

GEORGE WALKER ALLEN ET UX *v.* ARKANSAS  
STATE HIGHWAY COMM'N

5-5086

448 S. W. 2d 27

Opinion delivered December 22, 1969

1. DISCOVERY—ANSWERS TO INTERROGATORIES—INFORMATION AS TO EXPERT WITNESSES.—Landowners were entitled to obtain by interrogatories the names of condemnor's expert witnesses and other information needed to enable counsel to prepare for trial by investigating qualifications and credibility of commission's experts; for the opportunity to elicit information about an adversary's expert by cross-examination at trial is not the equivalent of a complete independent investigation made ahead of time.
2. APPEAL & ERROR—PRESUMPTION AS TO EFFECT OF ERROR—REVIEW.—Error *held* prejudicial where it could not be said with confidence that the award would not have been larger if landowner had been afforded a better opportunity to explore qualifications and credibility of experts in advance of trial.

Appeal from Craighead Circuit Court, Jonesboro Division, *John S. Mosby*, Judge; reversed.

*Henry S. Wilson*, for appellants.

*Thomas Keys* and *Philip Gowen*, for appellee.

GEORGE ROSE SMITH, Justice. In this condemnation proceeding the appellee is taking a 1.53-acre tract of land owned by the appellants. Two expert witnesses for the highway department valued the land at \$7,650. The landowners introduced two estimates of value, one of \$14,000 and the other of \$12,800. The jury's verdict was for \$8,000.

For reversal the landowners insist that the court erred in refusing to require the condemnor to answer interrogatories about the expert witnesses it expected to use at the trial. The interrogatories asked the names and addresses of the experts who had appraised the land for the highway department, their occupation,

whether they were highway department employees, the date of their reports to the department, whether they were to be called as witnesses, how often they had previously testified for the department, and how they were to be compensated. The court refused to require the department to answer any of the interrogatories.

In ruling upon the matter the trial court did not have the benefit of our opinion in *Bower v. Murphy*, 247 Ark. 238, 444 S. W. 2d 883 (1969), which was not delivered until after the case at bar had been tried. There we held that a litigant is entitled to obtain by interrogatories the names of his adversary's expert witnesses. The other interrogatories propounded in the court below were also proper, for the requested information was needed to enable counsel to prepare for trial by investigating the qualifications and credibility of the department's experts. The opportunity to elicit such information by cross-examination at the trial is not the equivalent of a complete independent investigation made ahead of time.

The error must be taken to have been prejudicial unless we can say with confidence that it was not. *Ark. State Highway Comm'n v. Parks*, 240 Ark. 719, 401 S. W. 2d 732 (1966). Here the amount of the verdict was so slightly in excess of the figure fixed by the department's expert witnesses that we cannot say with assurance that the award would not have been larger if the landowners had been afforded a better opportunity to explore the qualifications and credibility of the experts in advance of the trial.

Reversed.