

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON

) OF THE FOURTH JUDICIAL CIRCUIT

Road/Route: Route I-73  
File: 47.036358A.2  
Tract: 136  
Project: EM07(008)  
PIN: 36358\_RD02

) C/A No.: <sup>2012-</sup>2011-CP-17-018

**ORDER AWARDING ATTORNEYS'  
FEES AND COSTS**

South Carolina Department of Transportation,

) *A CERTIFIED  
TRUE COPY*

Condemnor,

v.

Robert H. Manning, III, individually, Estate of )  
Lula B. Manning by Robert H. Manning, III )  
and Howard M. Manning, Personal )  
Representatives, Estate of Howard B. )  
Manning, by Howard M. Manning, Personal )  
Representative and Virginia R. Manning, )  
individually and Howard M. Manning, )  
individually,

) *CLERK OF COURT  
DILLON COUNTY*

FILED  
GWENTHYATT  
2014 OCT 30 AM 11:31  
CLERK OF COURT  
DILLON COUNTY

Landowners.

**RECEIVED**  
FEB 03 2015

**SC Court of Appeals**

THIS MATTER COMES BEFORE THE COURT on October 7, 2014, to determine a reasonable award of attorneys' fees and costs that the Landowners, as the prevailing party, are entitled to recover under S.C. Code § 28-2-510. After considering the oral arguments of counsel, the briefs submitted by both parties and the relevant statutes and case law, the Court finds that the Landowners are entitled to an award of attorneys' fees and costs in the amount of \$170,000.00, pursuant to § 28-2-510 and the applicable South Carolina case law.

**BACKGROUND**

This condemnation case involves 47.31 acres of farm land in Dillon County that was

taken from the Landowners, under the state's eminent domain powers, on January 18, 2011 by the South Carolina Department of Transportation (SCDOT) for the future construction of Interstate 73. SCDOT deposited \$151,400 with the Dillon County Clerk of Court, an amount which reflected SCDOT's valuation of the condemned portion of the Landowners' farm property near Latta. On July 30, 2014, after a three-day trial, a Dillon County jury returned a verdict in favor of the Landowners in the amount of \$721,800. Interest under the appropriate code section runs in the amount of eight (8%) percent per annum from the date of condemnation (January 18, 2011) until the date of verdict, resulting in total interest of \$146,337.54. The SCDOT has paid into the Trust Account of Landowners' counsel the sum of \$868,137.54, which consists of the verdict plus interest. Following the trial, the Landowners, as the prevailing party, petitioned the Court for an award of attorneys' fees and costs under S.C. Code § 28-2-510 and the South Carolina case law.

### **LEGAL STANDARD**

Attorney's fees are not recoverable unless authorized by contract or statute. *Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997). S.C. Code § 28-2-510 authorizes an award of reasonable litigation expenses, including attorneys' fees, to a landowner who prevails in the trial of a condemnation action. "The specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). In determining a reasonable award of attorneys' fees, this court is required to consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for

similar services.” *Vick v. South Carolina Dept. of Transp.*, 347 S.C. 470, 484, 556 S.E.2d 693 (S.C. Ct. App., 2001).

### ANALYSIS

The Landowners contend they are entitled to \$233,178.89 in attorneys’ fees based primarily upon the contingency fee agreement they entered into with their counsel. By contrast, SCDOT essentially contends that the Landowners’ award of attorneys’ fees should be based solely on an hourly rate amount. The Court disagrees with both of these positions and instead finds that a reasonable amount of attorneys’ fees in this case would be One Hundred and Seventy Thousand (\$170,000.00). This decision is made based on my presiding over this jury trial, my review of all written submissions and all applicable case law, my consideration of all oral arguments, and after this Court has analyzed and applied the six factors outlined in *Vick v. South Carolina Dept. of Transp.*, 347 S.C. 470, 484, 556 S.E.2d 693 (S.C. App., 2001):

**a. The nature, extent, and difficulty of the case**

This was a challenging case for the Landowners and their attorneys to prove for several reasons. To begin with, one of the Landowners died during the pendency of the case, requiring the Landowners’ counsel to make a motion for the substitution of parties. Moreover, since the condemnation involved portions of a larger family farm, the Landowners proceeded to trial on a rather complex theory of damages, which included an argument that they suffered damages to the remainder portion of the subject property. Additional factors affecting the difficulty of this case were the amendment of the acreage amount of condemned property because of a discrepancy in the original SCDOT calculations; the service by SCDOT of an amended updated appraisal upon Landowners’ counsel on the morning this trial commenced, thus requiring Landowners’ counsel to prepare on short notice for the critical cross-examination of SCDOT’s

appraiser; and two different open estates were involved as Landowners, and while this case was pending, one of the Personal Representatives was removed. In the end, as evidenced by the verdict which was returned in their favor, the Landowners succeeded in convincing the jury of their theory of damages.

**b. The time necessarily devoted to the case**

Counsel for the landowners submitted detailed hourly statements showing that altogether they spent more than 178 hours preparing for and trying this case.

**c. Professional standing of counsel**

This Court finds that Landowners' counsel – Robert J. Sheheen of Camden, S. C. and Douglas Jennings, Jr. of Bennettsville, S. C. – are well-respected as two of the most knowledgeable, experienced, and extremely capable trial attorneys representing Landowners in eminent domain cases in the South Carolina Bar. It is uncontradicted that these two attorneys have acquired special knowledge of the unique law applying to eminent domain claims and defenses, and their knowledge, skills and professional standing contributed substantially to the ultimate decision in favor of the Landowners in this case.

**d. Contingency of compensation**

Under the agreement the Landowners reached with their counsel, attorneys' fees were to be calculated based on the following formula: 3% of the \$151,400 originally deposited with the Dillon County Clerk of Court by SCDOT, plus 33.33% of any amount over and above this original deposit amount recovered by the Landowners as a result of a jury verdict plus interest and litigation costs. Based solely on this contingency arrangement, the attorneys' fees and costs in this case would equal \$233,862.05.

**e. Beneficial results obtained**

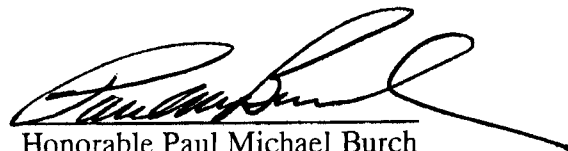
There is certainly no question that the efforts and expertise of Landowners' counsel resulted in an extremely beneficial final result being obtained for these Landowners. Their knowledge of eminent domain law and trial advocacy skills contributed significantly to the Landowners ultimately receiving \$868,137.54 from SCDOT when the original amount offered to Landowners and posted by SCDOT with the Clerk was \$151,400.00.

**f. Customary legal fees for similar services**

This Court finds the award of attorney's fees herein to be reasonable in light of all the particular circumstances of this eminent domain case, and to be customary and well with the standards applying to such matters pursuant to S.C. Code Ann. § 28-2-510 and South Carolina case law.

Having thoroughly considered all the foregoing, this Court finds and concludes that a fair and reasonable award of attorney fees in this case is One Hundred and Seventy Thousand (\$170,000.00) to be paid by SCDOT to Landowners' counsel within twenty (20) days of the date of filing this Order with the Dillon County Clerk of Court.

AND IT IS SO ORDERED.



Honorable Paul Michael Burch  
Presiding Judge,  
Fourth Judicial Circuit

Chesterfield, South Carolina  
October 28, 2014

