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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Circuit Court Judge

Case No. 2012-CP-23-04064
Appellate Case No. 2015-001909

Piedmont Natural Gas Company, Inc.,Appellant/Respondent,

v.

Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel Butler, Tweety Smith a/k/a Tweety Smith Harris, Doreth Smith, Fletcher Lee Harris, Alma Williams Smith, James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Buford Mansell, Ethel Mae Smith, Wilson Smith, Patrick R. Smith, Reginald Lamont Smith, Eric Smith, Christine Smith Dawkins, William G. Dawkins, Alma Renee Smith Murry, Sharai Smith Brock, Robert Lee Smith, Melissa F. Smith, Rosalyn Annette Steven, Edith Smith Foster, George Waymon Foster, Bridgette Smith Blassingame, Tara Smith, Waymon Odell Smith, Martha Miller Smith, Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, Dorothy Smith Pearson, Gary Pearson, Jerome Smith, Jaygo Terry, Ida Terry, Mack Terry, Zone Terry, Leola Terry Smith, James Smith, J.P. Terry, David Brayvell Terry, Ettie Pearl Booker, Tecora O. Terry Mason, Odell Mason, Lenora Holley, Dorothy Terry Sheppard, Orangelee Sheppard, Vernon Sheppard, Kasandra Sheppard Jenkins, Karen Sheppard Spates, Theodore Terry, Sr., Gracie Terry, Kelvin F. Terry, Theodore Terry, Jr., Keith Terry, Leola Terry Daniels, Wilford Daniels, Terrance Leslie, Sr., Derrick McGee, Jr., Fred Smith, Jr., Mannell Terry, Patricia Terry, Sheila Terry, Barbara Evans, Leonard Evans, Linda Evans, Thomas Evans, Johnny R. Williams, Connie Evans, Michael Evans, Iola Terry Cox, William Henry Cox, Johnny F. Cox, Joyce A. Smith, Anthony Cox, Alfred Cox, J. Henry Cox, Charlette J. Cox, Charles J. Cox, Michael Cox, Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda, Eugene Gilliam, Terry Gilliam, Jerry Gilliam, Warren Gilliam, Eugene Gilliam, Jr., Melvin Gilliam, Rodney Gilliam, Cindy Gilliam, Shakima Gilliam, Carmella Cottom, Nina Gilliam, Vermell Gilliam Phillips, Shaynise Alston, John Gilliam, Donald Gilliam, Sr., Leunette Gilliam, Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam, Raymond T. Gilliam, Juan Miranda, Carmen Miranda a/k/a Carmen Miranda Glavin, John Glavin, Sr., John Glavin, Jr., Miranda Glavin, Jeffrey Glavin, Yolanda Glavin, Ezell Terry, Magaline Terry, Leroy Terry, Kenneth Terry, James (Jimmy) Terry, Pearlie Mae Terry, Winnie L. Terry Anderson, Furman Anderson, Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis, Charlene Peake, Albert

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Anderson, Paul Terry, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer, Jamie Terry, James O.C. Smith, Pauline Smith, Gloria Gore, Paul Smith, Ethel Allen, Desiree Golden, Pauline Workman, Brenda Moulhem, and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives, and any party claiming by or through them, Landowners,

and

The United States of America, acting by and through its agency, the Internal Revenue Service, The United States of America, acting by and through its agency the United States Department of Justice, The South Carolina Department of Revenue, The South Carolina Department of Mental Health, The State of South Carolina, Bullhead Investments, LLC, Arrow Financial Services, LLC, Sharonview Federal Credit Union, Discover Bank, Zachery Arnold, GE Commercial Finance Business Property Corporation, Midland Funding, LLC, and Greenville County, Other Condemnees,

and

John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, said property being identified as a portion of Greenville County Tax Map Numbers 053101010200 and 0531010102101, Unknown Claimants,.....

Of whom Ethel Allen, Shaynise Alson, Harold Anderson, Tommy Anderson, Bridgette Smith Blassingame, Sharai Smith Brock, Carmella Cottom, Alfred Cox, Mary Ann Davis, William G. Dawkins, Abigail Dodd, Linda Evans, Michael Evans, Thomas Evans, Chavonte Gilliam, Cindy Gilliam, Derrick Gilliam, Donald E. Gilliam, Jr., John L. Gilliam, Lakisha Gilliam, Latonya Gilliam, Leunette Gilliam, Mattie M. Gilliam, Nina Gilliam, Raymond TI Gilliam, Rodney Gilliam, Shakima Gilliam, Warren Gilliam, Desiree Golden, Gloria Gore, Lenora Holley, Kasandra Sheppard Jenkins, Terrance Leslie, Sr., Sandra McDowell, Derrick McGee, Jr., Brenda Moulhem, Alma Rene Smith Murry, Charlene Peake, Leslie Gilliam Peter, Angela Reid, Orangelee Sheppard, Vernon Lee Sheppard, Charles Terry Sholer, Calvin Smith, Eric Smith, Fred Smith, Jr., Gene A. Smith, James R. Smith, Joyce A. Smith, Loree Smith, Martha Miller Smith, Patrick Smith, Paul Smith, Reginald Lamont Smith, Tara Smith, Karen Regenia Spates, Rosalyn Annette Steven, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Gracie Terry, Jamie Terry, Keith Terry, Kelvin F. Terry, Leroy Terry, Mark G. Terry, Paul Terry, Jr., Theodore Terry, Jr., Porsha Williams, and Pauline Workman are the Respondents/Appellants,

and

Unknown landowners, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, United States of America and the United States of America, acting by and through its Agency, the Internal Revenue Service, Midland Funding, LLC, Sharonview Federal Credit Union, SC Department of Revenue, County of Greenville, Arrow Financial Services, LLC, SC Dept. of Mental Health, SC Attorney General, and Bullhead Investments, LLC, Zachery Arnold, Ettie Pearl Booker, Ira K. Carol, Johnny F. Cox, Wilford Daniels, Angela Gilliam, Bianca S. Gilliam, Demetrius J. Gilliam, Jerry Gilliam, Kehiminnie S. Gilliam, Terry Gilliam, John Glavin, Jr., John Glavin, Sr. Jeffrey Glavin, Miranda Glavin, Yolanda Glavin, Terrance Leslie, Terrell Leslie, Tearia Leslie, Donnette Ortchere, Jerome Smith, Melissa F. Smith, Michael Smith, James (Jimmy) Terry, Patricia Terry, Pearlie Mae Terry, and Sheila Terry are the Respondents.

**BRIEF OF AMICUS CURIAE
SOUTH CAROLINA CHAMBER OF COMMERCE**

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STATEMENT OF ISSUES ON APPEAL

The South Carolina State Chamber of Commerce (the “Chamber”) concurs with the Statement of Issues on Appeal set forth by Appellant, Piedmont Natural Gas Company, Inc. However, the Chamber limits its discussion in this amicus brief to the negative consequences of introducing speculative stigma damages into the just compensation calculation under the South Carolina Eminent Domain Procedure Act, S.C. Code § 28-2-370.

STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

The Chamber is a tax-exempt organization organized to further the common interests of South Carolina businesses. The Chamber aims to protect the interests of South Carolina's business community by identifying and addressing issues that may negatively impact economic development.

The Chamber strives to create prosperity for the State's citizens through increased economic productivity and competition and to promote the positive impact of a successful business community, in both the private and public sectors, for citizens of this State. The trial court's unprecedented expansion of the scope of "just compensation" in condemnation matters presents just such an issue that threatens South Carolina's businesses.

INTRODUCTION AND FACTUAL BACKGROUND

The Chamber concurs with the Statement of the Case and Statement of Facts as presented by the Appellant. The question before this Court is simple: when appraisers calculate the “just compensation” due to a property owner for a taking for the public purpose, can they include speculative, unfounded damages that are based on irrational and unsupported fear?

ARGUMENT

This Court has long rejected attempts to introduce speculative damages calculations into the just compensation framework. Whether those damages were based on future property value, business income on a property, or reputational damage, they all failed. *See, e.g., Gray v. S. Facilities, Inc.*, 256 S.C. 558, 570-71, 183 S.E.2d 438 (1971) (rejecting claim for diminution of value damages based on “psychological factor” as too speculative). Stigma damages are simply another theory that attempts to justify speculative damages in condemnation cases but on a much larger scale. Former Chief Justice Toal argued against this category of speculative damages in the torts context, reasoning that that such damages should not be recognized when the property owners’ “only injury” was “the possible devaluation of their properties.” *Chestnut v. AVX Corp.*, 413 S.C. 224, 232, 776 S.E.2d 82, 86 (2015) (Toal, C.J., dissenting).

Stigma damages are equally inappropriate in the context of condemnations, and the use of them in this case is particularly egregious. Here, the property owners’ appraiser admitted that he had no comparable or objective measure to support his calculation of stigma damages, nor did he have any specialized knowledge or training on which he relied to reach his conclusions. (R. p. 271:4-7; R. p. 273:7-9; R. p. 274:9-11; R. p. 276:17-19; R. p. 273:4-6) His judgment was based on the fact that he “felt like there was damage to the remainder.” (R. p. 268:13-18) It is difficult to conceive of a more speculative basis for any kind of damages claim.

But regardless of whether they are thought of as a unique category or merely as a variation on a theme, stigma damages should not be recognized as valid damages in condemnation cases by this Court. Recognizing stigma damages would significantly increase the cost of condemnation proceedings and increase the burdens on the judicial

system. For these reasons, the Chamber respectfully requests that this Court reverse the judgment of the trial court.

I. RECOGNITION OF STIGMA DAMAGES WOULD INCREASE THE COSTS OF CONDEMNATION ACTIONS.

The Eminent Domain Procedure Act (the “Act”) creates the “exclusive procedure” by which condemnation actions may be initiated in South Carolina. S.C. Code § 28-2-60. It allows “any condemnor,” including certain private companies, to institute a condemnation action “for the acquisition of an interest in any real property necessary for any public purpose.” S.C. Code § 28-2-210. Companies rely on the Act to build roads, cell towers, electric lines, wind farms, natural gas pipelines, water mains, and other key pieces of infrastructure that fuel growth and economic development in South Carolina and serve the public.

When planning a development project, the ability to roughly predict the costs of necessary condemnations is critical. The Act defines the compensation owed property owners as “only the value of the property to be taken, any diminution in the value of the landowner’s remaining property, and any benefits [to the property owner].” S.C. Code § 28-2-370. This Court has previously limited the scope of possible damages property owners may claim under this definition, excluding for example “possible uses which are so remote and speculative and which would require the concurrence of so many extrinsic conditions and happenings as to have no perceptible effect upon present market value.” *S.C. State Hwy. Dept. v. Westboro Weaving Co.*, 244 S.C. 516, 520, 137 S.E.2d 776, 778 (1964). When accounting for future value, the potential value of a property must be “reasonably probable.” *Carolina Power & Light Co. v. Copeland*, 258 S.C. 206, 215, 188 S.E.2d 188, 192 (1972).

Even when there is a range of potential value based on factors unique to different properties, there is still sufficient predictability for development planning. Land has a predictable, measurable cost. Fear does not. Stigma damages are based on “actual or perceived risks or fear.” *Chestnut*, 413 S.C. at 230, 776 S.E.2d at 85 (Toal, C.J., dissenting) (quoting E. Jean Johnson, *Environmental Stigma Damages: Speculative Damages in Environmental Tort Cases*, 15 UCLA J. Envtl. L. Pol’y 185, 185 (1997)). These fears can be based on anything, and need not be “reasonable or substantiated.” *Id.*

People’s fears are easily manipulated through misinformation and unfounded prejudice. One needs only look to the rising number of people who claim—without any medical or scientific support—to be allergic to electromagnetic waves or who claim that windfarms emit harmful, inaudible noise. *See Refugees of the Modern World*, Slate Magazine, 12 April 2013 (looking at the growing population who believe that they are allergic to various forms of electromagnetic waves)¹; *Why People Believe Low-Frequency Sound is Dangerous*, The Atlantic, 19 June 2017 (analyzing the persistent, refuted belief that large windmills emit “low frequency” noise that is harmful to humans).² Fear can be irrational, fickle, and, in applications like stigma damages, expensive.

There is no way of predicting what kinds of development projects will engender alleged fear in the public, nor what the possible price tag on that alleged fear will be. Here, alleged fear about a natural gas pipeline was valued at more than the actual land taken by the pipeline, without any evidence of dangers posed or reasonable risks to the public. Future property owners could claim stigma damages for alleged fear of, for

¹ Article available at http://www.slate.com/articles/technology/future_tense/2013/04/green_bank_w_v_where_the_electrosensitive_can_escape_the_modern_world.single.html

² Article available at <https://www.theatlantic.com/science/archive/2017/06/wind-turbine-syndrome/530694/>.

example, accidents near a public road, train derailments, leaks from a sewage system, sewer gas explosions, or vagrancy near public parks.

These claims would materially increase the cost of condemnations under the Act. Property owners could use these alleged and unsubstantiated fears to increase their demands in pre-hearing settlement negotiations and their appraisers could use them to double the valuation of “just compensation” in condemnation proceedings, which is exactly what happened here. This would greatly increase the potential costs to developers and public works projects, and increase the uncertainty when planning those projects. This would be harmful to the continued growth and development of South Carolina. The Chamber asks this Court to follow the rule articulated by former Chief Justice Toal and to reject any rule that allows for speculative stigma damages to be included in calculations of just compensation under the Act.

II. RECOGNITION OF STIGMA DAMAGES WOULD INCREASE THE NUMBER OF CONDEMNATION ACTIONS LITIGATED IN SOUTH CAROLINA COURTS.

The vast majority of takings are settled between the parties with minimal involvement from the judicial branch, as allowed under S.C. Code § 28-2-40. Agreement between property owners and condemnors depends on the parties having some measure of certainty about the value of the underlying property. Any time that valuation significantly diverges, judicial input is the necessary method of resolution.

Claims for stigma damages that are based on the allegation of some meritless, irrational fear will likely preclude private settlement, particularly if they drive compensation demands that are more than twice the cost of the actual land being condemned. Failed settlement discussions will necessarily lead to more condemnation actions in courts around the State, requiring the time and attention of judges on matters

that otherwise could have been resolved amicably. Moreover, expert testimony on stigma damages will be far more contentious and time-consuming than testimony about property values, leading to longer hearings and more appeals.

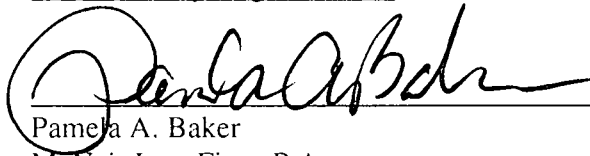
These burdens on South Carolina's courts would be warranted if stigma damages were a necessary component of "just compensation" under the Act. But they are not. Under the Act, "just compensation" shall consider "only the value of the property to be taken, any diminution in the value of the landowner's remaining property, and any benefits [to the property owner]." S.C. Code § 28-2-370. Speculative stigma damages do not fit within this statutory framework and the courts do not need to waste substantial judicial resources on litigation over the monetary value of alleged fears in condemnation proceedings. The Act itself does not mention stigma damages a single time. Accordingly, the Chamber asks this Court to reject expanding the scope of "just compensation" to include stigma damages as used in this case.

CONCLUSION

Stigma damages have never been recognized in South Carolina, and they should not be recognized by this Court on the facts presented in this case. The Chamber asks this Court to reject the arguments of the Appellees in this case, reject the unfounded inclusion of stigma damages by the court below, and hold in favor of Appellant Piedmont Natural Gas Company, Inc. and follow the rule articulated by former Chief Justice Toal and decline "to adopt stigma damages in any form as an appropriate measure of damages in South Carolina." *Chestnut*, 413 S.C. at 232, 776 S.E.2d at 86.

Respectfully submitted this 21st day of September, 2018.

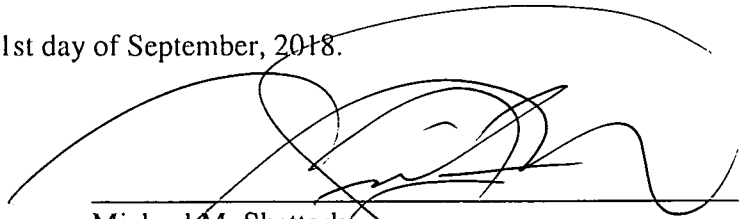
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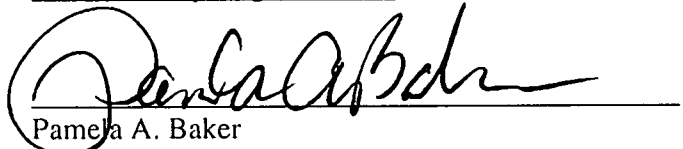
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Respectfully submitted this 21st day of September, 2018.



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CERTIFICATE OF SERVICE

I certify that I have caused to be served the MOTION FOR LEAVE TO FILE AND AMICUS BRIEF FOR THE SOUTH CAROLINA CHAMBER OF COMMERCE on counsel of record and respondents in this action by depositing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

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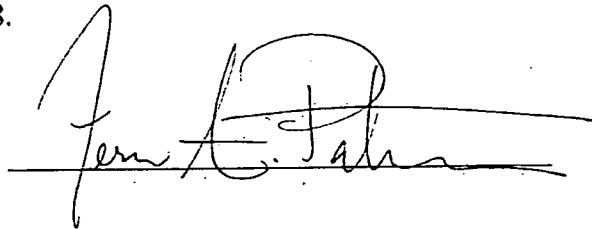
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Unrepresented Respondent Landowner

This the 21st day of September, 2018.

A handwritten signature in black ink, appearing to read "Fern E. Johnson". The signature is written in a cursive style with a large, looped initial "F" and "J". A horizontal line is drawn across the signature.