

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2007-TS-01308**

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**GULF SOUTH PIPELINE COMPANY, LP**

**Appellant**

**vs.**

**BLANCHE MARI DOWNY PITRE**

**Appellee**

**Appeal of the Jury Verdict and Judgment and Order on Post-Trial Motions  
of the County Court of Warren County, Special Court of Eminent Domain,  
Honorable John S. Price Jr. County Court Judge in Gulf South Pipeline Company, LP, v.  
Blanche Mari Downy Pitre, Cause No. 06, 0689-CO**

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**BRIEF OF THE APPELLANT  
GULF SOUTH PIPELINE COMPANY, LP**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case.

- 1) Gulf South Pipeline Company, LP, Plaintiff
- 2) Blanche Mari Pitre, Defendant
- 3) Trey Bourn, Attorney for Appellant
- 4) LeAnn Nealey, Attorney for Appellant
- 5) Robert C. Galloway, Attorney for Appellant
- 6) Butler, Snow, O'Mara, Stevens & Cannada, PLLC, Counsel for Appellant
- 7) David M. Sessums, Attorney for Appellee
- 8) Varner, Parker & Sessums, P.A., Counsel for Appellee

  
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Trey Bourn  
Counsel for Appellant

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## **STATEMENT OF ISSUES**

I. The jury rendered a \$175,000 verdict in favor of the defendant Blanche Mari Downy Pitre based on the expert testimony of James Hamilton. Hamilton, however, did not base his “after” fair market value of the subject property on sales comparables, or any other permissible basis, but instead placed arbitrary percentages of damages on different parts of the property based only upon his unsubstantiated opinion. Did the trial court err in allowing the jury to hear Hamilton’s testimony and base its verdict on Hamilton’s testimony?

II. Hamilton, in his appraisal and in his testimony at trial, did not provide legally sufficient grounds for 99.2 percent of Pitre’s claimed damages and was the only witness testifying for Pitre as to the value of the subject property. Did the trial court err in denying Gulf South’s motion for a judgment notwithstanding the verdict and not entering a judgment for \$38,250, the amount testified to by Gulf South’s appraisal witness and the only evidence the jury could have properly considered?

## STATEMENT OF THE CASE

### **A. Nature of the Case, Course of the Proceedings, and Statement of the Facts Relevant for the Issues on Review.**

On November 22, 2006, the plaintiff Gulf South Pipeline Company, LP (“Gulf South”), filed a Complaint to exercise its right of eminent domain, pursuant to Miss. Code Ann. § 11-27-47, against the defendant Blanche Marie Downey Pitre (“Pitre”) to acquire by eminent domain a right-of-way and easement (“right-of-way”) for a gas pipeline on, over, and across certain lands of the defendant in Warren County, Mississippi. (R. at 5). The sought permanent easement contained approximately 5.59 acres of land. (R. at 11).<sup>1</sup>

On February 21, 2007, Gulf South, pursuant to the provisions of Miss. Code Ann. § 11-27-7, filed its statement of values, representing the fair market value of the right-of-way sought on the date of the filing of the petition constituted \$38,250 and the damage to the remainder constituted \$0. (R. at 42). Gulf South based its statement of values by multiplying the 5.59 acres for the permanent easement by the fair market value of the land, which it determined to be \$6,000 per acre. (R. at 327). Thus, the total compensation and damage due to Pitre amounted to \$38,250.<sup>2</sup> (R. at 42). Gulf South amended its statement of values to add agricultural as the highest and best use of the property. (R. at 224).

Under Miss. Code Ann. § 11-27-7, Pitre was required to file and serve on Gulf South her statement of values not less than ten days prior to trial. On April 9, 2007, Gulf South moved the trial court to exclude Pitre from proffering any evidence on the value of the right-of-way because, with the trial set for April 12-13 (after two continuances), Pitre missed the 10-day

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<sup>1</sup> Gulf South also acquired a temporary easement on Pitre’s land, which contained approximately 3.72 acres. (R. at 11). The temporary easement’s value is not at issue in this appeal.

<sup>2</sup> At trial, Gulf South’s expert testified this number came from adding the \$33,450 value of the permanent easement (\$6,000 x 5.59 acres) to the value of the temporary easement. (R. at 327-32).

deadline. (R. at 103). Conveniently, on the next day, Pitre filed her statement of values, valuing the right-of-way at \$175,000. (R. at 108). The trial court, after granting a third continuance, denied Gulf South's motion. (R. at 154).

After another delay, Pitre produced the appraisal report of her expert, James Hamilton, on May 17, 2007. (R. at 155-61 & 170-218). Although Gulf South sought to exclude Hamilton's report and opinions for the reasons detailed below, the trial court determined the appraisal report contained several opinions on which Hamilton would be allowed to testify at trial, as follows:

- a. "[D]ue to the installation of the pipeline, the subject property has to be diminished in value." (R. at 185).
- b. The pipeline would damage the remainder of the land not subject to the easement by 15 percent in value. (R. at 203).
- c. The pipeline would damage the house on the property by 20 percent in value. (R. at 203).
- d. The pipeline would damage the shop on the property by 30 percent in value. (R. at 203).

Hamilton concluded that the damages to the remaining land, the shop, and the house aggregated \$173,643.25, which is 99.2 percent of the total damages claimed of \$175,000. (R. at 203-04). In his appraisal, though, and later at trial, Hamilton did not provide legally sufficient grounds for this 99.2 percent of Pitre's claimed damages.<sup>3</sup> As a result, Gulf South moved the trial court to limit or strike the testimony of Hamilton because his opinions had no factually reliable foundation under Miss. R. Evid. 702 or Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993). (R. at 236). Gulf South also moved to exclude Hamilton because his testimony would not be sufficiently reliable and would not assist the jury or the trial court because the probative value of his testimony is outweighed by the danger of unfair prejudice, confusion of

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<sup>3</sup> Because the unsubstantiated basis for any of Hamilton's opinions relate directly to the reasons for excluding his testimony, the details of his testimony are discussed in the "law and argument" section *infra*.

issues, misleading the jury, and wasting the time of the trial court and jury. (R. at 236). At trial, the court denied Gulf South's motion, ruling from the bench that as a matter of law Hamilton was qualified under Miss. R. Evid. 702 and Daubert to testify as an expert witness on behalf of Pitre. (Tr. 268). The trial court subsequently denied Gulf South's instruction to the jury to return a verdict in the amount given in its statement of values: \$38,250. (Tr. 287 & R. at 344).

**B. Disposition of the Case Below.**

On June 14, 2007, after a two-day trial, nine out of 12 jurors returned a verdict against the plaintiff Gulf South for \$175,000 in favor of Pitre. (R. at 354). The trial court entered a judgment on June 26, 2007, in accordance with and reflecting that verdict. (R. at 355). On June 28, 2007, Gulf South moved for a judgment notwithstanding the verdict ("JNOV"). (R. at 358). The trial court, by the order entered July 9, 2007 (and including the order dated July 2, 2007 incorporated into and clarified by the July 9, 2007, order), denied Gulf South's JNOV motion. (R. at 464 & 465). Gulf South timely filed its notice of appeal on July 12, 2007. (R. at 466).

**SUMMARY OF THE ARGUMENT**

Pitre claimed the value of the right-of-way Gulf South sought to take by eminent domain was worth \$175,000 and produced the appraisal report of her expert, James Hamilton, to support this proposed amount. Hamilton's appraisal contained the following opinions:

- a. "[D]ue to the installation of the pipeline, the subject property has to be diminished in value." (R. at 185).
- b. The pipeline would damage the remainder of the land not subject to the easement by 15 percent in value. (R. at 203).
- c. The pipeline would damage the house on the property by 20 percent in value. (R. at 203).
- d. The pipeline would damage the shop on the property by 30 percent in value. (R. at 203).

Hamilton concluded that the damages to the remaining land, the shop, and the house



aggregated \$173,643.25, which is 99.2 percent of the total damages claimed of \$175,000. (R. at 203-04). In his appraisal, though, Hamilton did not provide legally sufficient grounds for this 99.2 percent of Pitre's claimed damages. As a result, Gulf South moved the trial court to limit or strike the testimony of Hamilton because his opinions had no factually reliable foundation under Miss. R. Evid. 702 or Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993). (R. at 236). However, the trial court denied Gulf South's motion, ruling that as a matter of law Hamilton was qualified under Miss. R. Evid. 702 and Daubert to testify as an expert witness on behalf of Pitre. (Tr. 268). Because the jury eventually rendered a \$175,000 verdict in favor of Pitre based on the testimony of Hamilton, who did not provide legally sufficient grounds for 99.2 percent of Pitre's claimed damages, the trial court committed reversible error in allowing the jury to hear and base its verdict on Hamilton's testimony.

Once Gulf South established at trial the right-of-way was worth \$38,250, the burden shifted to Pitre to prove the property was worth the value she claimed in her statement of values: \$175,000. Specifically, Pitre had the burden of proof with respect to what she alleged to be just or due compensation for the taking of her property. In attempting to satisfy this burden of proof, Pitre presented the testimony of Hamilton. By using comparable land sales ("comparables"), Hamilton determined the "before" fair market value of the property totaled \$840,905. (R. at 276). Hamilton determined the "after" fair market value of property totaled \$667,261, but did not use any comparables to reach his conclusion. (R. at 277). Instead, just as he did in his appraisal, without relying on any facts or data, Hamilton opined the remainder of Pitre's land would decline in value by 15 percent, Pitre's house on an adjoining piece of property by 20 percent, and a shop on that same piece of adjoining property by 30 percent. (R. at 277; Tr. 461 & 468-69). In using these arbitrary percentages, Hamilton reasoned the pipeline would damage these structures by \$173,643.25, which is 99.2 percent of the claimed \$175,000 damages. (Tr.

461).

Because Hamilton, in both his appraisal and in his testimony at trial, did not provide legally sufficient grounds for 99.2 percent of Pitre's claimed damages and was the only witness testifying for Pitre as to the value of the right-of-way, Gulf South moved the trial court for a judgment notwithstanding the verdict and requested the trial court to enter a judgment for \$38,250, the amount testified to by Gulf South's appraisal witness and the only evidence the jury could have properly considered. The trial court denied the motion. Because there was no basis for the jury verdict, the trial court should have granted Gulf South's motion for a judgment notwithstanding the verdict and entered a judgment for \$38,250. The trial court's failure to do so is reversible error, requiring judgment to be entered on the only amount properly before the jury: \$38,250.

### **THE STANDARD OF REVIEW**

The Mississippi Supreme Court reviews a trial court's decision to admit expert testimony on an abuse-of-discretion standard. Roberts v. Grafe Auto Co., 701 So. 2d 1093, 1098 (Miss. 1997) (citing Seal v. Miller, 605 So. 2d 240, 243 (Miss. 1992)). A de novo standard of review applies to a trial court's denial of a judgment notwithstanding the verdict ("JNOV"). Johnson v. St. Dominics-Jackson Mem'l Hosp., 967 So. 2d 20, 22 (Miss. 2007). This Court will affirm the denial of a JNOV only if there is substantial evidence to support the verdict. Id. (citing Natchez Elec. & Supply Co. v. Johnson, 968 So. 2d 358, 362 (Miss. 2007)). Although the evidence is reviewed in "the light most favorable to the non-moving party," this Court will reverse and render judgment in the movant's favor where evidence is so "overwhelmingly in favor of the party requesting the JNOV that reasonable persons could not have arrived at a contrary verdict." Natchez Elec. & Supply Co., 968 So. 2d at 362 (citing Steele v. Inn of Vicksburg, 697 So. 2d 373, 376 (Miss. 1997)).

## **ARGUMENT AND AUTHORITIES**

### **A. The Trial Court Should Have Excluded Hamilton's Testimony Under Miss. R. Evid. 702 and the Daubert/McLemore Standard.**

#### **1. The Evidentiary Standard Under Miss. R. Evid. 702 and Daubert/McLemore.**

For this Court to determine the admissibility of expert testimony, it has adopted the standard in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and later modified in Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999). Webb v. Braswell, 930 So. 2d 387, 397 (Miss. 2006). Under the modified Daubert standard, the trial court must first determine whether expert testimony is relevant and, second, whether the proffered testimony is reliable. Daubert, 509 U.S. at 589; Miss. Transp. Comm'n v. McLemore, 863 So. 2d 31, 38 (Miss. 2003).

In eminent domain cases, the party offering the expert testimony must show the expert's opinion is based upon scientific methods and procedures, not unsupported speculation. Adcock v. Miss. Transp. Comm'n, --- So. 2d ----, 2008 WL 732795, at \*3 (Miss. March 20, 2008) (citing Miss. Transp. Comm'n v. McLemore, 863 So. 2d 31, 36 (Miss. 2003)). Factors to consider may include

“whether the theory or technique can be and has been tested; whether it has been subjected to peer review and publication; whether ... there is a high known or potential rate of error; whether there are standards controlling the technique's operation; and whether the theory or technique enjoys general acceptance” within the expert's particular field.

Id. (quoting McLemore, 863 So. 2d. at 37).

#### **2. Hamilton Provided No Grounds for His Opinion the Subject Pipeline Would Damage the Subject Property.**

Once Gulf South established at trial the right-of-way was worth \$38,250, the burden shifted to Pitre to prove the property was worth the value claimed in her statement of values:

\$175,000. Specifically, Pitre had the burden of proof with respect to what she alleged to be just or due compensation for the taking of her property. See Bishop v. Miss. Transp. Comm'n, 734 So. 2d 218, 221 (Miss. 1999) (“In order to receive greater compensation, the party whose property is being condemned then must present evidence.”); Ellis v. Miss. State Highway Dept., 487 So. 2d 1339, 1342 (Miss. 1986) (“After a prima facie case has been made out by the condemnor, then, if the landowner expects to receive more compensation than that shown, he must go forward with the evidence showing such damage.”). In attempting to satisfy this burden of proof, Pitre presented the testimony of Hamilton, an expert in the field of real estate appraisal. His testimony, though, was insufficient to carry the defendant’s burden of proof because it was inadmissible.

Section 17 of the Mississippi Constitution requires payment of just or due compensation to the landowner. In order to determine just compensation, the owner is awarded “the difference between the fair market value of the whole tract immediately **before** the taking, and the fair market value of that remaining immediately **after** the taking.” Miss. State Highway Comm’n v. Hillman, 198 So. 565, 569 (Miss. 1940) (emphasis added). The professional appraisal community employs three different methods to reach an opinion of fair market value: (1) the cost approach, (2) the market data or sales comparison approach, and (3) the income approach. Potters II v. Miss. State Highway Comm’n, 608 So. 2d 1227, 1231 (Miss. 1992).

In his appraisal, Hamilton stated he used the “sales comparison approach” to determine the fair market value of the subject land. (R. at 258, 264-76). By using comparable land sales (“comparables”), Hamilton determined the “before” fair market value of the property totaled \$840,905. (R. at 276). Hamilton determined the “after” fair market value of the property totaled \$667,261 without using any comparables. (R. at 277). Without relying on any facts or data, Hamilton opined the remainder of Pitre’s land would decline in value by 15 percent, Pitre’s

house on an adjoining piece of property by 20 percent, and a shop on that same piece of adjoining property by 30 percent. (R. at 277; Tr. 461 & 468-69). In using these arbitrary percentages, Hamilton reasoned the pipeline would damage these structures by \$173,643.25, which is 99.2 percent of the claimed \$175,000 damages. (Tr. 461).

The Mississippi Supreme Court has repeatedly ruled that experts cannot merely speculate,<sup>4</sup> a principle this Court has specifically applied in eminent domain cases. See McLemore, 863 So. 2d at 40 (appraiser's testimony that land within 750 feet of proposed interstate highway was more adversely affected and suffered more damage was entirely speculative and inadmissible); see also Hammond v. Coleman Co., 61 F. Supp. 2d 533, 539 & 546 (S.D. Miss. 1999) (expert excluded because he only discussed "possibilities" and not "probabilities").

An expert in eminent domain actions must produce comparable land sales in this sort of valuation. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356, 1360-61 (Miss. 1989); Miss. State Highway Comm'n v. Franklin County Timber Co., 488 So. 2d 782, 785 (Miss. 1986). Mississippi law does not require the comparable sales to be identical in every respect, and the trial judge has wide discretion in allowing testimony of comparable sales and should allow liberal cross-examination to permit testing of the true utility of the comparable sales. Franklin County Timber Co., 488 So. 2d at 785.

Although Hamilton did rely on comparables to determine the "before" value of the property, he did not rely on any comparables to determine the "after" value, i.e., damage to the

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<sup>4</sup> See, e.g., Dedeaux Utility Co., Inc. v. City of Gulfport, 938 So. 2d 838, 843 (Miss. 2006) ("[Expert's] testimony was not based on sufficient facts and data and was therefore unreliable... the trial court erred in admitting that testimony."); Webb v. Braswell, 930 So. 2d 387, 398 (Miss. 2006) (excluding expert testimony on future lost profits where not based on reasonable probability); Fresenius Med. Care & Cont'l Cas. Co. v. Woolfolk ex rel. Woolfolk, 920 So. 2d 1024, 1032 (Miss. Ct. App. 2005) (reversing lower court allowing expert testimony premised on factual assumption unsubstantiated by any evidence in the record: "[I]f the premise upon which Dr. Stringer's opinion was based is flawed, then it necessarily follows that the opinion is also flawed.").

land, the house, and the shop. (Tr. 461). He instead opined the pipeline would damage these elements or structures without providing any valid basis. As detailed below, Hamilton did not rely on any comparables or any other legally sufficient evidence to prove, or even show, the subject pipeline would devalue the subject property (including the house and shop). (Tr. 461 & 468-69). As a result, the jury should not have been allowed to base its verdict on Hamilton's valuation and should have returned a verdict for Gulf South's value of \$38,250.<sup>5</sup>

**a. Hamilton's Opinion that the Pipeline Will Diminish the Value of the Subject Property as a Whole Was Unsupported Speculation.**

In his appraisal of the subject property, Hamilton declared that "due to the installation of the pipeline, the subject property has to be diminished in value." (R. at 185). However, Hamilton did not provide any comparable land sales to substantiate his opinion. In fact, in his deposition, Hamilton stated he based his opinion purely on his belief, and nothing more, that the land would be "tainted" by the pipeline:

Q. Why does the rest of the property have to be diminished in value is my question?

A. Well, you're putting the pipeline across that property, you're changing the highest and best use when that pipeline goes through there. So if they get ready to sell that property, they've got to disclose the fact that there's a 42-inch gas line running through that property. And you are going to have very few people that are going to be interested in buying that property or even trying to develop a lot or buying the house or anything to that effect with that pipeline going through there. And that's my opinion.

Q. Do you have any support or evidence for that opinion other than --

A. Well, my 30-some-odd years in appraising. And I've done a lot of appraising on what I call tainted property. You go to Jackson, and you have got property over there that, if

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<sup>5</sup> Because neither Pitre nor any other witness for the defendant (other than Hamilton) testified as to any other value of the property, either before or after the taking, the only evidence the jury could have properly considered was Gulf South's evidence of \$38,250.

somebody mentions the Yazoo clay over there, then they're not going to be very interested in buying it and building a house on it.

(R. at 296-97). Interestingly, after 30 years of appraising land, Hamilton had no comparable land sales or other proof that a pipeline had ever diminished the value of anyone's property:

Q. Do you have any comparables that show sales of rural acreage where there is a pipeline through that would support an opinion that the acreage is worth less because there is a pipeline across it?

A. I don't know that I've ever seen any land sell that has a pipeline across it.

(R. at 297). Hamilton's testimony at trial was the same as in his deposition in both areas, i.e., he had no evidence to support his opinion that a pipeline would damage the defendant's property.

Q. [W]hen you came to determine the value after the pipeline is there, you didn't use any comparable sales, did you?

A. We can find land comps when we go out just about anytime. We can find house comps about anywhere. But you find houses with land with gas lines and pipelines on it and find sales of that type of property, that's kind of hard to do.

Q. Okay. But regardless whether it's easy or hard, you didn't use any comparables? You don't have any in your report, right?

A. If I could have found any, I would have.

(Tr. 461).

**b. Hamilton's Opinion that the Pipeline Will Diminish the Value of the Remainder of the Property by 15 Percent Was Unsupported Speculation.**

In his appraisal, Hamilton estimated that Gulf South's pipeline would reduce the value of the remainder of the property by 15 percent. (R. at 203). In his deposition, Hamilton testified he had no comparable land sales to substantiate his opinion:

Q. [A]nd then you depreciated the remaining 101.591 acres by 15 percent.

A. That is correct.

Q. Where did you get that 15 percent number?

A. That came from the same thing that I was talking about in my experience with property that's had easements across it or property that's had subdivisions developed on it, or something that would damage the property and make it harder to sell.

Q. That 15 percent is your number, right?

A. That is correct. ... That's my number.

Q. As I understand it, you don't have any comparable sales to show that rural acreage in this area that's got a pipeline across it sells for 15 percent more than acreage than that that doesn't have a pipeline across it; do you?

A. Other than just what I've told you so far, I don't have any.

(R. at 298). Hamilton's testimony did not change at trial:

Q. And so what you're left with is just your opinion that if this property were to sell, it would sell for 15 percent less than it would have before the pipeline was there? Is that correct?

A. That's correct.

(Tr. 461-62).

**c. Hamilton's Opinion that the Pipeline Will Diminish the Value of Pitre's House by 20 Percent Was Unsupported Speculation.**

In his appraisal, Hamilton estimated a pipeline on the subject property would diminish the value of Pitre's house by 20 percent. (R. at 203). Again, Hamilton's trial testimony lacked evidentiary support, as did the following deposition testimony:

Q. Who came up with that number of 20 percent damages to the house and the eight acres?

A. That would be me.



Q. That's your number?

A. That's my number.

Q. What is that 20 percent number based on?

A. That's based on the fact that if they try to sell it, it's going to be a tough sale, and like I've already explained several times and would be happy to do it again, that 42-inch pipeline running across the property that close to that house is going to damage the value or sale of the house. And I thought I was very conservative with the 20 percent, but that is my number, and I think that it would be at least a 20 percent discount if it can be sold at all.

Q. And again, you don't have any comparables to show that houses -- How far is this house from the pipeline; do you know?

A. Probably 150 feet; that's just my estimation.

Q. Do you have any comparables to show that houses that close to a pipeline sell for 20 percent less than similar equivalent houses not next to a pipeline?

A. No, sir.

(R. at 298). Hamilton's testimony was the same at trial.

Q. Now -- then we get to the house and the 8 acres and you had a \$220,000 value there, right?

A. On the house, yes.

Q. With the 8 acres?

A. That's correct.

Q. And if you consider that 8 acres to be worth \$5,000 an acres, that would be \$40,000, right?

A. That's correct.

Q. And so if you subtracted the land value of \$40,000 from \$220,000 for the house itself, it would be \$180,000, right?

A. Okay. ... It sounds like it.

Q. Okay, if you took that \$220,000 house and 8 acres, you said that it would be worth in your opinion 20 percent less --

A. That's correct.

Q. -- market value? Is that right?

A. That's correct.

Q. Okay. And again, you don't have any comparable sales of houses with acreage with [a] pipeline close to them that you based that on?

A. That's correct.

(Tr. 462). Pressed further Hamilton admitted he did not even take into consideration how far the pipeline would be from the house; he merely considered the house "tainted" and assigned the arbitrary percentage of 20 percent damage with no justification:

Q. [H]ow far is that house from where that pipeline is going? Do you know?

A. I testified in my deposition that it was 2 to 300 feet, and I have not measured it since then.

Q. I think you actually testified it was 150 feet, but we won't quibble about 100 feet or so. If it turns out it's 6 or 700 feet from the house to the pipeline, would that affect the percentage value you put on there?

A. It's still tainted property. ...

Q. What about if it was 1,000 feet?

A. Anytime you've got a gas line or something to that effect on a piece of property, people are going to have an [aversion] of buying it. So -- on this one I was -- I've got here 20 percent damages.

(Tr. 462-63). Finally, Hamilton could not give a plausible explanation why he assigned a 20 percent reduction to the house and just 15 percent to the land adjacent to the house.

Q. Why did you take a different percentage for the house than you did for the rest of the land? Why two different

numbers? ... Why the difference between the 15 percent for most of the land and 20 percent for the house and the other land?

A. The house is already there, so that was our -- what we decided to use for damages.

(Tr. 463-65). Hamilton's opinion the pipeline would cause the house 20 percent damages to the house was not based on any facts or any rational process; rather, he based his opinion on nothing more than his capricious and speculative opinion the house would somehow be "tainted." Hamilton had absolutely no justification for assigning the arbitrary percentage of 20 percent damages to the house.

**d. Hamilton's Opinion that the Pipeline Will Diminish the Value of Pitre's Shop by 30 Percent Was Unsupported Speculation.**

In his appraisal, Hamilton opined the value of Pitre's shop will diminish by 30 percent from the location of a pipeline on the subject property. In his deposition, Hamilton stated the percentage is higher only because the shop would be closer to the pipeline. Hamilton, though, did not have anything to support his opinion.

Q. Then you've got the shop building that has been depreciated 30 percent.

A. It's closer to the pipeline.

Q. Is that your number of 30 percent?

A. That is.

Q. And you say you depreciated it 30 percent because it's closer to the pipeline than the house is?

A. That is correct.

(R. at 298-99). Nor could Hamilton state any rational basis, or cite any authority, for using three different percentages for damage to different components of Pitre's property.

Q. Are you aware of any authority or reference that says you can take a piece of property like this that's overall 115

acres that's got a house on it and another outbuilding, a shop and a garage apartment with an office in it and just attribute different percentages of reduction in value because of the presence of a gas line or an electric line or anything else that goes through there?

A. This is my opinion, and I was the one that put that on there. And I'm sure that you can get five other people, and some of them will be higher, and maybe some of them will be lower; I don't know, but right now this is my opinion, and it's what I have done with my experience over the last 30 years. And I feel like that these are realistic numbers.

Q. I understand that. What I'm asking you for is is there any book on appraisal or any article in any journal or magazine or anything like that that says it's appropriate to take a piece of property like you've done and set different percentages of reduction in value instead of taking it all as one parcel and putting one percentage of reduction on it?

A. I know of no articles or --

Q. Or texts or anything?

A. Or texts or anything like that.

(R. at 299). Again, Hamilton testified to the same thing at trial:

Q. Now, let's talk about the shop a minute, or the barn, or whatever it is. There's an out building there that, as you pointed out, is a little loser to the line, and on that one you put 30 percent. Where did that 30 percent number come from?

A. It came from my opinion.

Q. Okay. And that's where your 20 percent number for the house and 8 acres came from? it's just your opinion?

A. That's correct.

(Tr. 465). Moreover, when pressed on why he valued the land as a whole before the taking, but split the land up into three specific areas of damages after the taking, again Hamilton fell back into his "opinion" mode, speculating as to the exact percentages of damage without justification, proof, or any semblance of evidence to substantiate his opinion.

*Where did I get  
info that no  
damage?*

- Q. So you included all of that property together for arriving at this one overall value of \$840,905?
- A. That's correct.
- Q. But then when you took to looking for damages or reductions in value, you split it up and applied different percentages of value to those different components: The house with the 8 acres, the shop, and the 107 acres?
- A. That's correct.
- Q. Have you ever seen any appraisal text or authority that says you can do that, split up an old raw parcel and apply different percentages of reduction in value to that?
- A. I can't say that I've ever seen anything that said I could do it, and I also don't remember seeing anything that said I couldn't do it. But you've got different varies of damages and to assign one percentage of damage to the whole area seems ludicrous to me.
- Q. And that's your opinion?
- A. That's my opinion and I'm sticking by it.
- Q. But you don't have any sales or other evidence to show that there is reductions in market value --
- A. If anybody bought houses and land with pipelines across it, I might have come across some comps. But it's hard to come by.

(Tr. 468-69).

In McClemore, this Court excluded an appraiser's baseless opinion that a proposed interstate highway would damage all land within 750 feet. McLemore, 863 So. 2d at 40-42. In doing so, this Court determined the appraiser's opinion was speculative and, thus, inadmissible because it was based on a methodology or reasoning not printed in any textbook, not taught in seminars, unique to the appraisal, not a principle of any kind, and not taught in any of the licensing courses the expert completed. Id.

Likewise, in this case, Hamilton cannot just say something is his opinion, but not provide a basis for that opinion; such an opinion is mere speculation. Mississippi law requires the trial court to exercise its gatekeeping responsibility and exclude such unsubstantiated opinions and testimony. Adcock, 2008 WL 732795, at \*3; McLemore, 863 So. 2d at 36. The trial court's gatekeeping responsibility is particularly important in the expert context, given the added weight jurors were likely to give Hamilton's opinions in light of his "expert" status. See Edmonds v. State, 955 So. 2d 787, 792 (Miss. 2007) (finding lower court erred in admitting expert's "conclusory and improper testimony," acknowledging "juries usually place greater weight on the testimony of an expert witness than that of a lay witness.") (citations omitted). The trial court abused its discretion in failing to exclude Hamilton's opinions and testimony, and reversal is thus warranted on this basis.

**B. This Court Should Reverse the Trial Court's Denial of Gulf South's JNOV and Render Judgment for \$38,250 Because Pitre Had No Evidence Proving Her Alleged Just or Due Compensation.**

As explained above, after Gulf South established the subject property was worth \$38,250, the burden of proof shifted to Pitre to show what she alleged to be just or due compensation for the taking of her property. Bishop, 734 So. 2d at 221; Ellis, 487 So. 2d at 1342. Pitre's expert witness Hamilton, in his appraisal and in his testimony at trial, could not provide legally sufficient grounds for 99.2 percent of Pitre's claimed damages. His testimony and opinions should have been excluded, and the jury should not have been allowed to base its verdict on Hamilton's valuation. Moreover, because Hamilton was the only witness testifying for Pitre as to the value of property -- either before or after the taking -- Pitre wholly failed to prove she was entitled to more than the amount established by Gulf South. Therefore, the only value the jury could have properly considered was \$38,250, the amount testified to by Gulf South's appraisal witness.

Because there was no legally valid basis for the jury verdict, the trial court should have granted Gulf South's motion for a judgment notwithstanding the verdict and entered a judgment for \$38,250. The trial court's failure to do so is reversible error, requiring judgment to be entered on the only amount properly before the jury: \$38,250.

**CONCLUSION**

For the foregoing reasons, Gulf South respectfully requests this Court to reverse the jury verdict and decision of the trial court denying Gulf South's Motion for Judgment Notwithstanding the Verdict and render a judgment that \$38,250 be paid to the defendant as full and complete compensation for the taking of the pipeline easement.

THIS the 15<sup>th</sup> day of April 2008.

Respectfully submitted,

GULF SOUTH PIPELINE, LP

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**CERTIFICATE OF SERVICE**

I, Trey Bourn, hereby certify I have this day caused a true and correct copy of the foregoing Brief of the Appellant Gulf South Pipeline, LP, to be delivered by United States mail, postage prepaid, to the following:

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SO CERTIFIED, this the 15<sup>th</sup> day of April 2008.

  
TREY BOURN



**CERTIFICATE OF FILING**

I, Trey Bourn, certify that I have had hand-delivered the original and three copies of the Brief of Appellant Gulf South Pipeline, LP, and an electronic diskette containing same on April 15, 2008, addressed to Ms. Betty W. Sephton, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

  
TREY BOURN

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