under rules of court established by the court of appeals, Federal court rules on discovery are generally followed. I assume that most of you are more or less familiar with the rules of the Federal jurisdiction on discovery tactics, but in this we have gone even further than the Federal courts allow. In fact, I am working on a case now in Federal court where the Federal judge is probably about to deny interrogatories such as this; that is to say, they do not have to be answered by the property owner. That is in the balance right now in a Federal case in Baltimore.

When we receive the information called for in our interrogatories we know fairly well the property owner's theory of the case and what he is going to rely on. And, often, in large cases when we receive answers to these interrogatories, we then determine whether it is advisable to take an oral deposition. In Maryland we have the right to take pre-trial depositions by giving five days notice, so we get the expert in the attorney's office, in my office, or somewhere else, and take his deposition and delve into matters not covered in the interrogatory I have just read.

In Maryland we have found the interrogatory a very helpful and useful tool and we think it is part of the trial preparation of a case. The form is as follows:

STATE ROADS COMMISSION OF MARYLAND,	:	IN THE
acting for and on behalf of the	:	
STATE OF MARYLAND.	:	CIRCUIT COURT
	:	
	:	FOR
vs.	:	BALTIMORE COUNTY
	:	
	:	
	:	

INTERROGATORIES

To:

From: State Roads Commission of Maryland

You are requested to answer the following Interrogatories:

a. These Interrogatories are continuing in character, so as to require you to file supplementary answers if you obtain further or different information before trial.

b. Where the name or identity of person is requested, please state full name, home address, and also business address, if known.

c. Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrence mentioned or complained of in the pleadings.

d. Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's agents, representatives and, unless privileged, his attorneys. When answer is made by a corporate defendant, state the name, address and title of the person applying the information, and making the affidavit, and the source of his information.

e. The pronoun "you" refers to the party to whom these Interrogatories are addressed, and the persons mentioned in clause (d).

1. State the Defendant's contention as to the exact amount of acreage in the whole of the property involved in these condemnation proceedings.

2. State the names and addresses of all witnesses intended to be offered as expert appraisers to testify in this case as to valuation and as to the just compensation to be paid to the property owners.

3. State the names and addresses of all witnesses intended to be offered as engineering experts.

4. State the names and addresses of all witnesses intended to be offered as expert opinion witnesses in any field of specialization, and indicate his (or their) fields of specialization.

5. Have you received any written appraisal from any expert appraiser intended to be called as a witness in this case? If so, attach the same to the answers hereto.

6. If the answer of Interrogatory Number Five is "no," ascertain and supply the following information for each of the intended expert valuation witnesses:

- A. State the total damages assessed by reason of the taking and consequential damages.
- B. Itemize the estimated before value and indicate the method or process used to determine the before value and the reasons therefor.
- C. Itemize the estimated after value.
- D. Itemize the estimated consequential damages, if any, and the reason for each item of such consequential damage.
- E. State the opinion of the witness as to the highest, best and most profitable use to which the subject property is adapted or to which it is adaptable in the reasonably foreseeable future, and his reasons for such opinion.

7. As to each and every of the expert valuation witnesses intended to be called to testify in this case and whose written report is not attached hereto, (or such report being attached but lacking the particulars demanded in this interrogatory), and if he has used the "comparable sales approach," state with particularity each and every item of market data intended to be used by such appraiser to substantiate his "before and after value."

8. As to each and every of the expert valuation witnesses intended to be called to testify in this case and whose written report is not attached hereto, (or such report being attached but lacking the particulars demanded in this interrogatory), and if he has used the "summation method":

- A. State with particularity his volumetric computations of all improvements, if any.
- B. State with particularity the depreciation factor or factors used by him in determining "replacement cost less depreciation."
- C. State with particularity the authorities, including appraisal handbooks and market data relied upon by him for his determination as to the proper depreciation factor.
- D. State with particularity the authorities, including but not limited to, appraisal handbooks and market reports and data relied upon by him for his determination as to the proper cubic footage and square footage factor.

9. As to each and every of the expert valuation witnesses intended to be called to testify in this case and whose written report is not attached hereto, (or such report being attached but lacking the particulars demanded in this interrogatory), and if he has used a "capitalization approach," state with particularity the type of capitalization approach used and all of the facts he considered in determining his "before and after values."

10. State the name of any witness intended to be called to testify relative to the probability of a change in the zoning of the subject property.

11. Does the defendant or his attorneys have in their possession any subdivision plat or plans of the subject property, either recorded or unrecorded; if "yes," attach copies of such plat or plans hereto.

12. Does the defendant contend that there are any gas, oil or mineral rights in and adding to the value of the land taken?

13. Has there been a survey of the entire property of the defendant? If so, give the date of such survey and the name and address of the surveyor.

14. State the names and addresses of any tenant who has occupied the subject property within the past five (5) years.

15. Was there, during the past five (5) years, a lease or leases in effect, whether recorded or non-recorded? If so, attach a copy of such lease to the answers to these interrogatories.

16. Have you received any written reports from experts other than appraisers, intended to be called to testify in this case? If so, attach copies of such report to the answers hereto.

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Special Attorney