



INSTITUTE FOR JUSTICE

April 8, 2010

To Whom It May Concern:

We write to give you our wholehearted recommendation of Cleve B. Tyler, Ph.D., as a testifying expert on issues of compensatory damages. Dr. Tyler provided expert testimony in *Brody v. Village of Port Chester, et al.*, No. 00-cv-7481, in which we represented the plaintiff, in the Southern District of New York in December of 2007. Faced with a truly difficult damages problem, Dr. Tyler performed more than admirably, and the case settled on appeal for approximately the amount of damages Dr. Tyler had specified in his testimony. We could not have been happier with the result, and we would not hesitate to retain him again.

The undersigned are attorneys at the Institute for Justice, a national civil-liberties law firm specializing in constitutional litigation. As the firm that litigated the landmark Supreme Court case *Kelo v. City of New London*, we are generally recognized as the nation's premier experts in eminent domain litigation. The *Brody* case, however, presented a situation that was unique in our careers as constitutional litigators—and, as far as reported cases reveal, in the history of constitutional law. The plaintiff's property had been taken through eminent domain by the Village of Port Chester, NY, and he had been awarded the land's fair market value in a state court proceeding. In the parallel federal litigation, however, we subsequently obtained a ruling from the Second Circuit holding New York's eminent domain procedures unconstitutional—specifically finding that Brody had not been given sufficient notice of his only opportunity to raise legal objections to the condemnation of his property. Unfortunately, the buildings on Brody's property had already been demolished and his land incorporated into a large shopping mall.

We were faced, then, with a dilemma: the taking had been ruled unconstitutional, but return of the wrongfully taken property seemed all but impossible. Brody had obviously been harmed—he would much rather have kept his property than received the property's fair market value—but quantifying that harm was extremely difficult, both for us and the many experts and professors we consulted.

Dr. Tyler's solution presents an excellent example of his ability to reliably and persuasively adapt standard economic models to new scenarios. Quickly familiarizing himself the rather complicated fact pattern (and thousands of documents) that had developed over seven years of litigation, Dr. Tyler reasoned that Brody's legal right to challenge the taking was a unique, intangible asset—something that could be valued using the same tools economists use to value patent licenses in patent-infringement litigation. This key insight transformed the problem

from a situation with no guiding precedents into a straightforward application of standard economic theory. The skill with which he transformed the situation and crafted a solution simultaneously creative enough to provide a basis for a damages award and conservative enough to appeal to the trial judge perfectly illustrates Dr. Tyler's intellectual agility.

Dr. Tyler also provides excellent written product. The reports generated for the *Brody* litigation (which included laying out his affirmative theory and rebutting the contentions of the two separate experts the defendants retained to counter him) were thorough while still being readable to a non-economist. Dr. Tyler was particularly careful to be sure each point of his theory was backed up visually, with either a graph or a chart, making it easier for the judge (and, frankly, us) to follow each step of his analysis.

The *Brody* case required a significant amount of testimony from Dr. Tyler, including an eight-hour deposition and over two hours of live trial testimony in a bench trial before Judge Harold Baer, Jr. (SDNY). Dr. Tyler's performance was excellent. He maintained his focus throughout questioning—including holding up quite well under some particularly harsh interrogation during his deposition—and his answers consistently showed care and precision. His courtroom demeanor was also a positive—he had an extended colloquy with Judge Baer about the merits of his report that ranked as the high point of the entire first day of the trial.

Finally, though perhaps most importantly, Dr. Tyler is easy to get along with. In the course of a contentious trial process that required a number of very late nights and weekends, that saw a steady stream of disparaging innuendo flow from opposing counsel (both in their papers and during live questioning), and that, coming on the heels of seven years of prior litigation, required the fairly rapid mastery of a complicated fact pattern, Dr. Tyler never once lost his aplomb or sense of humor. Even in tense situations, Dr. Tyler remained calm and, in all sincerity, both of us enjoyed his company even in the midst of a late evening's work.

In light of all of the above, we have nothing but praise for Dr. Tyler's knowledge, skill, and character, and we give him our full recommendation. Please feel free to contact either of us if you require any additional information.

Sincerely,



Dana Berliner\*  
Senior Attorney



Robert McNamara  
Staff Attorney