

BAYOU BRIDGE PIPELINE, LLC

16TH JUDICIAL DISTRICT

VERSUS

DOCKET NO. 87011-E

38.00 ACRES, MORE OR LESS,
LOCATED IN ST. MARTIN PARISH;
BARRY SCOTT CARLINE, ET AL

ST. MARTIN PARISH

STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK OF COURT

POST-TRIAL MEMORANDUM
OF DEFENDANTS / PLAINTIFFS-IN-RECONVENTION
THEDA LARSON WRIGHT, PETER AASLESTAD, AND KATHERINE AASLESTAD

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“The power of expropriation is fraught with the possibility of abuse and injustice and, accordingly must be strictly construed.”¹

INTRODUCTION

The corporate representative for Bayou Bridge Pipeline, LLC, (“BBP”) admitted under questioning by the Court that the company made a calculated “business decision” to ignore and override the expropriation and property laws of this state and illegally enter onto the Landowners’ property and construct its pipeline because “time is money.” There could not be a clearer picture of the abuse and injustice that can so easily arise in the exercise of eminent domain when that power is in the hands of a for-profit oil pipeline company operating with no oversight at the outset of its expropriation. BBP calculated that it was cheaper to violate the constitution and laws of this State than to follow them.

If the Court does not hold BBP accountable for this decision and award substantial damages to the affected landowners, the company will have been correct in its assessment; and it will send a signal to other corporations that in Louisiana business interests trump even the most fundamental rights, and the right of landowners to due process set out in the United States and Louisiana constitutions will be rendered void and meaningless.

BBP also failed in its burden of proving that the pipeline is necessary and for a public purpose. Its own expert testified that Louisiana has the highest concentration of pipelines – “even more than Texas” and possibly in the world. The expert also testified that there are existing pipelines running from Lake Charles to St. James, the origin and terminus of the Bayou Bridge pipeline. He also acknowledged that the Atchafalaya Basin and the Louisiana coast have been damaged and that pipelines have contributed to that damage. An expert for the landowners further delineated how the Atchafalaya Basin, and in particular the area where the property is located, has been harmed by pipelines and how this pipeline has exacerbated the harm. He testified to ongoing efforts in the Basin to remediate harm to ensure it can aid in flood prevention for surrounding areas and channel needed sediment to the coast to help offset land loss. When

¹ *Kimble v. Bd. of Comm'rs for Grand Prairie Levee Dist.*, 94-1134 (La.App. 4 Cir. 1/19/95, 2–3), 649 So.2d 1112, 1113, *writ denied*, 95-0405 (La. 4/7/95), 652 So.2d 1347, and *writ denied*, 95-0416 (La. 4/7/95), 652 So.2d 1347.

weighed against the risks to the Basin, the environment, and efforts to offset and remediate those harms, the pipeline is not only *unnecessary*, it is dangerous for this state.

BBP also offered no evidence to prove how its pipeline serves a public purpose. It presented no specific evidence whatsoever as to whose product it is shipping, and to whom, and what products it will generate and who will benefit. It offered only a general theme from its expert that more oil is somehow good for the public – an expert who admitted he did not know the specifics of this pipeline and that he only considered purported benefits of more oil generally and none of the harms to public health and the environment, including the leak or safety history of the companies involved in this project.

In these circumstances, if public purpose and necessity, standards of proof and evidence mean anything, the Court must hold that BBP failed in its burden of proving its pipeline is a) necessary, and b) is for a public purpose.

I. Bayou Bridge Admitted that it Made a Calculated “Business Decision” to Trespass on and Damage Landowners’ Property, and Violate Their Rights to Property and Due Process Protected Under the United States and Louisiana Constitutions.

This Court exists to protect the constitutional rights of individuals within its jurisdiction. Article I, Section 2 of the Louisiana Constitution requires that “[n]o person shall be deprived of life, liberty, or property, except by due process of law.” The Fifth Amendment to the United States Constitution likewise requires that “[n]o person shall be deprived of life, liberty or property without due process of law.” Constitutional interpretation begins with “the language of the constitution itself.” *Ocean Energy, Inc. v. Plaquemines Par. Gov’t*, 04-0066 (La. 07/06/04); 880 So.2d 1, 7 (citations omitted). “Unequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning.” *Id.* (citations omitted). Article 865 of the Louisiana Code Civil Procedure Art. 865 requires that “[e]very pleading shall be so construed as to do substantial justice.”

The evidence presented at trial in this case proves:

- Bayou Bridge is a Delaware, for profit corporation that decided it wanted to build a pipeline across Louisiana and commenced expropriation procedures in 2016 to acquire easements from landowners along its 162.5-mile route.
- Theda Larson Wright, Peter Aaslestad, Katherine Aaslestad own undivided interests in the property at issue in this litigation.

- Bayou Bridge began to contact owners of this property as early as 2016, and did not file its Petition for Expropriation to acquire the legal authority to construct on the property until late July 2018, after a landowner filed an injunction case to stop the company from entering onto and constructing on his property.
- With regard to the property at issue in this litigation, there were over 800 landowners and the company sought easement agreements with landowners Theda Larson Wright, Katherine Aaslestad, and Peter Aaslestad.
- These three landowners refused to voluntarily agree to allow BBP to construct the pipeline on the land they co-own and BBP did not obtain voluntary easement agreements from hundreds of other co-owners of the property before entering and beginning construction thereon.
- Instead of complying with requirements of due process of law and going to court to seek legal permission to go onto the property and destroy trees, digging deep trenches, and laying thousands of pounds of pipe across the property, BBP, as confirmed in questioning by the Court, made a “business decision” to go ahead with construction because “time is money.”
- BBP only filed its expropriation suit after one of the landowners – Peter Aaslestad – brought his own suit seeking to enjoin their illegal activity on his property.² Immediately thereafter, BBP filed the expropriation case against Mr. Aaslestad and hundreds of other landowners who had not agreed to grant an easement to the company.
- Meanwhile, BBP continued and ultimately completed construction of the pipeline on the property before landowners even filed an answer in this expropriation case.
- BBP did not apologize to these three small landowners but instead ridiculed them in these proceedings and treated their defense against the expropriation (as is their right) as an inconvenience, suggesting that their constitutional rights as landowners are somehow not important given their fractional financial interest in the property they share with hundreds of other co-owners.³
- The property has been in the families of Theda Larson Wright and Peter and Katherine Aaslestad for decades and they feel strong emotional and familial ties to the property and Louisiana.
- Their decisions to defend themselves in the expropriation suit brought against them by BBP were motivated by concern for the property and the environment in Louisiana, in light of the importance of the Atchafalaya Basin and the problems of flooding and land loss in Louisiana.

² Mr. Aaslestad’s injunction lawsuit, bearing the case number 87010-D, in the 16th Judicial District Court, was filed in July 27, 2018, and the case file has been judicially noticed in this litigation. Despite seeking a preliminary injunction at the time of filing his Petition in July 2018, the matter was not set for hearing until September 10, 2018, nearly six weeks from the date of filing. The court represented that this was likely an error as requests for injunctive relief are generally set closer in time to the filing of said request. To prevent continued harm in the interim, Plaintiff Aaslestad filed a motion for a temporary restraining order, which the court neither granted nor denied, but deferred to the impending hearing on the preliminary injunction. The parties entered into an agreement to pass the preliminary injunction hearing in which BBP agreed to cease entry and construction on the property. However, at the time of the agreement, BBP had already substantially completed construction on the property.

³ According to BBP’s pleadings these landowners are “three individuals [who] have joined the crusade by activist organizations whose sole objective is to kill the Bayou Bridge”.... “Exchanging their heretofore disinterest in the Property for outrage. Defendants have taken on roles of victimized landowners. And, from their homes far from St. Martin Parish, Defendants, supported by the organizations advancing their claims, intend to use their combined claim of 1.1% interest in one of 714 tracts of land along the pipeline route to take down the entire project by asserting numerous exceptions, constitutional violations, and procedural defects.” BBP Pre-Trial Memorandum, November 9, 2018.

Trespass is an unlawful physical invasion of the property of another. *Whitlock v. Fifth Louisiana Dist. Levee Bd.*, 164 So.3d 310, 316 (La. App. 2 Cir. 4/15/15) (“A trespasser is one who goes upon another’s property without his consent.”), *citing Davis v. Culpepper*, 34-736 (La. App. 2 Cir. 7/11/01), 794 So.2d 68, *writ denied*, 01-2573 (La. 12/14/01), 804 So.2d 646; *Barrilleaux v. NPC, Inc.*, 704 So.2d 449, 451 (La. App. 1 Cir. 12/29/97); *M & A Farms, Ltd. V. Town of Ville Platte*, 422 So.2d 708, 711 (La. App. 3 Cir. 1982). Here, BBP entered onto the property, cleared trees, and laid its pipeline on the property without consent of all owners or any adjudicated authority to do so.

In order to determine whether a trespass has occurred or whether a taking should be considered an inverse condemnation proceeding, Louisiana courts must, 1) determine if a right with respect to a thing or an object has been affected; 2) if it is determined that property is involved, decide whether the property has been taken or damaged in a constitutional sense; and 3) determine whether the taking or damaging is for a public purpose under Art. 1, Sec. 4. *Williams v. City of Baton Rouge*, 98-1981 (La. 4/13/99, 7), 731 So.2d 240, 246. However, when the trespasser acts in bad faith, it is liable in tort for trespass and “all the resultant damages under Article 2315.” *Id.* at 248 (holding that in addition to property damages, plaintiffs were also entitled to general damages, and mental anguish damages). In *Williams*, the Louisiana Supreme Court held that the City of Baton Rouge was a bad faith trespasser because it did not fail to undertake expropriation proceedings “through oversight or lack of foresight,” or as a result of a “good faith error,” but, knowing it did not have legal authority and that it needed a court order to enter onto the property, “took the matter into their own hands” and did so anyway. *Id.* at 247. That made it liable for trespass and damages beyond the compensation that would have been due the landowner in an inverse condemnation proceeding.

The evidence was clear, after questioning by the Court, that BBP made a calculated business decision to trespass upon the property and construct its pipeline because “time is money.” The trespass was not a result of “oversight or lack of foresight” or as a result of “good faith error.” BBP has been contacting landowners of this parcel at least since 2016. It only now sought to expropriate. The landowners should not be punished for the company’s failure to legally obtain authorization to enter and construct on the property. BBP knew it lacked

agreements or judgments of expropriation with hundreds of landowners and that one of them was actively seeking to enjoin their trespass in court. Instead they took matters “into their own hands,” continued to enter upon the property and laid the pipe in the ground even after an injunction proceeding was filed against them. BBP’s trespass was committed in bad faith and with total disregard for the fundamental rights of these landowners that is protected under both the U.S. and Louisiana constitutions.

A. Unconstitutional Taking, Fifth Amendment to the United States Constitution

Plaintiffs-in-Reconvention have also counterclaimed for unlawful takings under the United States Constitution. The Fifth Amendment, made applicable to the states through the Fourteenth Amendment, provides that “No person shall... be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.” *See S. Lafourche Levee Dist. v. Jarreau*, 16-788 (La. 3/31/17), 217 So.3d 290, 305.

Private entities expressly delegated the power of eminent domain under Louisiana law qualify as an agent of the government for purposes of establishing constitutional liability for a taking. *See Mongrue v. Monsanto*, 249 F.3d 422 (5th Cir. 2001). If the court determines, BBP was authorized by law to expropriate the property and that the expropriation was for a public and necessary purpose, then BBP should be held liable under the United States constitution for an unlawful taking.

B. Unconstitutional Taking, Art. I, Sec. 4, Louisiana Constitution of 1974

In order to determine whether property rights have been “taken” under La. Const. Art. 1 § 4, which provides that property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner, the court must determine (1) if a property right has been affected; (2) whether the property has been taken or damaged in a constitutional sense; and (3) whether the taking is for a public purpose under art. I, sec. 4. *Anderson v. Bossier Par. Police Jury*, 45, 639 (La. App. 2 Cir. 12/15/10, 25–26), 56 So.3d 275, 287.

Here, if the Court finds that the taking is for a public purpose, then BBP should be held liable for a taking in violation of the Louisiana Constitution.

C. Violation of Due Process, Fifth Amendment to the U.S. Constitution

A procedural due process violation is actionable and compensable without regard to any other injury. *See also, Archbold-Garrett v. New Orleans City*, 893 F.3d at 322 citing *Carey v. Phiphus*, 435 U.S. 247, 266, 98 S.Ct. 1042, 1054, 55 L.Ed.2d 252 (1978) (“Because the right to procedural due process is ‘absolute’ in the sense that it does not depend upon the merits of a claimant’s substantive assertions ... the denial of procedural due process should be actionable for nominal damages without proof of actual injury.”).

D. Violation of Due Process, Art. I, Sec. 2, of the Louisiana Constitution

The very nature of the expropriation action mandates, at a minimum, some degree of process prior to the taking. In the instant case, because BBP entered onto and began construction on the property prior obtaining the right to expropriation through final judgment in an action to expropriate, it deprived the landowners of an opportunity to be heard prior to the deprivation of their constitutionally protected, fundamental right to property. *See Fields v. State through Dept. of Public Safety and Corrections*, 714 So.2d 1244, 1251 (La. 1998) (“Generally, before a person is deprived of a protected interest, he must be afforded some kind of hearing.”). And while courts have recognized circumstances in which a valid governmental interest justifies a prompt, post-deprivation hearing, these are allowed in only “extraordinary” or “truly unusual” situations. *Id.* Here, the taking is significant, involving material alterations to, and destruction of, private property, by a private company alleging a right to expropriate.

Moreover, unlike the Louisiana Constitution's provision on equal protection, which is distinct from that provided in the Fourteenth Amendment to the Federal Constitution, the guarantee of due process does not vary from the federal provision. *Thomas v. New Orleans Redevelopment Auth.*, 2004-1964 (La.App. 4 Cir. 10/6/06), 942 So.2d 1163. A procedural due process violation is therefore actionable and compensable without regard to any other injury. *See also, Archbold-Garrett v. New Orleans City*, 893 F.3d at 322 citing *Carey v. Phiphus*, 435 U.S. 247, 266, 98 S.Ct. 1042, 1054, 55 L.Ed.2d 252 (1978).

II. Bayou Bridge Did Not Meet Its Burden of Proving the Pipeline is Necessary and for a Public Purpose.

Private entities authorized by law to expropriate can only do so for a public and necessary purpose and with just compensation paid to the owner of the property. La. Const. art. 1, sec. 4(B)(4). The determination of what constitutes a public and necessary purpose is delegated to the judiciary. *Id.* However, the Louisiana Constitution prohibits economic development, enhancement of tax revenue, or any incidental benefit to the public from being considered in determining whether the proposed expropriation serves a public purpose. La. Const. art. 1, sec. 4(B)(3).

At trial, BBP presented the expert testimony of David Dismukes. Dismukes testified that:

- He was hired by Energy Transfer Partners, one of the joint venture parent companies for BBP, and was paid \$10,000.00 to create an economic impact “study” for the pipeline, which consisted of power point slides. Dismukes testified that he created the study within approximately one month’s time.
- He was not provided specific information about and did not know which shippers contracted with BBP or what companies would be receiving products shipped by BBP.
- Louisiana has the highest concentration of pipelines – “even more than Texas” and possibly in the world.
- There are already existing pipelines running from Lake Charles to St. James, the origin and terminus of the Bayou Bridge pipeline.
- He also acknowledged that the Atchafalaya Basin and the Louisiana coast have been damaged and that pipelines have contributed to that damage.
- Dismukes has received financial sponsorship from Phillips 66, another parent company in the BBP joint venture, for a report project he was involved with which addressed energy trends in the Gulf Coast.
- Dismukes confirmed that the BBP assessment and his testimony only presented what he purported to be “benefits” of the pipeline, without having any specifics as to the shippers and receivers, origins and destinations of the products.
- His entire testimony about the public benefit of the pipeline was a general proposition more oil is good for the public without providing specifics as to this particular project.
- He did not assess or consider harms or adverse impacts of the project.
- He did not consider the safety records of leaks or spills for the parent companies, which when combined amount to a total of \$116,978,797.00 in property damage over a 10-year period, as shown in public records from the Pipeline and Hazardous Materials Safety Administration.

To the extent Dismukes’ testimony addressed economic development and/or enhancement tax revenue that would purportedly result from the pipeline, such evidence may not be considered by the

Court in determining whether this project is for a public purpose. L. Const. Art. I, sec. 4(B)(3). The question of public and necessary purpose must consider the worsening environmental and land loss crises in Louisiana and the role pipelines have played in hastening the crises. Article IX, Section 1 of Louisiana's Constitution provides that "the natural resources of the state, including air and water, and the healthful, scenic, historic and esthetic quality of the environment shall be protected, conserved and replenished insofar as possible and consistent with the health, safety and welfare of the people." The state repeatedly identifies the need to maintain a "healthful and safe environment for the people of Louisiana as a matter of critical state concern."⁴ To suggest that a court should not account for this issue of critical state concern in considering the public and necessary purpose of a private project seeking to use the extraordinary power of eminent domain runs afoul of state policies, constitutional requirements, and the many efforts by the state to protect the Basin, the coast, the environment, and communities from further harm.

Defendants presented evidence to show that the State and regulatory agencies recognize and acknowledge the harm that pipelines, energy infrastructure, and exploration contribute to the growing environmental and public health and safety crises facing Louisiana and the nation. Specifically, and although Defendants' expert wetlands specialist, Scott Eustis, was precluded from testifying as to the broader concerns and impact of pipelines on the state with respect to coastal land loss and in the Basin in particular, his testimony showed:

- Ongoing efforts to restore the areas in and around this property that have continued to degrade in part due to pipelines.
- The impacts are not isolated, but have direct, indirect, and cumulative impacts that affect the Basin and Louisiana's coast.
- The Atchafalaya Basin is critical for flood prevention and control and for channeling sediment to the coast to offset land loss.
- The Bayou Bridge pipeline has exacerbated harm to this property in particular.
- He testified to ongoing efforts in the Basin to remediate harm to ensure it can aid in flood prevention for surrounding areas and channel needed sediment to the coast to help offset land loss.

⁴ See e.g., La. R.S. 30:2001, *et seq.* ("The legislature finds and declares that: (1) the maintenance of a healthful and safe environment for the people of Louisiana is a matter of critical state concern." §2002(1)); La. R.S. 30:2072 ("The legislature finds and declares that the waters of the state of Louisiana are among the state's most important natural resources and their continued protection and safeguard is of vital concern to the citizens of this state."); La. R.S. 30:2453 ("The legislature finds and declares that the release of oil into the environment presents a real and substantial threat to the public health and welfare, to the environment, the wildlife and aquatic life, and to the economy of the state.").

Moreover, public, government documents, some recent and others dating back more than twenty years, acknowledge and warn of the growing urgency to remediate the destruction of the Basin and its importance for preventing coastal land loss.⁵

It was further evident that the company's attempt to use the permits (which have been called into question by two different courts) as a shield to any consideration by this Court of environmental harm is not only contrary to what the law requires,⁶ but also irrelevant in the event one or more of the permit conditions have been violated.

III. Damages and What Compensation Can Be Just in These Circumstances?

Evidence presented at trial demonstrated that BBP destroyed trees, including cypress and sycamore, dug deep trenches in the property, and built the pipeline in a spoil bank, contrary to representations it made to the U.S. Army Corps of Engineers in its permit application process. See Ex. 8. The company's repeated attempts to use the permits (which have been called into question by two different courts) as a shield to any consideration by this Court of environmental harm were not only contrary to what the law requires,⁷ but also rendered irrelevant in light of the fact that permit conditions were violated.

Defense witness Scott Eustis testified that he observed that he made conducted a number of overflights to monitor construction of the pipeline and that on his flight on June 28, 2018, he observed that the route had been cleared on the property. He then testified that he observed trenches and evidence of construction activity during a monitoring overflight on August 30, 2018. On

⁵ Report to Governor Mike Foster and the Louisiana Legislature: Atchafalaya Basin Floodway System, State of Louisiana, State Master Plan, 1998, *available at* http://www.dnr.louisiana.gov/assets/docs/Atchafalaya_Basin/StateMasterPlan.pdf. See also, Louisiana Department of Natural Resources, FY 2018 Annual Plan, Atchafalaya Basin Program, Supplement, *available at* http://www.dnr.louisiana.gov/assets/OCM/ABP/2018_Plan/Supplemental_Narrative.pdf; Coastal Protection and Restoration Authority, *Louisiana's Comprehensive Master Plan for a Sustainable Coast*, 2017, *available at* http://coastal.la.gov/wp-content/uploads/2017/04/2017-Coastal-Master-Plan_Web-Single-Page_CFinal-with-Effective-Date-06092017.pdf.

⁶ The Louisiana Constitution requires that the question of whether an expropriation is for a public purpose is a *judicial* determination. La. Const. Art. I, sec 4(B)(4). Nothing in the caselaw, constitution, or applicable statutes precludes the court from considering the totality of impacts, costs, and benefits of the project – including the impacts on the environment, public health, and safety. And indeed, the Article IX, section 1, of the Louisiana Constitution, and the *Master Plan for a Sustainable Coast*, submitted by the Coastal Protection and Restoration Authority and accepted by the Louisiana Legislature, demonstrate that such considerations are necessary.

⁷ The Louisiana Constitution requires that the question of whether an expropriation is for a public purpose is a *judicial* determination. La. Const. Art. I, sec 4(B)(4). Nothing in the caselaw, constitution, or applicable statutes precludes the court from considering the totality of impacts, costs, and benefits of the project – including the impacts on the environment, public health, and safety. And indeed, the Article IX, section 1, of the Louisiana Constitution, and the *Master Plan for a Sustainable Coast*, submitted by the Coastal Protection and Restoration Authority and accepted by the Louisiana Legislature, demonstrate that such considerations are necessary.

November 11, 2018, he visited the property and observed that it appeared the pipeline had been built into a spoil bank. Landowner Peter Aaslestad testified to the fact of recently cut trees. The parties offered a stipulation as to the testimony of timber expert, Brandon Melville, who had to provide an after the fact estimate of the loss of trees.

BBP offered the testimony of Mike Aubele who presented a graph of what he described as an “as built” survey of the pipeline which purported to demonstrate that the pipeline had been built at a safe depth below the spoil bank to allow for future removal of the spoil. However, Aubele’s testimony, in addition to confirming the fact that company built into the spoil, could not confirm how the survey was made, by what precise methodology, when it was made, or how accurate it was. He also could not confirm what “grade” referred to – whether sea level or a natural grade before or after existing spoil banks and build-up.

In an expropriation case, a landowner shall be compensated to the full of extent of their loss. La. Const. Art. I, sec. 4(B)(5). The amount of just compensation, “but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.” *Id.*

BBP has attempted to suggest that just compensation for these landowners amounts to a little over one dollar, based on a market value appraisal of the property conducted by David Dominy. However, Dominy’s testimony revealed that the appraisal he conducted is meaningless for this case. Dominy testified that:

- The appraisal was based on the assumption that there was no compulsion in the transaction, which is not the case in expropriations where one party has the power to take the property and the other party cannot turn it down and walk away from the deal.
- He did not conduct a site visit to assess the property or any damages.
- He did not take into account the company had trespassed upon the property, which would affect the appraised value.
- He did not take into account the value of trees for the landowners, acknowledging that trees can have value that is not captured in a market analysis.
- He did not take into account the value of the property as a floodplain, or the value of trees in helping to prevent flooding and accretion.
- He did not take into account possible severance damages to the remainder of the property in the event of damage to the property that can cause harm to the area surrounding the easement.

- He did not take into account the risk of spills or leaks on the property or other environmental hazards.

In short, the evidence presented at trial demonstrated that Dominy's appraisal is useless in this context and does not provide an accurate or appropriate basis for determining just compensation.

The evidence at trial failed to prove that the pipeline is necessary and for a public purpose. Thus, the Court should deny the expropriation and the question of just compensation is moot. However, if this Court grants the expropriation, just compensation should take into account the trespass, the fact that the transaction is compelled, that there has been damage to the property, and violations of the landowners' rights to due process and property.

In addition to property damages resulting from the expropriation, "when the expropriating authority is considered a bad faith trespasser, it can be liable for resultant damages under article 2315." *Bd. of Supervisors of La. State University and Agricultural and Mechanical College*, 183 So.3d at 767, citing *Williams*, 731 at 248; *State, Through Dept. of Highways v. Ellender*, 379 So.2d 1069 (La. 1980).

Louisiana landowners are entitled to compensatory damages "for the violation of his constitutional property right to be free of unlawful trespasses upon his land, whether by the municipality or by private person." *Belgarde v. City of Natchitoches*, 156 So. 2d 132 (La. App. 3. Cir. 1963); *Williams*, 731 at 250 ("This Court has specifically recognized the right of one wronged by trespass upon his property to recover general damages including damages for mental anguish. *Ard v. Samedan Oil Corp.*, 483 So.2d 925 (La. 1986).").

In regard to the stipulated testimony of forestry expert Brandon Melville, the Amended Timber Damage Assessment Report attached to the parties' joint stipulation as Exhibit B provides a per acre value of timber representative on the property. BBP has represented that the area of the easement crossing this parcel is 3.59 acres. However, it is important to note that, Mr. Melville's expert proposal provides that it was impractical to render an opinion on the total amount of damages owed for the loss of timber related to BBP's clearing activities on the property in light of the fact that the assessment and site visit were performed after-the-fact. Because of BBP's unconsented clearing of trees on the property without permission or notice to

the landowners, Plaintiffs-in-Reconvention were not afforded the opportunity to assess the volume, density, and type of trees contained in the right-of-way prior to BBP's clearing. In light of the after-the-fact nature of this assessment, due in whole to the illegal conduct of the company, the court should afford the greatest possible discretion in favor of the landowners in considering an award of damages for the felled trees on the property. Moreover, in light of the bad faith nature of the trespass and clearing, the court should treble the damages as provided under Louisiana's timber trespass statute. La. R.S. 3:4278; *Mathews v. Steib*, 82 So.3d 483, 485 (La. App. 1 Cir. 12/15/11). And again, the nature of BBP's conduct makes it clear that this is not an inverse condemnation action, but rather is an egregious trespass in tort and violation of the rights of individuals without excuse or apology.

IV. CONCLUSION

Landowners ask this court to enter judgment in their favor and against Plaintiff, and enter an award for damages commensurate with the harms caused by Plaintiff's intentional acts undertaken in bad faith, and as necessary to deter similar conduct in the future.

Landowners ask that the expropriation be denied and BBP be ordered to remove the pipeline from their land.

Landowners ask for damages for trespass, property damage, violations of their constitutional rights as small landowners, for mental distress – which anyone would encounter if a large corporation took their property without their permission, destroyed trees, and damaged property as though they and their rights did not matter – and for any additional damages as the court deems just and appropriate under the circumstances.

Only a substantial award of damages will drive home the point to this out-of-state, billion dollar company that it must abide by the Louisiana Constitution and laws, respect due process, and the rights of landowners, no matter how big or small they are.

Date: November 30, 2018

Respectfully submitted,



MISHA L. MITCHELL
La. Bar Roll No. 37506
Atchafalaya Basinkeeper
47 Mt. Laurel Ave

Birmingham, AL 35242
(225) 692-1133
basinkeeperlegal@gmail.com

Pamela C. Spees
La. Bar Roll No. 29679
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel & Fax (212) 614-6431
pspees@ccrjustice.org

William P. Quigley
La. Bar Roll No. 7769
Professor of Law
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
quigley77@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been transmitted via electronic means to all known parties of record this 30th day of November 2018 by email to the following counsel of record:

Michael B. Donald
811 Main Street, Suite 2900
Houston, Texas
Tel. (713) 437-1800
Fax (713) 437-1810
Email: mdonald@joneswalker.com

Archie Joseph
Attorney at Law
707 Berard Street
Breaux Bridge, LA 70517
(337) 332-5287
Email: ajosephlaw@cox-internet.com

Ian A. MacDonald
600 Jefferson Street, Suite 1600
Lafayette, LA 70501
Tel. (337) 593-7600
Fax (337) 593-7748
Email: imacdonald@joneswalker.com

Curator

*Attorneys for Petitioner Bayou Bridge
Pipeline, LLC*



MISHA L. MITCHELL

*Attorney for Defendants / Plaintiffs-
in-Reconviction*