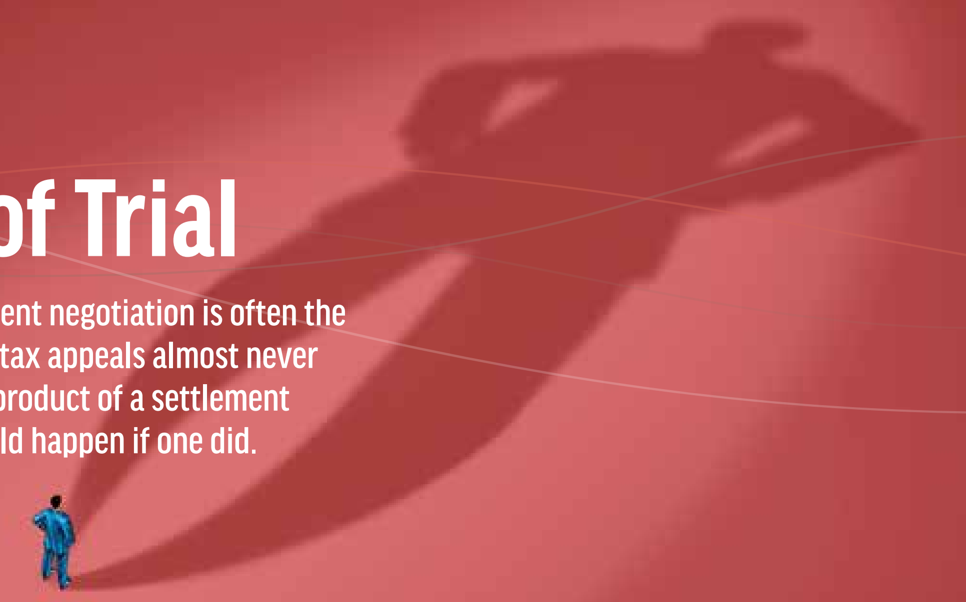
CASE STUDY

The Shadow of Trial

The most important factor in a settlement negotiation is often the one no one talks about: trial. Property tax appeals almost never go to trial, yet every final value is the product of a settlement negotiated in the shadow of what would happen if one did.



The Texas Legislature has structured the property tax system so that when an ARB outcome is unacceptable, the remedy is civil litigation against the appraisal district. That structural fact should inform how institutional owners think about representation from the moment a notice arrives, not after every other option has been exhausted.

There is a concept in legal economics called the shadow of trial. Settlement negotiations do not happen in a vacuum. They occur in the shadow of what both sides believe would happen if the case went to a jury.

The settlement value of your case is not determined by your evidence alone. It is also determined by the risk the appraisal district believes it faces if that evidence is presented at trial.

When the district has reason to believe your representation cannot or will not take a case to verdict, their risk is low. They can settle at whatever value they choose, because there is no trial at the end of the road. The shadow is short.

When the district has reason to believe, based on demonstrated history, that a fair settlement is the only thing standing between them and a jury, their calculus changes. The shadow lengthens. And the settlements that follow reflect it.

This dynamic was evident in our representation of Hanover Rice Village. HCAD proposed a 40.7% year-over-year value increase, which the ARB reduced to 37.8%. Hanover retained us for litigation only following the ARB decision. We confirmed the ARB value remained well above what was defensible. HCAD also knew that if a fair settlement could not be reached, we were prepared to let a jury decide. The case ultimately settled at a ***6.3% decrease***, resulting in additional $888,040 in tax savings beyond the ARB outcome, equivalent to approximately $2.3K per unit in NOI.

The kind of results investors love.

The objective on both sides of these negotiations is the same. The question is at what value the district will agree to settle. That answer does not hinge on the evidence alone. It hinges on what the district believes you are prepared to do with it. And ***that*** is what changes the risk calculus for appraisal districts.

Key Takeaways

- Leverage is created long before settlement discussions begin.
- Your advisor's trial credibility changes the appraisal district's perceived risk.
- The most valuable trials are the ones that never happen.