

**No. 19-1308**

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**In The**  
**Supreme Court of the United States**

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BERNARD MORELLO, et al.,

*Petitioners,*

v.

SEAWAY CRUDE PIPELINE COMPANY, LLC,

*Respondent.*

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**On Petition For A Writ Of Certiorari To The  
Court Of Appeals Of Texas, First District**

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**SUPPLEMENTAL APPENDIX**

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JACQUELINE LUCCI SMITH  
*Counsel of Record*  
LUCCI SMITH LAW, PLLC  
2550 Gray Falls Drive, Suite 395  
Houston, Texas 77077  
(832) 494-1700  
[JLSmith@LucciSmithLaw.com](mailto:JLSmith@LucciSmithLaw.com)  
*Counsel for Petitioners*  
*Bernard J. Morello and*  
*White Lion Holdings, L.L.C.*

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## **INTRODUCTION TO SUPPLEMENTAL APPENDIX**

In addition to the two interlocutory orders (S. App. 1; S. App. 2) which led to the entry of judgment without trial, the remaining documents contained in the Supplemental Appendix are: excerpts from Seaway's Second Amended Petition, filed approximately ninety (90) days prior to trial (S. App. 11); the 1975 Permanent Easement Agreement ("1975 Agreement") (S. App. 4); and the offer of proof detailing the testimony and opinions of expert witness, Chris Farrar, filed with the trial court. (S. App. 26). The amended petition and 1975 Agreement are referred to throughout Morello's Petition for Writ of Certiorari, filed on May 11, 2020. Farrar's proffer explains the impossibility of the pre-conditions mandated in Seaway's amended petition and why these terms, which vary significantly from the negotiated terms of the 1975 Agreement, adversely impacted the remainder of the Property west of the pipeline. *Id.* at 37-43. Due to the terms imposed upon the Property by the amended petition, the Property west of the pipeline could no longer be developed. The improper exclusion of expert testimony that contradicted the trial court's personal opinion that Seaway's amended petition resolved the compensation dispute resulted in an unconstitutional deprivation of Morello's Fifth, Seventh, and Fourteenth Amendment rights.

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**CAUSE NO. 13-CCV-050231**

SEAWAY CRUDE PIPELINE COMPANY LLC,	§ EMINENT DOMAIN § PROCEEDING
Plaintiff,	§ IN THE COUNTY
v.	§ COURT AT LAW
BERNARD J. MORELLO, ET AL.,	§ NUMBER 3
Defendants.	§ FORT BEND § COUNTY, TEXAS

Order Granting Plaintiff's Motion for Partial  
Summary Judgment and Motion for No Evidence  
Partial Summary Judgment and Order Denying  
Defendants' Plea to the Jurisdiction

The Court has considered Plaintiff's Motion for Partial Summary Judgment and Motion for No Evidence Partial Summary Judgment as well as Defendants' Plea to the Jurisdiction, which also serves as their response to the motions for summary judgment.

The Court **GRANTS** Plaintiff's Motion for Partial Summary Judgment and its Motion for No Evidence Partial Summary Judgment.

The Court **DENIES** Defendants' Plea to the Jurisdiction.

DATED: August 21, 2016.

/s/ Elizabeth Ray  
Judge Elizabeth Ray

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**CAUSE NO. 13-CCV-050231**

SEAWAY CRUDE PIPELINE COMPANY LLC,	§ EMINENT DOMAIN § PROCEEDING
Plaintiff,	§ IN THE COUNTY
v.	§ COURT AT LAW
BERNARD J. MORELLO, ET AL.,	§ NUMBER 3
Defendants.	§ FORT BEND § COUNTY, TEXAS
	§

**ORDER DENYING DEFENDANTS'**  
**§ 21.019 MOTION FOR COSTS**  
**AND ATTORNEY'S FEES**

On this date, the Court heard and considered Defendants' § 21.019 Motion for Costs and Attorney's Fees (the "Motion"). After considering the Motion, Seaway Crude Pipeline Company LLC's Response in Opposition to Defendants' § 21.019 Motion for Costs and Attorney's Fees, and the arguments of counsel, the Court denies the Motion. Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECREED that the Motion is DENIED in its entirety.

SIGNED this 3rd day of August, 2016.

/s/ Elizabeth Ray  
HONORABLE JUDGE ELIZABETH RAY

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Counsel for Plaintiff:  
tforestier@winstead.com and orsaklaw@gmail.com

Counsel for Defendants:  
jls@luccismithlaw.com and jbain@bainandbainlaw.net

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COMPARED      DEED VOL. 656 PAGE 322

269625

RIGHT OF WAY CONTRACT

DRAFT NO \_\_\_\_\_ FILE 15-21  
PROJECT AFE SW 5008

FOR AND IN CONSIDERATION of the sum of Eighteen Thousand Seven Hundred Eighty Seven [Illegible] 50/100 Dollars (\$18,787.50), the receipt of which is hereby acknowledged, GULF STATES TUBE CORPORATION (hereinafter referred to as "Grantor", whether one or more) hereby grants to SEAWAY PIPELINE, INC., (Grantee), its successors and assigns, the right to lay, maintain, operate, protect, inspect and remove one pipeline for the transportation of crude oil and hydrocarbon products, over, through, upon, under and across lands in the County of Fort Bend, State of Terms, to-wit:

That part of these tracts or parcels of land, the first containing 20 acres, more or less, being part of the Charles W. Simpson Survey, Abstract No. 485, in Fort Bend County, Texas, more particularly described in that certain Deed from Sun Daily, et ux, to Gulf States Tube Corporation, dated January 6, 1960, and recorded in Volume 400, Page 171, in the Deed Records of Fort Bend County, Texas. The second containing 115.22 acres, more or less, being part of the Charles W. Simpson Survey, Abstract No. 485, in Fort Bend County, Texas, more particularly described in that certain Deed from Helene Daily Sussan, et al, to Gulf

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State Tube Corporation, dated May 31, 1967, and recorded in Volume 458, Page 853, in the Deed Records of Fort Bend County, Texas. The third containing 25.322 acres, more or less, being 23.167 acres, more or less, of the C. F. Osborne Survey, Abstract No. 691, and the Moses Merritt Survey, Abstract No. 287, and 2.155 acres, more or less, of the Lester E. Cross Survey, Abstract No. 408, all in Fort Bend County, Texas, more particularly described in that certain Deed from Herman W. Blackwood, et al, to Gulf States Tube Corporation, dated April 7, 1960, and recorded in Volume 404, Page 134, in the Deed Records of Fort Bend County, Texas. Said part of the above described tracts of land being more particularly described as follows, to wit:

A strip of land 75 feet in width, being a permanent right-of-way 60 feet in width, 85 feet westerly and 35 feet easterly of the following described line, with a 15 foot wide temporary work space adjacent to the easterly side of said permanent right-of-way. Said strip of land expanding to a width of 150 feet for a distance of 400 feet northerly, along the following described line, from the northerly right-of-way line of the Southern Pacific Railroad, being the southerly property line of the Grantors herein, being a permanent right-of-way 60 feet in width, 25 feet westerly and 35 feet easterly of the following described line, with a 50 foot wide temporary work space adjacent to the westerly side of said permanent right-of-way and a 40 feet wide temporary work

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space adjacent to the easterly side of said permanent right-of-way.

Beginning at a point on the southeasterly property line of the Grantors herein, said point being southwesterly, along said property line, a distance of 528.2 feet from the southeasterly corner of the 115.22 acre tract of land, of which this is a part, a fence corner post more particularly described in Volume 488, Page 853, in the Deed Records of Fort Bend County, Texas; thence North 04° 38' 09" West, a distance of 2429 feet to a point on the northerly property line of the Grantors herein, the south side of a County Road, said point being westerly, along said property line, a distance of 1415.0 feet from the Grantors' northeasterly property corner, a point at the intersection of the south line of a County Road with the west line of another County Road.

Containing 3.34 acres permanent right-of-way and additional 1.52 acres temporary work space.

In the event Grantee fails to use said pipeline, or equipment for a period of eighteen (18) consecutive months after construction, this equipment and all rights granted hereunder shall cease, expire, and ipso facto terminates without any demand or putting in default.

In the event of the termination of this grant, in any manner, Grantee shall remove all pipe and appurtenances in the right-of-way herein granted and shall be liable for all damages occasioned thereby to Grantor

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or persons holding under Grantor, and shall fill up thoroughly the trench or ditch left on Grantor's property after removed of said pipe line and shall restore the right-of-way to a clean and safe condition.

The [illegible] herein granted is for one pipeline and one pipeline only. The width of said easement shall be seventy-five (75') feet in width during construction and shall revert to a permanent width of sixty (60') thereafter.

Grantor reserves the right to construct, place, lay and maintain telephone, electric, sewer and water lines and roadways or streets or railroad spurs on, over and across, but not along the easement. Any expense involved in raising, lowering, casing, venting or other protective measures required will be at the sole cost and expense of Grantee. Grantee agrees that it will, within three (3) months after receiving written notice from the Grantor herein, lower, raise, case and/or vent its pipeline if such be necessary in order that Grantor may construct a railroad spur or roadways over the across said pipeline of the Grantee.

Grantee agrees that the pipeline and appurtenances shall be buried not less than 36 inches below the surface of the ground and there will be no above ground installations.

During initial construction, Grantee may use such additional temporary work space as may be reasonable and necessary at all highway, road, railroad, erode and/or drainage ditch crossings.

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Except as herein provided, Grantor expressly covenants and agrees not to impound or maintain any substances whatsoever or construct, place or erect buildings or structures of any type whatsoever upon, over, under or across or within (40) forty feet of the pipeline and its appurtenances upon, over, under or across the above described lands, or permit same to be done by others. The rights and privileges herein granted are assignable or transferrable in whole or in part, vesting in any other person, firm or corporation the ownership of one pipeline and appurtenance or an undivided interest therein.

Grantee agrees to pay for all damages to the buildings, equipment, improvements and personal property of the Grantor caused by the laying of said pipeline and the maintenance and use thereof.

Grantee agrees that it will, within six (6) months after receiving written notice from the Grantor herein, relocate its pipeline, at Grantee's expense, to eliminate any actual interference with a proposed bona fide plan of Grantor involving the construction of buildings or structures with which Grantee's pipeline would unreasonably interfere. If such interference requires relocation of the pipeline, then Grantor shall furnish Grantee, at no charge, an alternate right-of-way across said land of the same width as the right-of-way herein granted, and granting the same rights to Grantee as expressed herein, said right-of-way to be at a location that is reasonably satisfactory to both Grantor and Grantee herein. It is expressly understood that Grantee shall not be required to relocate its pipeline

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more than one time and Grantor hereby agrees it will not require or request such relocation within five (5) years from the date of this instrument.

Grantor is to fully use and enjoy said premises excerpt for the purposes hereinabove granted.

All of the rights, obligations, comments and provisions hereof shall inure to and be binding upon the successors and assigns of the parties hereto.

The rights herein granted, or any of them, may be exercised by any or all of the Grantee herein, their successors and/or assigns either jointly or separately.

Signed and delivered this 26 day of June, 1975.

GULF STATE TUBE CORPORATION

By: /s/ John Boxner  
John Boxner, Vice President

[SEAL]

ATTEST:

/s/ [Illegible]

THE STATE OF TEXAS |  
COUNTY OF FORT BEND |

BEFORE ME, the undersigned authority, on this day personally appeared John Boxner, known to me to be the person above name is subscribed to the foregoing instrument as Vice President of GULF

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STATES TUBE CORPORATION, a corporation, and acknowledged to on that be executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

Given under my hand and seal of office this the 26th day of June, 1975.

/s/ [Illegible]  
NOTARY PUBLIC IN  
AND FOR FORT BEND  
COUNTY [SEAL]

My commission expires June, '77.

Duly recorded this the 22 day of August A.D. 1975  
at 4:30 O'Clock P.M.

By /s/ [Illegible] Deputy Pearl Ellett,  
County Clerk  
Fort Bend  
County, Texas

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**NO. 13-CCV-050231**

<b>SEAWAY CRUDE PIPELINE COMPANY LLC,</b>	<b>§ EMINENT DOMAIN § PROCEEDING IN § THE COUNTY § COURT AT § LAW NO. 3 §</b>
<b>PLAINTIFF, v. BERNARD J. MORELLO and WHITE LION HOLDINGS, LLC,</b>	<b>§ FORT BEND § COUNTY, TEXAS § §</b>
<b>DEFENDANTS.</b>	<b>§</b>

**PLAINTIFF'S SECOND AMENDED  
STATEMENT AND PETITION  
FOR CONDEMNATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, SEAWAY CRUDE PIPELINE COMPANY LLC (“SEAWAY”), files this Second Amended Statement and Petition for Condemnation against BERNARD J. MORELLO (“MORELLO”) and WHITE LION HOLDINGS, LLC (“WHITE LION”), and shows the Court as follows:

**I.  
DISCOVERY SCHEDULE**

1. Discovery is intended to be conducted under level 2 of Rule 190 of the Texas Rules of Civil Procedure.

**II.  
PARTIES**

2. Plaintiff, SEAWAY CRUDE PIPELINE COMPANY LLC, is a Delaware limited liability company, and is authorized to transact business in the State of Texas.

3. Defendant BERNARD J. MORELLO is record owner of certain land situated in Fort Bend County, Texas, upon which the easements identified in Exhibits A and B, attached to this petition . . .

\* \* \*

25. MORELLO shall, upon ninety (90) days prior notice to SEAWAY, have the right to construct, maintain, repair, and operate pipelines, fences, roads, streets, alleys, sidewalks, bridges, railroad tracks, underground communications conduits, electric transmission and distribution lines, telephone lines, gas, water, drainage and sewer pipelines, and other utilities, across the Morello Property Permanent Easement at any angle of not less than forty-five (45) degrees to the Pipeline; and the right to use the Morello Property covered by the Morello Property Permanent Easement for recreation or other similar purposes, not inconsistent or conflicting with SEAWAY's use and enjoyment of the Morello Property Permanent Easement for the purposes set forth herein; provided, however, MORELLO shall exercise said rights in such a manner so that (i) the Pipeline and facilities located within the Morello Property Permanent Easement shall not be endangered, obstructed, injured or interfered with; (ii)

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SEAWAY's access to the Morello Property Permanent Easement, the Pipeline and its other facilities is not interfered with; (iii) SEAWAY shall not be prevented from traveling within and along the entire length of the Morello Property Permanent Easement on foot or in vehicles or machinery; (iv) the Pipeline is left with the amount of cover originally installed to allow safe operation of the Pipeline; (v) the Pipeline is left with proper, sufficient, and permanent lateral support; and (vi) SEAWAY's use of the Morello Property Permanent Easement for the purposes set forth herein is not unreasonably impaired or interfered with. MORELLO can plow, cultivate and farm the Morello Property Permanent Easement without notice to or the consent of SEAWAY, provided that these operations do not disturb the Morello Property Permanent Easement to a subsurface depth below sixteen inches (16") from the ground surface.

26. SEAWAY shall, at SEAWAY's sole cost and expense, lower and/or encase the Pipeline, and/or take other protective measures, as SEAWAY deems necessary to permit MORELLO to construct and maintain roads, streets, and/or railroad tracks across the Morello Property Permanent Easement consistent with paragraph 25 above, provided that MORELLO first presents SEAWAY with the following: (i) engineering plans and profiles showing the design, specifications, and exact location(s) of all proposed road, street, and/or railroad crossings; (ii) copies of any governmental permits or approvals required for construction of the proposed road(s), street(s), and/or railroad tracks; (iii) in

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the case of railroad tracks, proof that a railroad company that owns or operates the railroad right-of-way along Texas State Highway Spur 529 has agreed to provide rail service to the Morello Property and/or the White Lion Property; and (iv) proof that sufficient funding for construction of all of the proposed road(s), street(s), and railroad tracks is in place. Upon being presented with the foregoing, SEAWAY shall have 180 days in which to complete any necessary work contemplated by this paragraph. SEAWAY shall not be required to make accommodations for crossings under the terms of this paragraph more than one time. MORELLO's rights in this paragraph shall inure to the benefit of the successor owners of the Morello Property.

27. SEAWAY reserves the right to install gates in any fences that cross the Morello Property Permanent Easement. SEAWAY shall bury the Pipeline to a minimum depth of thirty-six inches (36") below the surface of the ground and any then-existing drainage ditches, creeks and roads, except at those locations where rock is encountered the Pipeline may be buried at a lesser depth.

\* \* \*

45. WHITE LION shall, upon ninety (90) days prior notice to SEAWAY, have the right to construct, maintain, repair, and operate pipelines, fences, roads, streets, alleys, sidewalks, bridges, railroad tracks, underground communications conduits, electric transmission and distribution lines, telephone lines, gas, water, drainage and sewer pipelines, and other

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utilities, across the White Lion Property Permanent Easement at any angle of not less than forty-five (45) degrees to the Pipeline; and the right to use the White Lion Property covered by the White Lion Property Permanent Easement for recreation or other similar purposes, not inconsistent or conflicting with SEAWAY's use and enjoyment of the White Lion Property Permanent Easement for the purposes set forth herein; provided, however, WHITE LION shall exercise said rights in such a manner so that (i) the Pipeline and facilities located within the White Lion Property Permanent Easement shall not be endangered, obstructed, injured or interfered with; (ii) SEAWAY's access to the White Lion Property Permanent Easement, the Pipeline and its other facilities is not interfered with; (iii) SEAWAY shall not be prevented from traveling within and long the entire length of the White Lion Property Permanent Easement on foot or in vehicles or machinery; (iv) the Pipeline is left with the amount of cover originally installed to allow safe operation of the Pipeline; (v) the Pipeline is left with proper, sufficient, and permanent lateral support; and (vi) SEAWAY's use of the White Lion Property Permanent Easement for the purposes set forth herein is not unreasonably impaired or interfered with. WHITE LION can plow, cultivate and farm the White Lion Property Permanent Easement without notice to or the consent of SEAWAY, provided that these operations do not disturb the White Lion Property Permanent Easement to a subsurface depth below sixteen inches (16") from the ground surface.

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46. SEAWAY shall, at SEAWAY's sole cost and expense, lower and/or encase the Pipeline, and/or take other protective measures, as SEAWAY deems necessary to permit WHITE LION to construct and maintain roads, streets, and/or railroad track; across the White Lion Property Permanent Easement consistent with paragraph 45 above, provided that WHITE LION first presents SEAWAY with the following: (i) engineering plans and profiles showing the design, specifications, and exact location(s) of the proposed road, street, and/or railroad crossing(s); (ii) copies of any governmental permits or approvals required for construction of the proposed road(s), street(s), and/or railroad track; (iii) in the case of railroad tracks, proof that a railroad company that owns or operates the railroad right-of-way along Texas State Highway Spur 529 has agreed to provide rail service to the Morello Property and/or the White Lion Property; and (iv) proof that sufficient funding for construction of all of the proposed road(s), street(s), and railroad tracks is in place. Upon being presented with the foregoing, SEAWAY shall have 180 days in which to complete any necessary work contemplated by this paragraph. SEAWAY shall not be required to make accommodations for crossings under the terms of this paragraph more than one time. WHITE LION's rights in this paragraph shall inure to the benefit of the successor owners of the White Lion Property.

47. SEAWAY reserves the right to install gates in any fences that cross the White Lion Property Permanent Easement. SEAWAY shall bury the Pipeline to

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a minimum depth of thirty-six inches (36") below the surface of the ground and any then-existing drainage ditches, creeks and roads, except at those locations where rock is encountered the Pipeline may be buried at a lesser depth.

\* \* \*

**CERTIFICATE OF SERVICE**

I certify that on this the 17th day of May 2016, the above and foregoing document was served upon the following attorney of record in compliance with Rule 21a of Texas Rules of Civil Procedure:

Jacqueline Lucci Smith  
Lucci Smith Law, PLLC  
10810 Katy Freeway, Suite 102  
Houston, Texas 77043  
JLSmith@LucciSmithLaw.com  
*Attorneys for defendants Bernard J. Morello and  
White Lion Holdings, LLC*  
**By Email & Electronic Service**

/s/ Thomas J. Forestier  
**Thomas J. Forestier**

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**EXHIBITS**  
**A and B**

**EXHIBIT "A"**

**SEAWAY CRUDE PIPELINE COMPANY LLC  
SEAWAY LOOP - SEGMENT 4  
BERNARD J. MORELLO  
TRACT NO TX-FB-0135.00000**

**PERMANENT EASEMENT AND RIGHT OF WAY**

Description of a fifty (50) foot wide Permanent Easement and Right of Way situated in the H. & T.C. R.R. CO. Survey, Section 12, Abstract Number 485, and being over, through and across a called 115.22 acre tract of land conveyed to Bernard J. Morello, recorded in County Clerk File Number (C.C.F. No.) 2004042732 of the Official Public Records of Fort Bend County Texas (O.P.R.F.B.C.T.), said fifty (50) foot wide Permanent Easement and Right of Way being situated twenty (25) feet on each side of the herein described baseline, the sidelines of said Permanent Easement and Right of Way being lengthened or shortened to meet the boundary lines of said called 115.22 acre tract of land, said baseline being more particularly described as follows:

**COMMENCING** as a 1/2 inch iron rod found for the north corner of said 115.22 acre tract of land and the most westerly corner of Tract 3, a called 20 acre tract of land conveyed to White Lion Holdings, L.L.C., recorded in C.C.F. No. 2004042731 of the O.P.R.F.B.C.T.; **THENCE** South 45° 32' 13" East, along the northeasterly boundary of said 115.22 acre tract of land, a distance of 1454.79 feet, to the **POINT OF BEGINNING**;

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**THENCE** South 06° 09' 28" East a distance of 51.92 feet, to a point;

**THENCE** South 12° 13' 28" East, a distance of 797.86 feet to the **POINT OF TERMINATION** in the south-easterly boundary of said 115.22 acre tract of land and the northwesterly right of way of the Texas Mexico RailWay, from which a 1/2" iron pipe found for the southeasterly corner of the said 115.2 acre tract of land bears North 53° 17' 45" East, a distance of 476.79 feet, said baseline having a total length of 849.78 feet (51.50 rods) and said Permanent Easement of R.O.W. containing 0.975 acre of land, more or less.

**TEMPORARY WORKSPACE**

A seventy five (75) foot wide strip of land parallel with and adjacent to the westerly boundary of the above described Permanent Easement and Right of Way, extending or shortening the side lines of the Temporary Work Space to intersect with the boundary lines of the said 115.22. acre tract of land. Said Temporary Work Space containing 1.655 acres of land. more or less.

**ADDITIONAL TEMPORARY WORKSPACE**

A one-hundred and twenty-five foot by two-hundred and thirty-four foot (125'x234') strip of land parallel with and adjacent to the westerly boundary of the above described Temporary Workspace and depicted on Exhibit "B", containing 0.752 acre of land, more or less.

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All bearings and distances shown herein are grid, based upon UTM, Zone 14N, North American Datum of 1983, U.S. Survey Feet, its derived from an on the ground survey performed by Willbros Engineers (U.S.) LLC conducted in June of 2012.

For reference and further information see Exhibit "B" drawing number TX-FB-0135.00000, Rev. 1, same date.

/s/ Jeffrey Lee Woodson 2/25/2013  
**Jeffrey Lee Woodson** Date:  
**Registered Professional**  
**Land Surveyor**  
**Texas Registration No. 6246**

[SEAL]



**EXHIBITS**  
**A-1 and B-1**

**EXHIBIT "A"**

**SEAWAY CRUDE PIPELINE COMPANY LLC  
SEAWAY LOOP - SEGMENT 4  
WHITE LION HOLDINGS, LLC.  
TRACT NO TX-FB-0134.00000**

**PERMANENT EASEMENT AND RIGHT OF WAY**

Description of a fifty (50) foot wide Permanent Easement and Right of Way situated in the C.P. Osborne Survey, Abstract No. 691, the H.T. & C. RR. Co. Survey, Abstract 485, the Moses Merritt Survey, Abstract 287, and the Lester E. Cross Survey, Abstract 408, Fort Bend County Texas, and being over, through and across Tract 2, a called 25.322 acre tract of land, and Tract 3, a called 20 acre tract of land conveyed to White Lion Holdings, LLC., recorded in County Clerk File Number (C.C.F. No.) 2004042731 of the Official Public Records of Fort Bend County Texas (O.P.R.F.B.C.T.), said fifty (50) foot wide Permanent Easement and Right of Way being situated twenty (25) feet on each side of the herein described baseline, the sidelines of said Permanent Easement and Right of Way being lengthened or shortened to meet the boundary lines of said called 25.322 acre (Tract 2) tract of land, and said 20 acre, (Tract 3), tract of land, said baseline being more particularly described as follows:

**COMMENCING** as a 1/2 inch iron rod found for the northwest corner of said 25.322 acre (Tract 2) tract of land in the south right of way line of Muegge Road; **THENCE**, North 81° 10' 46" East, along the common line of the of the said 25.322 (Tract 2) acre tract of land

and the said south right of way line of Muegge Road a distance of 944.36 feet, to the **POINT OF BEGINNING**;

**THENCE** South 06° 09' 06" East, a distance of 1560.53 feet to the **POINT OF TERMINATION** in the south-easterly boundary of said 20 acre, (Tract 3) tract of land and the north boundary of a called 1215.22 acre, (Tract 4) tract of land conveyed to Bernard J. Morello, record in C.C.F. No. 2004042732, of the O.P.R.F.B.C.T., from which a 1/2 inch iron pipe rod found for the south corner of the said 20 acre tract (Tract 3) tract of land bears South 45 32 13 east, a distance of 780.10 feet; said baseline having a total distance of 1540.53 feet (94.58 rods) and said Permanent Easement of R.O.W.

**TEMPORARY WORKSPACE**

A seventy five (75) foot wide strip of land, parallel with and adjacent to the west boundary of the above described Permanent Easement and Right of Way, extending or shortening the side lines of the Temporary Work Space to intersect with the boundary lines of the said 25.322 acre, (Tract 2) tract of land and the said 20 acre (Tract 3) tract of land; said Temporary Work Space containing 2.550 acres of land, more or less.

**ADDITIONAL TEMPORARY WORKSPACE**

A one-hundred and twenty-five foot by two-hundred foot (125'x200') strip of land parallel with and adjacent to the west boundary of the above described Temporary

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Workspace and depicted on Exhibit "B", containing 0.556 acre of land, more or less

All bearings and distances shown herein are grid, based upon UTM, Zone 14N, North American Datum of 1983, U.S. Survey Feet, its derived from an on the ground survey performed by Willbros Engineers (U.S.) LLC conducted in June of 2012;

For reference and further information see Exhibit "B" drawing number TX-FB-0135.00000, Rev. 1, same date.

/s/ Jeffrey Lee Woodson 2/25/2013

**Jeffrey Lee Woodson** Date:

**Registered Professional**

**Land Surveyor**

**Texas Registration No. 6246**

[SEAL]

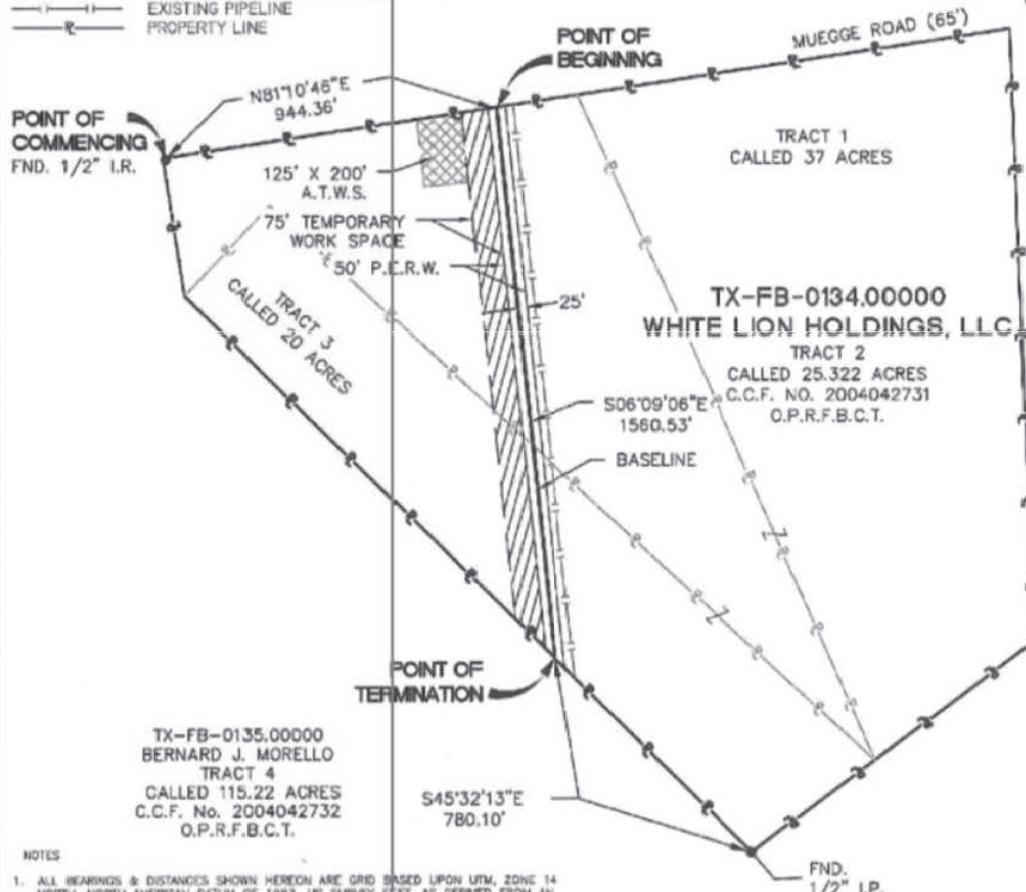
## EXHIBIT "B"

### FORT BEND COUNTY, TEXAS

C.P. OSBORNE SURVEY, A-691, H.T. & C. RR. CO. SURVEY, A-485,  
MOSES MERRITT SURVEY, A-287, LESTER E. CROSS SURVEY, A-408

#### LEGEND

FND.	FOUND
I.R.	IRON ROD
I.P.	IRON PIPE
D.R.W.C.T.	DEED RECORDS OF WALLER COUNTY, TEXAS
D.P.R.W.C.T.	OFFICIAL PUBLIC RECORDS OF WALLER COUNTY, TEXAS
P.E.R.W.	PERMANENT EASEMENT & RIGHT OF WAY
N.T.S.	NOT TO SCALE
C.C.F. NO.	COUNTY CLERK FILE NUMBER
A.T.W.S.	ADDITIONAL TEMPORARY WORKSPACE
— — — — —	EXISTING PIPELINE
— — — — —	PROPERTY LINE



#### NOTES

- ALL BEARINGS & DISTANCES SHOWN HEREIN ARE GRID BASED UPON UTM, ZONE 14 NORTH, NORTH AMERICAN DATUM OF 1983, US SURVEY FEET, AS DERIVED FROM AN ON THE GROUND SURVEY PERFORMED BY WILLBROS ENGINEERS (U.S.) LLC IN JUNE, 2012.
- THE OWNERSHIP OF THE SUBJECT TRACT, SHOWN HEREIN, IS BASED UPON DEEDS PROVIDED BY OTHERS. NO OTHER RESEARCH WAS PERFORMED BY THE UNDERSIGNED SURVEYOR.
- SEE EXHIBIT "A" FOR DESCRIPTION.
- IF THIS PLAT AND ACCOMPANYING DESCRIPTION ARE NOT SIGNED AND SEALED BY THE SURVEYOR WHOSE NAME APPEARS BELOW, IT SHOULD BE CONSIDERED AS A COPY AND NOT THE ORIGINAL.
- THIS SURVEY WAS PERFORMED FOR THE SPECIFIC PURPOSE OF ESTABLISHING A BASELINE, MAPPING SELECTED FEATURES, AND LOCATING NECESSARY LAND LINE FOR EASEMENT ACQUISITION FOR A PIPELINE.

*Jeffrey Lee Woodson* 2/25/2013  
JEFFREY LEE WOODSON  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 8246

**WHITE LION HOLDINGS, LLC**  
TOTAL DISTANCE ACROSS PROPERTY: 1560.53 FEET  
OR 94.56 RODS  
AREA OF PERMANENT EASEMENT: 1.791 ACRES  
AREA OF TEMPORARY WORKSPACE: 2.550 ACRES  
AREA OF ADDITIONAL TEMPORARY WORKSPACE: 0.556 ACRES



SCALE IN FEET  
400 200 0 400

DRAWN	B/W/C	DATE	09/05/12
CHECKED	PG	DATE	09/05/12
APP'D		DATE	
SCALE	1"=400'	PAGE	1 OF 1
REV#	DATE	DESC.	
1	2/25/13	MISC.	
JOB NO.		52606	
25-Feb-2013 : 11:04 AM			



WILLBROS  
4400 Post Oak Parkway  
Houston, TX 77027  
(713) 403-8000 TX-F-B2

#### EASEMENT PLAT

SEAWAY LOOP - SEGMENT 4  
PERMANENT EASEMENT & RIGHT OF WAY  
ACROSS THE PROPERTY OF  
WHITE LION HOLDINGS, LLC  
FORT BEND COUNTY, TEXAS

DRAWING NO.	TX-FB-0134.00000	REV.
		1 2571

CAUSE NO. 13-CCV-050231

SEAWAY CRUDE	§ CONDEMNATION
PIPELINE COMPANY,	§ PROCEEDING
LLC	§ COUNTY COURT
Plaintiff	§ AT LAW NO. 3
V.	§ FORT BEND
BERNARD J. MORELLO	§ COUNTY, TEXAS
ET AL	§
Defendants	§

**EXHIBIT A**  
**OFFER OF PROOF CHRIS FARRAR**

Mr. Farrar is a commercial real estate professional with expertise in capitalizing commercial real estate projects, underwriting commercial real estate transactions and procuring the development of real estate projects (permitting and entitlement process). If permitted to testify at trial, Mr. Farrar would offer the opinion that the conditions set forth in Plaintiff's Second Amended Petition, and in particular as set forth in Paragraphs 26 and 46 of that pleading would effectively prohibit the Property Owners from developing the property in any manner that would require Seaway to undertake any protective measures, including lowering, encasing or venting the pipeline. Mr. Farrar will explain why the conditions set forth in the Second Amended Petition in Condemnation cannot be met by the Property Owners and therefore, the Property Owners would not be able to invoke what is in reality a non-existent right to require Seaway to make any

modifications to protect the Pipeline. Additionally, Mr. Farrar would offer testimony that because of the language in the Second Amended Petition the Defendant Property Owners would be unable to raise capital or obtain funding and permitting for development of the Property. Mr. Farrar's testimony would include the following:

Mr. Farrar's CV is offered concurrently herewith and is Bates Numbered CF\_0001 - 0002.

Q. Tell the jury about your education.

Graduated from Texas A&M University – Mays Business School, College Station, TX December 2009 Master of Real Estate – Finance

Graduated from Texas A&M University – College of Architecture, College Station, TX August 2006 Bachelor of Construction Science

Q. What experience do you have in the real estate industry?

I first worked for Camden Property Trust – Houston, TX from August 2006 – August 2008. During that time, I held the position of Project Engineer/Analyst – Real Estate Investments. That position in particular dealt with new development and rehab of multi-family assets. My responsibilities included:

- Supported the project manager in construction of multi-family projects, including new development and rehab.

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- Responsible for the construction schedule and project quality control ensuring delivery of project in a timely manner.
- Performed cost estimating and assisted in buy-out process of multi-family development projects.
- Prepared financial and market analysis for senior development team on potential rehabs and new construction.
- Traveled bi-weekly to various markets to evaluate project status and perform construction budget analysis.
- Researched development trends and demand for future growth in Camden's eight core markets.
- Handled the pre-development process for new construction projects, which included obtaining and providing necessary documentation to secure building permits and governmental approvals.
- Worked with engineers and architects throughout the development process to ensure compliance and address modifications encountered during construction.

Q. Explain the process a property owner/developer must go through to successfully complete a new development.

First you hire an architect and engineer.

The architect completes designs and produces schematic drawings and renderings. This cannot

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be completed without specific information about the location, depth and easement restrictions applicable to the pipeline.

Owner/developer then takes the preliminary design and schematic to the engineer to obtain specific plans that are feasible structurally and financially. This cannot be completed without specific information about the location, depth and easement restrictions applicable to the pipeline. Developer then must take the plans to appropriate oversight authorities – city, county, etc. – for approvals.

Developer throughout this process is analyzing market conditions to determine if the project is financially feasible and preparing a financial package to demonstrate the future profitability of the project for use in raising capital and obtaining funding.

Developer prepares financing package which has its own set of documents.

Developer obtains bids from General Contractor or contractors that will provide budget and obtain preliminary pricing

Obtain all necessary approvals, permits and entitlements

Secure financing and capital

Build infrastructure

Build the project

Allow for stabilization period.

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Q. Your job was to work with the Civil/ Structural Engineer and Architect to design plans to submit to various governmental entities for approval, and then obtain necessary permits to move forward. How often is the first set of plans approved?

Rarely – Almost never. The Plans must be reviewed and approved by multiple persons or departments within the regulating, governing body (city or county), and any required change by any one person/department requires that the revised plans be resubmitted for additional approval. It is a process that essentially starts over any time someone or some condition of the property requires a change.

Q. While at Camden Property Trust was it your job to get plans and amendments through all the processes for approval?

Yes

Q. Where were these projects located?

The projects were located in Houston, TX; Tampa, FL and Orlando, FL

Q. What happens when, during the permitting or construction process, the developer encounters unforeseen circumstances that require change in plans?

Several things can happen, depending on the required changes. Typically, a resubmission to the city or county with the incorporated changes that would have to be approved. Also the developer would have to notify the bank and the general

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contractor for adjustment in loan proceeds or costs/change orders.

Q. What are entitlements?

Entitlements – ie: government approvals Examples include zoning approvals, wetlands removal, greenspace additions, street additions, landscape requirements, etc.

Q. How long were you at Camden?

Two years

Q. Why did you leave?

There was a downturn in market and new development slowed, so I went to graduate school.

Q. What did you do after grad school?

I went to work for BBVA Compass – Houston, TX from December 2009 – September 2011

Q. What was your position there?

Assistant Vice President – Commercial Real Estate Lending

Q. What were your job responsibilities?

- Supported three relationship managers in servicing and funding a \$900 million dollar commercial real estate loan portfolio.
- Assisted with the development of new business and provided credit analysis for all prospective clients/deals.

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- Responsible for all phases of underwriting loans including real estate analysis, cash flow and profitability modeling.
- Maintained loan portfolio, including quarterly updates, approving draw requests, and monitoring covenant compliance.
- Evaluated market and product type risk of loan portfolio and analyzed project economics for all new loans for new development or existing assets.

Q. What did you do at BBVA Compass that is relevant to your opinions in this case?

Source and Underwrite the Deals – I would meet with the developer or sponsor to discuss the potential opportunity. From there we would decide if we wanted to pursue the loan opportunity. I would complete a full underwriting of the project and sponsor and then submit to credit committee for approval of loan commitment.

– Underwriting commercial real estate for the bank. This is much different from a car or home loan. When underwriting for commercial real estate it is not as simple as filling out an application and running a credit report. Several other conditions and criteria must be met on both the project and sponsor side. These include sponsor strength and experience (verifying resume, contingent liability analysis, liquidity, creditworthiness, etc). One must also address the project which includes: feasibility, financial analysis, profitability, general contractor capabilities/bonding capacity, market

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analysis, required compliance and costs associated with permitting, etc.

Funding for commercial development, whether it is industrial, multifamily, rail, retail or some other type of income producing asset, the analysis is always project and sponsor driven. This means that in order to obtain funding from a bank or any other financial resource, the applicant must present a package that convinces the lender that the project is financially feasible, physically possible, sponsored by a viable person or entity, staffed by qualified professionals and contractors, and whether the project is compatible with market conditions and the highest and best use of the property.

Q. Explain the terminology please.

1. Sponsorship – person requesting the financing and providing guaranty during construction
2. Project – is the project financially feasible- is it going to be profitable
3. Market – doing your homework – what is the demand for the finished project. For example, in this instance, are there other or competing rail yards and how are they performing, how much revenue do they generate, and what does it cost to build a railyard that would be competitive in the market.

Q. Can you give me an example of the process?

1. Architect – prepares rough estimate at budget
2. General Contractors – Verifies budget and Bids the project

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3. Developer picks General Contractor
4. General Contractor has to pass Bank muster - must be able to obtain performance and payment bonds to protect against liens during construction
5. If contractor doesn't pass bank scrutiny - developer must start over with another contractor or sponsor must provide enough support financially to get the bank comfortable
6. Bank evaluates bids against current construction costs - this is an ongoing internal metric banks keep track of.
7. Perform Underwriting analysis to make sure project will be cash flow positive and profitable at stabilization - able to meet debt service coverage ratio (DSCR). - This is an internal metric used by the bank or other lender.
8. Will the project or sponsor be able to meet interest carry during development and while the project stabilizes
9. Review contracts and letters of intent from rail company to show project income will exist upon completion which in turn allows developer to properly meet debt service obligations
10. Appraisal - all info sent to appraiser - who will determine highest and best use and final value, both "As Is and As Stabilized"
11. Once value determined - bank has to decide final lending parameter - (70-75% loan to cost typically on construction/ground up deals).

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Any risk that is perceived by the bank or lender on any one of these factors may prevent funding for the deal. For example, in this case the risk that Seaway will not agree to lower, encase or protect the pipeline in a timely manner would be perceived as an unacceptable risk. Also, the risk that other components of the deal will expire or fall apart during the 180 day period Seaway has to evaluate and take protective measures for the pipeline would be perceived as too high to pass underwriting because during that 180 day period too much can change. Permits can expire, building codes can change, market conditions can change, the rail companies might back out of the deal, etc.

Q. What do you do now?

I own my own companies. FMC Advisors LLC and Woodside Capital Advisors LLC – Houston, TX. We opened in August 2013 – Present

I do Commercial Real Estate Financial Consulting

- Provide financial consulting for clients during the acquisition, development and re-financing process.
- Source both debt and equity via multiple capital sources for all property types throughout the major markets of Texas.
- Assist the client in the management of the transaction process, including development, valuation, insurance, environmental, legal and title.

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Q. How is that relevant to your opinions in this case?

I have a strong understanding of what it takes to develop a project.

Q. Have you had the opportunity to review the conditions placed on Property owners in this case in order to invoke the provision in the Second Amended Petition for Condemnation that purports to give the Property Owners the right to require Seaway to lower, encase or take other protective measures for its pipeline in order to make way for development.

Yes

Q. Where are those conditions specified?

In general, the petition sets forth what the property owners can do with the property now, and paragraphs 26 and 46 of the Second Amended Petition set forth the conditions the Property Owners must meet in order to require Seaway to lower, encase or otherwise protect the pipeline to allow for development.

Q. What can the Property Owners do now?

They are limited to activities that do not interfere with or endanger the pipeline at its current location. Basically, no commercial development would be permitted over the pipeline under the terms of the Second Amended Petition. In order for there to be any development whatsoever, the Property Owners would have to meet the conditions in Paragraphs 26 and 46, and Seaway would have to lower, encase or otherwise protect the pipeline in a way that is acceptable to the Developer, the end

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users (ie: railroad company or companies) and the regulating authorities (building codes, permits, entitlements).

Q. Are the conditions precedent that the Property Owners must meet to get Seaway to lower, encase or protect the pipeline to allow for development achievable?

In my opinion no.

Q. Why not?

Several reasons, one of which is they are not compatible with the ability to obtain government approvals and/or financing for development of this property into industrial use with rail or any other use for that matter other than raw land.

Q. Could you explain in more detail?

1. The conditions placed on the property owners as prerequisites to their ability to require Seaway to lower and/or encase or otherwise protect the Pipeline to allow for development would not and cannot occur in the manner and sequence prescribed. Seaway has no obligation under the terms of Paragraphs 26 and 46 to move, lower, encase or take any protective measures to allow for development until and unless the Property owners first meet the conditions set forth in (i) – (iv) of those paragraphs. Even if that were possible, which in my opinion it is not, Seaway's obligation to comply is not absolute. It reserved for itself the discretion to determine what was necessary. Yet, the other components, may be

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incompatible with Seaway's decided method. For example, one of the conditions requires the Property Owners to have a contract with a railroad company. There is no requirement that Seaway comply with the Railroad's conditions, therefore, even if the Property Owners were to obtain a contract, Seaway retains the power to invalidate it by refusing to meet the safety precautions demanded by the railroad company. Similarly, if Seaway's opinion differed from the permitting authorities, the Property Owner would have no mechanism to force Seaway to meet the terms for the permits. Furthermore, permits aren't issued until plans exist, and plans cannot be prepared until the specifics of where and how the pipeline will be moved or protected exist. It is a circular exercise in futility.

2. In addition, Seaway reserved for itself a 180 day compliance period, which would effectively prevent any ability to fund the project as more specifically explained below. Because the conditions placed on the property owners as prerequisites to the ability to require Seaway to lower and/or encase the Pipeline or take other protective measures to allow for development significantly raise the risk that any potential development plan will not be completed, the additional risk will negatively impact the property owners' ability to raise both debt and equity, attract investors or obtain required building permits. In my opinion the risk factors caused by the prerequisites will make it highly unlikely, if not impossible for the property owners to obtain funding

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through investment or economical financing from any source.

3. Essentially Seaway is requiring the property owners to complete the requirements set forth in paragraphs Roman numerals (i) – (iv) of paragraphs 26 and 46 before Seaway even has to consider moving, lowering, encasing, or otherwise protecting the pipeline. While the steps set forth in paragraphs (i) – (iv) are valid steps that would be part of a development plan, they cannot be achieved in that order. For example, a Bank or other lender is not going to provide a commitment, let alone have “funds available” without knowing that Seaway is required to move the pipeline. What is there to guarantee the bank the pipeline would be moved. Requirement (iv) is impossible to meet because it means essentially that Property owner would have to close on this loan without having approval from pipeline company, which no financial institution would do. That is the meaning of the “funds in Place” requirement.
4. A construction loan ordinarily requires personal guarantee. It would not be commercially reasonable or feasible to expect a property owner or future developer to close on a loan with a personal guarantee without assurance that project will be built and approved by Seaway. Otherwise, the developer would be left liable on what would likely be a loan in the vicinity of \$20 million dollars.

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5. Even if (iv) only required a “commitment” as opposed to “funds in place” it wouldn’t work because commitments expire usually in 45 – 60 days and paragraph 26 gives Seaway 180 days to exercise its discretion and take action to protect the pipeline. Does that mean if the property owners submit a plan with a 60 day commitment, Seaway could reject it because the property owners can’t prove the funds will be available in 180 days? Or from the other point of view, if Seaway accepted the 60 day commitment, but then took the full 180 days to comply, the property owner’s funds would no longer be available and the bank would have to resubmit for new approval. It is an impossible burden.
6. There is no guarantee that Seaway will approve the proposed protective measures. There is no means to reconcile a difference of opinion between a Railroad customer or a governmental permitting agency regarding what measures need to be taken to allow for development. If Seaway refuses those terms, the development could not go forward. This risk would prevent financial institution from lending or committing.
7. The 180 day discretionary period to accomplish the protective measures for the pipeline which is reserved by Seaway causes other problems as well. It is impossible for any developer to control all of the components that go into development for that period of time without substantial risk the whole project will fail. The higher the risk the harder it is to get

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funding. For example, during that period it is likely that:

- a. Building code could change
- b. Permitting agency requirements change
- c. Interest rate environment change
- d. Market conditions change
- e. Rail company/other client could go to competitor or face financial difficulties causing developer to lose a deal
- f. Financing commitment could expire or Bank can withdraw commitment

(A bank will always include the ability to withdraw funding commitments for certain reasons. The Bank could reach its maximum construction funding allocation and then decline to do additional deals, or one or more of the above conditions change making the project no longer financially feasible or physically possible.)

- g. Construction costs change so that project economics no longer make sense
- h. Environmental group litigation/protests can slow or prohibit development.

8. Any prudent investor owner would evaluate all market conditions before proceeding with new development. The market conditions on readiness for development are always important. Six months is a long time for the

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market conditions to change. Market risk always exist but in this situation the property owners have so many handcuffs on their ability to develop that Lenders would consider this project not worth the speculation. Some examples of projects that have failed because of changes in market conditions include:

- a. Orlando Project – Received final approval and pulled permits. Contractor put in underground infrastructure and then literally developer put project on hold for two years until market conditions returned – then had to re-permit everything because building codes had changed – real world example.
- b. Energy corridor here in Houston – Several speculative (no pre-leasing) office buildings completed in last 24 months that still remain vacant today with zero cash flow. Banks are now contemplating foreclosure or asking the Sponsors to provide more equity to pay down the loans.
- c. Midway – City Centre new buildings – purchased in April 2015 with intent of tearing down three buildings for new development. Buildings are still there vacant because of changes in market (over supply of office and demand dropped for Class A office space).

9. Even if all stars align and he is able to present plan Seaway retains power to veto because Seaway can dispute the sufficiency of the

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plans/permits etc, and retains discretion as to what it “deems necessary” to protect the pipeline so can undermine terms of other four requirements.

In summary, the terms set forth in requirements (i) – (iv) of paragraphs 26 and 46 of the Second Amended Petition in Condemnation make future development of these tracts physically impossible and financially unfeasible because it will be impossible to meet the terms, and any commercial lender would view the project as too risky to put funds in play. No lender would lend the funds necessary to develop the property with all of these obstacles to successful development. These terms essentially make Seaway’s promise to lower, encase or otherwise protect the pipeline at its expense an empty promise because the property owners cannot meet the conditions.

Additionally, Mr. Farrar would offer testimony comparing the terms of permanent easement agreements Seaway entered into with other property owners on this project (for example Comparison to Harrison Interests, Exhibit 16 A-C of Summary Judgment Appendix) to the terms of the Second Amended Petition in Condemnation.

Exhibit 16B – Harrison interests Permanent Easement Agreement. Exhibit A to the Permanent Easement Agreement, paragraphs 3. (a) and (b) are particularly informative.

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The permanent easement agreement is an example of how the condemnation petition could have been written to allow for future development and additional use of the land. It specifies and contemplates possible additional uses and then reserves to the property owner the ability to develop, giving Seaway only 30 days to protect its pipeline.

Subparagraph b). Grantor Harrison Interest, retains the power to develop its land for industrial, commercial, whatever use it pleases. It need only present its plans to Seaway 30 days in advance. Seaway has 30 days to review the plans and take appropriate protective measures. There is no approval process and there are no prerequisites. Seaway has no authority to reject the proposal.

This shows Seaway knew how to allow for development if that was actually its intent. Mr. Farrar would have testified that he could take the Harrison Interests' permanent easement agreement to any lender as part of a development package and it would be sufficient to resolve the pipeline issue. The terms of the Second Amended Petition on the other hand, would be a red flag to any lender, and probably the death knell to the project.

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Respectfully submitted,  
LUCCI SMITH LAW, PLLC  
*/s/ Jacqueline Lucci Smith*  
Jacqueline Lucci Smith  
Texas Bar No.: 00786073  
10810 Katy Freeway, Suite 102  
Houston, Texas 77043  
Telephone: 832-494-1700  
Facsimile: 832-494-1426  
[JLSmith@LucciSmithLaw.com](mailto:JLSmith@LucciSmithLaw.com)  
ATTORNEY FOR DEFENDANT  
BERNARD J. MORELLO AND  
WHITE LION HOLDINGS, LLC

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