

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - KENTUCKY

Transportation Cabinet, Department of Highways v. Atkinson

Supreme Court of Kentucky - December 19, 2024 - S.W.3d - 2024 WL 5174259

Transportation Cabinet, Department of Highways, filed condemnation petition against property owners, who had entered into coal lease with company, which granted company right to mine property's coal in exchange for royalty payments, seeking to condemn fee simple title to portion of property to complete highway construction.

Following a jury trial, the Circuit Court entered judgment in which jury awarded owners \$550,000 as just compensation for the Cabinet's condemnation of their property. Cabinet appealed, and the Court of Appeals affirmed. Cabinet moved for discretionary review, which was granted.

The Supreme Court held that expert witness's testimony valuing condemned property's fair market value pre-condemnation did not run afoul of prohibition on price-per-unit evidence, and thus was admissible.

A valuation of condemned property's fair market value under income capitalization approach based on an elementary "price per unit" calculation, in which the quantity of minerals in the ground is estimated and then that figure is multiplied by the market price of the mineral to calculate a gross income to be derived from the condemned property, is irrelevant and inadmissible because it fails to account for the contingencies and uncertainties of business.

Expert witness's testimony valuing condemned property's fair market value at \$2.1 million pre-condemnation under income capitalization approach did not afoul of prohibition on price-per-unit evidence, and thus was admissible, in condemnation proceeding brought by Transportation Cabinet, Department of Highways, against property owners, seeking to condemn fee simple title to portion of property to complete highway construction; expert's testimony made clear that he appropriately endeavored to consider contingencies and uncertainties of business while estimating fair market value of owners' property, he contemplated that not all of property's subsurface coal could have been feasibly mined and sold, and accounted for risk and inflation to calculate a net present value of owners' expected income stream.