

# Pipeline Right of Way Expropriation in Louisiana

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## Basic Principles

- What is Expropriation?
  - Taking of property for public benefit.
  - Inherent power of the sovereign.
- Who May Expropriate?
  - Sovereign (national or state, per constitutions).
  - Companies granted power by sovereign.
  - Serve a public purpose; “common carrier” pipelines.

## Louisiana Constitutions

### □ 1921 Constitution

- For “public purposes”; “just and adequate compensation.”

### □ 1974 Constitution

- Private entity “authorized by law.”
- “Public” and “necessary” purpose.
- “Compensated to the full extent of his loss.”
- In as good a position as if property not taken.

## Before Filing Suit

### □ La. R.S. 19:2.2

- First, appraise the property, contact landowner, and make offer to purchase.
- Second, after thirty days, send notice to landowner advising him of his rights.
- Third, send certified letter: why property will be expropriated; proposed compensation; all appraisals; survey; above-ground facilities.

## Trial of an Expropriation Case

- Pipeline Company Must Prove:
  - Authority to expropriate.
  - Use for a public purpose.
  - Necessary to expropriate.
  - Compensation to landowner; taking damages; severance damages; other damages.
- Landowner Must Prove:
  - Viz. compensation, “highest and best use” if different from current use.

## Compensation Issues at Trial

- Taking Damages
  - Compensation for property expropriated.
- Severance Damages
  - Compensation for decrease in value of property not expropriated.
  - Smaller lot – less marketable.
  - Remaining property close to pipeline.
  - Irrational fear of leaks and explosions.
- Other Damages
  - Lost crops; decreased fertility of land.

## Judgments and Appeals

- ❑ Property Adjudicated to Pipeline Company
  - Full ownership, or servitude (right of use) only?
- ❑ Damages Award
  - “To the full extent of his loss.”
  - Paid to landowner or into court registry for benefit of mortgagees and privilege holders.
- ❑ Devolutive, Not Suspensive, Appeals
- ❑ Entirety of Judgment Reviewable on Appeal

## Taking for a “Public Purpose”

- ❑ Related to “Common Carrier” Status or Function
- ❑ Expansively Interpreted by Courts
- ❑ *Champlin Refining Co. v. United States*
  - Transporting pipeline company’s oil only.
- ❑ *Crooks v. Placid Refining Co.*
  - Short segment; part of larger system.
- ❑ *ExxonMobil v. Union Pacific Railroad Co.*
  - Private railroad crossing for pipeline company.



## “Necessity” of Taking

- ❑ Also Expansively Interpreted by Courts
- ❑ *Tennessee Gas v. Violet Trapping Co.*
- ❑ Relates to Purpose of Taking, Not Location of Tract
- ❑ Courts Defer to “Sound Discretion” of Expropriating Authority
- ❑ Extent and Location of Property “Reasonably Necessary” for Public Purpose

## Valuation Principles: Appraisal

- ❑ Property Valued (Appraised) Without Considering Post-Expropriation Use of Property
- ❑ Appraisal Methods
  - Market approach (preferred): comparable sales.
  - Cost approach: replacement cost less depreciation, plus land value.
  - Income approach: expected income stream capitalized.
- ❑ Fair Market Value
- ❑ Highest and Best Use

## Valuation Principles: Highest and Best Use

- ❑ “Sets the Expropriation Value of the Land,”  
per Louisiana Supreme Court
- ❑ Presumed To Be Current Use
  - Self-interest of landowner.
  - Factual, not hypothetical.
  - Prevents speculative valuation.
- ❑ *Faustina Pipeline Co. v. Hebert*
- ❑ *Marathon Pipe Line Co. v. Pitcher*

## Valuation Principles: Post-Expropriation Use?

- ❑ “Loss Sustained by Owner, Not as Enhanced by the Purpose for Which It Was Taken”
- ❑ *St. Charles Land Co. v. City of New Orleans*
  - “Inverse condemnation” case.
  - Runway extension at New Orleans International Airport.
  - Airport authority valuation: wetlands, canal bottom, unprotected by levee.

## Valuation Principles: Post-Expropriation Use?

- ❑ *St. Charles Land Co. v. City of New Orleans*  
(cont'd)
  - Landowners' valuation: "key parcel for complete assemblage of airport complex"; "high and dry."
  - Landowners' valuation 50 times higher than airport authority's valuation.
  - Trial court accepted airport authority's valuation.

## Valuation Principles: Post-Expropriation Use?

- ❑ *St. Charles Land Co. v. City of New Orleans* (cont'd)
  - Court of appeal increased award per “high and dry” assumption by landowners’ experts.
  - Federal levee system anticipated in 1987, 2010, and 2014.
  - Airport authority asks Louisiana Supreme Court to review case; court agrees.
  - Parties settled?

## *St. Julien Doctrine*

- Expropriating Authority Takes Property
  - Mistaken but good faith belief it is entitled to do so.
  - Constructs facility.
  - Landowner has consented or acquiesced.
  - Landowner may not treat occupancy and construction as trespass.
- If Government, Landowner Only May Seek Compensation
- If Nongovernmental Entity, Landowner May Challenge Public Purpose and Seek Compensation

## *St. Julien* Doctrine

- ❑ Derived from *St. Julien v. Morgan L. & T. R. Co.* (1883)
- ❑ Now Codified in La. R.S. 19:14
- ❑ Doctrine Protects Pipeline Company If:
  - Public and necessary purpose; and
  - Consent or acquiescence of landowner.
- ❑ Consent: Deliberation Followed by Choice
- ❑ Acquiescence: Passive Acceptance
- ❑ Original Landowner's Successors Bound by Consent or Acquiescence



## *St. Julien Doctrine*

- *Lonatro v. Orleans Levee District*
  - Landowners' back yards abutted drainage canal levee.
  - After Katrina flooding, Corps of Engineers to strengthen base of levee.
  - Remove trees and fences, build structures and “deep soil mixing” (40-80 feet below surface).

## St. Julien Doctrine

- ❑ *Lonatro v. Orleans Levee District* (cont'd)
- ❑ Servitude for Base of Levee on Landowner Property?
  - Landowners: we did not consent.
  - Levee District: but you acquiesced.
  - Court: did original landowners consent or acquiesce?
- ❑ Levee District's Motion to Dismiss Case Denied

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