

No. 22-52

In The
Supreme Court of the United States

ARIYAN, INCORPORATED, doing business
as Discount Corner, et al.,
Petitioners,

v.

SEWERAGE & WATER BOARD
OF NEW ORLEANS, et al.,
Respondents.

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Fifth Circuit

PETITIONERS' REPLY BRIEF

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INTRODUCTION

Although the Sewerage Board acknowledges it took Petitioners' properties, it pointedly avoids the essential question: *when will it pay just compensation?* The Board's only response: *if and when we feel like it—and no court can tell us what to do.* The Fifth Circuit agreed, leaving Petitioners to continue pleading with the very officials who refuse to pay. And if, as here, continued beseeching gets nowhere? The Sewerage Board's answer: “[E]lect ones who will.”¹

But the constitutional right to timely compensation cannot be left to the vicissitudes of politics, and federal courts have an essential role enforcing federal civil rights. *Brown v. Bd. of Ed. of Topeka*, 349 U.S. 294, 301 (1955) (Constitution demands “all deliberate speed” in compliance); *United States v. Commodities Trading Corp.*, 339 U.S. 121, 124 (1950) (“The word ‘just’ in the Fifth Amendment evokes ideas of ‘fairness’ and ‘equity’”). The Just Compensation Clause establishes the minimum requirements for *all* takings, state and federal, and squarely places the obligation on the Sewerage Board to pay for what it has taken “without unreasonable delay.” *Bragg v. Weaver*, 251 U.S. 57, 62 (1919). If the Sewerage Board does not pay within a reasonable time of a taking, the Fourteenth Amendment empowers federal courts to “enforce[e] the pledge,”

¹ Brief in Opposition (BIO) at 18-19. However, eight of the eleven Sewerage Board members are appointed by the mayor, not elected. <https://www.swbno.org/About/BoardOfDirectors> (July 8, 2022).

even if state law reserves condemnors' discretion when and if to do so. *Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668, 677 (1923).

This case presents an ideal vehicle to consider an issue of continuing national importance: whether “self-executing” just compensation means, at minimum, that state or other law cannot impede reasonably prompt and full payment after a taking. See *In re Fin. Oversight & Mgm't Bd.*, 41 F.4th 29, 42-43 (1st Cir. 2022) (bankruptcy plan cannot thwart Just Compensation Clause's requirement of full payment); *In re City of Stockton*, 909 F.3d 1256, 1268 (9th Cir. 2018) (property owner's takings claim against city could be limited by bankruptcy plan).

Petitioners assert their federal civil right to timely compensation and need a federal remedy. The petition should be granted.

ARGUMENT

I. THE STATE COURT JUDGMENTS ENFORCED THE STATE AND FEDERAL JUST COMPENSATION CLAUSES

Both the Sewerage Board and the Fifth Circuit flatly erred when stating that Petitioners did not raise their federal Fifth Amendment rights in the state court proceedings. BIO at 4-6; App.A-7. The record refutes the Sewerage Board's faulty assertion that Petitioners “did not assert federal claims” in the state court complaints, BIO at 1, and that the resulting judgments were “undeniably rendered under state law only.” *Id.* at 4. For example, the attached state court petitions for relief, a sample representing four

dozen Petitioners, assert inverse condemnation claims deriving “from the Takings Clauses contained in both the Fifth Amendment of the U.S. Constitution and Article I, Section 4 of the Louisiana Constitution.” App.L; App.M; App.N. Even the Sewerage Board recognized the dual genesis of the inverse condemnation claims, arguing that “[i]n the event the Court finds SWB liable, SWB asserts plaintiffs’ recovery should be limited to just compensation under the Fifth Amendment to the United States Constitution.” App.H-7.²

The Louisiana courts held the Sewerage Board liable for “inverse condemnation” of Petitioners’ properties without specifying whether this violated the state or federal takings clauses, or both. *See* App.H-2; App.J-3. This is consistent with Louisiana law, under which “inverse condemnation” includes claims for compensation under both the U.S. and the Louisiana constitutions. *See Lowenburg v. Sewerage & Water Bd. of New Orleans*, No. 2019-CA-0524, 2020 WL 4364345, at *5 (La. App. 4th Cir. July 29, 2020) (“As the Louisiana Supreme Court noted in *Chambers*, it is now hornbook law that *any* substantial interference with the free use and enjoyment of property may constitute a taking of property within the meaning of federal and state constitutions.”)

² The Sewerage Board criticizes Petitioners for not trying to execute the judgments in state court, BIO at 2, but Louisiana law forecloses any such efforts. La. Const. art. XII, § 10(c); *Dep’t of Transp. & Dev. v. Sugarland Ventures, Inc.*, 476 So.2d 970, 975-76 (La. App. 1985); *State ex rel. Dep’t of Highways v. Ponder*, 342 So.2d 1190, 1191 (La. App. 1977).

(emphasis added) (citing *Dep't of Transp. & Dev. v. Chambers Inv. Co., Inc.*, 595 So.2d 598, 602 (La. 1992)).

In *Chambers*, the Louisiana Supreme Court “recognized the action for inverse condemnation arises out of the self-executing command to pay just compensation.” 595 So.2d at 602. The term “inverse condemnation” merely describes the “procedural remedy” for a “property owner seeking compensation for land already taken or damaged . . . when no expropriation has commenced.” *Id.* See also *Robert v. State*, 327 So.3d 546, 558-61 (La. App. 2021) (Inverse condemnation claims derive from both federal and state Takings Clauses and are treated in concert). As the Fifth Circuit correctly noted, it’s a distinction without a difference. App.A-7; see also *Phillips v. Montgomery Cnty.*, 442 S.W.3d 233, 240-42 (Tenn. 2014) (exhaustive survey of state takings mirroring federal counterpart). Absent any contraindication in the state court’s inverse condemnation judgments, they are presumed to have adjudicated Petitioners’ federal just compensation claims. See *Yazoo & M.V.R. Co. v. Adams*, 180 U.S. 1, 15 (1901) (the fact that a state court does not expressly invoke a federal constitutional provision “does not prevent our taking jurisdiction, if the applicability of such clause were necessarily involved in its decision.”).

But even if the state court inverse condemnation judgments enforced solely the Louisiana Constitution’s right to just compensation for takings, this does not insulate the Sewerage Board’s refusal to pay from this Court’s review because the Fifth

Amendment's Just Compensation Clause establishes a "floor" below which state takings protection may not go. *Chicago, Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 231-32 (1897) (state law and state judgments must conform to minimum federal Just Compensation Clause standards, even though "the supreme court of Illinois did not, in its opinion, expressly refer to the constitution of the United States."). This Court continued:

In our opinion, a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the fourteenth amendment of the constitution of the United States, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument.

Id. at 241. Thus, the obligation to provide reasonably timely compensation is a fundamental limitation on *all* sovereign power, and state law cannot provide lesser protections for the right to timely compensation than the Fifth Amendment.

Petitioners' state court just compensation judgments are unique property interests because—unlike other civil judgments—they serve as replacements for the private properties taken.

Monongahela Nav. Co. v. United States, 148 U.S. 312, 326 (1893) (“[T]he natural import of the language would be that the compensation should be the equivalent of the property. . . . and this just compensation, it will be noticed, is for the property, and not to the owner.”). Unlike other civil judgments, just compensation judgments lack a culpability element—the owner’s only “wrong” is owning property required for a public use. The resulting just compensation judgment establishes the amount the condemnor is required to provide in exchange. See *Olson v. United States*, 292 U.S. 246, 255 (1934) (owner “is entitled to be put in as good a position pecuniarily as if his property had not been taken”); *Monongahela*, 148 U.S. at 326 (“There can, in view of the combination of those two words [just compensation], be no doubt that the compensation must be a full and perfect equivalent for the property taken[.]”).

Thus, the Louisiana state court judgments must, at minimum, represent the “full and perfect” substitute for the properties the Sewerage Board took from Petitioners. This fundamental federal right cannot be abrogated by state law. *E.g.*, *Espinoza v. Mont. Dep’t of Revenue*, 140 S.Ct. 2246, 2262 (2020) (Supremacy Clause requires state courts to give effect to federal rules of decision). See also Buckeye Institute Amicus Br. at 4-9; Institute for Justice Amicus Br. at 14-15.

Here, however, Petitioners lost their properties, and what the Sewerage Board handed them was by no means an equivalent. *Olson*, 292 U.S. at 255 (owner

entitled to “the market value of the property at the time of the taking *contemporaneously* paid in money”) (emphasis added) (citations omitted). All Petitioners own today are unenforceable pieces of paper subject to the Sewerage Board’s discretion to take as long as it likes. Even before this Court, the Sewerage Board never indicates it intends to pay.

II. **FOLSOM DID NOT INVOLVE STATE JUST COMPENSATION JUDGMENTS**

Folsom need not be overruled to hold that Petitioners’ federal complaint alleging the failure to provide compensation within a reasonable time violates the Fifth and Fourteenth Amendments. *Folsom* is distinguishable on two grounds.

First, the judgment creditors’ claims in *Folsom* enforced a Louisiana statute which authorized a specially-designated type of reimbursement for damages caused by a rioting mob, not the guarantees of just compensation for takings. *Louisiana ex rel. Folsom v. City of New Orleans*, 109 U.S. 285, 287 (1883) (The city’s “liability for the damages is created by a law of the legislature, and can be withdrawn or limited at its pleasure.”); *id.* at 290; *see also id.* at 291 (Bradley, J., concurring) (same); *Ettor v. City of Tacoma*, 228 U.S. 148, 157 (1913) (*Folsom* involved “a judgment against the city under a statute for damage to private property, inflicted by a mob[.]”); Owners’ Counsel of America Amicus Br. at 13-15 (detailing

Folsom's holding and limits).³ Consequently, Petitioners do not advance a rule subjecting every state court judgment to review to ensure timely payment—only those judgments compelling just compensation for a recognized taking of property.⁴ After all, only just compensation judgments enforce a self-executing constitutional right, and thus do not rely on a waiver of sovereign immunity. See *Knick v. Twp. of Scott*, 139 S.Ct. 2162, 2171 (2019); *United States v. Clarke*, 445 U.S. 253, 257 (1980).⁵ In *Ettor*, this Court recognized the critical difference, concluding that an action for just compensation “is neither for a tort, nor for a penalty, nor for a forfeiture, but for injury to property . . . which required compensation to be made. *The right to compensation was a vested property right.*” 228 U.S. at 158 (emphasis added). See also *Ginsberg v. Lindel*, 107 F.2d 721, 725 (8th Cir. 1939) (holding under *Ettor* that

³ *Folsom* requires courts “to go behind the liquidating judgment and ascertain the real nature of the liability.” *Clinton Mining & Mineral Co. v. Beacom*, 266 F. 621, 624 (3d Cir. 1920).

⁴ Nor do Petitioners suggest that *any* delay violates the Fifth Amendment, only *unreasonable* delay. This Court has considered unreasonable delay in a wide variety of other circumstances. See Pet. at 21, n.9.

⁵ The Sewerage Board’s warnings of “chaos,” BIO at 17, are both irrelevant and unpersuasive. This Court consistently rejects claims that enforcing the Fifth Amendment would bring the government to a screeching halt. See, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982) (rejecting “dire consequences” to application of physical occupation rule); *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063, 2078 (2021) (rejecting warnings that treating the access regulation as a taking “endanger[s] a host of state and federal government activities”).

a vested property right in a statutory lien cannot be destroyed by state action).

Second, *Folsom* does not control because at the time of the decision, this Court had yet to hold that the rights enumerated in the Bill of Rights limited state power. After incorporation of the Just Compensation Clause in *Chicago, Burlington*, Justice Harlan's dissenting *Folsom* views reflect modern takings jurisprudence. See *Folsom*, 109 U.S. at 295 (Harlan, J., dissenting) ("Since the value of the judgment, as property, depends necessarily upon the remedies given for its enforcement, the withdrawal of all remedies for its enforcement, and compelling the owner to rely exclusively upon the generosity of the judgment debtor, is, I submit, to deprive the owner of his property."). A landowner has "an unqualified right to a judgment for the amount of such damages, which can be enforced—that is, collected—by judicial process." *Sweet v. Rechel*, 159 U.S. 380, 402 (1895).⁶

⁶ Even if this Court concludes *Folsom* holds that state law may thwart the overriding federal interest in ensuring that property owners subject to state takings are compensated within a reasonable time and cannot be distinguished, its overruling is fairly included within the question presented and warranted. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 75 n.13 (1996) (Court properly considers arguments that are a "predicate to an intelligent resolution' of the question presented") (citation omitted).

III. ENSURING REASONABLY TIMELY COMPENSATION AFTER A TAKING IS AN ESSENTIAL FEDERAL ISSUE ONLY THIS COURT CAN RESOLVE

A. *Knick* Has Not Mooted the Sewerage Board's Delays

The Sewerage Board asserts that any Fifth and Fourteenth Amendment obligation to timely pay compensation does not apply to *state court* just compensation judgments (even those, as here, that vindicate federal rights), while conceding that it would promptly satisfy a *federal court* just compensation judgment. BIO at 2. Presumably, the Sewerage Board is willing to satisfy a federal court inverse judgment quickly because it recognizes it is subject to the Supremacy Clause and the Fourteenth Amendment. This concession extends only to federal court, yet the Supremacy Clause also controls in state courts. *See Russell v. CSX Transp., Inc.*, 689 So.2d 1354, 1356 (La. 1997) (“Absent a valid excuse, a state court may not refuse to enforce a federally created right when the parties and controversy are properly before such court.”). Nor does the concession account for those cases in which a federal court decides matters of state law.⁷

The Sewerage Board's only response is to counsel property owners who want timely payment of just

⁷ A federal district court has jurisdiction to consider state law compensation claims in some circumstances, such as a state law takings claim supplemental to a federal claim, or a takings claim brought by a non-Louisiana citizen invoking diversity-of-citizenship jurisdiction.

compensation judgments to bring their claims in federal court, as permitted by *Knick*, 139 S.Ct. at 2167. As long as owners have a choice of a federal forum, the Sewerage Board argues that it remains free to continue to unreasonably delay paying any chumps⁸ awarded just compensation in the Sewerage Board's home courts, perhaps forever. App.A-10 (Louisiana property owners are "without any judicial means to recover" just compensation and must "rely exclusively upon the generosity of the judgment debtor.").

The federal right to timely compensation does not turn on forum selection, and *Knick* does not shield Louisiana governments from reasonably timely payment of just compensation. The Sewerage Board overlooks the many reasons why property owners may assert their federal right to compensation in a Louisiana court. First, owners may prefer that forum. Although *Knick* certainly *allows* property owners to vindicate their federal constitutional rights in federal court, there is no indication this Court intended to entirely supplant state courts' concurrent jurisdiction to consider federal takings claims. *See Blythe v. Hinckley*, 173 U.S. 501, 508 (1899) ("state courts ha[ve] concurrent jurisdiction with the circuit courts of the United States to pass on the federal questions").

⁸ *See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 825 (2015) (Roberts, C.J., dissenting) (describing as "chumps" those who relied on "the text, structure, [and] history of the Constitution").

Second, owners may have no choice but to assert their federal property rights in state courts. For example, expropriations by Louisiana governments under their power of eminent domain—in which property owners have no choice of forum—are litigated in Louisiana courts. *See, e.g., St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., LLC*, 809 F.Supp.2d 524, 526 (E.D. La. 2011) (denying removal of state court expropriation case to federal court). Nor does the Sewerage Board account for cases where Louisiana is accused of a taking. If the owner sued in federal court for just compensation, the State would certainly claim the Eleventh Amendment immunizes it from such lawsuits. *See Bay Point Props., Inc. v. Miss. Transp. Comm'n*, 937 F.3d 454, 456 (5th Cir. 2019), *cert. denied*, 140 S.Ct. 2566 (2020).

**B. Self-Executing, Reasonably Prompt
Just Compensation Is an Issue of
National Importance**

Finally, the Sewerage Board argues that Louisiana is just one of many states that refuses to pay just compensation awards. BIO at 17-18 & n.3 (listing state statutes immunizing public entities from execution against public funds for payment of debts). If correct, this only highlights the national scope of the problem, further justifying this Court's review.

Although the Sewerage Board's and other Louisiana governments' refusal to timely pay just compensation works an especially onerous burden on Louisiana property owners, the overriding issue of how property owners enforce their self-executing Fifth

Amendment rights remains of national importance, with courts across the country offering differing and often inconsistent opinions. *See* Pet. at 38-39 (citing lower courts in conflict over the whether the self-executing nature of compensation is “dicta” or requires that compensation must be timely paid). The BIO waves away the circuit split as to whether the Just Compensation Clause’s self-executing nature can be thwarted by state or other law. *See* Petitioners’ Supp. Br. (describing split between the court below and *In re Fin. Oversight & Mgm’t Bd.*, 41 F.4th at 42-43 (concluding that “the Fifth Amendment itself expressly provides that just compensation must be paid whenever the government works a taking.”)).

CONCLUSION

The petition for writ of certiorari should be granted.

DATED: September 2022.

Respectfully submitted,

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CIVIL DISTRICT COURT

**CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS**

STATE OF LOUISIANA

NUMBER: 15-4501 DIVISION:B SECTION: 12

ELIZABETH SEWELL, ET AL.

VERSUS

**SEWERAGE & WATER BOARD OF
NEW ORLEANS**

FILED:_____

**_____
DEPUTY CLERK**

**FOURTH AMENDED & SUPPLEMENTAL
PETITION**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Elizabeth Sewell, *et al.*, who in this Fourth Supplemental and Amended Petition respectfully aver as follows:

* * *

PARTIES - PLAINTIFFS

5.

Plaintiffs, listed as follows, constitute individuals of the full age of majority and business entities, each

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with the legal capacity to file suit, which at all material times have owned and/or resided in and/or operated businesses in private properties damaged by the actions and omissions of the SWB in connection with the SELA Project:

* * *

6) Kim Alvarez and Allan Basik are the owners and/or residents of the house, property, and all improvements located at 2726 Jefferson Ave., New Orleans, Louisiana.

* * *

8) Geraldine and Carl, Sr., Baloney are the owners and/or residents of the house, property, and all improvements located at 1421 Napoleon Ave., New Orleans, Louisiana.

* * *

18) Jill M. and John Bossier, Jr. are the owners and/or residents of the house, property, and all improvements located at 2601 Octavia St., New Orleans, Louisiana.

* * *

29) Arlen Brunson is the owner and/or resident of the house, property, and all improvements located at 7921 South Claiborne Ave., New Orleans, Louisiana.

* * *

34) Abbrica Moran Callaghan is the owner and/or resident of the house, property,

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and all improvements located at 1017 Jena St.,
New Orleans, Louisiana.

* * *

44) Burnell Cotlon is the owner and/or
resident of the house, property, and all
improvements located at 3413-15 Willow St.,
New Orleans, Louisiana.

* * *

**52) Mary Elizabeth and George
Deussing** are the owners and/or residents of
the house, property, and all improvements
located at 5626 Prytania St., New Orleans,
Louisiana.

* * *

59) Kristina and Brett Dupre are the
owners and/or residents of the house, property,
and all improvements located at 7938 South
Claiborne Ave., New Orleans, Louisiana.

* * *

63) Eirinn Erny and Gregory Kozlowski
are the owners and/or residents of the house,
property, and all improvements located at 4416
Perrier St., New Orleans, Louisiana.

* * *

65) David Engles is the owner and/or
resident of the houses, properties, and all
improvements located at each 2201-03
Jefferson Ave., 2314 Jefferson Ave., and 5420-
22 Garfield St., New Orleans, Louisiana.

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* * *

66) David Epstein is the owner and/or resident of the house, property, and all improvements located at 5617 Prytania St., New Orleans, Louisiana.

* * *

84) Helen Smith Green is the owner and/or resident of the house, property, and all improvements located at 8233 South Claiborne Ave., New Orleans, Louisiana.

* * *

92) Larry Hameen is the owner and/or resident of the house, property, and all improvements located at 2223 Louisiana Ave., New Orleans, Louisiana.

* * *

100) Gail Marie Hatcher is the owner and/or resident of the house, property, and all improvements located at 8339 South Claiborne Ave., New Orleans, Louisiana.

* * *

102) Noella Hayes is the owner and/or resident of the house, property, and all improvements located at 9131 South Claiborne Ave., New Orleans, Louisiana.

* * *

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107) Cathleen Hightower is the owner and/or resident of the house, property, and all improvements located at 2729 Jefferson Ave., New Orleans, Louisiana.

* * *

108) Ruth and Leon Hinson are the owners and/or residents of the house, property, and all improvements located at 2414 Jefferson Ave., New Orleans, Louisiana.

* * *

120) Judith Jurisich and Thomas Ryan are the owners and/or residents of the house, property, and all improvements located at 1106 Napoleon Ave., New Orleans, Louisiana.

* * *

129) Margaret and Harry Leche are the owners and/or residents of the house, property, and all improvements located at 2503 Jefferson Ave., New Orleans, Louisiana.

* * *

133) Faye Lieder is the owner and/or resident of the house, property, and all improvements located at 731 Napoleon Ave., New Orleans, Louisiana.

* * *

147) Keeba and Gaylin McAllister are the owners and/or residents of the house, property, and all improvements located at 2812-14 Louisiana Ave., New Orleans, Louisiana.

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* * *

152) Fransisca Medina-Hogan and Stephen Hogan are the owners and/or residents of the house, property, and all improvements located at 8633 South Claiborne Ave., New Orleans, Louisiana.

* * *

164) Cody Myers is the owner and/or resident of the house, property, and all improvements located at 2424 Mistletoe St., New Orleans, Louisiana.

* * *

179) Betty Price is the owner and/or resident of the house, property, and all improvements located at 8336-38 Nelson St., New Orleans, Louisiana.

* * *

187) Bojan Ristic is the owner and/or resident of the house, property, and all improvements located at 8506 South Claiborne Ave., New Orleans, Louisiana.

* * *

194) Patsy Searcy is the owner and/or resident of the house, property, and all improvements located at 7725 South Claiborne Ave., New Orleans, Louisiana.

* * *

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195) Elizabeth and William Sewell are the owners and/or residents of the house, property, and all improvements located at 2603 Jefferson Ave., New Orleans, Louisiana.

* * *

203) Louise Stewart is the owner and/or resident of the house, property, and all improvements located at 1920-24 Jefferson Ave., New Orleans, Louisiana.

* * *

210) Theada Thompson is the owner and/or resident of the houses, properties, and all improvements located at each 2334 Joliet St., 2333-35 Joliet St., and 8438 South Claiborne Ave., New Orleans, Louisiana.

* * *

215) Poppy Tooker and George Mouldoux are the owners and/or residents of the house, property, and all improvements located at 2210-12 Jefferson Ave., New Orleans, Louisiana.

* * *

226) Dorothy and Donald White are the owners and/or residents of the house, property, and all improvements located at 8333 South Claiborne Ave., New Orleans, Louisiana.

* * *

239) Patricia Wynn is the owner and/or resident of the house, property, and all

Appendix L-8

improvements located at 2216 Jefferson Ave.,
New Orleans, Louisiana.

* * *

COUNT I - INVERSE CONDEMNATION

* * *

36.

The SWB's actions and omissions in connection with the SELA Project, as alleged herein, constitute inverse condemnation against the Plaintiffs.

37.

Inverse condemnation claims derive from the Takings Clauses contained in both the Fifth Amendment of the U.S. Constitution and Article I, Section 4 of the Louisiana Constitution.

38.

The SWB has, through the SELA Project construction, damaged Plaintiffs' properties without just compensation paid to Plaintiffs.

39.

The SWB's actions and omissions in connection with the SELA Project construction, as alleged herein, which damaged Plaintiffs' properties and property interests were integral to and consequences of the SELA Project.

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40.

The SWB's actions and omissions in connection with the SELA Project, as alleged herein, were done for the stated, express purpose of improving drainage and flood control in New Orleans, Louisiana, and surrounding areas, which Louisiana Constitutional article 1, § 4 (B)(2)(b)(iii) concludes constitutes a "public purpose" for an inverse condemnation claim.

41.

The SWB's actions and omissions in connection with the SELA Project, therefore, constitute inverse condemnation for which "just compensation" to Plaintiffs is required pursuant to Louisiana Constitutional article 1, § 4.

42.

Pursuant to the U.S. and Louisiana constitutions, Plaintiffs are entitled to compensation for the full extent of their inverse condemnation losses

* * *

FILED
2016 JAN 19 P 4:30
DIVISION: I-
CIVIL DISTRICT COURT

**CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS**

STATE OF LOUISIANA

DOCKET NO.: 16-621

ANNE LOWENBURG, JUDITH LOWENBURG
wife of/and TOM LOWENBURG, SARAH
LOWMAN, JACK STOLIER, WILLIAM B.
TAYLOR, III, M.D. and BARBARA WEST

VERSUS

**SEWERAGE & WATER BOARD OF
NEW ORLEANS**

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Anne Lowenburg, Judith Lowenburg wife of/and Tom Lowenburg, Sarah Lowman, Jack Stolier, William B. Taylor, III, M.D. and Barbara West, who are each persons of the full age of majority and domiciled in the Parish of Orleans, State of Louisiana.

* * *

COUNT I: INVERSE CONDEMNATION

30.

SWB's actions constitute a taking of property without just compensation under the Louisiana and U.S. Constitutions.

31.

Plaintiffs have a compensable property interest that has been taken in the Constitutional sense as a result of work done by the SWB for a public purpose. Pursuant to Article I, Section 4 of the Constitution of the State of Louisiana and the Fifth Amendment of the United States Constitution, Plaintiffs are entitled to be compensated to the full extent of their loss as a result of the actions of the SWB referenced herein.

* * *

**FILED
2015 NOV 10 A 11:36
CIVIL
DISTRICT COURT**

**CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS**

STATE OF LOUISIANA

NO. 15-10789 DIVISION J SECTION 5

ARIYAN, INC., d/b/a DISCOUNT CORNER

VERSUS

**SEWERAGE & WATER BOARD OF
NEW ORLEANS**

FILED: _____

**_____
DEPUTY CLERK**

PETITION

NOW INTO COURT, through undersigned counsel, comes Ariyan Inc., d/b/a Discount Corner (“Plaintiff”), and, in support of its claims against the Sewerage & Water Board of New Orleans (“S&WB” or “Defendant”), respectfully aver, as follows:

Parties

1.

Plaintiff Ariyan Inc., d/b/a Discount Corner is a Louisiana corporation domiciled and doing business in Orleans Parish, Louisiana.

*** * ***

Claims for Damages and Just Compensation

5.

Plaintiff is the owner of a tract of land in Orleans Parish, bearing the address of 8733 South Claiborne Avenue, New Orleans, Louisiana * * *

* * *

18.

Defendant failed to tender any compensation for the taking of the Property and Plaintiff's property interests.

* * *

23.

Defendant's actions constitute a taking of property without just compensation under the Louisiana and federal Constitutions.

* * *

26.

Plaintiff has a compensable property interest that has been taken in the Constitutional sense as a result of work done by the S&WB for a public purpose. Pursuant to Article I, Section 4 of the Constitution of the State of Louisiana and the Fifth Amendment of the United States Constitution, Plaintiff is entitled to be compensated to the full extent of its loss as a result of the actions of Defendant referenced herein.

* * *