

Condemnation Summit XXVIII

OCTOBER 7, 2022 | ARIZONA BILTMORE

Welcome & Program Introduction



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Today's Agenda

- 9:00 AM **Plenary Discussion of Evidentiary Motions in Eminent Domain Cases**
- 10:30 AM Networking Break
- 10:45 AM **Relocation Hot Topics & Best Practices**
- 11:45 AM Lunch on the Lawn
- 1:00 PM **Civil Practice & Procedure Updates from the Superior Court Bench**
- 2:30 PM Networking & Cookie Break Sponsored by Integra Realty Resources
- 2:45 PM **The Ins & Outs of Water Utility Condemnations**
- 3:45 PM Networking Break
- 4:00 PM **What Condemnation & Real Estate Professionals Need to Know about ESG & DEI**

Plenary Discussion: Evidentiary Motions in Eminent Domain Cases

DANIELLE CONSTANT, JENNINGS STROUSS

JENNIFER CRANSTON, GALLAGHER & KENNEDY

Motions *in Limine*

“In Limine”:

Latin: "at the start"

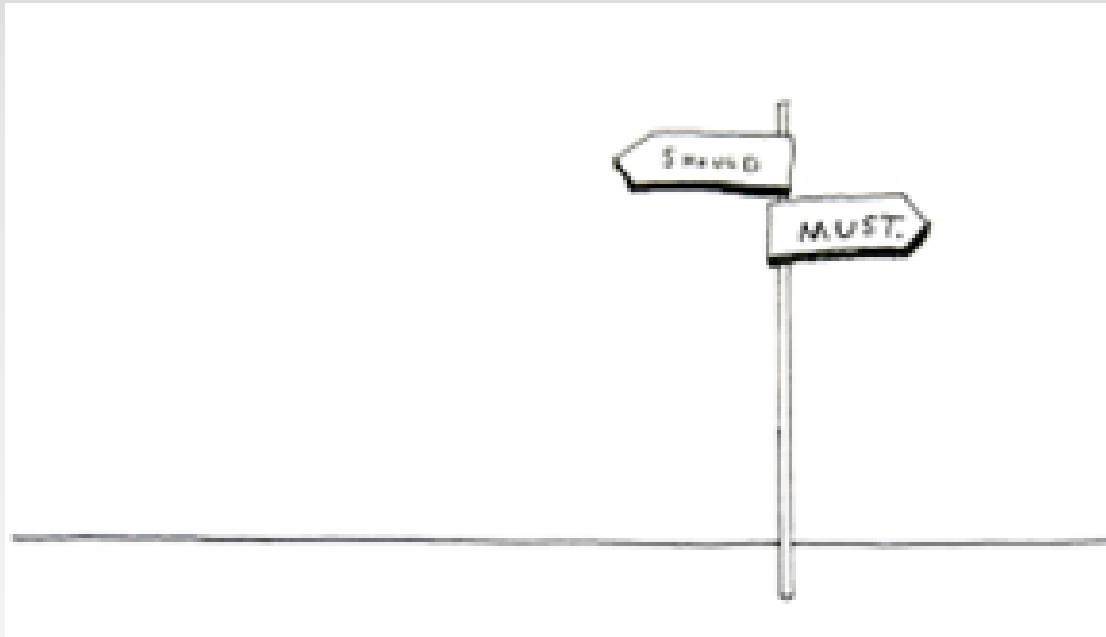
literally, "on the threshold"



Motions *in Limine*

- Procedures governed by **Rule 7.2**
- The Rule presumes you know what MILs are, because it doesn't tell you what they are.
- Procedural Requirements:
 1. Must consult with your opponent (but not a 7.1(h) consultation)
 2. File 30 days before either the trial or the trial management conference, or when the judge says they are due
 3. Response due 10 days later (10 days = 10 business days)
 4. No replies allowed

Motions *in Limine*



“All motions in limine submitted in accordance with Rule 7.2(b) **must be ruled on before trial** unless the court determines the particular issue of admissibility is better considered at trial.”

7.2(d)

Motions *in Limine*

So what is a Motion *in limine* (MIL)?

“A pretrial motion in limine is generally used as a substitute for evidentiary objections at trial.”

Zimmerman v. Shakman, 204 Ariz. 231, 235, ¶ 12 (App. 2003)

Motions *in Limine*

“A pretrial motion in limine is merely a convenient substitute for evidentiary objections at trial. ... [The Trial Court] may well consider that procedure preferable to hearing objections piecemeal at trial.”

State v. West, 176 Ariz. 432, 442 (1993), overruled other grounds

Motions *in Limine*

MILs should refer to evidence.

I.E., a Rule of Evidence should be cited.

The Courts frown on discovery issues cloaked in the appearance of a MIL. Discovery issues should be brought under Rules 26.1 and 37.

Zimmerman, ¶¶ 12-14.

Motions *in Limine*

MILs are not dispositive motions.

Those should be brought under rules **12** and/or **56**.

Motions *in Limine*

Just because a MIL may preclude a certain area of inquiry does not make it a dispositive motion.

The defense did not provide any authority that their *“theories of calculating just compensation through evidence of project influence, best use, and owner testimony, were, in and of themselves, claims or defenses. The trial court’s rulings did not preclude the [defense] from pursuing their claim, which ultimately resulted in a monetary judgment in their favor. Rather, the court’s rulings limited the evidence that could be introduced in support of the claim. As such, the court’s rulings involved ‘disputed evidentiary issue[s]’ of relevance and Rule 403 considerations, which may be properly considered in a motion in limine. See Ariz. R. Civ. P. 7.2. We see no error.”*

City of Tucson v. Tanno, 245 Ariz. 488, 494–95, ¶ 25 (App. 2018)

Motions *in Limine*

- A party may wish the Court to preclude areas that are irrelevant, inadmissible, or unfairly prejudicial.
- May narrow the issues for trial (and maybe spur settlement).
- Helps minimize bench conferences at trial.
(*cough cough [literally])
- Gives the court time to consider the admissibility of certain lines of questioning that are more complex than a “simple” objection can cover.

Motions *in Limine*

Common Evidence Rules:

- 401-402 Relevance
- 403 Prejudice, Confusion, Waste of Time
- 404-406, 608-609 Witness Character
- 408 Previous Settlement Offers

Motions *in Limine*

408 Previous Settlement Offers

State ex rel. Miller v. Superior Court, 189 Ariz. 228, 231 (App. 1997)

- ADOT filed a MIL seeking to preclude the pre-litigation appraisal.
- The trial ruled the prior appraisal admissible.
- ADOT petitioned for special action to the Court of Appeals.
- The Court of Appeals *reversed* the trial court.

Motions *in Limine*

- 1) The pre-litigation appraisal is precluded under ARS § 12-1116 (O).
- 2) It was precluded under 408 as it was prepared to make the owner a settlement offer.
- 3) Public policy concerns that when an agency must protect public funds, which includes assessing the worth of a property, that assessment should not be used against it later.

State ex rel. Miller v. Superior Court, 189 Ariz. 228, 231 (App. 1997)

Motions *in Limine*

But...

A witness may be impeached (607) which can include a “prior inconsistent statement” (613).



Motions *in Limine*

Back to Common Evidence Rules:

- 501-502 Privileges
- 602 Personal Knowledge (i.e., “*Foundation*”)
- 702-706 Experts (more on that later)
- 801-807 Hearsay
- 901-903, 1002-1006 Documents and Public Records

Motions *in Limine*

- What happens if MIL is denied and the evidence can/will be admitted?
 - You can special action to the COA, but their acceptance of special action is discretionary.
 - You can still object to the evidence at trial if appropriate.
 - You can appeal after the jury verdict. In Arizona, the objection is preserved.

“The court’s denial of a motion *in limine* preserves the moving party’s objection to the evidence for purposes of appeal.”

7.2(d)

Motions to Exclude Expert Witness Testimony

Arizona Rule of Evidence 702:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- b) The testimony is based on sufficient facts or data;
- c) The testimony is the product of reliable principles and methods; and
- d) The expert has reliably applied the principles and methods to the facts of the case.

SO MANY RULES



**SO LITTLE
BRAINSPACE**

Don't worry . . .

Help is on the way

Ariz. R. Evid. 702

- Identical to Federal Rule since 2012
- Federal advisory committee notes and federal decisions
- *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)
- *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)
- *State ex rel. Montgomery v. Miller*, 234 Ariz. 289 (App. 2014)
- *State v. Bernstein*, 237 Ariz. 226 (2015)



Rule 702 – Role of Court



- Court is “gatekeeper”
- Party proffering witness bears **burden** of establishing relevance, reliability, and admissibility of the testimony by a **preponderance of the evidence**
- “Close cases” are for the jury

Expert Qualifications



- Knowledge
- Skill
- Experience
- Training
- Education

702(a) Help the Trier of Fact



702(b) Sufficient Facts or Data

- Focus on **quantity** of information
- What research / investigation did the expert conduct?



702(c) Reliable Principles and Methods



Accepted body of
learning or experience

702(d) Reliably Applied to the Facts



Plus . . .

- Has the expert:
 - Maintained **standards** controlling application of the technique?
 - Accounted for obvious **alternative explanations**?
 - Accounted for available data and **unknown variables**?
 - Engaged in improper **extrapolation**?
- Big picture questions:
 - Is testimony **relevant** and **reliable**?
 - Is there an **analytical gap** between the data and opinion?

But what about
condemnation
cases?



Party Seeking Exclusion

- What is the “fact in issue”?
- Did the expert do his or her homework?
 - Review report, file, and ask at deposition.
- If expert relied on studies, articles, and industry standards, were they applied correctly?
 - Any USPAP violations?
- Where testimony is based on experience, reliability is more important
 - Expert’s assurance of reliability isn’t enough.
- Can you use expert’s own testimony to support exclusion?

Party Opposing Exclusion

- Battle of experts – should be presented to the jury
 - Expert testimony can be “shaky”
 - Evidence does not need to be flawless
- Industry materials and case law endorsing expert’s methodology
 - Novel methodologies are also acceptable
- Expert’s qualifications, experience, and testimonial history
- Experts are permitted wide latitude to offer opinions
 - First-hand knowledge not required
- Rule 702 should be applied with flexibility

Other Considerations

- Timing of motion
- Partial exclusion
- One expert per issue
- Hearing strategy



INTERACTIVE SCENARIOS

Scenario 1: Landowner Severance Damage Testimony

- City street-improvement project will eliminate 1 of 2 access points to a midblock retail property (both access points on same street).
- City's appraiser finds no change in highest and best use or severance damages based on elimination of the single access point.
- Landowner wants to testify that elimination of the access point will make internal circulation difficult, construction will cause tenant to leave, and the current use is no longer feasible.
- In addition to City's valuation of the part taken, owner wants to testify that the remainder is worth 50% less in the after condition.
- Can City exclude the owner's testimony? In whole or in part? Why or why not?

Scenario 2: Condemnor's After Condition Evidence

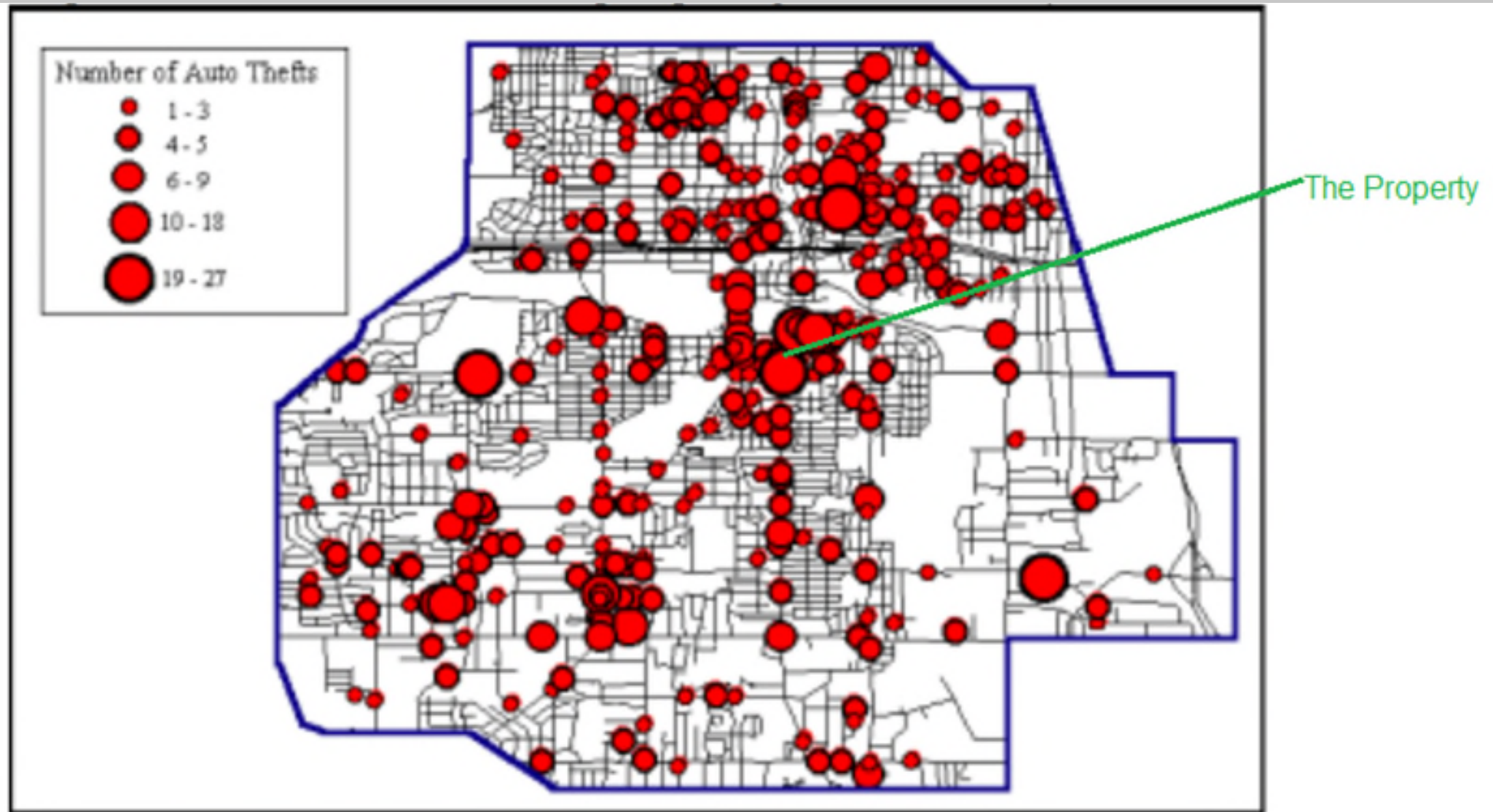
- County is acquiring 5 acres of a 20-acre planned residential development parcel for a new flood control basin.
- County's appraiser finds no severance damages based on the County's description and artists renderings of what the basin will look like once constructed.
- Descriptions and artists renderings are based on less than 100% construction plans.
- Can the owner developer exclude the County's appraiser testimony? In whole or in part? Why or why not?
- What about the artists renderings of the future basin?

Scenario 3: Pre-Filing Communications and Relocation

- State is acquiring a portion of an industrial parcel for a new freeway.
- Prior to the lawsuit, State's agent and the landowner had various conversations about whether the take would be total and what kind of compensation/relocation benefits could be available.
- The pre-filing communications turned nasty when the landowner accused the State of acting like "Nazis" and the relocation agent characterized the property as containing a bunch of "useless [stuff]".
- Landowner's appraiser opines that the take is total, requiring compensation for the entire parcel as well as relocation benefits.
- Can State exclude appraiser's testimony? In whole or in part? Why or why not?
- What about the pre-lawsuit statements between the relocation agent and the landowner?

Scenario 4: Historic and Public Documents

- Town is acquiring entire parcel for a redevelopment project.
- In order to bolster its appraiser's opinion that the property isn't worth much, Town wants to admit the following documents.
 - Public records of crime statistics for the neighborhood
 - Newspaper articles about the character of the neighborhood and specific instances of violence and prostitution
 - Police reports of alleged crimes occurring on or near the subject property
- Can the landowner preclude Town from admitting the documents? Which ones? Why or why not?



Thank You!

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Questions?



Networking Break

WE WILL RESUME AT 10:45 AM

Relocation Hot Topics

MIKE SULLIVAN, RANGE WEST CONSULTANTS

Welcome, Michael Sullivan



Consultant
Range West Consultants
mikes@rangewc.com

Agenda

- What information do we play the game with?
- Key terms in the relocation of business, farm operations, etc.
- What about those underground storage tanks?
- Concrete relocation entitlements?
- Actual site search costs?
- Vacant land relocation?



Introduction

- The survival of most businesses when property is acquired, and relocation is mandated, depends on proper implementation of applicable laws. The original public law 91-646 was formulated to ensure businesses did not close as a result of agency acquisition for a public purpose.

Topic One

Public Law 91-646.

42USC, Chapter 61, Section 4601 – 4655. The statutes.

49CFR, Part 24 – The regulations.

FHWA frequently asked questions. Link at

www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm

Case law – Beaird Poulan v. Department of Highways, State of Louisiana. 441 F. Supp. 866 and Pou Pacheco v. Soler Aquino. 833 F.2d 392 (1987)

Key Terms

§4621. Declaration of findings and policy

(a) Findings

The Congress finds and declares that —

- (2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;
- (3) the displacement of businesses often results in their closure;

Key Terms

§4621. Declaration of findings and policy

(b) Policy

This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. **The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.**

Underground Storage Tanks

Are Underground Storage Tanks Real Property or Relocation???

Argument as real property – They are buried in the ground!

Arguments for relocation – Each tank has a registration number.
– States require tank closure report upon non-use.
99% of all tanks closed are removed.





FHWA Questions

62. §[24.301](#)(g)(3). Are the costs incurred for site preparation for installing underground tanks eligible moving expenses?

Underground tanks are generally considered realty and purchased as part of the real estate. If under state law, the underground tanks are personal property and will be moved and used at the replacement site, then they can be considered an eligible moving expense.

Concrete in Relocation

Concrete as relocation?

Real property or relocation?

If concrete can be a relocation item, is there any limit to the amount of concrete recovered in relocation?









FHWA Questions

§[24.301](#)(g)(3). Can the costs of pits, pads, and foundations necessary for the installation of machinery or equipment in the replacement business site be reimbursed as a moving cost?

The costs of pits, pads, and foundations can be reimbursed as an eligible moving cost if they are necessary for the reinstallation of equipment or machinery or the installation of substitute items that are necessary for the business operation. Normally, pits, pads, and foundations only add value to a property for a particular business operation and would not generally enhance real property.

In the case where the pits, pads, and foundations are ascribed a contributory value, then that value may be deducted from the cost of the newly constructed pit, pads, and foundations.

Site Search

Is the \$2,500.00 dollar limit a statutory or regulatory requirement?

Why do all Department of Transportations find it necessary to place the site search limit in their relocation cover letter?

If a relocation agent is aware of the site search circumstances with a specific business, does the relocation agent have an obligation to assist the displace in maximizing his entitlement?

Does a relocation agent (under contract with an acquiring agency) have the ethical responsible to disagree with the acquiring agency on the amount of site search. If there is disagreement between the relocation agent and the acquiring agency, is the agent responsible for documenting disagreement in the relocation file?

FHWA Questions

§[24.301](#)(g)(17). How early can search costs be incurred by a displaced business and still be reimbursable? Could they be incurred prior to authorization or award of a grant for the project or program?

While searching costs may be incurred by the displaced business at any time after there is a reasonable expectation that the business will be displaced, the agency cannot reimburse the displaced business for any searching costs incurred until the displaced business qualifies as a displaced business as defined in §[24.2](#)(a)(9).

FHWA Questions

§[24.301](#)(g)(17). Can search expenses ever exceed \$2,500?

In unusual circumstances search expenses over \$2,500 may be reimbursed when the agency verifies that the expenses are justified and obtains a waiver from the funding agency, per §[24.7](#).

Refer to *Pou Pacheco v. Soler Aquino*, 833 F.2d 392 (1987)

Court awarded \$55,000.00 in documented site search.

Vacant Land & Relocation

Can the taking of vacant land from a larger parcel, where the taking does not affect the operation or access of an ongoing business, be grounds to relocate the entire facility??

What property aspects should be considered by the property owner's attorney and an agency relocation agent in determining if a business has been displaced by the taking of vacant land??

Refer to *Beird-Poulan v. Department of Highways, State of Louisiana*, 441 F. Supp. 866 for the written decision.

Vacant Land Relocation

Legend

- Atlas Tubular
- Pipe Reclamation



Thank You!

Mike Sullivan

mikes@rangewc.com

Questions?



Lunch on the Lawn

WE WILL RESUME AT 1:00 PM

Civil Practice & Procedure Updates from the Superior Court Bench

THE HONORABLE MICHAEL J. BUTLER, PIMA COUNTY SUPERIOR COURT

THE HONORABLE MICHAEL P. MCGILL, YAVAPAI COUNTY SUPERIOR COURT

THE HONORABLE DANIELLE J. VIOLA, MARICOPA COUNTY SUPERIOR COURT

Welcome to our Judges Panel



Hon. Michael J. Butler
Pima County Superior Court



Hon. Michael P. McGill
Yavapai County Superior Court



Hon. Danielle J. Viola
Maricopa County Superior Court

Issues

- State of the Courts
- Jury Selection – Elimination of Peremptory Strikes
- Discovery Disputes
- Pandemic/Post-Pandemic Considerations
- Clerk of Court

State of the Courts

- Yavapai
- Pima
- Maricopa

Jury Selection

- Rule Changes
- Electronic Questionnaires

Rule Changes

After considering various rule petitions, the Arizona Supreme Court eliminated peremptory challenges effective **January 1, 2022.**

- On December 8, 2021, the Arizona Supreme Court adopted the Statewide Jury Selection Workgroup's Rule Petition on an emergency basis.
- Rules adopted on permanent basis effective August 29, 2022 with some changes.

Reasons Supporting Rule Changes

- Research indicates prospective jurors are more willing to provide candid answers in written questionnaires than during oral voir dire.
- Research suggests that jurors are more willing to provide useful information when asked questions about their opinions and life experiences rather than being asked whether they will follow the court's instructions.
- Many practitioners expressed concern regarding judges “rehabilitating” jurors by asking leading questions and the research suggesting this “rehabilitation” is not effective.

What do the Revised Rules Say?

- Challenging party has burden by preponderance of the evidence to show that juror cannot render fair and impartial verdict. **Ariz. R. Civ. P. 47(d)(3).**
- Court must consider totality of a prospective juror's conduct and answers given during voir dire. **Ariz. R. Civ. P. 47(d)(3).**

Use of Questionnaires

- Unless the Court orders otherwise, the court should require each prospective juror to complete a case-specific written questionnaire in a manner and form approved by the court, to include questions about the prospective juror's qualifications to serve, hardships preventing the prospective juror from serving, and whether the prospective juror could render a fair and impartial verdict. **Ariz. R. Civ. P. 47(c)(3)**
- Questionnaires are not mandatory.
- Revised rules encourage the use of case-specific questionnaires when feasible, deferring to the court on the method and manner of their administration. See Comment 2022 Amendment to Rule **47(c)(3)**

If a Questionnaire is Used

- The questionnaire should include instructions on the purpose of voir dire, how the court and parties will use the information, and who may have access to the information the juror provides. **Ariz. R. Civ. P. 47(c)(2)**
- Case specific questionnaires should include information on the purpose of voir dire, how the court and parties will use the information and who may have access to the information provided.
Ariz. R. Civ. P. 47(c)(3)
- Prospective juror must swear or affirm that answers provided in response are truthful.
Ariz. R. Civ. P. 47(c)(1)
- Completed case-specific written questionnaires must be filed under seal and maintained as part of the case file. **Ariz. R. Civ. P. Rule 47(b)(3)**
- Before oral voir dire, prospective jurors' responses to case-specific written questionnaires must be provided to each party. Any party receiving a copy of the responses must not disclose the information to the public and may disclose the information only to the extent necessary for the proper conduct of the case. **Ariz. R. Civ. P. Rule 47(b)(3)**

If a Questionnaire is Used *cont.*

- When jury selection is completed, each recipient must destroy or return to the court all copies of juror responses. **Ariz. R. Civ. P. Rule 47(b)(3)**
- Counsel may retain a copy of the case-specific questionnaires containing work product. **Ariz. R. Civ. P. 47(b)(3)**

What Information Should You Consider Including in a Questionnaire?

- Information that jurors may be reluctant to provide publicly, e.g., they were victim of an offense, they were convicted of an offense.
- Information that is more efficient and effective to obtain through written questionnaires and could taint the jury pool, e.g., What do you know about this case?
- Relevant attitudinal questions such as whether the jurors have any opinions or life experiences that would cause them to give more or less credibility to a particular witness or whether they have attitudes regarding particular issues such as damages for pain and suffering.
- Hardship.

Test Drive?



Oral Voir Dire

- At the beginning of oral voir dire, if not already provided to the jurors, the court must explain purpose of voir dire. **Ariz. R. Civ. P. 47(c)(2)**
- Except in eviction or justice court civil cases, court must conduct oral voir dire. Failure to submit questions prior to examination should not be grounds to deny a party the opportunity to conduct an oral examination. **Ariz. R. Civ. P. 47(c)(5)**
- Upon request, court must allow parties *sufficient* time, with other reasonable limitations to conduct further oral examination of the prospective jurors. **Ariz. R. Civ. P. 47(c)(5)(A)**
- The Court retains the discretion to manage voir dire, including to preclude improper, excessive, or abusive questioning. **Ariz. R. Civ. P. 47(c)(5)(B)**
- Sufficient time is not unlimited or unrestricted time. Judge still controls voir dire.

Oral Voir Dire

- When feasible, the court should permit liberal and comprehensive examination by the parties, refrain from imposing inflexible time limits, and use open-ended questions that elicit prospective jurors' views narratively. *See* Comment 2022 Amendment to **Rule 47(c)(5)**
- The Court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm they can set aside their opinions and neutrally apply the law. *See* Comment 2022 Amendment to **Rule 47(c)(5)**

General

- The court may excuse a prospective juror upon stipulation of the parties that, in their good faith belief, the prospective juror cannot render a fair and impartial verdict. **Ariz. R. Civ. P. 47(d)(4)**
- The court may discuss using case-specific written questionnaires at the trial setting conference, including a deadline for submitting questions, areas of inquiry, any limitations on questioning, and whether to permit brief pre-voir dire opening statements. **Ariz. R. Civ. P. 16(e)(2)(D)**

Oral Voir Dire – What's New?

- Strict time limits discouraged.
- Extended oral voir dire with participation from the parties.
- Emphasis on open-ended questions that elicit prospective jurors' views narratively.
- Avoiding judge-led rehabilitation through leading, conclusory questioning.
- Attorney driven rehabilitation.
- Alternative phrasing to bias and prejudice or lack of fairness.
 - Filters or lenses versus bias or prejudice
- Follow up questions to clarify a juror's position remain appropriate.

Making the Record

- The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. **Ariz. R. Civ. P. 47(d)(3)**
- In making its determination, the court must consider the totality of a prospective juror's conduct and answers given during voir dire. **Ariz. R. Civ. P. 47(d)(4)**
- Consider the totality of the juror's responses and conduct, including facial expressions, body language, tone of voice, tearful, head-shaking.
- You may need to ask clarifying and follow-up questions.
- Listen to arguments for strikes and make your record.

Lawyer Survey Responses

I received the questionnaire responses in a timely fashion.

More Details

● Strongly Disagree	1
● Disagree	1
● Neutral	0
● Agree	6
● Strongly Agree	10



Lawyer Survey Responses

I had enough time to review responses prior to conducting in-person voir dire.

[More Details](#)

● Strongly Disagree	1
● Disagree	5
● Neutral	0
● Agree	9
● Strongly Agree	3



Lawyer Survey Responses

12. Did the questionnaire cover the topics or questions you wanted to present to the jurors?

[More Details](#)

● Yes	16
● No	2
● Unsure	0



Lawyer Survey Responses

17. Overall, were you satisfied with the questionnaire process?

More Details

● Strongly Disagree	1
● Disagree	1
● Neutral	3
● Agree	10
● Strongly Agree	3



Juror Feedback - Positives

- I liked the new online questionnaire before going to a courtroom.
- The questionnaire given to my group was very probing and very detailed.
- Electronic Peremptory was slick. Just between you and the device.
- I like that the question at first are done electronically, it makes the process faster.
- The updated QR Code questionnaire process was an immense time improvement. Thank you for the efficiency.
- I really liked the QR code answer form that we submitted to let the judge read through to determine the first wave of people to release from jury duty. I felt more at ease responding what my personal issues are rather than verbalizing my issues in front of a room full of people.

Juror Feedback - Negative

- I would suggest being able to take the jury survey from home.
- Find a way to make things more efficient. Waited 2 + hours to finally be called to scan a QR code that allowed me to fill out a questionnaire that I could have done at home. Once that was filled out and after they took lunch the rest of the process seemed totally worth a juror's time. It would be nice if the questionnaire that you fill out to determine bias and suitability to serve was done the night before online and those passed on don't have to drive downtown.
- Maybe more of the questionnaire and analysis can be done ahead of time and then essentially get right to the last part of the process shortly after arrival.
- The time between the questionnaire and returning was a little long though.

Discovery Disputes

- Rule 26(d)
- Attachments
- Additional Briefing

Pandemic/Post Pandemic

- Remote versus in-person
- Trial procedures
- Backlog
- Other changes

AO 2022-13

Maricopa County Superior Court

IT IS FURTHER ORDERED that a judicial officer assigned to a case is authorized to make a hearing-specific deviation from the presumptive manner in which a hearing must be held if holding the hearing in the presumptive manner is not practical or otherwise not in the interest of justice. If such a finding is made, the judicial officer is required to provide notice to the parties identifying the manner in which the hearing is to be held.

IT IS FURTHER ORDERED that nothing in this Administrative Order or the attached Presumptive Standards confers a procedural right on any party, and neither the Administrative Order nor the Presumptive Standards may form the basis of or be used in support of a challenge to the validity of a hearing or court order.

IT IS FURTHER ORDERED that this order will take effect on September 12, 2022. All hearings scheduled following that date must be set in the manner proscribed. Hearings scheduled prior to that date may go forward as scheduled.

AO 2022-13

Maricopa County Superior Court

Attachment 1

Remote and In-Person Hearings For the Superior Court in Maricopa County

Case Type	Hearing Type	Remote	In-Person	Justification for Change
<i>Proceedings Under the Arizona Rules of Civil Procedure (Including Proceedings Under the Rules of Procedure for Judicial Review of Administrative Decisions; Superior Court Rules of Appellate Procedure - Civil and Criminal and Tax Court Rules of Practice)</i>				
<i>General</i>				
	Temporary Restraining Order	X		
	Preliminary Injunction - Non-witness	X		
	Preliminary Injunction - Witness		X	
	Scheduling Conference	X		
	Settlement Conference	X	X	The conferences will be set at the discretion of the assigned Judge Pro Tem based on staffing and technology.
	Compulsory Arbitration - Non-witness	X		
	Compulsory Arbitration - Witness		X	

AO 2022-13

Maricopa County Superior Court

	Good Faith Settlement Hearing		X	
	Pre-trial/Motion - Non-witness	X		
	Pre-trial/Motion - Witness		X	
	Jury Selection		X	
	Jury Trial		X	
	Bench Trial		X	
	Default	X		
	Contempt - Non-witness	X		
	Contempt - Witness		X	
	Post-Judgment Proceedings - Non-witness	X		
	Post-Judgment Proceedings - Witness		X	
	Excess Proceeds	X		
	Amended Marriage Licenses and Birth Certificates	X		
	Forfeitures	X		
	Name Change hearings	X		Names Changes will be conducted remotely but may be designated In-Person if contested.

Clerk of Court

- Relationship
- E-file
- Exhibits – Case Centers pilot project

Thank You!
Questions?



Cookie Break

Sponsored by Integra Realty Resources

WE WILL RESUME AT 2:45 PM



The Ins & Outs of Water Utility Condemnations

CHRIS KRAMER, JENNINGS STROUSS

Welcome, Chris Kramer



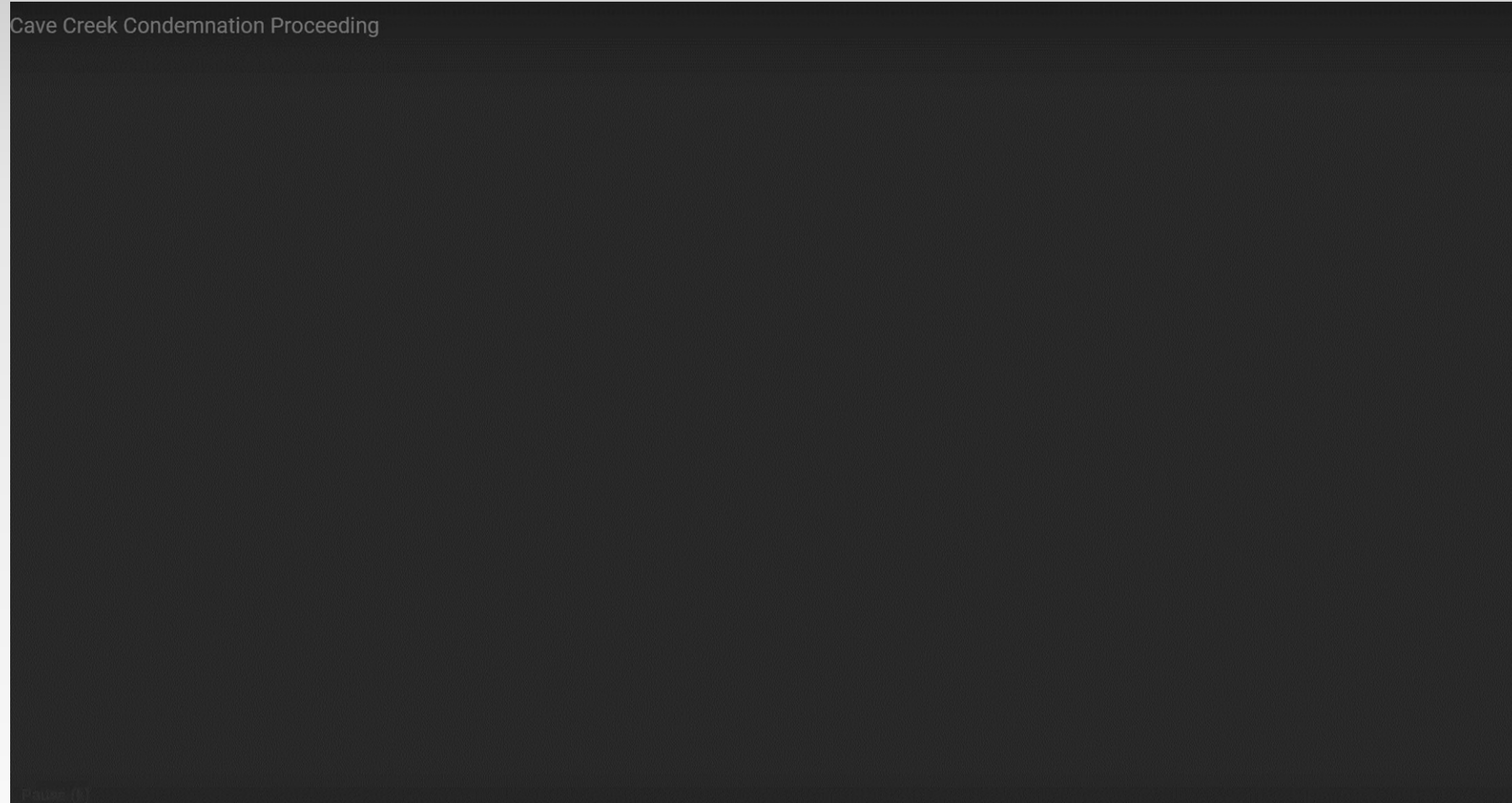
Member
Jennings Strouss
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Carefree v. Cave Creek

- Intergovernmental Agreement
- Partial Taking
- Pre-Filing Appraisal (RCNLD)
- Offer
- Appraisal (OCLD v. DCI/RCNLD+ “Severance Costs”)
- Virtual Arbitration
- Award
- Attorneys’ and Expert Fees + Bad Faith

Benefit of the Bargain?

Cave Creek Condemnation Proceeding



Bullhead City v. EPCOR

- Preliminary Valuation and Rate Study
- Election
- Appraisal
- Offer
- Right to Take
- Immediate Possession
- Pre-Trial and Jury Selection
- Settlement

Water Industry Playbook

- Stop the condemnation before it starts.
- <https://truthfromthetap.com/>

Condemnation is expensive, uncertain, time-consuming, expensive, anti-business, socialist, expensive, un-American and expensive.

Municipal ownership results in higher rates and worse service.

Anyone who says otherwise is ignorant, misleading or lying to advance their social agenda.

Authority to Condemn

- ARS Sec. 9-511(C): For purposes listed in sub. A
- ARS Sec. 9-515: Where residents served under existing franchise
- ARS Sec. 9-516: Where adequate service provided within or without corporate boundaries
- ARS Sec. 9-518: Where no other method for valuing utility is provided by law
- ARS Sec. 9-522: Subject to 515-518 may condemn within or without corporate limits and issue bonds to finance
- ARS Sec. 12-1111, et seq.

Necessity, “More Necessary” Public Use

- ARS Sec. 12-1112 does not apply to utility condemnations
 - *Desert Waters v. Superior Court*, 91 Ariz. 163 (1962)
 - *Flecha Caida Water Co. v. Tucson*, 4 Ariz. App. 331 (1966)

Right to Take and Immediate Possession

- Motion to limit discovery: Whether condemnation is a “good idea”.
- Motion for partial summary judgment: right to take and right to take immediate possession.
- 4-day OSC (April)
- \$80M bond (\$55M vs. \$137M)
- Possession: September 1, 2021 (DOV)

Rate Making for Dummies

(Rate Base x Allowed Rate of Return) = Return on investment
+ Allowed Expenses = Revenue requirement

Rate Base is generally OCLD (or OCLD+RCNLD/2)

Economic obsolescence is the inability of an asset to earn a return regardless of its functionality

Valuation

- Partial Taking and Allocation
- Severance vs. “Actual and Consequential” Damages
- Original Cost
- Replacement Cost
- Reproduction Cost
- Regulation and Economic Obsolescence (Going Concern)
- Discounted Cash Flow
- Direct Capitalization of Income (Rate Base)
- Market (Price per Connection or ERU)
- Owner’s Opinion
- Auction Theory (with Municipal Buyer)

Pre-Trial Practice and Procedure

- Witnesses
- Severance Damages MPSJ
- Jury Questionnaire
- Challenges for Cause
- COVID

Settlement

- \$60M vs. \$150M updated appraisals
- \$80M vs. \$130M (settlement posture pre-mediation)
- Offered high/low of \$95M-\$125M
- Countered with high/low of \$80M-\$120M
- Settled for \$100M

Thank You!

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Questions?



Networking Break

WE WILL RESUME AT 4:00 PM

What Condemnation & Real Estate Professionals Need to Know About ESG & DEI

HENRY DARWIN, GALLAGHER & KENNEDY

HEATHER FOX SKINNER, JPMORGAN CHASE & CO.

Welcome, Henry Darwin & Heather Fox Skinner



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Environmental, Social, and Governance (ESG) Criteria

HENRY DARWIN, GALLAGHER & KENNEDY



Environmental, Social, and Governance (ESG) Criteria

[in- 'vī-rə(n)-mənt-el 'sō-shəl ən(d) gə-vər-nən(t)s krī- 'tir-ē-ə]

A set of standards for a company's behavior used by socially conscious investors to screen potential investments.



Source: Crux Informatics

E nvironmental Examples:

- Climate Change/Carbon Emissions
- Air/Water Pollution
- Energy Use
- Water Consumption
- Waste Generation
- Deforestation
- Green Building

Social Examples

- Diversity, Equity, and Inclusion
- Employee Relations/Engagement/Benefits
- Health and Safety
- Community Service/Impact/Relations
- Human Rights
- Consumer Relations
- Product Quality/Safety

Governance Examples

- Board Composition/Diversity/Independence/Accountability
- Executive Compensation
- Bribery and Corruption
- Political Contributions
- Compliance/Fines
- Data Security
- Tax Strategy
- Transparency

Government Interest



GREENWASHING

Spending more time and money claiming to be “green” through advertising and marketing rather than actually implementing business practices that minimize environmental impact.

How to Avoid Greenwashing:

- SMART ESG Goals (Specific, Measurable, Achievable, Relevant, Time-Bound)
- Written Plan for Achieving Goals
- Interim SMART Goals
- Regular Review of Interim SMART Goals
- Procedures for Adjusting When Interim SMART Goals Missed



Diversity, Equity & Inclusion in Commercial Real Estate

HEATHER FOX SKINNER, MSRE, CCIM

AZCREW | CREW Network | JPMorgan Chase & Co.

ALL VIEWS EXPRESSED ARE MY OWN

Where Do We Even Start?!

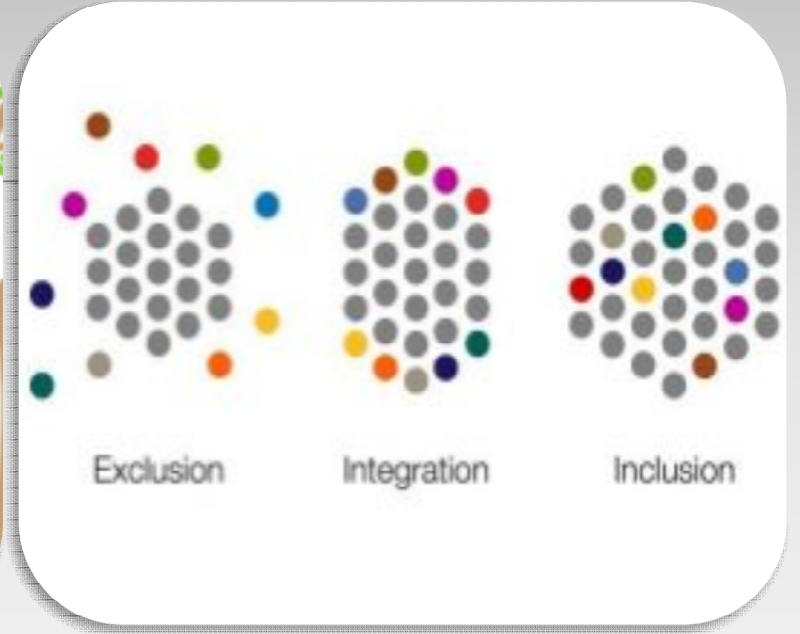
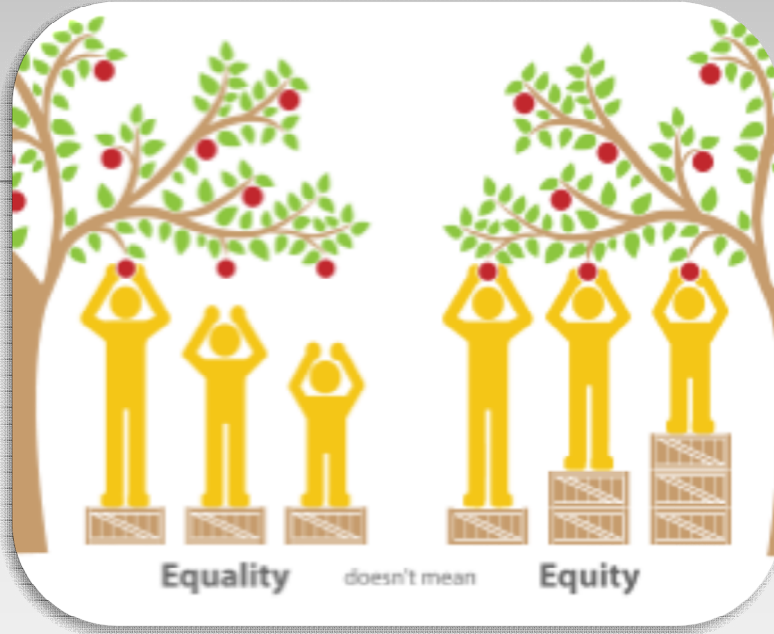


The first barrier... is complexity. Companies often don't know where to start.¹

- Industry & Society
- Workforce & Company
- The Physical Space
- Pledge For Action

References

1. Enriquez – Ramones, Mary, et al. "Diversity & Inclusion in the Real Estate Industry." *Deloitte Real Estate Predictions 2020*, Article 6



Diversity, equity, and inclusion (DEI) is not just a phrase. Each word speaks to distinct values. *-University of Washington, Office of Research, DEI*

Industry & Society

Redlining ¹

- Statistically significant credit score gaps
- Higher probability of being subprime

Historically a Family Business

- Many 2nd or 3rd generation
- April 11, 1968 – Fair Housing Act

Progress is Happening ²

- ASU Partnership w/ HBCUs
- Real Estate Development Courses
- Let's hear from Murphy Cheatham



References

1. Aaronson, Daniel, et al. "The Effects of the 1930s HOLC "Redlining" Maps." Federal Reserve Bank of Chicago WP 2017-12, Revised February 2019.
2. Gilger, L. (2022, August 29). An ASU partnership attempts to increase diversity in the real estate industry. KJZZ.



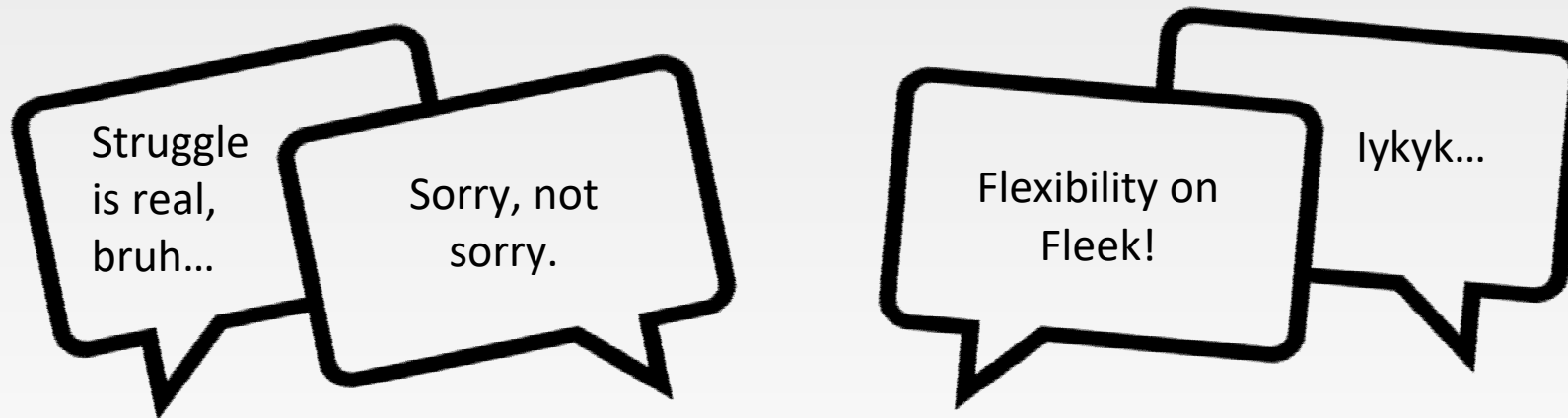
There is only one thing wrong with the younger generation: some of us don't belong to it anymore.

- Bernard Baruch (1870-1965)

Workforce & Company



Gen Z / Millennials will make up 70% of the workforce by 2030 ^{1,2}



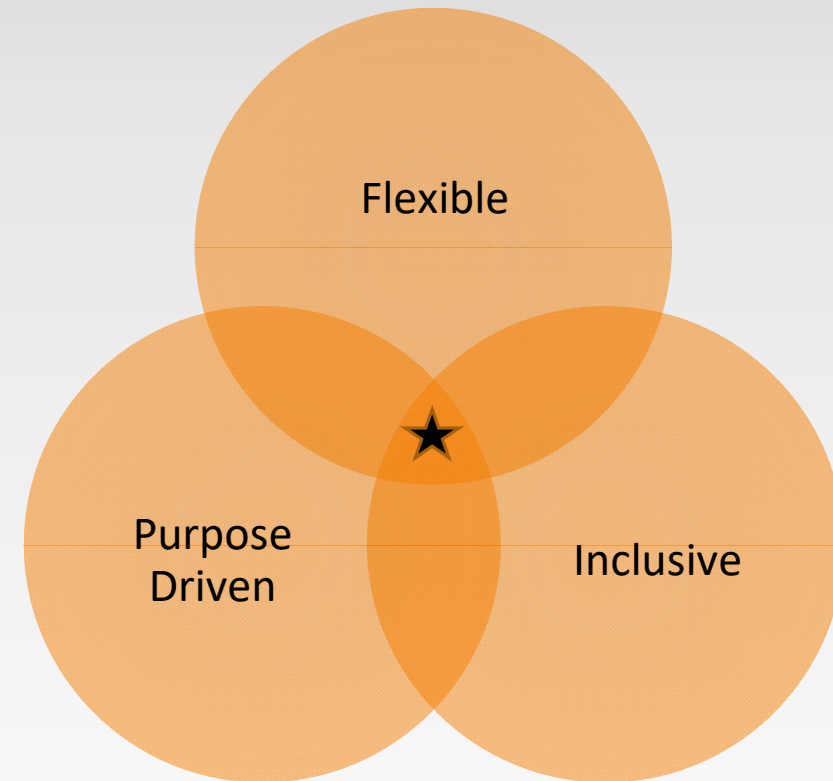
References

1. Deloitte (2022). Striving for balance, advocating for change: The Deloitte Global 2022 Gen z & Millennial Survey.
2. Gomez, Karianne et al. "Welcome to Generation Z." Deloitte Network of Executive Women

The Physical Space

Workplace Design Trends¹

- Destination
 - Creativity & Innovation
- Experimentation
- Purpose Driven
- Third Spaces
 - Design to the Edges
- Equity & Inclusion
 - Beyond Race, Gender, Generations
 - Equitable Experiences
- Health & Wellbeing
 - Biophilia
 - Mental Health



References

1. Cohen, Andy et al. "Gensler Design Forecast 2022." The Gensler Research Institute, The Future of Work.

Pledge For Action

- Support our Mission
- Close Compensation Gap w/ Pay Equity Study
- Senior Executive Sponsorship of Underrepresented Groups
- Advancement to Top Roles
- Intentional Recruiting and Hiring
- Implement Accountability Strategies



Learn more: crenetwork.org/cre-pledge-for-action

Thank You!

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Heather Fox Skinner
heather.skinner@jpmchase.com

Questions?





We Appreciate Your Feedback.
Please Take a Moment to Fill Out Our Survey.

Thank You!

**Please Pick up Attendance Certificates
at the Registration Desk.**