

**BOARD OF SUPERVISORS OF  
LOUISIANA STATE  
UNIVERSITY AND  
AGRICULTURAL AND  
MECHANICAL COLLEGE**

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**NO. 2017-CA-0722  
  
COURT OF APPEAL  
  
FOURTH CIRCUIT  
  
STATE OF LOUISIANA**

**VERSUS**

**SOUTHERN ELECTRONICS,  
INC. (F/K/A SOUTHERN  
RADIO SUPPLY CO. INC.)  
AND THE CITY OF NEW  
ORLEANS**

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**APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2011-01631, DIVISION "L-6"  
Honorable Kern A. Reese, Judge**

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**Judge Tiffany G. Chase**

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(Court composed of Judge Roland L. Belsome, Judge Rosemary Ledet, Judge Tiffany G. Chase)

**BELSOME, J., DISSENTS WITH REASONS**

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**AFFIRMED AS AMENDED**

**June 6, 2018**

The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (hereinafter the “Board”) seeks review of the trial court’s award of attorney’s fees following an expropriation trial in which judgment was rendered in favor of Southern Electronics Supply, Inc. (hereinafter “Southern Electronics”). The Board sets forth three assignments of error, all of which assert the attorney’s fees awarded by the trial court are excessive. Based upon our review of the record and for the reasons that follow, we find that the trial court did not abuse its discretion in awarding attorney’s fees in the amount of \$2,177,500.00. However, we amend the judgment solely to reflect a credit to the Board in the amount of \$578,384.98 in attorney’s fees previously paid by Southern Electronics to its attorneys. Thus, the Board is responsible for the remaining balance of the trial court’s judgment, or \$1,599,115.02. In all other respects the judgment is affirmed.

### **Factual and Procedural History**

The underlying facts of this case concern the expropriation of property located at 1909 Tulane Avenue in New Orleans (hereinafter the “Property”). The

land at issue was located within the footprint of the area that would later become the new University Medical Center.

On December 29, 2008, the Board notified Southern Electronics of its intent to expropriate its property in furtherance of the plan to replace the old medical center damaged by Hurricane Katrina (hereinafter the “Project”). The Board and Southern Electronics actively engaged in negotiations; however, after Southern Electronics rejected two settlement offers, the Board filed a petition for expropriation. The Board deposited \$1,750,000.00 into the registry of the court for just compensation, along with an additional \$1,527,150.00 for business losses.<sup>1</sup>

On December 14, 2009, two years prior to the filing of the petition for expropriation, Southern Electronics entered into an agreement with the firm of Sher, Garner, Chaill, Richter, Klein, and Hilbert, L.L.C. (hereinafter “Sher Garner”) for Sher Garner to represent Southern Electronics in connection with the expropriation. On April 16, 2010, Southern Electronics received an offer of \$1,750,000.00 from the Board for just compensation. Leopold Z. Sher (hereinafter “Mr. Sher”), a senior partner with Sher Garner, testified that Southern Electronics and its counsel had several protracted meetings with Board representatives where Sher Garner endeavored to settle the matter. During those meetings, Southern Electronics produced additional evidence demonstrating potential business losses

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<sup>1</sup>While the Board did not *initially* offer *any* compensation for business losses, it ultimately deposited \$1,527,150.00 for business losses, after extensive meetings with all parties. On June 30, 2016, the trial court issued judgment awarding Southern Electronics an additional \$1,527,150.00 for business losses, which reflected the amount the Board previously deposited into the registry of the court.

and provided the Board with additional property valuation appraisals. After substantial negotiations, the Board offered an additional \$1,527,150.00 for business losses but declined to increase the just compensation offer. When all settlement offers were rejected by Southern Electronics, this litigation followed.

On February 16, 2011, the Board filed a petition for expropriation against Southern Electronics and the City of New Orleans. Southern Electronics filed an answer and a reconventional demand on April 5, 2011, seeking full and just compensation from the Board along with costs and attorney's fees. In its reconventional demand, Southern Electronics maintained that it was entitled to the replacement cost of its expropriated property, an amount far higher than the amount offered by the Board. Specifically, Southern Electronics submitted that the building at 1909 Tulane Avenue was both unique and indispensable to its business for two reasons: (1) the location was uniquely situated to provide service to its customers, allowed walk-in business to generate new accounts, and allowed for close proximity to much of the City of New Orleans; and (2) the buildings were specifically built and tailored for its operational requirements, providing ample office and air-conditioned warehouse space, and allowing for maximum efficiency and quality control of electronics parts, among many other benefits.

In August 2011, Southern Electronics relocated to 2301 Julia Street in New Orleans, a location it contends was completely deficient when compared to its former facility, did not constitute a replacement facility, and resulted in business losses due to its undesirable location. Following a hearing, Southern Electronics

was granted leave to amend its petition, specifically related to damages it alleged were incurred due to relocation. In its amended petition, it sought the replacement cost to move its business from Julia Street to a more desirable location; damage to its reputation; loss of business and products; or in the alternative, costs to rehabilitate Julia Street to a more permanent facility; damages for criminal damage to its property; and compensation for security systems and services at the new location.

The trial on the just compensation issue spanned twenty-three days, over a seven week period of time, and was held in late 2014. The matter was taken under advisement at the conclusion of testimony. After the matter was taken under advisement, but before judgment being issued, Southern Electronics fell behind on its legal bills. Southern Electronics and Sher Garner agreed to modify the hourly billing agreement.<sup>2</sup> A letter dated July 1, 2015, from Sher Garner to Southern Electronics, provides that after June 15, 2015, the parties' agree to convert to a contingency fee agreement.

On June 30, 2016, the trial court issued judgment on the underlying suit, along with "reasons for judgment."<sup>3</sup> Judgment was in favor of Southern Electronics in the amount of \$5,000,000.00 for the replacement cost of the property, subject to a credit of \$1,750,000.00, which the Board previously deposited in the registry of

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<sup>2</sup>The original hourly fee agreement resulted in \$1,757,606.25 in legal fees, of which, Southern Electronic had paid \$578,384.98

<sup>3</sup>The title on the trial court's reasons for judgment reads "amended reasons for judgment;" however, it appears this is a typographical error as this pleading is the only reasons for judgment issued by the trial court. Thus, we will refer to the document throughout this opinion as the "reasons for judgment."

the court. In addition to replacement costs, Southern Electronics was awarded an additional \$1,527,150.00 for business losses, which reflected the amount the Board previously deposited into the registry of the court, along with five percent interest on the judgment. Thus, the total amount awarded equaled \$6,527,150.00. Attorney's fees and costs were to be determined at a later date. In the reasons for judgment, the trial court found Southern Electronics entitled to an award of the replacement cost of the unimproved land and improvements, rather than limiting the recovery to the property's fair market value. Specifically, it found that the property was both unique and indispensable to Southern Electronics' family business, entitling Southern Electronics to additional compensation. The trial court did not award attorney's fees in this judgment but noted that La. R.S. 19:8 and *Bd. of Sup'rs of Louisiana State Univ. & Agric. & Mech. Coll. v. Villavaso*, 2014-1277, p.19 (La.App. 4 Cir. 12/23/15), 183 So.3d 757, 769, authorized it to award reasonable attorney's fees, when the highest amount offered in expropriation cases is less than the compensation awarded for the property and severance damages.

On October 20, 2016, the issue of attorney's fees, expert fees and court costs proceeded to trial. Southern Electronics' counsel sought \$2,335,991.23 in attorney's fees; \$401,875.82 in expert fees and \$163,315.44 in court costs, totaling \$2,901,182.49. At trial, Southern Electronics addressed the fact that there had been a contractual change from an hourly fee to a contingency fee arrangement with Sher Garner during the pendency of the case. Mr. Sher represented to the trial court that Mr. Iggie Perrin (hereinafter "Mr. Perrin"), Southern Electronics' president,

sought a different contractual arrangement, due to the financial strain of the protracted litigation. At the time Mr. Perrin sought a new contractual arrangement, Southern Electronics had paid \$578,384.98 to Sher Garner in connection with this litigation. At the conclusion of the trial on attorney's fees, expert fees and court costs, the trial court indicated it would allow the parties to present additional evidence, holding the record open for that purpose.

The trial court issued judgment on April 20, 2017, and awarded Southern Electronics the following: \$2,177,500.00 in attorney's fees, \$321,704.68 in expert fees and \$148,240.70 in costs, totaling \$2,647,445.8. The judgment on attorney's fees, expert fees and costs was issued without any accompanying reasons for judgment. Following judgment, the Board appealed only the attorney's fees award, arguing the fees are excessive. Neither the underlying expropriation judgment, nor the witnesses' fees and costs awards are challenged.

## **DISCUSSION**

### ***Standard of Review***

The trial court is given great discretion in awarding attorney's fees. *Bd. of Sup'rs of Louisiana State Univ. v. Dixie Brewing Co.*, 2015-1053, p. 18 (La.App. 4 Cir. 9/1/16), 200 So.3d 977, 989. Thus, this Court will not modify the trial court's award of attorney's fees unless there is an abuse of discretion. *Bd. of Sup'rs of Louisiana State Univ. v. Boudreaux's Tire & Auto Repair, L.L.C.*, 2013-0444, p.9 (La.App. 4 Cir. 3/5/14), 133 So.3d 1262, 1269.

### *Eminent Domain*

While the issue of the underlying expropriation judgment is not before this Court, it is necessary to briefly address the constitutional principles of eminent domain and the rights of the landowner in such cases generally. Both the state and federal government have the inherent power to compel its citizens to relinquish their rights to property under the very principles of eminent domain. U.S. Const. amend. V; La. Const. art. I, § 4. In taking private property for public use, eminent domain recognizes that in some instances, the public need is greater than the rights of a single property owner. *ExxonMobil Pipeline Co. v. Union Pac. R. Co.*, 2009-1629, (La. 3/16/10), 35 So.3d 192. Even so, a property owner's rights are protected under both the state and federal constitution, which require the government to compensate a property owner to the full extent of their loss in expropriation cases. *Boudreaux's Tire & Auto Repair*, 2013-0444 at p.4, 133 So.3d at 1267. At its core, the full extent of the loss simply means the property owner should be placed in the same pecuniary position that they enjoyed prior to the taking of property. *State Through Dep't of Highways v. Constant*, 369 So.2d 699, 702 (La. 1979). The full extent of the loss is generally measured by:

“[t]he appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred because of the expropriation.” Such loss is generally assessed in terms of a property's fair market value.”

*Boudreaux's Tire & Auto Repai.*, 2013-0444 at p. 4, 133 So.3d at 1267 (quoting La. Const. art. I, § 4). In the case *sub judice*, the trial court determined that

Southern Electronics was entitled to full compensation for the taking of its property, including business losses.

In expropriation cases, the full extent of an owner's loss is generally measured by the property's fair market value, which is defined as the "price a buyer is willing to pay after he has considered all of the uses to which the property may be put, where such uses are not speculative, remote or contrary to the law." *W. Jefferson Levee Dist. v. Coast Quality Const. Corp.*, 1993-1718, p. 16, (La. 5/23/94), 640 So.2d 1258, 1273. The property is generally appraised and competing experts present testimony on its valuation based on the highest and best use, which is defined as "the most profitable use to which the land can be put by reason of its location, topography, and adaptability." *Exxon Pipeline Co. v. Hill*, 2000-2535, p. 8 (La. 5/15/01), 788 So.2d 1154, 1160. However, if the fair market value does not fully compensate the owner, replacement costs may be awarded. See *Sandrock v. St. Bernard Par. Gov't*, 2014-1019, pp. 8-9 (La.App. 4 Cir. 5/27/15), 171 So.3d 1039, 1045.

The central issue at the expropriation trial below focused on whether Southern Electronics was entitled to recover the fair market value or the replacement value of the expropriated property. Only in rare cases does the fair market value of the expropriated property result in inadequate compensation, entitling the displaced owner to replacement cost. *State, Dept. of Transp. & Dev. v. Griffith*, 585 So.2d 629, 632 (La.App. 2d Cir. 1991). As such, "an award of replacement value is the exception, not the rule." *Id.* Therefore, Southern

Electronics found itself in the position of proving the exception to the rule, having to demonstrate it was entitled to replacement costs by proving at trial:

“that the location of the property or some physical feature of it is unique and indispensably related to the success of the business. “The jurisprudence has limited awards of replacement value to situations in which the property was indispensable to the expropriatee’s business such that an award constituting merely the market value of the property would likely have caused the defendants to lose their business.”

*Orleans Par. Sch. Bd. v. State, Div. of Admin.*, 2012-1312, pp. 4-5 (La.App. 4 Cir. 2/27/13), 177 So.3d 711, 713, (quoting *State, Dept. of Transp. & Dev. v. Griffith*, 585 So.2d 629, 631-632 (La.App. 2d Cir. 1991) (internal citation omitted)). In *Griffith*, the Court explained the purpose of recognizing replacement value in some cases, noting that the fair market value would not amount to just compensation since, “based on his unique, indispensable need for the property, [fair market value alone] would place the defendant in a worse pecuniary position than he had been in before the taking.” *Griffith*, 585 So.2d at 632. Therefore, in such rare situations, just compensation can only be achieved by receiving the replacement value of the property.

### ***Attorney’s Fees***

On October 20, 2016, the trial court conducted a trial on the attorney’s fees issue but allowed the record to remain open for the parties to depose experts and to submit additional evidence, which included expert affidavits and reports addressing the issue. Both parties presented experts on the issue of the reasonableness of the attorney’s fees, Southern Electronics submitted Dane S.

Ciolino and the Board presented Leslie J. Schiff. Both analyzed the fees pursuant to the *Williamson* factors and the Rules of Professional Conduct, Rule 1.5(a). Judgment was issued on April 20, 2017, which awarded Southern Electronics \$2,177,500.00 in attorney's fees, which the Board argues is excessive and unreasonable.

The attorneys' task in establishing replacement cost made this case far more complex than an ordinary fair market value expropriation case. Southern Electronics was required to present extensive evidence, layperson and expert testimony, regarding: (1) how the building location made it inextricably linked to the success of its business, along with (2) the building's uniqueness or indispensability. Thus, the attorneys found themselves with the herculean task of crafting a trial plan to address the uniqueness of the facts of this case.

Based upon the underlying judgment, the attorneys were successful in establishing to the trial court that Southern Electronics was entitled to replacement value rather than fair market value. The trial court's reasons for judgment found that Southern Electronics satisfied its burden in showing the property was both unique and indispensable to the family business, entitling it to additional compensation and making an award of the replacement value appropriate. Thus, this Court must determine whether the attorney's fees awarded are reasonable considering the level of work, skill and responsibility delegated at trial, based upon the factors set forth in *State v. Dep't of Transp. & Dev. v. Williamson*, 597 So.2d 439, 442 (La. 1992).

The Board sets forth three assignments of error, all of which assert the attorney's fees awarded by the trial court are excessive. The crux of the Board's argument is that the trial court erred in awarding Southern Electronics attorneys' the amount due under the post-trial contingency fee contract and the award of attorney's fee is unreasonable under *Williamson*.

Generally, Louisiana only allows for an award of attorney's fees when fees are either provided for in a contractual agreement or authorized by statute. *Boudreaux's Tire & Auto Repair*, 2013-0444 at p. 9, 133 So.3d at 1269 (citing *Langley v. Petro Star Corp. of La.*, 2001-0198, p. 3 (La. 6/29/01), 792 So.2d 721, 723). The fees in this case are authorized by statute, and the trial court found that Southern Electronics was entitled to reasonable attorney's fees and costs consistent with La. R.S. 19:8, which expressly permits a trial court to "award reasonable attorney's fees to the defendant" when the amount of compensation awarded at trial exceeds the highest offer made for the property. *Boudreaux's Tire & Auto Repair*, 2013-0444 at p. 9, 133 So.3d at 1269 (quoting La. R.S. 19:8(A)(3)).

Southern Electronics vehemently argued for additional compensation, including requests for additional business losses above the amount deposited into the registry of the court by the Board. While not all of Southern Electronics' arguments were ultimately successful, this Court has recognized that attorney's fees are appropriately awarded on all points tested, regardless of whether it results in additional award amounts at trial. *Boudreaux's Tire & Auto Repair*, 2013-0444 at p. 15, 133 So.3d at 1272. While the trial court did not provide written reasons

for the attorney's fee award, we are cognizant that trial court was well acquainted with the work undertaken in this case by virtue of its enduring twenty-three days of trial.<sup>4</sup> When considering the reasonableness of the amount of attorney's fees awarded, we must consider the totality of the trial, including but not limited to the length of trial, complexity of the issues, large amount of evidence and testimony presented, and the trial court's benefit of having witnessed the trial first-hand.

The Louisiana Supreme Court, in *Williamson*, established the essential factors a court should consider when determining a reasonable award of attorney's fees. 597 So.2d at 442. Those factors include:

(1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) amount of money involved; (5) extent and character of the work performed; (6) legal knowledge, attainment, and skill of the attorneys; (7) number of appearances made; (8) intricacies of the facts involved; (9) diligence and skill of counsel; and (10) the court's own knowledge.

*Id.* The trial transcript on the attorney's fees issue, along with the pleadings and evidence submitted in support, is replete with a detailed discussion of the *Williamson* factors and an application of the factors to this case. Furthermore, Rule 1.5(a) of the Rules of Professional Conduct was also discussed at length by the parties in this matter. Rule 1.5 (a) specifically addresses the reasonableness of attorney's fees and the factors to be considered by a court in assessing whether the fees are reasonable, which include the following:

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<sup>4</sup>Attorney's fees should be awarded on a case-by-case basis after examining numerous factors; and a court may consider a contingency contract as well, but is not bound by such an agreement in determining reasonable attorney's fees. *See, e.g., Rivet v. State, Dept. of Transp. & Dev.*, 2001-0961, p. 6 (La. 11/28/01), 800 So.2d 777, 782.

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

Thus, we will review the judgment in light of the factors enumerated in *Williamson* and Rule 1.5(a) of the Rules of Professional Conduct.

#### **Application of the *Williamson* Factors**

The first factor we consider is the ultimate result obtained by Sher Garner for Southern Electronics. The Board offered Southern Electronics \$1,750,000.00 in just compensation; however, Southern Electronics was ultimately awarded \$5,000,000.00 in just compensation, with a credit for the \$1,750,000.00 the Board previously deposited into the registry of the court. This final award was nearly three times the amount the Board offered prior to litigation. In addition, the trial court awarded Southern Electronics \$1,527,150.00 for business losses although the Board did not initially offer any business losses. Sher Garner argued that it negotiated with the Board to obtain Southern Electronics an offer for business losses. When comparing the amount of attorney's fees awarded and the ultimate result obtained, the fees are not unreasonably excessive. Sher Garner's persistence resulted in an offer of business losses and a greater award for replacement value. While we cannot definitively conclude that either of these outcomes would not have occurred without Sher Garner's assistance, the attorneys' persistence clearly resulted in a substantial judgment for Southern Electronics.

Next, we address the second factor: the responsibility incurred by Sher Garner. Jurisprudence holds that this factor concerns the responsibility the attorneys undertook in the litigation itself; whether the matter tried was complex; and the time and labor required at trial. *Brandner v. Staf-Rath, L.L.C.*, 2012-62, p. 9 (La.App. 5 Cir. 5/31/12), 102 So.3d 186, 192, and *Williamson*, 597 So.2d at 442. Thus, we must inquire as to what Sher Garner had to prove in the underlying trial. Sher Garner had the burden to prove that Southern Electronics was entitled to the replacement value of its property; that the relocation facility at Julia Street was not a replacement facility, as the Board argued; and that the estimates provided by Southern Electronics were for replacement costs.<sup>5</sup>

As noted above, to demonstrate Southern Electronics was entitled to the replacement value of its facility, substantial evidence had to be present that the facility and the location were unique and indispensable to the success of its business. A brief background of the business itself is illustrative on this point. Southern Electronics was a well-known, third-generation local business, which operated for over eighty years in the same block of Tulane Avenue, enjoying a favorable reputation in the neighborhood. The original location was designed specifically for Southern Electronics and had undergone numerous renovations to tailor the building to its needs.

Sher Garner presented numerous expert and lay witnesses to establish the uniqueness of the building at trial. Southern Electronics' president, Mr. Perrin,

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<sup>5</sup>A replacement facility is a functionally similar building, possessing similar quality, design and functionality. Expert testimony was presented by Southern Electronics' witness, Dr. Wade Ragas, an expert in real estate valuation, real estate market analysis and real estate appraisal. Dr. Ragas explained the difference between reproduction costs versus replacement costs. Dr. Ragas testified that reproduction costs would often be much higher, requiring the same item, regardless of cost. The primary purpose of replacement cost is to duplicate equal quality of amenities and usefulness of the property, but using a lower cost substitute when available.

explained the importance of the location. He testified that Southern Electronics was part of the neighborhood, benefitted by maintaining its original location because people knew the company and where to find it; thus, it did not have to advertise. Mr. Perrin explained the location allowed the company to develop new business by virtue of the large amount of foot traffic it enjoyed. There was easy access in two directions for car traffic, along with a large parking lot for both wholesale and retail customers. Mr. Perrin estimated the old location would receive twenty to twenty-five new walk-in customers per week, which dwindled to almost nothing after it relocated. He pointed out that the walk-in, retail customers would often develop into commercial clients. As an example, Mr. Perrin cited to a New Orleans Police Detective, a retail customer, who later returned to the store to obtain a large order of crime cameras for the City of New Orleans.

To support the lay testimony regarding the uniqueness of the location, a significant amount of expert testimony was presented at trial. Expert testimony was presented in the following fields: advertising and marketing, warehousing, quality control of electronic products, real estate valuation, real estate market analysis and real estate appraisal, and architecture and cost estimating. Southern Electronics' enjoyed a broad range of customers, including industrial, government contractors and small businesses, and it benefitted from easy accessibility and a central location. The facility's location allowed it to generate a large amount of walk-in trade, which was almost unheard of in the electronics parts industry. According to one expert, the large amount of traffic flow passing by the original location was indispensable in generating business. The actual physical characteristics of the original location also contributed to the uniqueness of the building. The storage and shipping facility area allowed Southern Electronics to turn over product

quickly. The large amount of air conditioned warehouse space was ideal for storage and assembly of electronic components or parts, which were often sensitive, requiring climate control and preventing dust. Furthermore, the combination of all of the buildings' distinctive and premium features, coupled with its adaptability, made the building distinctively unique and exceptionally well-suited for Southern Electronics' business. The building allowed for reconfiguration of the space without having to do major construction, it was multi-use, having retail space, office suites, meeting rooms, storage, loading and warehouse. It was noted that over seventy percent of the space was office or retail and seventy-three percent of the space was climate controlled (approximately 22,000 square feet of climate controlled space for inventory), which was extremely rare but uniquely suited to Southern Electronics' requirements. The property covered eight commercial lots and was granted special zoning (allowing for more commercial sales space than typically would be allowed). The air conditioning (hereinafter "A/C") was set up in a way that allowed parts of the building to be cut off from the A/C unit in order to save on cooling costs. Further, the building had separate electric meters, meaning that Southern Electronics could, and did, rent out portions of the building to other businesses during economic downturns.

A review of the extensive testimony and evidence in support, established that a significant amount of effort was expended by Sher Garner. The firm worked diligently over a number of years on this case. Mr. Sher submitted an affidavit in support of Southern Electronics' request for attorney's fees, attesting that the firm billed over seven thousand hours in preparation for trial. The cumulative effect of the testimony and evidence resulted in the trial court finding that Southern Electronics was entitled to replacement value of its property and that Julia Street

was not a sufficient replacement facility. Sher Garner assumed the responsibility of adequately presenting this evidence to the trial court in such a way to recover the replacement value. To that end, Sher Garner's strategy was effective and consequential to the resulting judgment.

The third factor for this Court to consider is the importance of this litigation. This case involved a fundamental constitutional right. The object of the taking was comprised of land that housed a long established, custom built, third generation local business. Achieving a favorable result was essential to keeping this longstanding local business in the New Orleans community, making the importance of the outcome monumental to the New Orleans area.

The fourth factor, regarding the amount of money involved, is self-evident--- the total compensation was \$6,527,150.00. This Court often considers the reasonableness of the amount of attorney's fees awarded in relation or proportion to the underlying expropriation judgment. Thus, a brief review of the attorney's fees awarded in similar expropriation cases is helpful. In *Bd. of Sup'rs of Louisiana State Univ. v. Dixie Brewing Co.*, 2015-1053, p. 12 (La.App. 4 Cir. 9/1/16), 200 So.3d 977, 986, the parties settled the expropriation suit for a total amount of compensation of \$7,639,107.00. The trial court awarded \$2,503,651.26 in attorney's fees or 33% of the total compensation. 2015-1053, at p. 15, 200 So.3d at 987. In *Villavaso*, 2014-1277, at pp. 4-20, 183 So.3d at 762-769, the trial court's judgment was for \$447,638.00, and \$165,000.00 was awarded in attorney's fees, 37% of the total compensation. In the case *sub judice*, the total award was \$6,527,150.00 and the attorneys' fees awarded were \$2,177,500.00 or 33%. Thus, when the attorney's fees in this matter are compared to similar expropriation cases,

such as *Dixie Brewing Co.* and *Villavaso*, the fees are remarkably similar and are not unreasonably excessive.

Next, we consider factors five and eight together, pertaining to the intricacies of the facts in dispute and the character of the work performed by Sher Garner. In fact, the Board concedes that this case involved complex and intricate factual issues. The intricacies of the facts in dispute and the character of the work performed involved proving Southern Electronics was entitled to replacement value and not simply fair market value. Sher Garner also was required to demonstrate deficiencies in the Julia Street building. The parties presented the testimony of numerous competing experts on this issue. For example, Southern Electronics presented Donald Randon, an expert in commercial real estate, commercial real estate brokerage and the commercial real estate market while the Board offered Mr. Henry W. Tatje, an expert in real estate appraisals. Mr. Randon specialized in relocating commercial real estate clients and met with Southern Electronics on several occasions to assist with finding a comparable property. Mr. Randon testified that in his over thirty years of experience, he had never been involved in brokering a building similar to the Southern Electronics facility. Essentially, there were no comparable buildings in the New Orleans market. He explained that it is uncommon for a warehouse of the size of the Tulane Avenue location, 25,000 to 30,000 square feet, to have such a large amount of office space. The excessive office space contributed to the uniqueness of Southern Electronics' building. The building also possessed multiple special features specifically tailored to Southern Electronics. Further, Mr. Randon testified that the Tulane Avenue location had high visibility and traffic. Even the Board's expert, Mr. Tatje, acknowledged the difficulty in appraising the Tulane facility. Mr. Tatje testified

that, in fact, there were no comparable facilities to use in the immediate market area near the old facility to arrive at a comparable price per square foot for a similar building.

As a further indication of the intricate facts and character of the work performed by Sher Garner, Southern Electronics was tasked with comparing the old facility with the new Julia Street facility. This involved touring both facilities, reviewing costs estimates on remodeling the new facility to match the old one, deposing multiple experts, reviewing the competing expert reports and then developing a theory of the case for trial to demonstrate the new facility was inferior. The Board argued the Julia Street location was a replacement facility (which Southern Electronics disputed) and that less compensation was thus due.

Further proof of the character of the work performed by Sher Garner is the extensive evidence presented and the more than three thousand pages of testimony created. The attorneys engaged in intense trial preparation, which included preparation of thirteen expert witnesses. The extensive work on this case was, in part, caused by the complex and intricate facts in dispute regarding the original Tulane Avenue location and the value of the Julia Street property in relation to it. The character of the work performed is apparent throughout the record. The Sher Garner attorneys were knowledgeable about the issues involved, exceedingly well-prepared and skillfully presented Southern Electronics' case to the court.

Next, as many of the facts pertaining to factors six and nine are intertwined, we will discuss these two factors together. Factor six pertains to the legal knowledge, attainment and skill, and factor nine pertains to the diligence and the skill of counsel. In *Billieson v. City of New Orleans*, 2015-0858, p. 11 (La.App. 4 Cir. 1/27/16), 186 So.3d 786, 793, this Court reviewed the attorney's qualifications

and specializations in finding support for the determination that the attorney's fees awarded were reasonable. As such, it is appropriate to look at both the affidavit and curriculum vitae (hereinafter "CV") of the attorneys involved to determine their qualifications to perform the work involved. Mr. Sher submitted an affidavit in support of the attorney's fees. He indicated the attorneys working on this case were lead counsel James Garner and Peter Hilbert, Jr., along with associate counsel Joshua Force, Thomas J. Madigan, II, and Jacob A. Airey. Mr. Garner was admitted to the Louisiana bar in 1989 and specializes in complex commercial litigation. His CV notes that he has served as lead counsel in numerous cases, including expropriation matters. He has been named as one of the "Best Lawyers in America" since 2006, along with being named as a "Super Lawyer" since 2007. Likewise, Peter Hilbert, Jr., was admitted to the Louisiana bar in 1977, specializes in commercial litigation, and is an active litigator. He has also been named as a "Super Lawyer" since 2009. Joshua Force was admitted to the Louisiana bar in 1992, serves as an Adjunct Professor at Tulane University and has been named as one of the "Best Lawyers in America" since 2009. Thomas J. Madigan, II, was admitted to the Louisiana bar in 2002 and his areas of practices include commercial, business, and real estate litigation. He also has been listed in the publication "Best Lawyers" since 2012. He specializes in personal injury litigation. Finally, Jacob A. Airey was admitted to the Louisiana bar in 2002 and has extensive litigation experience, serving as lead trial counsel in both state and federal courts. Mr. Sher testified that the firm delegated different aspects of the trial to various attorneys, assigning different witnesses, research and depositions to variously skilled personnel. Sher Garner assigned many of its best lawyers to this case, all that had extensive experience in litigation, including in expropriation

matters. The legal knowledge, attainment and skill and the diligence and skill of Sher Garner's attorneys was significantly illustrated by the work performed.

The seventh factor is the number of appearances made. Sher Garner has represented Southern Electronics in this case for nearly a decade. It was hired by Southern Electronics from the moment Southern Electronics received the letter from the Board. There was extensive motion practice. The parties filed cross-motions for partial summary judgment, involving the very same complex issues that were later decided at the seven-week trial. These cross-motions addressed the valuation of the property (fair market value versus replacement value), whether Southern Electronics should be allowed to make a claim for lost profits, whether it can recover relocation costs to move from the Julia Street location, or whether it can recover future repairs and renovation costs for a replacement facility. Sher Garner appeared for numerous hearings on motions *in limine* and *Daubert* motions, along with numerous pre-trial conferences. The trial lasted twenty-three days and spanned over a seven-week period, which clearly required substantial time away from other clients and business. Moreover, courts may consider the amount of billable time incurred by the attorneys. *Williamson*, 597 So.2d at 442. As testified to by Mr. Sher, more than 7000 billable hours were incurred in this case by the firm.

The final factor addresses the court's own knowledge. We note that great deference is given to the trial court, in part, because of the trial court's "greater familiarity with the issues involved in the overall case and with the specific value of the services rendered by the attorney whose fee is under consideration." *Billieson*, 186 So.3d at 790. Thus, this Court acknowledges that the trial court has the most understanding of the very complex questions involved at trial on the

expropriation, including the time, industry, and expertise demonstrated by Sher Garner in pursuing this case for Southern Electronics. *Borgnemouth Realty Co. v. Par. of St. Bernard*, 2013-1651, p. 18 (La.App. 4 Cir. 5/21/14), 141 So.3d 891, 903. The trial court's extensive knowledge and understanding of this matter is displayed in the extensive reasons for judgment issued on the just compensation issue. The trial court provided a detailed recitation of the founding of Southern Electronics, the value and uniqueness of the building and the indispensability of the business location. The reasons for judgment also display the trial court's immense knowledge of the underlying facts of this matter, both discussing the various experts who testified at trial and how they helped establish the need for replacement value rather than fair market value. We acknowledge that no written reasons accompanied the judgment on attorney's fees in this case. However, written reasons for judgment do not form part of the actual judgment, meaning this Court reviews only the judgment. It is of no moment that written reasons were not provided in support of the attorney's fees award. *Bellard v. American Cent. Ins. Co.*, 2007-1335, p. 25 (La. 4/18/08), 980 So.2d 654, 671. The trial court concluded that this case required significant testimony and a considerable amount of time and effort. Based on the record before this Court, we cannot conclude that the trial court abused its discretion in its award of attorneys' fees.

### **CONCLUSION**

As this Court has recognized, a trial court has great discretion with regard to an award of attorney's fees; and such an award will only be modified if there is found to be an abuse of discretion. *Dixie Brewing Co.*, 2015-1053, at p. 18 (La.App. 4 Cir. 9/1/16), 200 So.3d at 989. The record before this Court demonstrates the complexity of the issues before the trial court and the attorneys'

ability to secure a sizable judgment for the client. Sher Garner's attorneys were quite adept in their representation of Southern Electronics. After a thorough analysis of this case under the factors enumerated in Rule 1.5 of the Rules of Professional Conduct and *Williamson*, we conclude that the trial court did not abuse its discretion in awarding \$2,177,500.00 in attorney's fees.

Accordingly, we find the trial court did not abuse its discretion in the awarding of \$2,177,500.00 in attorney's fees. The trial court's judgment provides a total award of \$2,177,500.00, for attorneys' fees; thus, we amend the judgment solely to reflect a credit to the Board in the amount of \$578,384.98 in attorney's fees Southern Electronics previously paid to its attorneys. Accordingly, the Board is responsible for the remaining balance of the amount awarded by the trial court of \$1,599,115.02. In all other respects the trial court's judgment is affirmed.

**AFFIRMED AS AMENDED**