REVIEW OF ODA CASE LAW

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1. ILLEGAL TREE CUTTING

- Cain v. North Carolina Dept. of Transp., 2002 WL 416091 (March 19, 2002) – **North Carolina**
  - Cain owned a sign located on I-95. It leased the sign to Sunshine Outdoor of Florida. Sunshine subleased billboard to Café Risque. Trees were cut on right of way to increase visibility of sign. Petitioner and Sunshine denied any involvement in the cutting of the trees. Sunshine asserted Café Risque was responsible. Recent cases do not require direct involvement by the permit holder to uphold a revocation. Fact that petitioner did not know of violation nor hired violators did not relieve him of liability. Petitioners responsibilities did not end when it leased billboard to a third party, nor did it end when a sublessee violated those requirements.

- Garden Club of Georgia v. Shackelford, 266 Ga 24, 463 SE2d 470 (1995) - **Georgia**
  - Court invalidated DOT rules issuing tree cutting permits to allowing the trimming of trees and vegetation on highway right of way. Court held that rule was unconstitutional because granted gratuity on basis it allowed an unobstructed view of a sign on private property without providing a substantial benefit to the state.

- Garden Club of Georgia v. Shackelford, 2002WL 392478 (February 25, 2002) - **Georgia**
  - In light of above case, General Assembly passed new law, policy and manual. Issue is whether the statute allowing removal of trees to permit the viewing of signs on private property violates the gratuities clause of the Georgia Constitution. Georgia constitution prohibits the state from granting any donation or gratuity. New statute requires applicant to pay application and renewal fees in reasonable amount to allow full recovery of administrative costs of the program AND pay the value of the trees and vegetation cut. Under this section, billboard owners must provide or pay DOT for landscaping at a value not less than the DOT's appraised value of the benefit inured to the state.

- Subdivision Services Corporation (SSC) v. Zoning Hearing Board of Charlestown Township, 784 A2d 850 (Oct. 2001) – **Pennsylvania**
  - SSC owned 53 acres adjacent to turnpike. SCC applied for 4 2-sided billboards each 500 feet apart on its property to be read from turnpike. ZHB denied application because proposed sign would be unreasonable and deleterious to the health, safety and welfare of Township Residents. Court reversed, ordered permits be issued conditioned on SSC's removal of trees and foliage to ensure 500 feet of visibility for Turnpike motorists. Appellate court affirmed lower court. Appellate court held testimony and evidence was insufficient to prove that accidents on Turnpike were related to presence of billboards. – could have been from ice. Also, court has authority to impose such conditions provide they have a reasonable relation to the public health, safety and welfare. Testimony indicated that clearing trees would cure traffic safety problem.

- Hassoldt v. Patrick Media Group, Inc., 84 Cal.App.4th 153, 100 Cal.Rptr.2d 662 (October 13, 2000) - **California**

- Hassoldt owned property adjacent to the sign. The Hassoldts suspected Patrick Media for cutting a tree to better expose the sign. Hassoldts claimed that Patrick Media tortiously trimmed their tree. Court held that evidence concerning prior nefarious tree trimming by company was not admissible to show identity of wrongdoer, or to show intent or motive, and admission of that testimony was prejudicial error.

2. REVOCATION OF PERMITS

- Whiteco Metrocom, Inc. v. Roberson, 84 NCApp. 305, 352 SE2d 277 (1987) – **North Carolina**
  - Sign owner hired an independent contractor to maintain its signs. Independent contractor committed violations. Permit revoked. Court held, by obtaining the statutorily authorized permit, petitioner accepted the duty to follow the law in its exercise; and petitioner did no rid itself of this duty by hiring an independent substitute to act for it. For a duty imposed by statute cannot be delegated.

- Traverso v. DOT, 87 Cal.App.4th 1142, 105 Cal. Rptr2d 179 (March 20, 2001) – **California**
  - Dot revoked 4 permits in 1970. Traverso seeks to set aside the revocations and have the DOT renew or reissue the original permits because the DOT failed to properly notify his predecessor in interest of the revocation 25 years ago, therefore revoked without due process and operate as if never revoked. Court held no – even if deprive of due process 25 years ago, predecessors had opportunity to object and failed to do so, therefore statute of limitations bars action.

- Whiteco Industries, Inc. v. Harrelson, 335 N.C. 566, 441 SE2d 135 (1994) – **North Carolina**
  - Whiteco leased billboard to Comfort Inn. Three men, hired by Comfort Inn, cut trees on right of way. Permit revoked. Court held: to allow Whiteco to argue that there was no sufficient connection between them and the violators was tantamount to inviting circumvention of the law. Petitioner's responsibility did not end when it leased billboard space to a third party. In determining whether there has been a violation of an outdoor advertising regulation sufficient to support a permit revocation, NCDOT must (1) clearly identify persons, (2) who committed a violation for which revocation is permissible, and (3) show a sufficient connection between those persons and the permit holder

- Chancellor Media Whiteco Outdoor, Lamar and Universal v. Dept. of Transportation, 795 So.2d 991(July 30 2001) – **Florida**
  - Several nonconforming signs were destroyed in wildfires in 1998. DOT revoked sign permits. 23 CFR 750.707(d)(6)(1999) states that a nonconforming sign may continue as long as it is not destroyed, however, if permitted by state law, the signs may be re-erected if destroyed due to vandalism or tortious acts. Court held Lamar did not prove that wildfires were caused by vandalism or tortuous acts. Federal law is clear. The intent of the federal law is to prevent acts of "environmental terrorism" or the like where person opposed to billboards might engage in their intentional destruction. Also, no evidence of breach duty of Dept of Forestry to substantiate claim of DOF's negligence. See also, Chancellor Media Whiteco Outdoor Corp. v. Dept of Transportation, 796 So2d 547 (Oct. 9, 2001)

- Chancellor Media Corp. v. Dept. of Transportation, 2001 WL 725979 (June 29, 2001) – **Iowa**
  - Four signs were destroyed in a windstorm in 1998. The signs were reconstructed at a cost exceeding 60% of their initial value. There was no communication between the sign owner and DOT until 1999 when DOT notified sign owner that permits revoked because signs

had been destroyed. Sign owner argued that there is an implied exception to the law which allows them to restore a nonconforming billboard following its destruction by a natural disaster. Court held, the Iowa law is clear. The DOT has no discretion but must revoke a nonconforming sign which has been destroyed. No exceptions for Acts of God.

- Meredith Outdoor Advertising, Inc. v. Iowa DOT, Office of ROW, 2002 WL 1558786 (July 17, 2002) - **Iowa**
  - Iowa DOT revoked 2 permits for signs located more than 660 feet from an interstate r/w. The signs were located in an agricultural zone. Signs erected prior to 1972 – therefore grandfathered. Meredith added supports, enlarged dimensions, and increased height of signs. The DOT found the signs had been reconstructed or modified without first obtaining new permits from DOT in violation of the regulations. Meredith argued DOT exceeded its rulemaking authority under law in relying on regulation to cancel permits. Lower court reversed DOT because held DOT did not have rulemaking authority for signs beyond 660 feet from r/w. Supreme Court held other provisions and intend of the law gave authority and required DOT to regulate signs visible from the r/w, therefore, the revocation was valid exercise of DOT rulemaking authority.

3. TAKINGS AND BILLBOARDS

- Illinois Dept. of Transportation v. Drury Displays, Inc., 261 Ill.Dec. 875, 764 NE2d 166 (2002) - **Illinois**
  - CSX railroad quitclaimed land to DOT for highway construction. On the property was a sign leased by Drury and two signs leased by National Advertising Co. DOT condemned Drury's and Nationals interests. Court seems to suggest that the DOT should have exercised its rights as a landlord to terminate the lease under the 60 day notice provision. However DOT did not do so, rather DOT filed condemnations to terminate interests. Court held. (1) signs could not be disassembled without damage and (2) sign could not be "economically relocated". DOT argued that the only compensable property interest was the leasehold interest (i.e. bonus value) and it did not condemned signs because personal property. Court held that eminent domain statutes requires just compensation as the fair market value of the property at its highest and best use on the date condemned. Fair market value is the amount of money a willing buyer under ordinary circumstances would pay to a willing owner in a voluntary sale. The statute does not say just compensation is only "bonus value".

- Eller Media Company, vs. City of Houston, 2001 WL 1298901 (Oct 25, 2001)– **Texas**
  - In 1992, ordinance passed declaring all off-premise signs within City and its extraterritorial jurisdictions were nonconforming and unauthorized. Eller contends the ordinance violated First Amendment – Court held no, a city can ban billboards for reasons not related to content – here they banned them for aesthetics and traffic safety. (2) Eller contends unconstitutional taking without compensation – although a taking, no compensation required because adequately compensation by the amortization scheme to recoup their investment.

- State v. Hartrampf, 273 Ga. 522, 544 SE2d 130 (March 2, 2001) – **Georgia**
  - In 1981, County issued permit for sign. In 1982, DOT condemned property were sign was located but sign was not affected, however lot size was smaller that .46 acre required under County ordinance for lots containing off-premise advertising. No variance was ever requested. In 1998, County renewed permit for sign as a nonconforming structure. New ordinance passed which grandfathered all sign erected prior to 1990 but prohibited any repair of them. Following a tornado, the County revoked the permits. Nevertheless, the sign company repaired the sign. Property owner

(Hartrampf) charged with 168 violation of the ordinance. Court held ordinance could not "cause the removal" of a nonconforming sign, by an ordinance prohibiting sign from being repaired, without paying just compensation. Therefore ordinance unconstitutional because conflicted with state law. State law required County to pay just compensation for removal of lawfully erected sign which later became nonconforming.

- Moreton Rolleston, Jr. Living Trust vs. DOT, 242 Ga.App 835, 531 SE2d 719 (March 16, 2000) – **Georgia**
  - Visibility of legal nonconforming northbound reader sign reduced when DOT project lowered northbound land, constructed center wall, and built 16' x 16' signboard over southbound lane. Sign company argued denial of equal protection and taking. Court held no violation of 14th Amendment because nonconforming sign, and no taking under 5th Amendment because impairment shared by public.

- Lamar Company, LLC v. State, 2002 WL 1363880 (June 25, 2002) – **Georgia**
  - State condemned property with sign. State settled with landowner which required landowner to break lease with Lamar. State voluntarily dismissed condemnation proceedings. Lamar was named in the condemnation notice. The settlement required the State to buy the entire property of the landowner. Court held the lease agreement provided that if the property were sold, the owners could terminate the lease with 90 days advanced notice. When the landowners sold the entire property to the State, they terminated the lease per this provision. In doing so, they extinguished Lamar's interest in the property. Therefore, Lamar no longer had a compensable interest and was no longer a condemnee. Discussion on attorney fees.

4. PROHIBITED FORMS OF ADVERTISING

- People vs. Professional Truck Leasing Systems, Inc., 737 NYS2d 767 (2002) – **New York**
  - Traffic rule was upheld prohibiting person from leasing a cargoless, 4-foot wide truck or "moving Billboard" transporting nothing else but a "big" advertisement for a job recruitment computer website unrelated to its own truck leasing business. Defendant convicted on basis of conduct that plainly fell within the ambit of traffic rule. Traffic rule was not unconstitutional because defendant afforded other mediums to advertise.

- Taxi Cabvertising, Inc. v. City of Myrtle Beach, 26 Fed. Appx. 206, 2002 WL 23165 (January 9, 2002) United States Court of Appeals case. **South Carolina**
  - Cabvertising (CAB) is in the business of placing roof-mounted advertisements on taxicabs. CAB sued because denied First Amendment, equal protection (14th Amendment) and restrained interstate commerce in violation of the Commerce Clause. Court ruled, other medium available to advertising so not violation of First Amendment; ordinance was content-neutral so not violation of equal protection; and ordinance regulates evenhandedly and does not burden commerce so no violation of Commerce Clause.

- Spriggs v. South Strabane Township Zoning Hearing Board, 786 A2d 333 (2001) – **Pennsylvania**
  - Landowner erected 11 foot high privacy fence behind his house and overlooking I-70. On fence, Landowner affixed plywood sections communicating passages from the Bible. Landowner asserted he had right to express his religious beliefs under the First Amendment and Penn. Constitution. Board held illegal because violated ordinance by (1) erected in residential area; (2) not one of the exempted signs allowed to be seen from the road; (3) exceeded size requirement. Court held ordinance narrowly tailored to serve significant governmental interest. Landowner has other mediums available for such communication. Significant interest in not (1) distracting drivers; (2) traffic hazards (3) aesthetic harm outweighs right of landowner.

- Barber v. Texas DOT, 49 SW3rd 12 (April 5, 2001) – **Texas**
  - Barber erected sign on his private property adjoining I-20. The sign read "Just Say NO to Searches" and displayed a phone number. Barber did not apply for a sign permit from the DOT. The sign was

not in a commercial area. DOT notified Barber sign was illegal and must be removed. Issue: Can the DOT prohibit Barber from engaging in purely ideological speech on his own private property? Court Held – this prohibition is a violation of Barber's free speech rights guaranteed by the 1st Amendment to the US Constitution. Court found Barber could have erected a political sign, an on-premise sign, a for sale or lease of land sign, but not his sign. Court also found Barber has no adequate alternative means of communicating his message as convenient and less expensive. Barber wins.

- Burkow v. City of Los Angeles, 119 F.Supp.2d 1076 (October 17, 2000) – **California**
  - Burkow placed "for sale" sign in window of his car and parked it on public street.Ordinance prohibited such signs. Court held: Ordinance violated commercial speech rights absent showing that restriction was narrowly tailor to serve city's asserted safety and aesthetic interests. Ordinance did not prohibit potentially distracting advertisements unrelated to sale of vehicles or "for sale" signs in moving vehicles. City did not need to implement such an ordinance to minimize the alleged harm. The ordinance did not leave satisfactory alternatives to vehicles sellers.

- Kroll v. Steere, 60 Conn.App. 376, 759 A2d 541 (October 10, 2000) – **Connecticut**
  - Homeowner brought 1983 free speech claim against city claiming zoning regulation violated free speech. Zoning regulation provided that only 1 sign of not over 1 square foot in area may be displayed on any building. Court held – the regulation did not infringe on free speech rights of homeowner who placed 20 square foot sign on garage conveying message that killing deer was wrong because regulation made no attempt to regulate content of sign. Court held government had significant interest in regulation of signs to maintain safety of vehicular traffic and homeowner conceded sign was designed to attract attention of passing motorists.

5. REMOVE ILLEGAL SIGNS

- Highway News, Inc. v. Pennsylvania Dept. of Transportation, 789 A2d 802 (2002) - **Pennsylvania**
  - Highway News operated an adult bookstore on Lot 8. It subsequently relocated to Lot 9. Lot 8 and Lot 9 are separated by a road. Building on Lot 8 was demolished. Lot 8 now vacant. Highway News maintained an on-premise sign on Lot 8. DOT notified Highway News that sign was illegal because it was separated from the business by a road and was located 100 feet from the principal activity therefore could not be on-premise. As an off-premise sign, it was illegal because Highway News had not obtained a permit. Highway News argues Lot 8 is use for parking of its patrons. Court held: No. DOT's interpretation too narrow. Regulation defines "premises" as (1) land occupied by the buildings or *other physical uses that are necessary or customarily incident to the activity;* (2) land which is not used as integral part, including land separated from the activity by a road *AND not used by the activity;* (3) Land which is more than 100 feet from the activity *and whose purpose if for advertising purposes only*. No evidence on record as to whether Lot 8 is used for parking for business. Therefore, Court remanded case to determine that fact.

- United Sign, LTD v. Commonwealth of Kentucky, 44 S.W.3d 794 (October 27, 2000) – **Kentucky**
  - United erected 6 signs along I-75. Sign erected without permit. DOT argued signs were illegal per se because erected without permit. Court held that DOT had authority to require permit to be obtain before a billboard advertising device is erected.

- Tri-State Outdoor Media Group vs. Iowa DOT, 2002 WL 570910 (March 13, 2002) – **Iowa**
  - DOT revoked permit and directed removal because sign was modified without a permit. Tri-State alleges revocation was improper because they did not make the illegal modification and it violated their right to free speech. Sign was grandfathered nonconforming. While on routine inspection, DOT found 6 additional posts had been added to the sign without approval of DOT. Court held that the law did not require DOT to establish that Tri-State was the one who made the modifications, but only that the modifications had been made without a permit. It was uncontested that Tri-State did not do the work, but court held that was not relevant . Court also held that Tri-State's right to free speech were not violated. Court determined that the State had a sufficient basis for concluding that signs are traffic hazards and are aesthetically displeasing, and the most direct means of solving this problem was to require removal.

6. ARBITRARY AND CAPRICIOUS

- Lamar Advertising Co., Inc. vs. City of Orange Beach Board of Adjustments, 2000 WL 1603656 (Oct. 2000) (Alabama)
  - Lamar sued Board challenging constitutionality of zoning ordinance governing removal of nonconforming signs because ordinance was vague, overbroad, ambiguous and arbitrary. After Hurricane George, Board found signs structurally unsound and required removal. Court held "structurally unsound" was not defined and not a clear

standard. Even ODA investigators had differing interpretations. Since no uniform, articulatable method in applying standard, held unconstitutional as impermissibly vague and denies Lamar due process to know what it means and how it will be applied.

- Ex parte City of Orange Beach Board of Adjustments (In re Lamar ODA vs. City of Orange) 2001 WL 1591304 (2001) **Alabama**
  - Board petitioned for certiorari review by Supreme Court – Reversed and remanded – Supreme Court held that when reading the entire ordinance, the terms "structurally unsound" and "dilapidated" are not impermissibly vague nor ambiguous. The ordinance must be so plainly and palpably inadequate and incomplete as to be convinced beyond doubt that it offends the constitution or it will not be struck down. Ordinances can require some discretion in officials, especially where it is difficult of impracticable to lay down a definite or comprehensive rule for guidance. They must be uniform in application, and if so, do not confer unlimited power.

7. VALUATION

- Lamar Corporation v. Commonwealth Transportation Commissioner, 262 VA. 375, 552 SE2d 61 (Sept. 2001) - **Virginia**
  - Virginia holds that signs are realty. Since 1983, Lamar leased property for sign. In 1995, state condemned leased property. Lease provided ownership rights in Lamar. Lease was year to year with 60 day termination notice. Don Sutte was Lamar's expert. Court held that Sutte could testify about the income generated by the billboard because not offered in the valuation proceeding as an appraisal of the business conducted by Lamar on the property, but as a component consideration of the intrinsic nature and value of the billboard structure. Therefore, his consideration of the income generated by the sign was not a violation of the general rule barring a landowner from presenting evidence of expected income from the operation of a business conducted on the condemned property.

- Snyder Plaza Properties, Inc. v. Adams Outdoor Advertising, Inc., 259 Va. 635, 528 SE2d 452 (April 21, 2000) - **Virginia**
  - Adams lease land from Synder for 4 signs. City condemned Snyder's property. City and Snyder reached settlement to include Adam's interest. Lease gave Adams right to participate in condemnation award. Don Sutte was Adams expert. Using the sales comparison approach, Sutte examined 8 recent sales of similar leasehold in other states, divided sales price by annual gross income and arrived at GIM of 4.0. Next he calculated the "economic rent" or annual rent in the marketplace less 10% for vacancy and multiplied it by the GIM to arrive at the leasehold value. Sutte also used the income approach, subtracting vacancy from annual economic rent to reach effective gross annual income, less operating expenses to get net annual operating income then capitalized by 14.5%. Judge used modified version of income approach.

- Arizona Dept of Revenue vs. Arrizona Outdoor Advertisers, Inc., 202 Ariz 93, 368 Ariz. Adv. Rep. 3, 41 P3d 631 (March 7, 2002) - **Arizona**
  - ADOR attempted to treat sign owner's income from rental of billboard space as income from the commercial leasing of real property. Sign Company claimed that billboards are personal property. Court held that signs were not part of the realty because intended to remain with sign company upon termination of lease.

8. STANDING/ PROPERTY RIGHTS

- Maverick Media Group, Inc. v. Dept. of Transportation, 791 So.2d 491 (August 22, 2001) – **Florida**
  - DOT denied sign permit application because proposed sign location was too close to an existing Texaco sign. DOT dismissed Maverick's petition for formal administrative hearing because Maverick did not meet the 3rd party standing requirement. Maverick's petition included allegations that the Texaco sign permit was wrongfully issued. DOT argued that Maverick was essentially bringing a private cause of action by attacking the validity of

the Texaco sign and therefore had no standing. Court held Maverick had standing in the administrative process to address validity of the Texaco sign. Reasoning, a proposed lawful permit should not be barred because of existing illegal sign. See dissenting opinion for general rule of law that absent special injury, a party does not have standing to enforce governmental regulations – (1) should not allow party to challenge the initial permit of an economic competitor; (2) statute does not require DOT to prove legality of an existing permit.

- Carpenter Outdoor Advertising Co. v. City of Fenton, 251 F3rd 686 (June 1, 2001) – **Missouri**
  - Carpenter applied and received 2 sign permit from the DOT. Carpenter then applied to the City. The City would not act on the permits until they complied with the City ordinance. Carpenter sued alleging (1) violation of its procedural and substantive due process rights. However, a due process claim is pendant on a recognized liberty or property interest at stake. A property interest stems from existing rules or laws. Carpenter argues that the DOT permits grant it a property interest that the City could not override. But, City ordinance was valid and as such precluded Carpenter's expectancy of erecting a sign with just a DOT permit. Court held – no protected property interest in subjective expectancy.

9. ON-PREMISE

- Brazelton Group vs. Iowa DOT, 623NW2d 581 (January 18, 2001) – **Iowa**
  - Brazelton (Ramada Motel) erected an on-premise sign on and adjacent lot occupied by restaurant (a separate legal entity). Motel and restaurant had agreement to share areas and parking. Motel has permanent easement on restaurant lot for sign. DOT notified it was illegal. Court held state law prohibits such an on-premise sign because (1) not on Ramada property, (2) properties not owned by same party; (3) easement was for a sign site and constituted a narrow strip that could not be used for other purposes. Court held application of the narrow strip rule was reasonable in this case.

- People v. Maldonado, 86 Cal.App.4th 1225, 104 Cal.Rptr.2d 66 (January 10, 2001) – **California**
  - DOT brought action to abate a nuisance. In 1956, off-premise sign was mounted on roof of building. In 1993, Maldonado applied for off-premise permit. DOT denied permit and required removal because proposed advertisement could be along landscaped freeway. Law provides that only on-premise signs can be located on landscaped freeways. Violation continued until 1996. Maldonado contends that each advertiser on the sign leased an office from his building prior to advertising. Therefore the advertisements were on-premise. Court held that none of the lessees advertised goods or services manufactured or produced on the premises. Patently conveyed in the language of the Act is the requirement that their be direct, on-going, substantial relationship between the advertisement and the property on which it is located, so that people visiting the building will be able to obtain therein goods and/or services in the advertisement.

10. ADVERTISEMENTS ON BUS SHELTERS

- Wall v. City of Ballwin, 53 S.W.2d 168 (June 12, 2001) – **Missouri**
  - DOT entered agreement to allow bus shelters on state right of way. The bus shelters would have an advertising panel. City of Ballwin alleged that the advertising signs violated its ordinance and were erected without a City permit. Court held – DOT had exclusive jurisdiction over advertising within the state highway right of way. The City argued that the Highway Beautification Act allowed City to have Sign Ordinance more restrictive than state statute, therefore, their ordinance applied. NO, the HBA applies to 660 feet from right of way. Sign Ordinance does not apply to state right of way. City had no jurisdiction.

11. ZONING

- In the matter of Denial of Eller Midia Company's Applications for Outdoor Advertising Device Permits, 642 N. W.2d 492 (April 23, 2002) - **Minnesota**
  - Minnesota DOT denied 6 applications for signs in City of Mounds View. City adopted comprehensive zoning in 1982. Zoning included "PF – public facilities zoning" for areas to be used by the City. PF zoning included golf courses. In 1994, City built golf course which gives lessons, snack bars, pro shop sells merchandise. It is a revenue generating business for the City. Golf Course operating in red. Subsequently, City passed ordinance allowing billboards in PF zoning. City entered contract with Eller for $4.9 million for 15 year term on lease. Eller applied for permits on PF land. DOT denied permits because (1) PF is not "business area" but a municipal activity, and (2) ordinance was spot zoning. Court held: (1) City was allowed by statute to conduct commercial activities and DOT had practice of issuing permits in the past to cities in PF areas; (2) Not spot zoning because minutes of zoning board showed zoning changed to bring property in line with its comprehensive zoning plan. 23 CFR §750.708(d) and §703(a) and §708(b).

12. MISCELLANEOUS

- BRIDGE - SPC Company, Inc. v. Zoning Board of Adjustment of the City of Philadelphia, 773 A.2d 209 (April 19, 2001) – **Pennsylvania**
  - Eller sought a permit on SPC property next to a bridge. Proposed sign location was determined to be within 660 of the bridge therefore permit application denied. Zoning Board found that the DOT had not determined at what point the bridge begins. Zoning Board cited to the dictionary of "bridge" as a "structure carrying a roadway over a depression or obstacle". Therefore, the Zoning Board determined that the bridge begins at the point where the roadway becomes elevated. Court held no abuse of discretion by ZB. Reliance on dictionary and its conclusion as to beginning point, was supported by substantial evidence.

- SPACING - Van Wagner Communications, Inc. v. City of Los Angeles, 84 Cal.App.4th 499, 100 Cal.Rptr 922 (October 30, 2000) – **California**
  - City issued permit then revoke it on basis that the erection of the sign was barred by the ordinance governing sign spacing. Sign ordinance required 600 spacing between off-premise sign of particular size that are located on the same side of the *same street*. Ordinance did not apply to proposed sign site that was to be located less than 600 feet from another sign but located on another street, and near corner where 2 streets intersect, even though both sign would be visible to traffic on the same side of one of the streets. Court held – ordinance was clear and unambiguous and Court allowed signs because they were on different streets.

- SCENIC AMERICA – Outdoor West of Tennessee, Inc. vs. City of Johnson City, 39 SW3d 131 (June 26, 2000) – **Tennessee**
  - Lamar filed 11 applications seeking to enlarge the size of 11 billboards and/or change them to double faced signs. The DOT had issued 10 state permits (the 11th is not on a state controlled route). The 11 signs were built before the 1988 ordinance banning billboards; therefore they were covered under the Grandfather Statute. City denied the applications because of the current ordinance. Court held that the signs were under the grandfather clause and could be upgraded. Scenic America filed an Amicus Curiae Brief (Friend of the Court) – Scenic America is an associate of individuals and corporations committed to protecting and promoting Tennessee's scenic heritage. Scenic America made two public policy arguments. Court stated that Scenic America's argument on the issues raised by the City were well made, however after analyzing them, found them unsupported by law and unpersuasive.

- COMMERCIAL AREAS - Unisign, Inc. v. Commonwealth of Kentucky, 19 S.W.3d 652 (June 15, 2000) – **Kentucky**
  - In 1997, Unisign filed 3 applications for permits with DOT for signs along I-75 claiming area was commercial. DOT denied permits because area was not commercial as defined by law. Unisign erected 2 of the signs and started on the 3rd when DOT filed an injunction requiring removal. Court granted injunction. Court of Appeals affirmed injunction but found statute was unconstitutionally vague and overbroad and that it was an impermissible delegation of legislative authority. Supreme Court found the regulation required 10 separate businesses within 1,620 feet of each other to qualify as commercial area. This regulation was in effect until 1972 and reinstated in 1996. Prior to 1996, the DOT only required 1 business to qualify an area. In 1964, when it was in effect, prior

court ruling that the regulations to be reasonable, including the 10 business requirement. Court found 10 business minimum not unreasonable. Court also found no evidence of selective enforcement or discriminatory enforcement of Act against Unisign by DOT. Court also found regulation was not unconstitutional delegation of legislative authority.

- RELOCATION ASSISTANCE – Regional Transportation District v. Outdoor Systems, Inc. , 34 P.3rd 408 (2001) – **Colorado**
  - The Supreme Court of Colorado held that where a railroad sold its right of way to the local Regional Transportation District and in the process assigned its rights as lessor of billboards to the District, the billboard owners' claims for compensation (upon being given notice of termination of lease by the District) were outside the scope of the Uniform Relocation Assistance Act because the Act contemplates acquisitions of property by eminent domain, not be voluntary transactions, and at the time of the acquisition it was not clear that the project for which the land was acquired would receive federal funding, thus being outside the scope of federal legislation that the District would have to comply with. [Note: This is a lengthy opinion that analyzes the legislative history of the Act, and should be read in its entirely by counsel with an interest in relocation assistance law.]

■*THE END*