

PUBLICATION

For Convenience Store Chains in Georgia, Leasing Business Operations to Separate Entity Can Maximize Recovery in Condemnations

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In Georgia, when a convenience store chain both owns and operates a location, it should lease business operations to a separate legal entity to maximize recovery in the event of a partial condemnation.

In limited situations, Georgia law allows a business owner to recover damages to a business caused by a taking through eminent domain. If a business owner is entitled to recover such damages, the measure of compensation is the difference between the fair market value of the business before and after the taking. Whether a business owner is entitled to recover business damages depends on a number of factors, including: (1) whether the business owner also owns the real estate on which the business is located; and (2) whether the business has been completely destroyed or only partially damaged. If the entity that owns the business also owns the real estate underneath the business, that entity can recover business damages only if the entire property is taken or a partial taking forces the business to cease operations at that location. In other words, if a business is damaged by a taking but can continue operating, the business owner cannot recover for the damages if it also owns the real estate. When a business is operated by a separate lessee, however, the lessee may recover for damage to the business, regardless of whether the business is totally destroyed or only partially damaged.

To maximize recovery in the event of a partial taking through eminent domain, a convenience store chain that owns and operates a particular convenience store location should lease the business operations to a separate entity. In this situation, the entity that owns the land would recover the value of the property taken, and the entity operating the business would recover for any damages to the business. Without a lease agreement with a separate entity, the owner's recovery would be limited to damages to the value of the real estate.

We also recommend that the operating company to which the business is leased have at least slightly different ownership from the entity that owns the real property in order to curb argument that the two entities are effectively the same. Establishing different legal ownership for the property and the business is crucial to maximizing recovery in the event of a condemnation.