

CASE NO. 08-0061

IN THE SUPREME COURT OF TEXAS

THE STATE OF TEXAS,
Petitioner,

v.

CENTRAL EXPRESSWAY SIGN ASSOCIATES, et al.,
Respondents.

On Petition for Review from the Fifth Court of Appeals at Dallas,
Cause No. 05-06-00003-CV, and the County Court at Law No. Four of
Dallas County, Texas, Cause No. 00-02122-D

**CENTRAL EXPRESSWAY SIGN ASSOCIATES' RESPONSE IN
OPPOSITION TO PETITION FOR REVIEW**

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ABBREVIATIONS AND RECORD REFERENCES

Abbreviations

Plaintiff/Appellant/Petitioner The State of Texas..... “the State” or “Petitioner”

Defendant/Appellee/Respondent Central Expressway Sign Associates.....“CESA”

Defendant/Appellee/Respondent Viacom Outdoor, Inc.
f.k.a. Infinity Outdoor, Inc.....“Viacom”

Record References

References to the State’s Petition for Review
are in the form..... (State’s Pet. at [page #].)

References to the Final Judgment of the Trial Court
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STATEMENT OF CASE

Nature of the Case: This is an appeal from a condemnation proceeding that was brought by the State of Texas to acquire real property located in Dallas County, Texas.

Trial Court: The Honorable Bruce Woody, County Court at Law Number 4 of Dallas County.

Trial Court’s Disposition: The trial court entered a judgment on the jury verdict awarding \$1,850,000 to CESA and Viacom jointly.

Parties in the Court of Appeals: The State of Texas was appellant;
CESA and Viacom were the appellees.

Court of Appeals' Opinion: *State v. Central Expressway Sign Associates, et al.*, 238 S.W.3d 800 (Tex. App. – Dallas 2007, pet. filed) (opinion by Justice O'Neill, joined by Justices Moseley and Lagarde). The Dallas Court of Appeals unanimously affirmed the judgment of the trial court and denied the State's Motions for Rehearing and Rehearing En Banc.

RESPONSE TO STATEMENT OF JURISDICTION

Respondents disagree that this Court has jurisdiction under Texas Government Code sections 22.001(a)(2), 22.001(a)(4), and 22.001(a)(6).

There is no reason for this Court to exercise its discretionary jurisdiction to hear this case. In particular, the court of appeals' opinion does not overrule or impinge upon the general rule under Texas case law that loss of business profits is not a compensable damage. Rather, it falls within the firmly entrenched exception adopted by this Court that "evidence of profits derived from the *intrinsic nature of the real estate* itself, as distinguished from profits derived from operating a business on the land, can be considered in determining land value." *Herndon v. Housing Auth. of Dallas*, 261 S.W.2d 221,222 (Tex. Civ. App. – Dallas 1953, writ ref'd)(emphasis added). Indeed, the court of appeals was correct in holding that the trial court did not abuse its discretion in excluding the valuation testimony of State's appraiser because he failed to value the land taken in accordance with the undivided fee rule, i.e. he valued only the interest of CESA and ignored that of Viacom. As such, no error of law has been made nor is there a conflict within the courts of appeal; this Court does not have jurisdiction under either Sections 22.001(a)(2) or 22.001(a)(6) of the Government Code.

Further, this Court does not have jurisdiction on the grounds of Section 22.001(a)(4) of the Government Code as the judgment entered by the trial court awarding \$1,850,000.00 to CESA and Viacom and affirmed by the court of appeals was legally sufficient and within the range of the competent evidence admitted without objection at trial.

Quite simply, this case presents no issue which demands this Court's exercise of jurisdiction.

STATEMENT OF ISSUES

1. Did the court of appeals correctly conclude that the trial court's exclusion of the State's appraiser was not an abuse of discretion where the State's appraiser: (i) failed to adhere to the undivided fee rule, and (ii) failed to consider Viacom's interest in determining the fair market value of the subject property? (*In reply to Issue 1 in State's Pet. at p. x*)

2. Did the court of appeals correctly conclude that the advertising revenue generated by the subleases of the signboard and shared jointly by Viacom and CESA was compensable where: (i) the lease of the signboard was location specific, (ii) the advertising contracts required little, if any, work from Viacom, and (iii) the revenue cannot be replicated?
(*In reply to Issue 1 in State's Pet at p. x*)

3. Did the court of appeals correctly conclude that the evidence admitted at trial without objection was legally sufficient to support the jury's finding of fair market value? (*In reply to Unbriefed Issues 2 and 3 in State's Pet. at p. x*)

TO THE HONORABLE SUPREME COURT OF TEXAS:

Respondent, CENTRAL EXPRESSWAY SIGN ASSOCIATES, submits this Response in Opposition to Petition for Review filed by the State challenging the decision of the Court of Appeals, which unanimously affirmed the trial court’s entry of judgment on the jury’s verdict of \$1,850,000.00. This Court should deny review because the Court of Appeals did not err in rendering its opinion, and because the decision of the Court of Appeals does not conflict with any prior decision of this Court or the courts of appeal.

STATEMENT OF FACTS

This case concerns the condemnation of a leased signboard easement owned by CESA and leased by Viacom at the southeast corner of IH-635 (“LBJ”) and US-75 (“Central Expressway”). 3 RR 36. Viacom subleased this signboard site to various end-use advertisers; the resulting rental income was shared between CESA and Viacom. 3 RR 33-34.

Prior to trial, the State reached a settlement with Viacom which, however, remained a party to the suit. Viacom also reached a pre-trial settlement agreement with CESA regarding the apportionment of any jury award. As a result of this settlement, Viacom did not attend the trial proceedings.¹

¹ Final Judgment at 2-3.

Prior to trial, the court struck the State's valuation expert Grant Wall, because he utilized an improper appraisal method and did not include the leasehold interest in his value of the property. To value the easement, he capitalized only income shared by CESA rather than the total sublease income being received by both Viacom and CESA. The court of appeals agreed with the trial court's ruling that Wall's appraisal did not properly determine *the fair market value of the land taken*. 2 RR 218. The CESA appraisal witness, who classified the signboard as realty in his appraisal, was likewise struck as the trial court found the signboard to be personalty.

The jury nevertheless heard competent testimony regarding the value of the property from other witnesses of both the State and CESA. The two real estate developers who jointly own CESA as well as other signboards both testified that they determined the value of the signboard location, as is done in the industry, by capitalizing its total sublease rental income of \$14,000 per month; they opined that the fair market value of the billboard property taken by the State was between \$2 and \$2.7 million. 3 RR 43-45; 4 RR 96-97, 109-111.

The jury also heard State-introduced valuation testimony from the Right of Way Administrator for the Dallas District of the Texas Department of Transportation, Terry May. 5 RR 8, 10-11. On the stand, May authenticated letters

in which he advised Dallas city officials that the subject property could “easily” be valued at \$1.5 million. 5 RR 7-8.

At the end of the trial, with no objection by either party, the jury was charged with a single issue: “What amount do you find was the fair market value of the land taken on August 17, 2000 by the State of Texas.”² The jury found the value to be \$1,850,000.00 – an amount within the range of \$1.5 million to \$2.7 million, which was the competent valuation evidence presented at trial without objection.

Thereafter, the trial court ordered that: (1) the judgment on the jury’s verdict be “awarded jointly to” CESA and Viacom, and “distributed as agreed between” CESA and Viacom,³ and (2) the State “have and recover” the land which included the “easement owned by CESA and the leasehold owned by Viacom.”⁴

SUMMARY OF ARGUMENT

The standard for reviewing a trial court’s decision to exclude a party’s testifying expert is abuse of discretion.⁵ In a proper and appropriate application of the laws governing compensation to landowners in eminent domain cases, the Court of Appeals correctly held that the trial court did not abuse its discretion in excluding the State’s appraisal expert’s valuation testimony where he failed to

² Jury Charge at 4.

³ Final Judgment at 6.

⁴ Final Judgment at 5.

⁵ *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 629 (Tex. 2002).

value the land taken (which was subject to a lease) in accordance with the long standing undivided fee rule. Moreover, the court of appeals' finding that revenue generated by the subleases of the subject signboard location was compensable is directly in line with Texas case law which permits landowner compensation to be based upon capitalized revenue where such is derived from the intrinsic nature of the real estate, is independent of the operator's business acumen and good will, and cannot be replicated.

In light of its proper ruling regarding the compensability of the sublease revenue and the State's failure to preserve error as to the testimony of the landowners, the Court of Appeals' concluded correctly that the evidence presented at trial without objection, by both the State and CESA, was legally sufficient to support the jury's verdict, which was in the range of the valuation testimony.

Therefore, this case presents no issue which demands the exercise of jurisdiction by this Court and thus, the Petition for Review should be denied.

ARGUMENT

I. The Court of Appeals Holding is consistent with Texas case law

a. The Court of Appeals properly found that the undivided fee rule should be applied to value the land taken

In this case, there was a lease on the land taken by eminent domain; it is undisputed by all parties that any determined fair market value of the land taken must include the value of both the interest of the lessor (CESA) and the interest of

the lessee (Viacom).⁶ To ascertain their respective values under Texas law, Texas courts have unwaveringly held that these interests must be valued as a part of the whole property taken as if owned by one party in accordance with the undivided fee rule.⁷ Only after the jury determines the fair market value of the whole property taken can the award then be apportioned among the owners according to their agreement or respective ownership interests.⁸ Here, the pleadings, the evidence adduced at trial, and the issue submitted in the jury charge met this standard; therefore, the actions of the trial court and court of appeals in applying the undivided fee rule and affirming the jury's verdict were all together proper and lawful.⁹ Thus, the legal standard set forth by this Court for valuing property such as the subject signboard easement was met and no further court review on this point is necessary.

b. The appraisal of the State's expert was properly struck by the trial court as violative of the undivided fee rule

As was testified at trial, signboard locations, as income-producing realty, are evaluated within the industry by applying a capitalization rate or multiplier to the

⁶ *State v. Central Expressway Sign Associates, et al.*, 238 S.W.3d 800, 804 (Tex. App. – Dallas 2007, pet. filed).

⁷ *See, e.g., Weingarten Realty Investors v. Albertson's, Inc.*, 66 F. Supp.2d 825, 847 (S.D. Tex. 1999) (“in condemnation proceedings where the property sought is subject to a lease, the judge or jury first determines the market value of the entire property interests as though it belonged to one person, then the fact finder apportions the market value as between the lessee and owner of the fee.”); *Urban Renewal Agency of Lubbock v. Trammel*, 407 S.W.2d 773, 774 (Tex. 1966); *State v. Ware* 86 S.W.3d 817, 822-823 (Tex. App. – Austin 2002, no pet.).

⁸ *See Urban Renewal Agency*, 407 S.W.2d at 774; *Ware*, 86 S.W.3d at 822-823.

⁹ *Central Expressway Sign Assocs.*, 238 S.W.3d at 804.

respective site-generated gross income.¹⁰ Contrary to this standard and the tenets of the undivided fee rule, the State’s appraiser improperly determined the fair market value of the whole signboard easement by capitalizing *only* the rental income attributable to the CESA interest. Consequently, he completely neglected to capitalize the revenue attributable to Viacom’s interest which comprised 75 per cent of the gross rental revenue paid for advertising at that location. It follows that Wall’s opinion of value improperly diminished the fair market value of the land taken by 75 per cent. This appraisal approach was found by the trial court and confirmed by the court of appeals to be “unreliable” and in derogation of the undivided fee rule.¹¹ The State contended that it disregarded Viacom’s share of the profits because such was generated through advertising and was effectively “business income” or “business profits.”¹² This contention was rejected by both the trial court and court of appeals because the location and not the billboard or business intangibles of Viacom generated the rental income received from the sublease. The State’s value, which was based upon such a faulty premise, was thus correctly excluded and this Court should affirm same under the logic set forth in the court of appeals opinion.¹³

¹⁰ *City of Harlingen v. Estate of Sharboneau*, 48 S.W.3d 177 (Tex. 2001) (“the income approach to value is appropriate when property would, in the open market, be priced according to the income that it already generates.”).

¹¹ *Central Expressway Sign Assocs.*, 238 S.W.3d at 804.

¹² *Id.*

¹³ *Id.* at 803-805.

c. The landowners' valuation testimony adhered to the undivided fee rule

“Central Expressway Sign Association [sic] was the owner of a perpetual signboard easement... and Viacom was the owner of the leasehold interest in the land and off premise sign... these interests constituted the joint ownership interest in the Land being condemned on the date of trial upon which value evidence was presented.”¹⁴ As this excerpt from the final judgment reflects, competent valuation evidence was presented at trial that adhered to the tenets of the undivided fee rule. Indeed, the valuation witnesses for CESA valued the property as though undivided and owned by one party. Both arrived at their respective land values by applying a capitalization rate to the rental income flowing to the signboard location from the subleases as is proper in valuing such an income producing property.

Just as the landowners' testimony adhered to the undivided fee rule, so too did the charge of the court to the jury. At the conclusion of the trial, the jury was presented with one issue: “what amount do you find was the fair market value of the **land** taken on August 17, 2000, by the State of Texas?”¹⁵ In being asked to value “the land taken,” the jurors were charged with determining a singular value for all interests in the property as is required by the undivided fee rule.

¹⁴ Final Judgment at 2-3 (“Counsel for Viacom, having previously reached settlement with CESA concerning apportionment of amounts to be received at trial, therefore was not required to attend further trial proceedings.”).

¹⁵ Jury Charge at 4 (emphasis added).

In recognizing that the State did not object to the above cited jury charge, the court of appeals highlights that the State cannot now take “the simultaneous and inconsistent position that only CESA’s encumbered interest should have been valued.”¹⁶ The State did not amend its petition nor can it ex post facto alter the property interests that were taken. Therefore, and as the court of appeals emphasized, since neither the State, CESA, nor Viacom complained on appeal or at trial about the charge to the jury or the subsequent final judgment entered by the trial court,¹⁷ such objections were waived, can no longer be raised, and therefore should not be reviewed further by this Court.

II. The Court of Appeals properly applied the *Herndon* exception to the business profits rule to the facts of this case

The State spends the bulk of its petition contending that “it was not proper” for the trial court to permit valuation testimony that accounted for Viacom’s interest in the property.¹⁸ Yet, it confusingly agrees that the undivided fee rule requires that the valuation of the property taken include the interest of both CESA and Viacom.¹⁹ It seems the State’s inconsistent argument regarding the valuation of the property taken is born from its misguided interpretation of the general rule in

¹⁶ *Central Expressway Sign Assocs.*, 238 S.W.3d at 804.

¹⁷ *Id.* at 804. *See Missouri Pacific RR Co. v. Cross*, 501 S.W.2d 868, 872 (Tex. 1973) (highlighting that objections to the charge not made before the charge is read to the jury “shall be considered waived”). *See also* TEX. R. CIV. P. 274 (“Any complaint as to a question, definition, or instruction, on account of any defect, omission, or fault in pleading, is waived unless specifically included in the objections.”)

¹⁸ State’s Pet. at 8-15.

¹⁹ *Central Expressway Sign Assoc.*, 238 S.W.3d at 804.

Texas condemnation law that “profits received from conducting a business on property are generally not admissible to prove value in an eminent domain case.”²⁰

As the court of appeals properly found, this rule is inapplicable to the case at bar.²¹

The rationale behind the “business profits rule” is twofold: (1) the business (which was not taken as only real estate may be condemned) can usually be replicated by operating at a new location, and (2) the amount of profit earned by the business is more dependent on the capital invested, the business acumen of the operator, and the general business conditions than on the actual location of the business.²² In light of this rule, the State asserts that it is improper to consider Viacom’s interest in determining the fair market value of the land taken because it includes the advertising revenue accruing from the subleases of the billboard.²³ Such an assertion disregards the well entrenched exception that was crafted by the Dallas Court of Appeals and adopted by this Court: “evidence of profits derived from the **intrinsic nature of the real estate** itself, as distinguished from profits derived from operating a business on land, can be considered in determining land

²⁰ *Central Expressway Sign Assoc.*, 238 S.W.3d at 805 (citing *Herndon v. Housing Auth. of City of Dallas*, 261 S.W.2d 221, 222 (Tex. Civ. App. – Dallas 1953, writ ref’d). *See also Reeves v. City of Dallas*, 195 S.W.2d 575, 582 (Tex. Civ. App. – Dallas 1946 (writ ref’d n.r.e.) (“loss of business, profits, good will... are not recoverable”).

²¹ *Central Expressway Sign Assoc.*, 238 S.W.3d at 805.

²² *Id.* at 805 (citing *Herndon*, 261 S.W.2d at 222).

²³ State’s Pet. at 11.

value.”²⁴ “Intrinsic” in this context most nearly means “not dependent on external circumstances.”²⁵

Testimony from the landowners along with the lease provisions for the billboard site make it crystal clear that not only was the income flowing from the sublease of the site directly tied to the location of the subject property, but these rentals were dependent little, if at all, on external circumstances or factors associated with Viacom or otherwise, i.e. the location of the signboard was the sole determinant of rental value. As the court of appeals highlighted, the advertising contracts for the billboard site were location specific, with the site being situated in a “very busy location in North Dallas.”²⁶ These contracts required only a modicum of work from Viacom,²⁷ and the actual value of Viacom’s physical billboard structure in reality “was insignificant to the value of the billboard site”;²⁸ rather, the extraordinary traffic counts and the premium visibility engendered interest from advertisers. Most importantly, the revenue generated from such a unique location (unlike businesses subject to the business profits rule) could not be replicated.²⁹

²⁴ *Central Expressway Sign Assocs.*, 238 S.W.3d at 805. (emphasis added) (citing *Herndon v. Housing Auth. of City of Dallas*, 261 S.W.2d 221, 222 (Tex. Civ. App. – Dallas, 1953, writ ref’d).

²⁵ *Black’s Law Dictionary* 842 (8th ed. 2004).

²⁶ *Central Expressway Sign Assocs.*, 238 S.W.3d at 805.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 806 (urging that making the contention that the rentals flowing to this signboard site could be replicated is like saying “ordinary rent is replicated when a landlord generates income after acquiring another rental property”²⁹ -- it’s just not true.).

This signboard site was not only uniquely marketable and attractive to advertisers, but was it to be relocated to another location such as an urban neighborhood it would lose practically most, if not all, its total value. Quite clearly, the location of this signboard at Central Expressway and LBJ Freeway dictated the extraordinary advertising revenue, not the billboard itself, nor the good will or acumen of Viacom.

Hence, the court of appeals properly followed the *Herndon* exception³⁰ and in concluding that the advertising revenue was derived from the **intrinsic nature** of the real estate as the amount paid to advertise was “**largely (if not completely) based on the location of the billboard site**” rather than the business acumen, capital, or good will of Viacom.³¹ As a result of this conclusion, the court of appeals correctly found that the income generated from advertising on the billboard was “generated by the real property upon which the billboard structure [was] located,”³² rather than the actual billboard; therefore, the fair market value determination of the billboard easement must include both the interests of CESA and Viacom.

³⁰ *Herndon*, 261 S.W.2d at 222.

³¹ *Central Expressway Sign Assocs.*, 238 S.W.3d at 805.

³² *Id.*

III. The Court of Appeals properly found that the exclusion of Grant Wall by the Trial Court was not an abuse of discretion

In its petition for review, the State takes issue with the court of appeals' finding that the trial court did not abuse its discretion in excluding the valuation of testimony of Grant Wall;³³ this contention, once again, stems from the State's mistaken interpretation of the law regarding the compensability of business profits in eminent domain cases. To this end, the State argues that Grant Wall should not have been struck because his appraisal properly omitted Viacom's interest, which he maintained included business profits.³⁴

Texas law holds that expert testimony must be both relevant and reliable to be admissible.³⁵ While the relevancy requirement is satisfied if the expert testimony is "sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute," the reliability requirement will be met if the expert's opinion "comports with applicable professional standards outside the courtroom"³⁶ and is grounded in the methods and procedures of science.³⁷

³³ State's Pet. at 8.

³⁴ State's Pet. at 6-8.

³⁵ *Zwahr*, 88 S.W.3d at 629.

³⁶ *Harris County Appraisal Dist. v. Kempwood Plaza Ltd.*, 186 S.W.3d 155, 158 (Tex. App. – Houston 2006, no pet.) (citing *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2001)).

³⁷ *Zwahr*, 88 S.W.3d at 629 (quoting *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995)).

Trial court rulings regarding the exclusion of expert witnesses are reviewed under an abuse of discretion standard.³⁸ A trial court's judgment cannot be reversed merely because this Court would have concluded otherwise, nor should it be overturned merely because the Court believes the trial court made an error in judgment.³⁹ Quite simply, trial courts enjoy "wide latitude" in determining whether expert testimony is relevant and reliable and thereby admissible.⁴⁰

By admitting that he failed to value Viacom's interest in his valuation of the property taken,⁴¹ Wall revealed to the trial court that his testimony was: (1) irrelevant as it was not "sufficiently tied to the facts of the case" (i.e. both CESA and Viacom's interests were being condemned, yet both were not valued by him), and (2) unreliable in that he failed to adhere to the dictates of the undivided fee rule and hence the appropriate appraisal standards under Texas law.⁴² Because the jury was being asked to determine the fair market value of both CESA's and Viacom's interests jointly as though owned by one party, Wall's valuation testimony was struck because it failed to address the issue before the jury. As a result, the court of appeals properly held that the trial court, which is afforded "wide latitude" in making these decisions, did not abuse its discretion in finding Wall's testimony irrelevant and unreliable and therefore inadmissible.

³⁸ *Kempwood Plaza Ltd.*, 186 S.W.3d at 157 (citing *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 718-19 (Tex. 1998)).

³⁹ *Kempwood Plaza Ltd.*, 186 S.W.3d at 157 (citing *Gammill*, 972 S.W.2d at 718-19).

⁴⁰ *Id.*

⁴¹ 2 RR 80, 100-101. *See also Central Expressway Sign Assocs.*, 238 S.W.3d at 803.

⁴² *Central Expressway Sign Assocs.*, 238 S.W.3d at 806.

IV. The Court of Appeals properly held that the evidence presented at trial was legally sufficient to support the jury's verdict

The State chose not to brief its issues regarding the competency of the evidence presented at trial and hence the legal sufficiency of the evidence to support the jury's verdict. Nevertheless, it should be highlighted that the court of appeals properly concluded that the evidence presented at trial, by both CESA and the State, was legally sufficient to support the jury's verdict; moreover, any points of error that could have been raised by the State on this issue were not properly preserved.

In addressing a legal sufficiency or "no evidence" point, "if there is more than a scintilla of probative evidence in the record to support the finding," this Court must overrule the legal sufficiency point and affirm the jury's finding.⁴³ Both CESA and the State presented competent evidence at trial which supported the award made by the jury.

CESA's competent evidence came in the form of testimony from the two principals of CESA, who were real estate professionals and owners of other signboards.⁴⁴ Each testified as to the value of the property being taken as between \$2.0 and \$2.7 million.⁴⁵ In so doing, the landowners informed the jury that they

⁴³ *Leitch v. Hornsby*, 935 S.W.2d 114, 118 (Tex. 1996)(citing *Stafford v. Stafford*, 726 S.W.2d 14, 16 (Tex. 1987)).

⁴⁴ *Hochheim Prairie Farm Mut. Ins. Ass'n v. Burnett*, 698 S.W.2d 271, 276 (Tex. App.-Fort Worth 1985, no writ) (finding that a trial court's ruling to permit a landowner/lay witness to testify as to the market value of his property should not be disturbed unless a clear abuse of discretion is shown).

⁴⁵ 3 RR 45; 4 RR 96-97, 109-112.

included all of the rental income flowing jointly to Viacom and CESA for three reasons: (1) they were valuing the land being taken, i.e. both the interests of CESA and Viacom in accordance with the undivided fee rule, (2) the income received by Viacom was not business profits, but rather was rental income tied to the subleases of the location of the signboard which by its very terms was site specific, and (3) the location of the signboard was the sole determinant of the rental rates according to industry practice. Both landowners are real estate professionals,⁴⁶ who own other signboards and both testified to the fair market value of the signboard easement (which included the interests of both CESA and Viacom) under the “willing buyer, willing seller” standard set forth by this Court.⁴⁷

To that end, Texas courts have in similar situations uniformly recognized that if a landowner is competent to “offer relevant testimony regarding the value of his own property, then that testimony should be sufficient upon which to base a jury finding, especially when, as here, the landowner testifies that he is experienced in buying and selling property” in the same general marketplace.⁴⁸ There can be no question that the competent evidence offered at trial proved the value of the land taken by more than a “mere scintilla.” Moreover, the jury’s verdict of \$1.85 million quite plainly fell within that range of the testimony, which

⁴⁶ See 3 RR 19-20.

⁴⁷ 4 RR 43

⁴⁸ *Cameron Cty. Drainage Dist. v. Gonzales*, 69 S.W.3d 820 (Tex. App. – Corpus Christi 2002, no pet.).

was \$1.5 million to \$2.7 million.⁴⁹ And, in the end, “the jury is enlightened to give weight to the evidence and render its own conclusion;”⁵⁰ and, in light of plainly legally sufficient evidence presented before the jury, such a conclusion, in this case, should not be reviewed further by this Court.

CONCLUSION AND PRAYER

For the foregoing reasons, CESA submits that the Court of Appeals’ opinion was correct in all respects. Accordingly, CESA prays that the State’s petition for review be denied and for all other relief to which CESA may be justly entitled.

Respectfully submitted,

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⁴⁹ *Reeves*, 195 S.W.2d at 578 (punctuating that it is well known that valuation testimony “fluctuates greatly according to the interest of the witness in the subject matter of the suit, or according to who calls him as a witness. Such evidence gives the jury wide latitude in determining the value of such testimony, and in drawing their own just conclusion.”).

⁵⁰ *Reeves*, 195 S.W.2d at 579.

CERTIFICATE OF SERVICE

This is to certify that on the March 14, 2008, a true and correct copy of the foregoing, RESPONSE IN OPPOSITION TO STATE'S PETITION FOR REVIEW, has been sent by U.S. regular mail, as follows to the following:

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