



# TRUE NORTH LAW

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## **THOR HEARNE AND ANDREW BRIGHAM DEFEND FLORIDA LANDOWNERS' RIGHT TO BE MADE WHOLE WHEN THEIR PROPERTY IS CONDEMNED**

ATLANTA, GA – Last week the Eleventh Circuit Court of Appeals in Atlanta heard oral argument in *Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy County, et al. (Sabal Trail v. Thomas Family)*. This is the latest in a series of lawsuits between landowners and interstate natural gas pipeline conglomerates. The outcome of the case will affect similarly-situated landowners in Florida and beyond.

The Thomas family owned a watermelon and peanut farm through which Sabal Trail wanted to build an interstate natural gas pipeline. The pipeline company only offered to pay the Thomas family a fraction of the value of the property that a jury later determined the Thomas family's property was worth. The Thomas family endured years of litigation against the pipeline company and, in the end, the pipeline company lost, and the jury returned a verdict in favor of the Thomas family. Most landowners, when confronted with the prospect of fighting a huge company in court for years, are forced to accept whatever payment the company decides to offer.

Andrew Prince Brigham of the Brigham Property Rights Firm of Jacksonville, Florida, represented the Thomas family in federal district court and at the Eleventh Circuit. Thor Hearne of True North Law argued the case in the Eleventh Circuit. Brigham and Hearne are both members of Owners' Counsel of America, an exclusive, invitation-only association of the best litigator in each state who advocates on behalf of landowners.

When the Thomas family denied Sabal Trail's offer, Sabal Trail challenged not only the amount of compensation the Thomas family thought was fair for the land Sabal Trail took, but also challenged Florida's substantive state law guarantee that private landowners whose property is condemned for a pipeline must be made whole and the pipeline company must pay the owner the "full compensation" necessary to make the owner whole – including interest, attorneys' fees, and litigation expenses.

Sabal Trail argued that it shouldn't be required to pay landowners' attorneys' fees when it condemns their land and forces the landowners into court. Sabal Trail asked the Eleventh Circuit to break with the Eleventh Circuit's own precedent and rule contrary to the Third and Sixth Circuits. Under the federal Natural Gas Act, the federal government granted Sabal Trail a license allowing the pipeline company to condemn private property for a natural gas pipeline.

Florida's state constitution guarantees private landowners that, if their property is condemned through eminent domain, the condemning authority must pay the owner the "full" measure of compensation, which includes reimbursing the owner's attorneys' fees and litigation expenses and interest for the delay in paying the owner. The pipeline company argued it need only pay nominal interest and needn't reimburse any of the Thomas family's legal fees and litigation expenses. The

pipeline company said this was so because the federal law “displaced” Florida’s state law property rights with a new and different “federal common law” that did not require the pipeline company to make the Thomas family whole and did not require the pipeline company to reimburse the Thomas family’s attorney fees and interest as provided under Florida law.

*Sabal Trail v. Thomas Family* involves issues of constitutional law that sweep even more broadly than the Natural Gas Act. Sabal Trail’s argument that it can take private property and not pay the owner the full measure of compensation Florida law requires raises significant constitutional issues concerning the measure of compensation when the congressional act authorizing a private licensee to use eminent domain is silent as to whether federal or state law supplies the “rule of decision.” The correct answer to such question rests upon principles of federalism defining the relationship between the federal government and the states dating back to the Supreme Court’s famous Depression-era case, *Erie Railroad Co. v. Tompkins*.

In *Erie*, the Supreme Court overruled the Court’s prior decision in *Swift v. Tyson* and held (in a decision written by Judge Brandeis) that, “[e]xcept in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. ...There is no federal general common law.” 304 U.S. 64, 78 (1938).

Rather, the Supreme Court held, the federal government looks to state law to define the owner’s legal rights not some federal common law. In other words, that interest a Florida landowner has in his or her land is guaranteed by, and defined by, Florida’s law and constitution. There is no federal common law defining the property rights a Florida landowner (or landowner in any other state) has in their private property.

The specific question the Eleventh Circuit considered in *Sabal Trail v. Thomas Family* was whether, when a private for-profit pipeline company is granted a license by a federal agency allowing the pipeline to take an owner’s land, must the pipeline company pay the owner the “full measure” of compensation for the owner’s property as the owner’s property is defined by state law, or whether some federal common law has displaced the state’s substantive law defining an owner’s property. Because Florida’s constitutional measure of “full compensation” includes the payment of the owner’s attorneys’ fees and costs, a precedent actually established by Mr. Brigham’s grandfather in the 1950 landmark Florida case, *Dade Co. v. Brigham*, 47 So.2d 602 (Fla. 1950), the crux of the case for the Thomas family was whether they would have an *equal footing* to defend their property rights. Practically speaking, unless the measure of compensation included payment of the owner’s attorneys’ fees and costs, there would be no way the Thomas family, or any other small landowner, would be able to stand-up against a billion-dollar private licensee energy company such as Sabal Trail.

A 1982 *en banc* Fifth Circuit decision (which is binding on the subsequently-created Eleventh Circuit) *Georgia Power Co. v. Sanders*, 617 F.2d 1112 (5th Cir. 1980), directs that – especially in matters of property law – federal courts look to state substantive law to provide the rule of decision even when the power of eminent domain was granted a private contemnor by a federal law, such as the Natural Gas Act or the Federal Power Act.

Copies of the briefs filed on behalf of the Thomas family are available [here](#). A recording of the recent argument in *Sabal Trail v. Thomas Family* is available [here](#).

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