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.
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.
  - 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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