

Appellate court tells St. Bernard to cough up millions more after 2010 seizure of private port



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St. Bernard Parish port officials may need to come up with more than double the \$16 million they initially paid to seize a privately run port along the Mississippi River in 2010 under Louisiana's eminent-domain law after a new ruling from a state appellate court.

Judges James McKay, Terri Love and Roland Belsome of the state 4th Circuit Court of Appeal wrote in a decision published Wednesday that St. Bernard's government should have paid \$29 million – plus annual interest of 5 percent — to take over the port property from its original owners.

The judges also said the owners who lost the property are owed attorney's fees and costs they incurred as a result of the seizure, an amount that has not yet been calculated but will likely drive up the port's price tag by millions more before the end of a legal battle many see as an important test of the government's power to take private property.

Two judges dissented from the 10-page decision, although not necessarily because they disagreed with making the port pay more. While Judge Joy Cossich Lobrano's reasons for

dissent haven't been published, Sandra Cabrina Jenkins argued that Violet Dock Port's owners were owed even more than the amount her colleagues came up with — though she stopped short of specifying how much.

The complex proceedings are far from over. Both sides can still appeal to the state Supreme Court and ask the justices to either increase or lower the award. And the owners of what had once been known as Violet Dock Port are still asking the U.S. Supreme Court to consider the legality of the seizure. The high court hasn't decided whether to review the case.

Nonetheless, the lead attorney for Violet Dock Port's owners, Randy Smith, said he was optimistic that Wednesday's ruling would help his clients to be made whole.

"While this matter is far from over, we are gratified that the court of appeal has now recognized that this property was unique and indispensable and that we are rightly entitled to replacement costs," Smith said.

The port's attorney, Jim Garner, didn't immediately respond to a request for comment.

The case revolves around the port's use of \$16 million in state funds to take Violet's land along a mile of river frontage as well as five deepwater berths it had developed there over decades.

Violet serviced U.S. Navy ships, and its owners were gearing up to accommodate bulk cargo operations. After the seizure, port officials leased the site to the firm Associated Terminals, which also runs facilities in owned by the port in another part of the parish.

In the years since, Smith has accused port officials of planning all along to commandeer Violet's lucrative business on the cheap and hand it to Associated Terminals, a rival with important government connections. Smith has argued the publicly owned port did almost nothing to change the facility or how it was used following the takeover, violating a state law outlining the use of eminent domain.

Port officials countered that they are exempt from that restriction because the port satisfies a public purpose of facilitating the transport of goods or people in domestic or international commerce. Garner has dismissed Violet's bulk cargo expansion plans as speculative.

Judge Jacques Sanborn of St. Bernard's 34th Judicial District Court sided with the port following a trial and set the \$16 million price tag. A split 4th Circuit panel then upheld Sanborn's decision, prompting Smith's team to take the case to the state Supreme Court.

In a 4-3 ruling, the high court upheld the takeover as legal but deemed the \$16 million price tag as unjustly low. It then sent the case back to the state 4th Circuit to set a higher price.

"Riverfront property is limited in St. Bernard Parish and property with these attributes is nonexistent," read Wednesday's majority opinion, citing a review of expert testimony in earlier phases of the case. "The property was also indispensable for the operation of (Violet's) business."

In her dissent Wednesday, Jenkins said she wasn't convinced that the way the port facility was

being run today is its “highest and best use,” the legal standard to set a fair price tag. But she did note the burden fell on Violet to prove the facility has a higher and better use than what is being seen today.
