IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 68,593

FLORIDA POWER & LIGHT COMPANY,

Appellant,

vs.

S. B. JENNINGS a/k/a BRYAN JENNINGS, JR., et al.,

Appellees.



# BRIEF OF FLORIDA POWER CORPORATION AND TAMPA ELECTRIC COMPANY AS AMICI CURIAE, IN SUPPORT OF POSITION OF APPELLANT

ON APPEAL FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

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## PREFACE

For the purposes of this appeal, Appellant, FLORIDA POWER & LIGHT CO., Petitioner in the eminent domain proceedings in the trial court, shall be referred to herein simply as "Appellant". Appellees, S. B. JENNINGS, GORDON R. SANDRIDGE, JR. and SOUTHSIDE PROPERTIES, Defendant Landowners in the trial of this cause, shall be referred to herein solely as "Appellees".

FLORIDA POWER COMPANY and TAMPA ELECTRIC COMPANY, as Amici Curiae, shall be referred to hereinafter simply as "Amicus". All references to pages in the transcript of the trial of this cause will be designated by the symbol "T" followed by the page number of said transcript. All references to the Appendix in this cause will be designated by the symbol "A" followed by the page number of said appendix.

## STATEMENT OF THE CASE AND FACTS

Florida Power Corporation and Tampa Electric Company, as Amici Curiae, accept the Statement of the Case and Facts as set forth in the Appellant's Initial Brief.

## INTRODUCTION

The First District Court of Appeal acknowledged in Florida Power & Light v. Jennings, 485 So.2d 1374 (Fla. 1st DCA 1986) that its decision conflicts with the decision rendered in Casey v. Florida Power Corporation, 157 So.2d 168 (Fla. 2nd DCA 1963) and recognized that its ruling was a matter of great public importance. The District Court thus certified the following question to this Court:

> "Is evidence of the existence of fear and its effect on market value admissible as a factor in property valuation, if it is shown that the fear is reasonable."

This Court has jurisdiction in this case based upon the properly acknowledged conflict and the certification of a question of great public importance by the First District Court.

Based upon its review of the subject opinion, the pleadings, exhibits and transcript of the trial of this cause, Amicus respectfully submits the following as the issues to be resolved by this Court:

I. May evidence of fear be considered by the jury as an element of damage in condemnation property valuation proceedings?

II. If evidence of fear is admissible in property valuation proceedings, should the jury also consider evidence of the reasonableness of such fear or should the evidence be restricted to the effect of fear upon fair market value?

## SUMMARY OF ARGUMENT

Opinion evidence as to value based upon fear, unsightliness and potential future personal injury is too speculative and conjectural to be considered by the jury as an element of damage in eminent domain actions. The admission of such testimony cannot possibly result in fair and just compensation. The expansion of the scope of admissible opinion testimony adopted by the District Court in the case at bar will drastically affect all future eminent domain actions and convert said in rem proceedings into a parade of horrors. Evidence of fear of a noncompensable consequential damage should not be permitted to confuse the issues involved in property valuation proceedings. Only evidence germane to establishing the value of the property acquired and the amount of damage, if any, to the remainder should be admissible.

If evidence of fear is to be admitted as an element of damage in condemnation trials, then such evidence must be restricted so that the same relates only to the effect of fear upon fair market value. Evidence concerning the factual basis or reasonableness of the cause of the fear is unfairly prejudicial, inflammatory and irrelevant to a proper determination of just compensation.

## ARGUMENT

### I

### EVIDENCE OF FEAR SHOULD NOT BE CONSIDERED BY THE JURY AS AN ELEMENT OF DAMAGE IN CONDEMNATION PROPERTY VALUATION PROCEEDINGS.

In 1963 the Second District Court of Appeal announced in Casey v. Florida Power Corporation, 157 So.2d 168 (Fla. 2nd DCA 1963) that opinion evidence as to value in condemnation cases based upon fear and unsightliness is too speculative and conjectural to be considered as an element of damage to adjacent lands. Until Florida Power & Light Company v. Jennings, 485 So.2d 1374 (Fla. 1st DCA 1986), not one appellate court in this state readdressed this issue. Yet during those 23 years, as the reported cases and the record herein reflect, many miles of electrical transmission lines, such as the 500 kv line involved in the case at bar, have been constructed from one end of the state to the other.

In contrast to Casey, the First District Court, in Jennings, proclaimed that evidence of the existence of fear and its effect on market value may be admitted in evidence as a factor or circumstance to be considered by the trier of fact in a property valuation proceeding, so long as it is shown that the fear has a reasonble basis. Said Court thus sanctioned the admission of opinion testimony by expert witnesses concerning potential adverse biological effects of exposure to electro-magnetic fields. Amicus submits that the Jennings decision should be reversed, for such expert testimony must be excluded from jury consideration in property valuation proceedings in order that just compensation be determined fairly without the prejudicial influence of inflammatory, irrelevant factors.

Power companies, as quasi public corporations, are not unmindful of their obligation to pay full compensation to property owners whose lands must necessarily be condemned in order for the utility companies to perform their statutory obligation to render public service. These companies are equally conscious of their responsibility to their rate-paying customers not to pay more compensation to landowners in condemnation proceedings than the interest in the property being acquired is worth. This attempt to balance the utility company's responsibility has prompted Florida Power Corporation and Tampa Electric Company to intervene in this cause. This Court's resolution of the issues herein will greatly affect the methodology employed in the trial and determination of just compensation in all future eminent domain property valuation proceedings. While certainly the landowner must be fairly compensated for the taking of his property and the damages to the remainder, the procedure to arrive at the determination of just compensation must at the same time be fair to the citizens of Florida who must indirectly pay the cost of such acquisitions. That such issues are of great public importance is beyond question.

It cannot be overemphasized that the only objective of a condemnation proceeding is the proper determination of the amount of full and just compensation that a landowner should receive for the damages suffered as a result of the taking of his property. The only evidence relevant to said determination should pertain either to (1) the value of the property acquired or (2) the amount of damage, if any, to the remainder of the parent tract. Extraneous

evidence not germane to these two factors should be excluded from the jury's consideration.

Historically, in Florida and throughout the United States, the starting point for the determination of just compensation has been fair market value. Florida Eminent Domain Practice and Procedure, (Third Edition, 1977), page 152. And the conventional method of determining fair market value is by comparing the pre-condemnation value of the property and its post condemnation value. Kendry v. Department of Transportation, 366 So.2d 391 (Fla. 1978). In fact, in the standard jury instructions promulgated by this Court to guide the jury in determining just compensation in condemnation cases, the jury is advised to consider the price at which a willing seller, under no compulsion to sell, would convey his property to a willing buyer under no compulsion to buy, with each party acting fairly and with full knowledge of all the facts. Said price constitutes the true market value.

While this and other Florida appellate courts have emphasized that full and fair value is the test to be applied in arriving at compensation, market value, as established by a comparison of the sales of similarly situated properties is the criteria most commonly utilized if a market for similar property can be found. If a market of comparable sales cannot be established, Florida courts have sanctioned the use of the income approach, the cost approach and even the cost to cure the loss of value methodology. Hill v. Marion County, 238 So.2d 163 (Fla. 1st DCA 1970); McNayr v. Claughton, 198 So.2d 366 (Fla. 3d DCA 1967)

But no matter what method of valuation is used, the intent and objective is always to ascertain the land value lost because of the taking and the amount of compensation necessary to make the condemnee whole. Dade County v. General Waterworks Corporation, 267 So.2d 633 (Fla. 1972).

There is no evidence in the record before this Court to show that the traditional methods of ascertaining the market value of the property acquired and the damage to the remainder were not applicable in this cause to achieve the aforementioned objective. There is certainly no evidence in the record before this Court that lands encumbered with power lines throughout the state have not sold in the past and do not continue to sell. In fact, all of the expert appraisers in the case at bar found sufficient numbers of comparable sales of similarly situated property both on and away from power lines, which sales occurred before and after the taking. Thus, it cannot be said that expert real estate appraisers could not determine the impact of the construction of the transmission line over the subject property by analyzing pre-condemnation values as compared to post condemnation values. Each appraiser was, in fact, able to establish a fair market value. The testimony reflects that said appraisers found sales of property encumbered by power lines both of a lesser voltage than that involved herein and of the same voltage and even sales of property on the very same line being condemned. Indeed, Appellee's real estate appraiser, Ronald K. Moody, in describing the before and after taking market in this cause, testified:

> "Every one of those sales are located, let's say on the 240 kv line, then along comes the new kv line. Every one of them had an existing line and the people that bought those properties, they were very aware of the new kv line coming in. I think that is perfect market evidence." (T-862).

The expert appraisers in this case determined to their satisfaction the comparability of the sales used and were able to ascertain what they considered to be the damage to the remaining property resulting from the subject power line acquisition. Amicus submits that if, as in the case sub judice, land valuation experts are able to ascertain the depreciated value of remainder property from their analysis of comparable sales, then their objective has been accomplished. There is no need to consider extraneous evidentiary factors.

Notwithstanding the fact that the expert appraisers were able to determine the before and after value of the subject property, the jury herein was inundated with opinion testimony relating to potential biological effects attendant to electrical facilities. Testimony by a professor of electrical engineering concerning electric fields from power lines and the noise emanating from high voltage lines was deemed by the Court to have been properly admitted. So, too, was said expert's opinion that electrical energy has a coupling effect on the human body that results in long term chronic effects. Also, testimony by an epidemiologist was introduced concerning a study she had made wherein she concluded that children with cancer lived near power lines that put out unusually high magnetic fields. Said expert was permitted to apprise the jury of other studies which

purportedly indicate that constant exposure to high voltage electromagnetic fields made it harder for the human body to fight off cancer once the cancer has started. This effect was described to the jury as one which promotes cancer. Additional evidence was introduced concerning various accidents and related deaths that had occurred in connection with electrical facilities in years past. Thus, evidence of fear, noise, accidental death and the potential horror of future incurable disease was injected into the subject property valuation proceedings.

Amicus submits that whether scientific data does or does not establish a reasonable basis to justify fear of electric and magnetic fields associated with high voltage transmission lines is irrelevant and immaterial in a property valuation proceeding. The bottom line in property valuation proceedings remains, as always, what a willing buyer will pay a willing seller after the taking, as compared to before. To parade witnesses before a jury to show what some scientists feel is a harmful effect from electricity; to permit testimony concerning deaths from falling distribution lines; and to permit the jury to delve into possible future personal injuries can only inflame and prejudice a jury and cause them to arrive at a determination of just compensation based improperly upon future tort claims and scientific speculation instead of the actual price activity as shown in the market. By providing a jury with free reign to consider scientific studies about cancer and its unconfirmed relationship with electric and magnetic fields will turn condemnation trials into a parade of horrors. If the Jennings

decision is permitted to become the law of Florida, then condemnation trials, previously an in rem proceeding; Peeler v Duval, 66 So.2d 247 (Fla. 1953), Wilson v. Jacksonville Expressway Authority, 110 So.2d 707 (Fla. 1st DCA 1959); will be converted into inpersonam actions. The end result will be a virtual invitation to the jury to speculate about the landowner's actual loss.

The propriety of the District Court's enlargement of the scope of admissible expert opinion testimony in property valuation proceedings is important not only to electric transmission and distribution line condemnation, but to all future eminent domain actions in Florida. Certainly, the admissibility of expert testimony regarding fear would be equally applicable to all road right of way condemnation actions. The concomitant public fear of excessive carbon monoxide, traffic accidents, highway noise, fuel spills, and fear of volatile chemicals and gases escaping from trucks and tankers would thus be admissible evidence in such cases. Surely the jury would be allowed to hear engineers theorize about the escape of such pollutants from the right of way and then scientific and medical experts would be paraded to expound on the effects thereof and human susceptibility to cancer, heart disease, emphysema and other debilitating effects in order to lay a predicate for reduced property values. Imagine the horror stories that would be told to juries in proceedings to condemn a sanitary landfill or a sewer system.

The reality of the modern world is that there is scarcely a product or activity in normal every day life that some scientist cannot say is harmful, dangerous or the cause of or a promoter of cancer. Thus, the issue before this Court is, to what extent should the fear of such possibilities be paraded before a jury to enhance a verdict in an in rem proceeding to acquire land for public use. The obvious answer is such evidence is irrelevant. Only that evidence which shows the before and after value of the property involved should be considered by the jury. Only then will just compensation be determined without the inflammatory prejudice inherent in the rulings set forth in Jennings.

If the jury in an action to acquire an easement for the construction of a power line can now consider fear of possible future inpersonam liability as an element of damage in determining full compensation, this Court should weigh the consequences of such a ruling upon existing Florida law. Prior to Jennings, Florida courts had consistently enforced the fundamental evidentiary limitation that expert opinion testimony in eminent domain actions cannot be predicted upon conjecture and speculation. Yoder v. Sarasota County, 81 So.2d 219 (Fla. 1955). This Court stated in Yoder at page 221:

> "x x x It is not proper to speculate on what could be done to the land or what might be done to it to make it more valuable and then solicit evidence on what it might be worth with such speculative improvements at some unannounced future date. To permit such evidence would open a flood-gate of speculation and conjecture that would convert an eminent domain proceeding into a guessing contest. x x x "

In conformance with said mandate, the Second District Court in Casey ruled that opinion evidence as to value based upon fear and

unsightliness was too speculative and conjectural to be considered by the jury as an element of damage in eminent domain. The Casey decision certainly never held that the difference in the before and after value of remainder property was not compensable, as implied by Jennings. To the contrary, it simply held:

> "This court, like the majority of courts, recognizes the owner's right to full and just compensation; but when a jury must base its award upon ignorance and fear, we must draw the line; such a basis cannot possibly result in fair and just compensation."

The legal principles set forth in Casey are in accord with the long established rule that damages which are speculative, remote, imaginary, contingent or merely possible should not serve as a legal basis for the recovery of compensation in an eminent domain action. Arnerich v Almaden Vineyards Corporation, 126 P.2d 121 (Cal. 1st DCA 1942); Virginia Electric and Power Company v. Farrar, 135 S.E. 2d 807 (Va. 1964); Missouri Power & Light Co. v. Creed, 33 S.W.2d 783 (Mo.App.1930); State v Vesper, 419 S.W.2d 469 (Mo.App. 1967). It seems clear to Amicus that all such matters are contingencies which, if they ever occur, are the fit and proper subject for damage suits. Only such depreciation in value as may be considered as reasonably expected to follow from the lawful invasion of the premises should be considered by the jury during property valuation proceedings and evidence of those damages not fairly and reasonably to be anticipated should be inadmissible. No prior Florida decision has ever construed Article X, Section 6(a), Florida Constitution, as contemplating recovery in advance for a tort that may arise at some future time.

By the same token, Florida courts have repeatedly held that consequential damages such as noise, dust, fumes, emissions, and vibrations are damnum absque injuria, and compensation therefor cannot be compelled. Northcutt v. State Road Department, 209 So. 2nd 710 (Fla. 3d DCA 1968); Div. of Admin. v. West Palm Beach Garden Club, 352 So.2d 1177 (Fla. 4th DCA 1977); Div. of Admin, State of Fla. v Frenchman, 476 So.2d 224 (Fla. 4th DCA 1985); Weir v. Palm Beach County, 85 So.2d 865 (Fla. 1956). In West Palm Beach Garden Club, supra, the court stated at page 1180:

> "The Department of Transportation argues that Florida is a 'taking' state and that remaining land not subject to actual physical invasion or trespass, although damaged, is not capable of receiving compensation. Northcutt v State Road Department, 209 So.2nd 710 (Fla. 3d DCA 1968); Weir v. Palm Beach County, 85 So.2d 865 (Fla. 1956). However, the courts in Northcutt and Weir were both careful to limit the language used so as to leave room for the kind of 'damage' that would be tantamount to an actual taking if the owner '...is substantially ousted and deprived of all beneficial use of the land affected.' Northcutt, supra, at 713. Thus, any such damage tantamount to an actual taking, despite the absence of physical invasion or trespass, has been held to be compensable and we, think, properly so.

In West Palm Beach Garden Club, the court found no "taking" had occurred, since there had been no physical invasion or trespass, and the diminution in value caused by the adjoining highway noise had not rendered the property useless nor had the owner been deprived of its beneficial use. The court thus reversed a $1,700,000 judgment of severance damages awarded for the purpose of curing said noise, and held that the increased noise was a noncompensable consequential damage.

Similarly, in Frenchman, supra, the same court recently found that no taking, ouster, or deprivation of all beneficial use had been established in an action involving the partial condemnation of a golf course and thus held that the jury should not have been permitted to consider damages claimed for the increased effects of traffic visibility, noise, fumes, dust and decline in aesthetics. It must be noted that both Frenchman and West Palm Beach Garden Club involved special use properties where no comparable sales could be found and the court still precluded recovery of consequential damages.

As can scientifically be shown, noise travels much the same way as an electric field and a magnetic field, and it can be similarly measured. Many experts can be found to say excessive noise can have injurious health effects. The Federal government has established noise standards for interstate highways, yet as an element of damage in Florida it is non-compensable. The only exception is found in airport cases where the excessive noise constitutes a taking as defined previously herein. See City of Jacksonville v. Schumann, 167 So.2d 95 (Fla. 1st DCA 1964.)

The rationale for excluding compensation for consequential damages is that the injury is one not restricted solely to the property owner involved in the proceeding but rather, is experienced by all citizens in common as a consequence of the public improvement. As the Third District Court stated in Northcutt at page 713:

> "x x x Acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may

> impair its use, are universally held not to be a taking within the meaning of the constitutional provision. If the property owners' annoyance is of the same type to which everyone living in the vicinity is subjected in varying degrees there is, at most, a sharing in the common burden of incidental damages. Thus, an abutter, the value of whose land is impaired or whose easement rights are interfered with, has no right to compensation. . ."

Are the aforesaid theories of law regarding consequential damages and the prior requirement of a "taking" on intangible trespass cases now to be abandoned? Are "common burden" incidental damages now recoverable in eminent domain actions? As shown by the expert witness in this case, the electric field and the magnetic field created by a transmission line know no property boundaries. Unquestionably, everyone who lives in the vicinity of said lines encounters in varying degrees the intangible field attendant to such essential facilities. Amicus submits that the existence of said electromagnetic fields is no different than the other consequential factors mentioned above and is thus entitled to receive similar treatment under the law as damnum absque injuria.

In the last Session of the Legislature, Senate Bill 60 and 607 were passed which mandated that the Department of Environmental Regulation determine appropriate requirements to protect the public health and welfare from all transmission lines, distribution lines and substations owned and operated by power companies. (A-1-4). The enactments applies both to new and existing facilities. The Legislature has thus assumed jurisdiction to provide specific protection to Floridians from any biological effects that may be

created by electromagnetic fields and electric systems in general. Accordingly, this Court should not permit testimony concerning speculative possible effects of electric systems to form the foundation for a windfall recovery by a property owner in a property valuation proceeding.

In summary, opinion testimony in a condemnation case based on fear of danger from electric transmission lines is too speculative to be considered by the jury as an element of damage. Just as the Second District Court declared 23 years ago in Casey, the admission of such evidence cannot possibly result in fair and just compensation. Endorsement by this Court of the decision in Jennings will turn all public acquisition proceedings into a parade of potential horrors. And the citizens of Florida will end up footing the bill for the property owner's windfall. Jennings , therefore, should be reversed and the Second District Court's ruling in Casey confirmed as the governing law.

## II

## IF EVIDENCE OF FEAR IS ADMISSIBLE IN PROPERTY VALUATION PROCEEDINGS, THE JURY SHOULD ONLY CONSIDER EVIDENCE OF THE EFFECT OF FEAR UPON FAIR MARKET VALUE.

The District Court in the case at bar approved the admission of opinion testimony concerning potential adverse biological effects of exposure to electromagnetic fields based upon

its ruling that evidence of fear should be considered by the jury in property valuation proceedings. Such evidence was deemed relevant to show the existence as well as the reasonableness of the fear that purportedly existed in the minds of the public. As noted in Jennings, this view has been denominated as the "intermediate rule" by the various courts which have previously addressed this issue. The two other views concerning the admissibility of evidence of fear are termed the "majority rule" and the "minority rule". Under the dictates of the former rule, fear of danger from power lines is necessarily based on pure speculation and can never be an element of damage in condemnation actions. Alabama Power Co. v. Keystone Lime Co., 191 Ala. 58, 67 So. 833 (1914). According to the latter view, if the public fear of the power line affects the market value of the land, such evidence is admissible without independent proof of the reasonableness of the fear. Willsey v. Kansas City Power & Light Co., 631 P.2d 268 (Kan. Ct.App. 1981). It appears that the aforestated labels are in actuality inappropriate, since eleven states and the Sixth Circuit follow the "minority rule", nine states follow the "intermediate rule", and only four states adhere to the "majority rule".

According to the doctrine adopted in Jennings, the existence of fear and its effect upon market value is only to be considered by the jury as an element in computing the diminution of value of remainder property when the landowner can prove that the fear is reasonable and not imaginary or unfounded. Thus, the condemnation actions tried pursuant to the "intermediate rule" will necessarily involve the presentation of expert opinion testimony concerning the myriad of potential horrors that scientists theorize

may be caused by any given public improvement in order to establish a factual foundation for the public's fear. The jury then will be required to determine not only what effect the public's fear or apprehension has had upon property values, but also whether there is any validity to the scientists' assertions. An interesting anamoly can easily be foreseen under the "intermediate rule" when one jury finds the fear to be reasonable and another jury concludes that the fear is unreasonable, where each jury is considering fear of the same power line.

Amicus submits that if this Court is going to recede from Casey and permit evidence of fear to be admitted as an element of damage to be considered in property valuation proceedings, then the "minority rule" which provides compensation for any loss of market value, regardless of the source or cause of said dimunition in value, should be adopted as the law in Florida; not the "intermediate rule" set forth in Jennings. If fear is going to be considered as an element of damage and if it can be shown that said fear actually affects the market value as reflected in the before and after sales of comparable properties, such loss in market value should be compensable, irrespective of the reasonableness of said fear. As noted, the true majority of jurisdictions ruling on this issue adhere to this concept. Under said "minority rule", whether the basis of the underlying fear is rational or not is irrelevant

if a qualified witness opines that the fear depresses the market value. Said fear, however, must be reflected in real estate prices.

The Kansas Court of Appeals recently applied the foregoing principles in Meinhardt v. Kansas Power & Light Co., 661 P.2d 820 (Kan.App. 1983) in an action identical to the case at bar. There, the Court refused to allow a biomedical engineer to testify about alleged hazardous biological effects created by transmission lines on the following grounds:

> "x x x First, the qualifications of Dr. Beck related to engineering knowledge and did not include any medical credentials qualifying him to recognize a particular effect of electricity as harmful. Secondly, the data relied on by Dr. Beck was inconclusive enough that the jury would be forced to speculate whether the harm to the landowners was real and not simply significant as an influence on market value. And finally, the engineer's testimony concerning the harmfulness of the electricity did not relate directly to the only issue of concern in a condemnation appeal--just compensation. x x x" (Emphasis supplied).

As in Meinhardt, Amicus submits that the actual pricing experience as shown from before and after sales should be the only evidence relevant and necessary in property valuation proceedings. Expert testimony concerning the cause of fear or the factual basis of fear which results in the depreciation of value as portrayed in the comparable sales studies is unnecessary, unfairly prejudicial, confusing, misleading and inflammatory.

Amicus maintains that evidence of speculative and conjectural damages predicated upon tort injuries that may occur at some time in the future must remain inadmissible in condemnation

actions in Florida. The fear of a remote, contingent injury that may be caused by the condemnor's lawful acquisition, the happening of which is uncertain and includes possibilities over which the condemnor has no control, such as acts of God, cannot properly form the basis of an award of just compensation in property valuation proceedings. The impropriety of compensating a property owner today for an injury to a child which he fears will occur in the future cannot be questioned in good faith. The time of actual injury is the occasion to determine whether and to whom there is liability for such incidents.

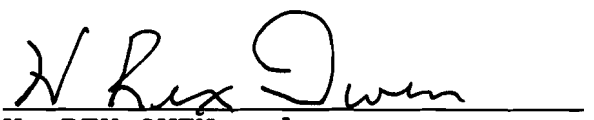
Thus, if this Court is going to sanction the admission of evidence of fear in property valuation proceedings, such evidence must be restricted to evidence of the effect of fear on market value. Collateral evidence detailing the hazards which give rise to the fear will only invite the jury to speculate about the true extent of the landowner's loss. Such evidence is not germane to the issue of market value and is unnecessary to support the conclusions of valuation made by expert appraisers. Accordingly, the First District Court's adoption of the "intermediate rule" in Jennings should be reversed.

## CONCLUSION

Opinion testimony in condemnation property valuation proceedings predicated upon fear unsightliness and potential future injury is too speculative and conjectural to be considered by the jury as an element of damage. Such evidence must be excluded or juries will determine the amount of just compensation based upon passion, prejudice, and inflammatory matters not relevant to true market value. Evidence of fear of a noncompensable consequential damage should not be permitted to confuse the issues involved in property valuation proceedings.

Alternatively, if evidence of fear is to be considered by the jury as an element of damage in condemnation proceedings, then the scope of such evidence must be restricted to the effect that fear has upon market value. To permit the introduction of evidence concerning the factual basis or reasonableness of the cause of the fear will invite the jury to speculate as to the landowner's actual loss and cause them to arrive at a determination of just compensation based improperly upon future tort claims and scientific theory instead of actual price activity as shown in the market.

Respectfully submitted,



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