49 V
see appendix A
appendix B

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA,
DEP RTMENT OF AGRICULTURE
AND CONSUMER SERVICES,

Petitioner,

v. Case No. 74,373

ROBERT H. BONANNO,
as Circuit Judge of the
13th Judicial Circuit,

Respondent.
_____/

RESPONSE OF AMICUS CURIAE BOB CRAWFORD,
PRESIDENT OF THE FLORIDA SENATE, AND
TOM GUSTAFSON, SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES

Pursuant to Fla. R. App. P. 9.370 and this Court's Order of July 21, 1989, granting leave to appear as amicus curiae, Bob Crawford, President of the Florida Senate, and Tom Gustafson, Speaker of the Florida House of Representatives, by the undersigned counsel, respectfully respond to the Order To Show Cause issued by this Court on July 7, 1989, as follows:

INTRODUCTION

The Florida Legislature very rarely participates in litigation challenging the constitutional validity of its enactments; that responsibility is ordinarily fulfilled by the Attorney General. To warrant a departure from that policy requires an extraordinary situation involving significant legislative interests and constitutional prerogatives.

This case involves an extraordinary situation.

The Florida Legislature enacted Chapter **89-91,** Laws of Florida, after extensive study and consideration.' It knowingly crafted a law that complies with longstanding constitutional principles announced by this Court. The competing constitutional issues about the exercise of the police power, the control of the appropriations process, and the provision of full compensation to injured persons, which confronted the Legislature are unique. These issues have been addressed in a responsible and reasonable manner which recognizes the interests of the injured persons and protects the integrity of the Legislature's police powers and appropriations powers. The rationale the Legislature had, and specifically expressed, in the enactment of Chapter **89-91,** Laws of Florida, is essential and relevant to a thorough understanding of the public policy and constitutional interests the Legislature sought to balance and to serve.

THE BACKGROUND AND LEGISLATIVE CONSIDERATION OF CHAPTER 89-91, LAWS OF FLORIDA

On January 21, **1988,** this Court issued its opinion in Department of Agriculture and Consumer Affairs v. Mid-Florida Growers, Inc., 521 So.2d 101 (Fla. **1988),** which held that, although the Department of Agriculture and Consumer Affairs had lawfully performed its legislatively delegated police powers, full and just

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'The Legislative Report of the Joint Select Committee on Citrus Canker, (hereinafter "Report") is attached as Appendix A, and the Legislative Report on Citrus Canker Chronology is attached as Appendix B.

compensation is required to be paid when the state, pursuant to those police powers, destroys healthy citrus plants to prevent the spread of citrus canker. The final circuit court judgement on damages in Mid-Florida Growers v. State of Florida, Dep't. of Agric. and Cons. Affairs, Fla. Case No. CA-G-85-275 (Fla. Hardee County Cir. Ct.), was entered by Judge Tim Strickland of the Tenth Judicial Circuit on April 26, 1988. The 1988 Regular Session of the Florida Legislature began April 5, 1988 and ended with the adjournment of Special Session F on June 8, 1988. Efforts to enforce this judgment began in September 1988 when the plaintiffs in that case attempted to seize the Wauchula State Farmers' Market to satisfy a part of their judgment. Report, at 149. In January 1989, the Mid-Florida plaintiffs renewed their efforts to enforce a portion of their judgment by seeking and obtaining a Writ of Mandamus against the Department of Agriculture and Consumer Affairs and the Commissioner of Agriculture. To this point, the Legislature had no reasonable opportunity to appropriate money to pay the portion of the judgement that gave rise to the Writ of Mandamus. Ultimately, this Court, after appeal by the Commissioner and Department and Suggestions to the Court by the Legislature and the Governor, stayed the contempt proceeding in the Tenth Judicial Circuit against the Commissioner and the Department on January 20, 1989. In its Suggestion to the Court, the Legislature requested an opportunity to do its work - "to enact laws and to appropriate money for specific purposes." Suggestion to the Court by the Florida Legislature in Mid-Florida Growers, Inc., and Himrod and

Himrod Citrus Nursery v. State of Florida, Dep't. of Agric. and Cons. Servs., and Doyle Conner, as Comm'r. of Agric., Case No. 73,586.

Subsequently, the President of the Senate and the Speaker of the House of Representatives, pursuant to s. 11.141(4), Florida Statutes, created the Joint Select Committee on Citrus Canker to:

> examine and make recommendations regarding the potential impact on the State of the various citrus canker lawsuits. We have requested the committee to examine the facts and circumstances surrounding the development and implementation of the Joint Federal/State Citrus Canker Eradication, Financial Assistance, and Risk Assessment Programs for the purpose of determining the appropriateness of actions taken and the need for further action. . . . Recommendations for legislative and executive action shall be made to the presiding officers regarding these and any other related matters.

Report, at 1. Chapter 89-91, Laws of Florida, was the ultimate product of the work of the Joint Select Committee. With this enactment, the Legislature specifically appropriated sufficient funds to pay, in full, all outstanding, unappealed final judgments arising out of the Citrus Canker Eradication Program. Section 17(3)(a) of Chapter 89-91, Laws of Fla.

The Joint Select Committee met five times between April 3 and May 24, 1989. The first three meetings of the Committee were for the purpose of examining the appropriateness of the actions of the Department of Agriculture and Consumer Services in dealing with the entire citrus canker problem. The final two meetings were held to consider legislative alternatives and to formulate the Committee's recommendations to the President and the Speaker. Report, at 165.

At the initial meeting of the Committee on April 3, the committee staff presented preliminary findings based upon the documents that had been obtained and analyzed. At this meeting, the Preliminary Executive Summary and the Chronology of Events were presented to the Committee. Final versions of these documents are included in the Report. During this initial meeting the Committee heard testimony from nine scientists who had involvement with the Citrus Canker Eradication Program or Risk Assessment Programs. Three of those scientists, Dr. Calvin Shoulties of Clemson University (formerly with the Department of Agriculture and Consumer Services, Division of Plant Industry), Dr. Stall, Professor in the Department of Plant Pathology at the University of Florida Institute of Food and Agricultural Sciences, and Dr. Ernie DuCharme, the Retired Director of the Citrus Research and Education Center of the University of Florida, testified that the diagnosis of citrus canker in 1984 was in accordance with the knowledge at that time. Additional testimony was given to the Committee that no one at that time knew the potential damage the disease could cause and additional research was required to determine the virulence of the disease. The testimony revealed that the United States Department of Agriculture and the Florida Department of Agriculture and Consumer Services prohibited all research on citrus canker diseases within citrus producing states and, therefore, prior to the Florida discovery, only limited research had been done outside the United States, primarily in Argentina. Report, at 166.

At the second meeting of the Committee on April 10, testimony was heard from federal and state officials who have been involved with the Citrus Canker Eradication Program and the Risk Assessment Program. Dr. Steve Poe of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service, testified that both the state and the industry agreed in 1984 that any solution to the citrus canker problem short of eradication was not acceptable. He added that the Action Plan for dealing with citrus canker had been revised and federal regulations relaxed as additional scientific information was revealed on the strain of citrus canker that had been discovered in Florida. Members of the Joint Committee questioned Dr. Poe as to how the federal government would have responded had Florida not cooperated with the USDA Citrus Canker Action Plan. Dr. Poe testified that the state had no alternative but to follow the 1982 Citrus Canker Action Plan due to the restrictions the USDA could and would impose on the shipment of fresh fruit from Florida. Id. at. 168. At the same meeting, Attorney General Robert Butterworth provided the Committee with an update on pending citrus canker litigation. The Attorney General equated the decision in Mid-Florida with the doctrine of strict liability where ". . . neither care nor negligence, neither good faith nor bad faith, neither knowledge not ignorance will save the defendant." Report, at 169. He added that the damages thus far awarded to the plaintiffs were a windfall because the fair market value of the trees that had been destroyed was determined as of the next market and the courts had not allowed evidence to be

introduced relating to the fear of citrus canker and how such fear would have affected market value. Report, at 169.

The third meeting of the Committee was devoted entirely to public testimony. Several citrus nurserymen testified as to their dissatisfaction with the failure of the state and federal governments to compensate them fairly for the losses they had sustained. Legal counsel for various nurserymen, and the nurserymen themselves, expressed displeasure over the state's failure to pay final judgments and attorney's fees. The taped recordings of this meeting contain powerful expressions of the anger and frustration felt by the plaintiffs and their attorneys. However, not all the nurserymen who testified have sued the state or have the same negative sentiments regarding state and federal regulatory activities. Report, at **171.**

As a result of information from the prior meetings, the Committee Chairman and Vice Chairman requested the Institute for Food and Agricultural Sciences (IFAS) and the Department of Citrus to provide the Committee with statistically verifiable data on the prices charged and obtained in the sale of nursery stock during the 1980's. The Committee met on May 9 to receive the reports of IFAS and the Department of Citrus. Mr. Ron Muraro, an IFAS farm management economist testified and presented data he assembled from a 'surveyof citrus nurserymen. Report at **172.** Additionally during questioning by committee members, Mr. Muraro testified that through previous research on citrus nurseries he had established cull factors for the Citrus Canker Indemnity Group (CCIG) categories of

plants. These factors represent the percentage of plants which, for various reasons, are not marketable. Mr. John Kaufman, President of the Florida Citrus Nurserymen Association, testified that Mr. Muraro's cull factors were, in fact, representative of most nurseries. Mr. Kaufman also testified that nurserymen also incur costs of digging, dipping, and packing plants; he estimated the cost at ten cents per tree. Mr. Kaufman estimated delivery costs to be approximately fifteen cents per tree. Mr. Mark Brown, of the Department of Citrus, testified that the Florida Citrus Mutual obtained price information for bare root, budded nursery trees from eleven citrus growers. Mr. Brown requested these growers and others to submit copies of invoices. A representative of the Florida Citrus Mutual testified:

> Following this period of August **1984**, growers who purchased trees were extremely cautious and in fact unwilling to purchase non-contracted for trees, particularly any trees from a nursery touched or affected by nursery type citrus canker **. . .** Even today, it is my opinion that growers are very concerned and probably would be very hesitant to make a purchase of any type nursery trees if he or she knew that the nursery had any contact or exposure to citrus canker. Growers are not willing to risk the destruction of their grove, regardless of the price of nursery trees.

Report, at **172-74.** At the conclusion of the meeting, the Committee Chairman requested the Joint Legislative Management Committee's Division of Economic and Demographic Research to provide the Joint Select Committee with marketing prices, based upon the useable data collected for the years **1984-1988** for each

category of nursery plant as delineated by the Citrus Canker Indemnity Group (CCIG). Id. at 173.

On May 15, the Joint Committee met to consider alternatives for legislative action that were to be recommended to the President and Speaker. One option that was discussed was to require all plaintiffs, once all court appeals were exhausted, to proceed through the legislative claims bill process. All remaining entities would receive the rates for compensation set by the CCIG in **1984,** plus the Consumer Price Index of 12.6% interest from **1984** through **1989.** This proposal provided for the payment of **$1.2** million in attorney's fees and a funding mechanism based upon an appropriation from the General Revenue Fund and bond proceeds backed by taxes on the citrus industry. **A** second alternative was put forward and adopted by the Committee which provided for the payment of fair market value determined by the Joint Legislative Management Committee's Division of Economic and Demographic Research from the useable information presented to the Committee on **1984** prices of the CCIG plant categories, projected administrative expenses, and payment of the then-outstanding court judgments. Id. at 175-76. At the final meeting of the Committee on May **24,** the Joint Select Committee voted to recommend a program to the President and the Speaker for an on-going compensation program based upon the direction given to staff at the previous meeting. The Joint Select Committee expressly recognized that the **1989** Legislature was developing the state budget under extremely tight fiscal constraints and that the total cost of such an on-

going program could only be estimated. Therefore, the estimated cost of the program was to be spread over a two-year program with final judgments for compensation and attorney's fees paid during the first year. Id. at 177. Chapter **89-91**, Laws of Florida, is very similar to the bill prepared by the staff of the Joint Select Committee.

THE OPERATION *AND* EFFECT OF CHAPTER 89-91, LAWS OF FLORIDA

Chapter **89-91**, Laws of Florida, (the Act) establishes a reasonable alternative remedy which allows a person who owned citrus plants which were destroyed in the Citrus Canker Eradication Program to recover the value of the destroyed plants. Clause 10, Preamble to the Act. The Act sets presumed values in a detailed manner for the plants which were destroyed. The procedure permits a person whose plants were destroyed either to receive "full and fair compensation" without the delays of future legal proceedings, or to have a hearing before the Division of Administrative Hearings to determine another value for the destroyed trees that "will provide full compensation, with appeal to the First District Court of Appeal." Section 3(1) and Clause 10 of the Preamble to the Act.

The preamble to the Act and the legislative findings contained in section 2 of the Act are based upon the work of the Joint Select Committee on Citrus Canker. The clauses of the preamble to the Act and the legislative findings are essentially the conclusions of the Joint Select Committee after consideration of voluminous amounts of information regarding the citrus canker disease and the

operation of the Citrus Canker Eradication Program. For example, the first four clauses to the preamble[2] deal with the discovery of what was thought to be citrus canker in Florida, the implementation of the **1982** Citrus Canker Action Plan, the fact that the State and Federal governments relied upon the best available scientific information regarding citrus canker, and the subsequent discovery, through extensive research, that the citrus canker discovered in **1984** was not as virulent as first feared. These statements, as well as paragraphs (c), (d), (e), and (f) of section 2(1) of the Act, are more than amply supported by information to the same effect contained in the Report in the chapters entitled "Discovery and Diagnosis -- Florida 1984," "**1982** Citrus Canker Action Plan," "The Early Response: September-December 1984," and "Citrus Canker Eradication Program **1985 - 1989**" as well as the Conclusions of the Report. Report, at **47-49**, **52-53**, **54-80**, **81-113**, **161**. In addition, the Legislature sought, by including such specific legislative findings, to make sure that the courts would be aware of the various precedents of this Court and the provisions of the State

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[2] WHEREAS, in **1984** the citrus industry was confronted with an emergency of crisis proportion based upon the apparent presence of a virulent strain of citrus canker in the nurseries of the State of Florida, and

WHEREAS, in response to this crisis the State of Florida and the Federal Governments embarked on a statewide citrus canker eradication program, and

WHEREAS, the State of Florida and the Federal Government, in good faith reliance on the scientific information available at this time, destroyed citrus nursery plants which were exposed to the apparently virulent strain of citrus canker, and

WHEREAS, later scientific information indicated that this strain of citrus canker did not constitute the grave danger to the industry as first perceived[.]

Constitution that the Legislature had specifically considered in fashioning a law that was designed to address completely and comprehensively the problems associated with the nursery strain of citrus canker.

The design of the Act makes it apparent that the legislative intent is to apply that Act to all types of plants infected by or exposed to the nursery strain of citrus canker. The Act itself supplies the evidence of this. Section 2(2)(a) of the Act states that it is the intent of the Legislature to "apply this act to all claimants, including but not limited to, those who have filed lawsuits prior to the effective date of this act involving compensation for destruction of citrus nursery plants." Obviously, given the research of the Joint Select Committee regarding the lawsuits pending against the state, the Committee was aware that lawsuits had been filed against the State for the destruction of plants located in citrus groves as well as citrus nurseries. Report, at 65-66. In addition, section (2)(c) provides that it is the legislative intent to "establish a compensation value for the categories of citrus nursery plants designated by the Citrus Canker Indemnity Group." [3] The categories of values established by the CCIG are field grown seedlings, field grown liners, field

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"The CCIG was established soon after USDA Secretary Block's declaration of an extraordinary emergency "to develop estimates of the value of citrus nursery stock and reset trees in citrus groves." The CCIG consisted of three agricultural economists and one horticulturist. Two members were employees of the USDA; one was employed by the Department of Agriculture and Consumer Services; and, one was employed by the Institute of Food and Agricultural Sciences at the University of Florida.

grown budded, greenhouse seedling, greenhouse liner, greenhouse budded, container plants/1 gallon, container plants/2 gallon, container plants/3 gallon, and resets. Report, at 71. The glossary of terms that accompanies the Report defines a reset as:

> A field grown or greenhouse grown budded nursery plant that is planted as a replacement tree in an existing citrus grove. These nursery plants would be called solid sets if used to plant a new block of citrus grove.

Report, at 210. Also, the fiscal information utilized to develop the cost estimates associated with the Act reflect the destruction of 19,434,959 trees pursuant to Immediate Final Orders, many of which, because they were resets, were located in citrus groves. Report at 2951. This same total number of destroyed trees (after deduction for trees destroyed voluntarily") is included in the Report; 1,429,388 of the destroyed trees are classified as resets. Report, at 2951. Finally, the glossary of terms used in the Report defines a "citrus nursery plant" to be:

> Any citrus plant which was produced in a commercial citrus nursery and was destroyed due to infection with or exposure to the nursery strain of citrus canker. This definition includes, but is not limited to the ten categories of plants established by the Citrus Canker Indemnity Group; all sizes of containerized plants; resets; solid sets; scion trees; and seed trees.

Report at 208. This definition of what the Joint Select Committee meant by the term "citrus nursery plant" includes use of the term "commercial citrus nursery." A commercial citrus nursery is:

> a commercial citrus nursery registered with DPI (Division of Plant Industry) to be free of burrowing nematodes,

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'The Act requires that, to be eligible for the compensation program, destruction must have been pursuant to an Immediate Final Order.

> engaged primarily in the propagation of citrus plants, either for sales, distributions or own-use.

Report at 208. No definitions of citrus nursery plant or of any of the plant classifications for which presumptive values are provided were included in the Act for the express purpose of preventing any limitation on the determination of the type of classification of plants destroyed beyond the presumption of correctness of the Department of Agriculture and Consumer Services records. Even though these records were to be the starting point for the determination of full compensation, by not providing restrictive definitions, the Legislature and the Joint Committee sought to make the application of the Act as broad as possible. In short, a citrus nursery plant, basically, is any kind of a citrus plant that was destroyed because it was exposed to or infected with the nursery strain of citrus canker.

An issue has also been raised as to the applicability of the Act only to persons whose citrus nursery plants were destroyed pursuant to an Immediate Final Order. Brief of Abate, et al, at 27. The Act defines a claimant as:

> a person who owned citrus nursery plants which were destroyed by employees or agents of either the Department of Agriculture and Consumer Services or the United States Department of Agriculture, or both, pursuant to an immediate final order, but does not include a person who destroyed citrus nursery plants without an immediate final order issued by the Department of Agriculture and Consumer Services or the United States Department of Agriculture, or both. (emphasis added).

The Department of Agriculture and Consumer Services' emergency rules (5BER84-8 and 5BER84-12) for dealing with citrus canker

specifically authorized citrus canker field personnel to issue oral orders, followed up by written final orders which were styled as Immediate Final Orders. The Legislature and the Joint Select Committee were aware that **1,414,076** trees had been voluntarily destroyed at **418** locations. Report, at **115.** During the final meeting of the Joint Select Committee, staff to the Committee, while explaining the proposal which ultimately became the Act, said:

> We want to make it real clear that it's the intent of the Legislature that the procedure set out in this Act applies to all persons whose citrus nursery plants were burned by DACS or USDA due to infestation or exposure to the nursery strain of canker, not canker A . . . it would not apply to those persons who voluntarily destroyed their plants or who were destroyed due to canker A.

Tape Recording of the Joint Select Committee on Citrus Canker, May 24, 1989. Thus, the Legislature has sought to compensate those whose trees were destroyed pursuant to the order of the Department of Agriculture and Consumer Services or the United States Department of Agriculture, or both, for a logical reason: those are the plants the State actually ordered destroyed for which compensation is due based upon this Court's decision in Mid-Florida.

The Act creates the Office of Citrus Canker Claims and directs the Office, as an affirmative duty, to notify claimants of the existence of the Office and the availability of compensation. A claimant desiring to be compensated for his citrus nursery plants must file an application with the Office that details the type and number of plants for which a claim is being made. The application

is required to have a place where the claimant may indicate that he disputes the presumptive values established under section 3 of the Act. The claimant must also indicate on his application the amount of money he has already received from the State or Federal government as financial assistance for citrus nursery plants destroyed pursuant to the Citrus Canker Eradication Program and the date the payment was received. Sections 5 and 6 of the Act.

Upon receipt of the application from a claimant which indicates a desire to accept the presumptive values established in section 3 of the Act, the Office must compare the information provided by the claimant with the records of the Department of Agriculture and Consumer Services as to the number and type of plants destroyed. Upon determining the information provided is correct, the Office is directed to compute the compensation due, deduct amounts previously paid for compensation by the State or Federal governments and apply twelve percent interest for the appropriate period. Upon execution of a release, the claimant is to be paid. Sections 5 and 6 of the Act. In short, the Act is designed to simply and quickly provide "full and fair compensation'' to claimants, without the necessity of legal proceedings.

In the event, however, the claimant disputes the calculation of compensation based upon the presumptive values established in section 3 of the Act or the number and types of plants destroyed, he is entitled to proceed before a hearing officer from the Division of Administrative Hearings (DOAH). Section 6(7) of the Act. The Office of Citrus Canker Claims, in consultation with the

Department of Legal Affairs, may at any point in the claims process, compromise or settle any claim when it is in the best interest of the State to do so. Section 5(3) of the Act. Again, an effort is being made to encourage and permit settlement of claims. For example, minor differences in the numbers and types of trees are to be expected given that over twenty million trees were destroyed. In such cases, it would be entirely appropriate for the Department of Legal Affairs to settle or compromise with the claimant, thereby saving the expense and effort associatedwith a hearing and the attorney's fees the state would be required to pay.

The Act establishes values to provide "presumptive full and fair compensation" for all citrus plants destroyed by the Citrus Canker Eradication Program. Section 3(1) of the Act. These values "shall be presumed correct but may be rebutted." Section 6(12) of the Act. The presumptive level of compensation is determined by multiplying the number of plants in each category established in the Act that were destroyed pursuant to an Immediate Final Order by the average tree survival factors for the appropriate type of plant and then multiplying the resulting product by the corresponding presumptive values provided in the Act. Section 3(2) of the Act. The Act provides over four pages of extensive, precise and quantitatively verifiable explanation of the means employed by the Joint Select Committee to determine the appropriate level of compensation. Some of the presumptive values (e.g. greenhouse liners, field grown liners and resets) were taken from the report

of the CCIG where other verifiable data did not exist or the data that was available was not of sufficient quality or quantity to warrant its use. Section 3(1)(b), (d), and (h) and (3)(b), (d), and (h) of the Act. In other situations where better information was obtained by the Joint Select Committee (e.g. greenhouse seedlings and field grown seedlings), that information was used. Section 3(1)(a) and (c) and (3)(a) and (c) of the Act. In one instance, the ratio between the CCIG rates for two categories of plants was calculated and then applied to produce a presumptive rate for a plant category. Section 3(1)(e) and (3)(e) of the Act. For field grown and greenhouse budded plants, the Legislature established intricate tables of values to reflect the values of budded plants between the time of budding of a seedling to the time the newly budded tree would be marketable.' Section 3(1)(i) and (j) and (3)(i) and(j) of the Act. As mentioned earlier, the Joint Select Committee heard testimony from competent, informed witnesses and specifically requested and received actual information that is independently verifiable on the value of the various categories of citrus nursery plants. Report, at 171-75.

The respondent complains that the Act's presumptive values make no provision for costs incurred or value added after sale.

"This approach may actually result in payment of more than full compensation. For example, a person who had seven month old greenhouse budded plants destroyed would receive the same presumptive compensation that a person that had nine month old greenhouse budded plants destroyed. This occurs due to the three month groupings of time elapsed since budding of budded plants at the value for the latest month.

Response of Grady Sweat, et al, to Petition for Writ of Prohibition, at **8.** Similarly, amici Gary M. Mahon, et al, protests that the presumptive values established under the Act are artificial and have no relation to the market value for plants in **1985** and **1986.** Brief of Gary M. Mahon, et al, at **5.** Amici Abate, et al, argues that the values established in the Act are "admittedly production costs only." Brief of Abate, et al, at 2. This position is without merit. The Act clearly and very simply provides citrus canker plaintiffs who feel their particular trees to be worth more than the presumed compensation amounts under the Act with a remedy:

> A claimant who contests the net compensation computed pursuant to this section or the number and category of citrus nursery plants destroyed shall be entitled to proceed before a hearing officer.

Section 6(7) of the Act. The arguments made by the respondents and amici agreeing with the respondents relative to the presumptive values are the very types of issues the Legislature and Joint Select Committee envisioned would come before the hearing officers. Tape recording of the meeting of the Joint Select Committee on Citrus Canker, May 24, **1989** and "Summary of Proposed Citrus Canker Bill," dated May 24, **1989.**

The calculation of the presumptive level of compensation requires the use of the tree survival factors prescribed in the Act. Section 3(2) of the Act. One of the amici in this matter has suggested that the Act fails to provide for full compensation because the application of the tree survival factors "to the pre-maturity values serves as a double discount on the recovery."

Brief of Abate, et al, at 7-8. The Act delineates the source of the tree survival factors as a research paper published by the Institute of Food and Agricultural Sciences at the University of Florida. Section 3(4) of the Act." The research paper that is the source of the tree survival factors refers to the factors as the "% tree loss" which is defined as:

> average percentage of original planted trees not reaching a salable (usable) plant; per cent of trees lost due to culling or death.

Citrus Nursery Plant Cost Study for Florida Greenhouse and Field Grown Citrus Nursery Trees, Staff Paper Number 281, Food and Resource Economics Department, Institute of Food and Agricultural Sciences, University of Florida, at 2. In the study, the cost factors per plant for field grown seedlings, field grown liners, green house seedlings, greenhouse liners, field grown budded and greenhouse grown budded trees are analyzed. These cost factors include an allocation for "% tree **loss."** Id., at 5, 7, 9, 11, 13, and 15. The definition of seedlings and liners explains how these factors are used:

> The estimated cost per plant for each nursery category within an individual nursery was added to the next nursery category. However, if a nursery did not grow plants-seedlings or liners-in one category, then the actual cost of purchasing the plants is included.

"Section 3(4) of Chapter 89-91, Laws of Florida, provides: (4) The average tree survival factors used in this section were taken from staff paper number 281 published in June 1985 by the Food and Resource Economic Department of the Institute of Food and Agriculture Sciences at the University of Florida.

Id., at 2. Therefore, no "double discounting" occurred because as a tree matured, the factors were recalculated for each stage of the maturation process of a citrus plant utilizing the cost determination from the previous stage, including the "% tree loss," for that previous stage. Nonetheless, the Act permits any claimant who contests the net compensation computed pursuant to the Act a hearing before a hearing officer and provides that the hearing officer's final order shall determine "any other matter necessary to the resolution of the claim as contemplated by this act." Section 6(7) and (10) of the Act. As with the presumptive values, any claimant may contest the impact of the survival factors on his claim for compensation before a hearing officer whose decision is appealable to the First District Court of Appeal.

The Joint Select Committee determined that the CCIG plant categories had to be used in its recommendation to the President and Speaker since the data on the numbers of each type of plant that had been destroyed was stored in the computers of the Department of Agriculture and Consumer Services by these ten plant categories. Report, at 176. The CCIG categories were established in 1984 in an effort to establish values for citrus nursery stock that had been destroyed by the eradication program. Id. at 71. The Legislature had previously utilized these categories in paying the financial assistance that was authorized by Chapter 84-547, Laws of Florida. Report, at 80. Under the CCIG plants categories, all containerized plants larger than three gallons were grouped in the three gallon category. Similarly, all budded plants, including

solid sets, were grouped in the reset category. Id. at 176. The Committee was aware that the Department of Agriculture and Consumer Services had more detailed data regarding the plants that had been destroyed; however, the data was not in a form that could be used by the Committee staff to further delineate the ten categories.' Id. at 176. See also Records of the Joint Select Committee on Citrus Canker Relating to Inventories on Destroyed Nursery Plants. As with the presumptive values for citrus plants and the tree survival factors, the records of the Department of Agriculture and Consumer Services regarding the numbers and categories of plants are presumed correct, but may be rebutted. Section 6(11) of the Act. When a claimant contests either the number or category of plants, the hearing officer's final order will make the determination based upon the preponderance of the evidence. Section 6(10)(b) and (11) of the Act.

In Daniels v. State, 170 So.2d 846 (Fla. 1964), this Court said that, "a legislative declaration of 'just compensation' which is in accord with the judicial view of the matter should not be disturbed." Id. at 852. Accordingly, the Act does not disturb the judicial view of the determination of full compensation because the Act itself declares that when a claimant contests the net compensation provided by the Act he "shall be entitled" to proceed

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'The Joint Select Committee also was aware that in Richard O. Polk v. Conner, Dep't. of Agric. and Cons. Servs. and State of Fla, Fla. Case No. GC-G-86-3694, (Fla. Polk County Cir. Ct.) that damages were awarded for seven gallon containerized trees. Report, at 145.

before a hearing officer. In proceedings before a hearing officer, the Act permits the hearing officer to determine every facet of any factual dispute relevant to determination of the full compensation due because of the forced destruction of citrus plants by the State. [8] Further, the Act provides that orders entered by hearing officers may be appealed, pursuant to **s. 120.68**, Florida Statutes, to the First District Court of Appeal. Section **6(14)** of the Act.

CHAPTER **89-91**, LAWS OF FLORIDA, DOES NOT INFRINGE ON ANY CONSTITUTIONAL RIGHT OF THE CITRUS CANKER CLAIMANTS

This Court's decision in Mid-Florida Growers, supra, exposed the State to extensive liability. When it enacted Chapter **89-91**, Laws of Florida, the Legislature fashioned a responsible and uniform method to deal with this liability. In doing so, the Legislature carefully considered the instructions available in this Court's prior decisions, which have delineated the means available to achieve a fair and efficient system to pay full compensation

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"Section **6(10)** provides:

(10) In a proceeding under this act, the hearing officer's final order shall determine:

(a) The value of the claimant's citrus nursery plants at the time of destruction.

(b) The number and category of the claimant's citrus nursery plants.

(c) Whether the destruction was required by either the state or federal government, or both.

(d) The amount of money previously paid, and the dates such moneys were paid, for destroyed citrus nursery plants to the claimant by the state or federal government, or both pursuant to the Citrus Canker Eradication Program.

(e) The amount of attorney's fees and costs, if any, pursuant to this section or section 7, as appropriate.

(f) Any other matters necessary to the resolution of the claim as contemplated by this act.

while safeguarding the Legislature's constitutional appropriations powers under Article VII, Section 1 of the Florida Constitution.

The uniform procedures prescribed by Chapter 89-91, Laws of Florida do not infringe on any constitutional right of the claimants. The amici and respondents rely very strongly on this Court's holding in Spafford v. Brevard County, 110 So.2d 451 (Fla. 1926), that determination of compensation is a judicial function. The amici and respondents, however, would have this court limit the definition of the judicial function solely to a circuit court jury trial. Indeed, the trial court, in this case summarily concluded that the legislature had no power to alter the method of determination of compensation in condemnation cases, and that the claimants were constitutionally entitled to a jury's determination of the value of their property. The law of condemnation, however, holds that there is a distinct difference between the initial determination of compensation, and the ultimate judicial review which implements the final determination of compensation. Clearly, there is nothing in the prior holdings of this Court which limit the initial determination of compensation to jury trials. Neither state nor federal courts have ever recognized a constitutional right to a jury trial in condemnation cases. Carter v. State Road Department, 189 So.2d 793 (Fla. 1966); Daniels v. State Road Department, 170 So.2d 846 (Fla. 1964); United States v. 5.00 Acres of Land, more or less, in Collier County, State of Florida, 673 F 2d 1244 (11th Cir 1982); Alabama Power Company v. 1354.02 Acres, More Less of Land in Randolph County, Alabama, 709

F 2d 666 (11th 1983); Accord In Res Third Street, 177 Minn 146, 225 N.W. 86 (1929); See also 27 Am Jur 2d Eminent Domain s. 407. As this Court observed in Carter v. State Road Board,

> No decision of the Florida Supreme Court, rendered prior to the adoption of the Constitution sustains a right to jury trial in condemnation. Tending to the contrary and of passing interest, the Moody decision upheld a statute that authorized the value of property taken to be fixed by court appointed "commissioners of appraisal" and the Edgerton case upheld an evaluation made by "five discreet persons, holders of real estate in said city or town." Inasmuch as no right to a jury trial existed at common law, we find nothing in s. 3 of the Declaration of Rights to require it. Neither do we find authority for the proposition that a jury trial is required by s. 12 of the Declaration of Rights. (footnotes omitted). Id. at 795.

Indeed, in the Daniels case, not only did the Court hold that the state was not constitutionally required to provide a jury trial for the determination of compensation in taking cases, but the Court also recognized that, from an historical perspective, the state could exercise the power of eminent domain without the payment of any compensation absent a state constitutional limitation on the eminent domain power. Daniels v. State Road Department, supra, 170 So.2d at 848, citing Smith v. City of Greenville, 229 S.C. 252, 92 S.E.2d 639 (1956).

Similarly, the United States Supreme Court has held, "it has long been settled that there is no constitutional right to a jury in eminent domain proceedings." United States v. Reynolds, 397 U.S. 14, 18, 90 S. Ct. 803, 806, 25 L.Ed.2d 12, 17 (1970). See also Georgia Power Co. v. 138.30 Acres, supra, 596 F.2d at 647,

specifically applying this principle to compensation proceedings. Accord, United States v. 5.00 Acres of Land, supra, 673 F.2d at 1247. In fact, this principle is of such wide-spread acceptance that the federal courts recognize in Rule 71A, Fed. Rul. Civ. Pro., the determination of compensation may be by any tribunal constituted by an Act of Congress:

> (h) Trial. If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue;

Similarly, the leading treatise on this issue states:

> The Seventh Amendment to the United States Constitution, in terms, protects the rights to trial by jury in United States courts, but it merely "preserves" the right of trial by jury in "suits at common law." Condemnation proceedings are not suits at common law; moreover, if a right to trial by jury had been given by this amendment, it would have been created, not preserved, for in this class of cases it did not previously exist. Accordingly, it has been repeatedly held that when land is taken by authority of the United States, the damages be ascertained by any impartial tribunal. (e.s.)

4 Nichols, Law of Eminent Domain s.4.105[1], citations omitted.

Accordingly, the use of administrative or quasi-judicial tribunals for the purpose of initially determining compensation is neither unconstitutional nor unusual. Indeed, this Court upheld a similar legislative response to the burrowing nematode epidemic in the cases of Corneal v. State Plant Board 95 So.2d 1 (Fla.1957 and State Plant Board v. Smith, 110 So.2d 401 (Fla. 1959), where

the statute provided that a non-judicial agency, the State Plant Board, could determine reasonable compensation for destroyed plants, and where the statute further "... provided for a hearing before the Board as to the adjudging of such compensation, and for judicial review of the Board's administrative determination in this respect." Id. at 403-404.

This Court held in Kluger v. White, 281 So.2d 1 (1973) that the Legislature could abolish a statutory or common law right of access to courts by enacting a statute that provides "a reasonable alternative to protect the rights of the people of the State to redress for injuries. . . ." 281 So.2d 1,4 (1973). In that case, this Court compared the challenged statute, which required meeting a threshold amount, to the Workers' Compensation Act, which had abolished tort actions against employers. The Court noted that Workers' Compensation provided "adequate, sufficient, and even preferable safeguards" as an alternative to the right to sue. Id.

Where Workers' Compensation limited recovery to $1200 for the "loss of sight in one eye," this Court held that no right of access to the courts had been denied Petitioner by a statutory preclusion from suing his employer, notwithstanding the meager amount awarded under the statute's schedule of payments. This Court went so far as to say that even an "inadequate and unfair" award does not "render the statute unconstitutional." Mahoney v. Sears, Roebuck & Co., 440 So.2d 1285, 1286 (1983). The Court reasoned that Petitioner had received medical and wage-loss benefits under Workers' Compensation and that the Legislature had eliminated delay

and uncertainty of recovery. The statute was held to be a "reasonable litigation alternative," 440 So.2d 1285, 1286.

The Florida Legislature, too, found in the workers' compensation model a compelling analogy to the canker relief legislation it was formulating to provide compensation to those who lost trees because of the Citrus Canker Eradication Program. The two compensation systems reflect several parallels, for example: scheduled injuries--scheduled tree loss; and, in the case of canker compensation, a no-hassle, payment schedule for those who would want to take it, or a comprehensive, independent alternative ending up in an appeal court for those who do not. In short, administrative procedures clearly set out by law--a real remedy--and legislatively appropriated funds with which to pay.

The worker's compensation system model has been upheld time and time again against multi-faceted challenges to its constitutionality. See Sasso v. Ram Property Management, 452 So.2d 932 (1984), a limit on wage-loss benefits did not deny access to courts; Wood v. Harry Harmon Insulation, 511 So.2d 690 (1987), evidentiary requirements necessary for spouse to receive death compensation did not deny access to courts; Florida Farm Bureau v. Ayala, 501 So.2d 230 (1985), Sec. 440.16(7) did not violate due process or equal protection under either the Florida Constitution or U.S. Constitution; Houghton v. ABJ Constructors, Inc., 422 So.2d 47 (1983), limit on medical benefits was constitutional; and Action v. Ft. Lauderdale Hospital, 440 So.2d 1282 (1983), scheduled wage loss did not violate equal protection.

The canker bill assures safeguarding of equal protection guarantees as well. That the goals of Chapter **89-91,** Laws of Florida, are reasonably related to legitimate state interests may be deducted from analogous holdings applicable to workers' compensation. One such holding came in Carr v. Central Florida Aluminum, 402 So.2d **565** (1st DCA **1981)** where the court held workers' compensation legislation was rationally related to the legitimate state interests of efficiency in payment of benefits "by eliminating endless debates . . . over exactly what percentage of use . . ., has been lost." Id. at **568.** Chapter **89-91,** Laws of Florida, likewise provides a similar mechanism for avoiding "endless debate" for those claimants who desire to avoid debate. As for the due process challenge in the workers' compensation analogy, in Scholastic Systems, v. LeLoup, 307 So.2d **166 (1974),** this Court held that due process with respect to administrative procedures is guaranteed by providing a right to a hearing and the right to appeal administrative action to a judicial tribunal. These guarantees allow for the proverbial "day in Court." In the citrus canker compensation situation, such appeal rights are guaranteed to those who want them. The respondent and amici, however, contend that a hearing before the Division of Administrative Hearings (DOAH) does not comport with due process because decisions of DOAH are somehow under the control of the Department of Agriculture and Consumer Services, or the Comptroller, or the Legislature. This assertion is without basis in law or fact.

CHAPTER 89-91, LAWS OF FLORIDA, ESTABLISHES A REASONABLE ALTERNAITIVE TO LITIGATION IN CIRCUIT COURT

A. THE DIVISION OF ADMINISTRATIVE HEARINGS IS AN INDEPENDENT AND AUTONOMOUS QUASI-JUDICIAL AGENCY

When any claimant contests the compensation calculated pursuant to the Act, the claimant is entitled to a hearing before a hearing officer assigned by the director of the Division of Administrative Hearings. Section **6 (7)** and **(8)** of the Act. Created by the comprehensive revision of the Administrative Procedure Act in **1974,** the corps of independent hearing officers at DOAH constitutes a central panel of full-time fact-finders available to virtually every department of state government to determine disputes between citizens and executive branch agencies. See Chapter **74-310,** Laws of Florida, Section 1 at **967,** at Fla. Stat. Section **120.65, (1987).** The Legislature created DOAH "to improve the fairness of administrative practice before Florida agencies, by replacing agency employees and representatives with independent hearing officers." See **3** England and Levinson, Florida Administrative Practice Manual, Reporter's Comments; at **22** (comments submitted by the Reporter for the Florida Law Revision Council on the final draft of the **1974** Administrative Procedure Act).

Scholarly commentators also have noted DOAH's independence in decision making. Dore, Access to Florida Administrative Proceedings, 13 Fla. St. U.L. Rev. **967, 1016-17 (1986).** As the First District Court of Appeal observed in Reese v. Department of Prof. Reg., **471** So.2d **601** (Fla. 1st DCA **1985):**

> One of the reasons for the enactment of the Administrative Procedures Act and establishment of the Division of Administrative Hearings was to furnish impartial fact-finders to hear adversary proceedings in which the substantial interests of a party are determined by an agency and where the proceedings involve a disputed issue of material fact.

Id. at 603. This Court has itself recognized the special position of DOAH hearing officers, which entitles their findings of fact to greater deference than those of fact-finders employed by a state agency that is a party to the dispute. Kimball v. Hawkins, 364 So.2d 463, 465 (Fla. 1978). DOAH is not part of, or in any way tied to, the Office of Citrus Canker Claims, which has been placed within the Department of Banking and Finance, the agency which draws warrants from the state treasury. Sections 17.03(2), 17.075 and 17.14, Florida Statutes (1987).

DOAH hearing officers are insulated from the influence of all litigants, private and governmental alike. All contacts with litigants or other persons on the merits of a case must be on the record, and ex parte communications are prohibited. Section 120.66(1), Florida Statutes (1987). Of course, each entity within the executive branch of state government must be housed in a department. Although DOAH is located in the Department of Administration for organizational purposes, by statute it functions as a totally separate agency.

Under Section 120.65(1), Florida Statutes (1987), DOAH is not "subject to control, supervision, or direction by the Department of Administration in any manner, including, but not limited to,

personnel, purchasing, transactions involving real or personal property, and budgetary matters." The Governor and Cabinet sitting as the Administration Commission appoint DOAH's director, subject to Senate confirmation. Section 120.65(1), Florida Statutes (1987). The Director is responsible to the Administration Commission for the efficient operation of the division, but does not control or direct decisions on the merits of cases assigned to hearing officers.

The Administration Commission enjoys no more authority over the budget of DOAH than over the budget of any other governmental entity, including the judiciary. Section 216.292(3), Florida Statutes (1987). Like the judiciary, DOAH's budget is submitted directly to the Legislature, rather than through the Executive Office of the Governor. Section 216.023(2), Florida Statutes (1987).

The Legislature has insulated DOAH from sources which might affect its decision making in order to eliminate even the appearance of such interference. The Comptroller has no more authority over the operation of DOAH or its budget than he has over the judiciary or budgets of courts. If the Executive Office of the Governor were to attempt to reduce the number of authorized hearing officer positions at DOAH, or to take any other action with respect to DOAH's approved operating budget, the director has the right of appeal to the Administration Commission. Section 120.65(2), Florida Statutes (1987). If a DOAH hearing officer makes a decision that displeases the Governor, the Commissioner of

Agriculture, the Comptroller or any other Cabinet member or agency head, existing law affords no means for retribution through supervisory or budgetary processes.

The Legislature and the Joint Select Committee placed the Office of Citrus Canker Claims in the Department of Banking and Finance purposely to avoid any possible conflict between the interests of the fact finders who would be hearing citrus canker matters and the Office as well as to avoid any possible conflict with the Department of Agriculture and Consumer Services. In short, the Legislature chose to have the division conduct these hearings because it and the Joint Select Committee were certain that the hearing officers would be fair and insulated from the influence of all litigants, public and private.

B. CAREER SERVICE PROTECTION ASSURES THE INDEPENDENCE OF DOAH HEARING OFFICERS

Hearing officers are the only lawyers remaining in the state career service system. Section 110.205(2)(q), Florida Statutes (Supp. 1988). All other lawyers in state government have lost career service protection and their employment as members of the selected exempt service may be terminated at any time. Id.; Section 110.604, Florida Statutes (1987). Since hearing officers can be disciplined or terminated only for good cause, they effectively enjoy permanent tenure. Section 110.227(1), Florida Statutes (1987). The Legislature purposefully kept hearing officers in career service in order to protect them from any real

or perceived political pressure regarding their decision making responsibilities.

Hearing officers are required to be members in good standing of the Florida Bar for the five year period preceding their employment. Section 120.65(4), Florida Statutes (1987). This is the same eligibility requirement for appointment as a circuit judge under Article V, Section 8, of the Florida Constitution. Judges of compensation claims, the administrative adjudicators within the Department of Labor and Employment Security who handle workers' compensation proceedings, are only required to have three years' experience in the practice of law. Section 440.45(1), Florida Statutes (1987); see also Chapter 89-289, Laws of Florida, Sec. 23. As a practical matter, the corps of DOAH hearing officers have been members of the Florida Bar for an average of 17.4 years. Hearing officers' compensation places them in the upper salary range of state employees. In 1985, hearing officers' salaries were advanced to the level of county court judges in order to ensure that the division would continue to attract the most qualified and experienced personnel available.

C. HEARING OFFICERS SIT IN A WIDE RANGE OF COMPLEX PROCEEDINGS

Proceedings conducted at DOAH can be lengthy, and commonly involve complex and important issues. See, e.g., Department of Transp. v. Groves-Watkins Constructors, 530 So.2d 912 (Fla. 1988); Graham v. Estuary Properties, Inc., 399 So.2d 1374 (Fla. 1981),

cert. denied, 454 U.S. 1083 (1981); Board of Trustees of the Internal Improvement Trust Fund v. Board of Professional Land Surveyors, 11 FALR 2451 (DOAH; April 17, 1989) (final order invalidating proposed rules of the Board of Professional Land Surveyors setting standards for establishing the ordinary high-water mark, which determines ownership of bottom lands).

In most instances, an agency embroiled in a dispute with a citizen refers the case to DOAH for the assignment of a hearing officer, who schedules an evidentiary hearing similar to a non-jury trial in the circuit court.[10] Hearings are ordinarily scheduled within ninety days from assignment. The hearing officer's decision is expressed in a recommended order containing detailed findings of fact and conclusions of law, as well as an appendix which states why each finding of fact proposed by the parties was accepted or rejected. In most cases before DOAH, the hearing officer must enter an order within a specified time period. As a result, most litigants move quickly through the process.

In approximately half the 7,000 cases filed annually at DOAH, hearing officers enter final orders. Those final orders, like final judgments of circuit courts, are directly appealable to the District Courts of Appeal. Section 120.68, Florida Statutes (1987). In adding citrus canker claims into DOAH's final order

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[10]The discovery procedures available under the Florida Rules of Civil Procedure are available at DOAH. Section 120.58(1)(b), Florida Statutes (1987).

jurisdiction, the Legislature is well within its constitutional authority.

D. HEARING OFFICERS PRESENTLY ASSESS ATTORNEY'S FEES AND CAN DO SO IN CITRUS CANKER CASES

Hearing officers at the Division of Administrative Hearings have considerable experience in assessing attorney's fees. Hearing officers may impose fees under Sections 57.111; 120.57(1)(b)5. and 120.59(6), Florida Statutes (1987). The District Courts of Appeal commonly remand cases to the Division of Administrative Hearings to assess attorney's fees under Section 120.57(1)(b)(10), Florida Statutes (1987) (formerly Section 120.57(1)(b)9., Florida Statutes (Supp. 1984)). These remands have specifically required hearing officers to apply the standards set by this Court in Florida Patients Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). See, e.g., University Community Hosp. v. Department of Health and Rehabilitative Services, 492 So.2d 1339 (Fla. 2d DCA 1985), appeal after remand, 493 So.2d 2 (Fla. 2d DCA 1986); Doctors' Osteopathic Medical Center v. Department of Health and Rehabilitative Services, 498 So.2d 478 (Fla. 1st DCA 1986). Assessment of attorney's fees in citrus canker cases will present nothing novel for DOAH hearing officers.

The Act makes provision for the award of attorney's fees for claims presented before a hearing officer. The Act provides that the fees for claims presented are to be based upon a reasonable rate for the time necessarily expended for the claim and hearing.

It is presumed that a reasonable fee would not exceed ten percent of the amount recovered in excess of the net compensation calculated under the Act. Section 6(13) of the Act. The Legislature and Joint Committee enacted this provision as a part of providing full compensation. The Act was designed to function without the involvement of anyone but the claimant; however, the Legislature and Joint Select Committee insured that a claimant would be fully compensated, including attorney's fees. The presumption is designed to insure that attorney's fees bear some relationship to the benefit obtained for the claimant in excess of that he could have obtained without legal assistance. The presumption is just that and may be overcome by the greater weight of the evidence.

The Act also provides for the determination of attorney's fees for claimants who have filed lawsuits prior to the effective date of the Act. Section 7 of the Act. The determination of the fees under this portion of the Act are in addition to any fees involved with a claim for compensation under the Act. Section 7(2) of the Act. A hearing officer from the DOAH will determine the appropriate level of compensation based upon the time and labor reasonably required to adequately represent the client; the fee or rate of compensation charged in the locality for comparable legal services; the experience, skill, reputation and ability of the attorney performing the service, and the skill, expertise or efficiency of effort reflected in the actual provision of the service, whether the attorney's efforts were duplicative of work

done by that attorney for another client who had a citrus canker lawsuit or claims pursuant to the Act; and, whether the attorney's work was duplicative of work done by other attorneys in earlier citrus canker lawsuits or claims. Section 7(4) of the Act.

E. THE COURTS CONSISTENTLY UPHOLD LEGISLATIVE DELEGATION OF QUASI-JUDICIAL AUTHORITY TO DOAH

Under Article V, Section 1 of the Constitution, "Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices." The First District Court of Appeal, has recognized that the Legislature has broad powers in assigning quasi-judicial functions to DOAH. Department of Administration v. Stevens, 344 So.2d 290, 294 (Fla. 1st DCA 1977) (upholding the authority of DOAH hearing officers to declare policies of executive agencies invalid under Section 120.54 and rejecting a separation of powers challenge based on Article V, Section 1, Florida Constitution). Also, see Gruman v. State, Dep't. of Rev., 379 So.2d 1313 1316 (Fla. 2nd DCA 1980), noting that a hearing officers' factual findings are entitled "to as much weight and respect as the verdict of a jury."

Formal administrative hearing procedures comport with constitutional requirements, and may lawfully be extended to canker compensation claims. Appellate judicial review of final orders assures litigants due process. To argue that the courts cannot effectively supervise the exercise of quasi-judicial power where

independent hearing officers of long experience are required to explicate their fact findings, which must be based upon evidence of record, and be coupled with conclusions of law interpreting applicable authorities, is to argue against the exercise of quasi-judicial authority by the executive branch in any context.

Article I tribunals in the federal system, including the United States Tax Court and the United States Claims Court, serve analogous functions. Although these bodies exercise quasi-judicial authority, they are also subject to correction by Article III United States District Courts or Courts of Appeals. It was settled long ago that due process does not require that a common law jury determine the value of property taken through eminent domain. Bauman v. Ross, 167 U.S. 548, 593 (1897); Backus v. Fort Street Union Depot Co., 169 U.S. 557, 568-69 (1898). It is simply wrong to suggest that anything in either the United States or Florida Constitutions forbids executive branch adjudicators from determining the value of growing plants.

F. THERE ARE NO APPLICABLE CONSTITUTIONAL LIMITATIONS ON DETERMINATIONS OF DAMAGES BY DOAH HEARING OFFICERS

There are limits to the authority of quasi-judicial bodies to determine damages. Administrative boards established by county ordinance cannot determine noneconomic tort damages for embarrassment and humiliation. Broward County v. LaRosa, 505 So.2d 422 (Fla. 1987). As this Court already found in Department of Agric. and Cons. Servs. v. Mid-Florida Growers, Inc., 521 So.2d 101

(Fla. 1988), however, the claims at issue here arise from Article X, Section 6 of the Florida Constitution. They do not arise from tort law. More recently, this Court held in Laborers' International Union v. Burroughs, ___ So.2d ___, 14 F.L.W. 181 (Fla. 1989), that an administrative body created by county ordinance may constitutionally assess damages for violation of an ordinance which forbids discrimination, and grant an injured party back pay and interest, because those damages are quantifiable.

The determination of the amounts due for plants lost due to burning is also quantifiable, and fundamentally unlike the assessment of noneconomic damages for embarrassment and humiliation involved in LaRosa. The decisions in LaRosa and Burroughs explore the authority of agencies created by county governments. These decisions did not define the limits of the Legislature's power to implement Article V, Section 1 by assigning duties to a State quasi-judicial body, such as DOAH, specifically established to determine disputes that citizens have with government agencies. In any case, the Legislature has given DOAH sufficient guidance to ensure that the process for the assessment of damages is procedurally fair, reliable, capable of dealing with any unusual or unique circumstance and subject to judicial review. The procedures found in Chapter 120, Florida Statutes, and Chapter 221, Florida Administrative Code, fully protect the due process rights of the property owners here.

RETROACTIVE EFFECT OF THE ACT

Statutes which relate only to procedure or are remedial in

nature may operate retrospective. Village of El Portal v. City of Miami Shores, 362 So.2d 275 (Fla. 1978); McCord v. Smith, 43 So.2d 704 (Fla. 1949); Young v. Altenhaus, 472 So.2d 1152 (Fla. 1985).

The legislature should clearly state its intent that a statute apply retroactively. Otherwise, a law is generally presumed to operate prospectively. Walker & LaBerge, Inc. v. Halligan, 344 So.2d 239 (Fla. 1977). The title of a statute must convey appropriate notice of intent that it apply retroactively. Chiapetta v. Jordan, 16 So.2d 641 (Fla. 1944). The title of Chapter 89-91, Laws of Florida, clearly states that it "...provid[es] for the prospective and retrospective application of the act to all persons having citrus canker claims against the state..."[11]

There must be some reason other than retroactivity to invalidate legislation, such as the impairment of contract, as in Yamaha Parts Distributors, Inc. v. Ehrman, 316 So. 2d 557 (Fla. 1975); violation of the prohibition against ex post facto laws, as in Bilyou v. Florida, 404 So.2d 744 (Fla. 1981); or impairment of vested rights. The respondents and amici argue that Chapter 89-91 is invalid because it impairs vested rights of those persons who have filed lawsuits seeking compensation for destroyed citrus plants. Most of the cases cited in respondents' and amici's briefs concern legislation in which there was no express legislative

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[11] "In fact, of the almost 20,000,000 trees burned in the citrus canker program, over half (12,071,116) were owned by the 64 nurserymen who had cases pending in circuit court on the effective date of the Act.

declaration that the statute in question have retroactive effect.

Before examining the cases cited in the opposing briefs, clarification is needed as to what rights citrus canker claimants possess. As discussed earlier, they have no right to a circuit court determination of compensation, nor to a jury trial. Their right is the right to full compensation as provided by Article X, section 6 of the Florida Constitution. This right was scrupulously guarded by the Legislature, as the background and legislative consideration of Chapter 89-91 shows, and this right is in no way impaired by the Act. Under Chapter 89-91, a claimant may either accept the rates set out in section 3, in which case he most likely considers it full compensation, or he is entitled to a hearing before an impartial hearing officer and attempt to prove what full compensation is to him, just as he would do in a circuit court proceeding and he has the right to appeal that decision to the First District Court of Appeal.

In City of Sanford v. McClelland, 163 So.2d 513 (Fla. 1935), cited in Duda's brief, Mr. Ashton had obtained judgment against the city of Sanford. On July 20, 1932, execution was issued and on April 11, 1935, Sheriff McClelland levied on property owned by the municipality. Eight days later a new law, Chapter 17125, Laws 1935, became effective, which provided that no execution could be levied under a judgment against a municipal corporation. Chapter 17125 contained no statement regarding retroactivity. Even if it had contained such a statement, it is likely that it would have been declared invalid as to Mr. Ashton, as "...even a clear

legislative expression of retroactivity will be ignored by the courts if the statute impairs vested rights, creates new obligations, or imposes new penalties." Anderson v. Anderson, 468 So.2d 528, at 530 (Fla. 1st DCA 1985). Mr. Ashton had acquired a lien on the municipality's property by the levy of execution. "A lien is a qualified right or proprietary interest which may be exercised over the property of another. It is a right which the law gives to have a debt satisfied out of a particular thing." City of Sanford v. McClelland, supra. at 514. Chapter 17125 did more than impair that right, it abolished it completely and gave Mr. Ashton nothing in return. See Kluger v. White, 281 So.2d 1 (Fla. 1973).

Cone Brothers Contracting v. Gordon, 453 So.2d 420 (Fla. 1st DCA 1984), is another case where there was no clear legislative expression as to retroactivity. The court found the statutory amendment to be substantive, requiring an absolute reduction in Gordon's award, and applied it prospectively. Chapter 89-91, Laws of Florida, provides a mechanism for a claimant to obtain full and just compensation.

In L. Ross, Inc. v. R.W. Roberts Construction Co., 481 So.2d 484 (Fla. 1986), the Florida Supreme Court agreed with the opinion of the district court which stated, "The right to an attorney's fee is substantive because it gives to a party who did not have that right the legal right to recover substance (money!) from a party who did not theretofore have the legal obligation to render or pay that money." Chapter 89-91, Laws of Florida, allows for the

claimant to recover and be awarded reasonable attorney's fees.

Meli v. Admiral Insurance Company, 413 So.2d 135 (Fla. 3rd DCA 1982), and Rupp v. Bryant, 417 So.2d 658 (Fla. 1982), involved decisions against retroactive application because the challenged statute totally abrogated and abolished rights to recover. The claimants (plaintiffs) were left with nothing to replace that right, as they clearly are in Chapter 89-91, Laws of Florida.

In Ettor v. Tacoma, 228 U.S. 148, 57 L.Ed 773, 33 S.Ct. 428 (1913), the plaintiffs were left with no way to recover from the city for damages done during the original grading of streets, after the statute allowing such a lawsuit against the city was repealed while their lawsuit was pending. The difference between this and the statute sub judice is clear: the citrus canker claimants are in the same position they were before the statute became effective. They will receive full compensation for their plants.

Anderson v. Anderson, 468 So.2d 528 (Fla. 3rd DCA 1985), is wholly inopposite. Chapter 89-91, Laws of Florida, does substitute an entirely new system, but one that is a reasonable alternative. Kluger v. White, supra. Claimants do not have to prove the state's liability for the destruction of plants, nor do they have to invalidate the releases which were signed when they received their financial assistance. It is an expedited system, designed to pay as many claimants as possible, as soon as possible, while protecting those who want to have their "day in court" to prove values different than those presumptively set in Chapter 89-91.

Young v. Altenhaus, 472 So.2d **1153** (Fla. **1985),** concerned two medical malpractice cases in which this Court found "that a statutory requirement for the non-prevailing party to pay attorney fees constitutes 'a new obligation or duty,' and is therefore substantive in nature.'' This case is cited by the respondent to support the proposition that "the right to attorney's fees is a substantive right which cannot be adversely affected through retrospective legislation." Response of Grady Sweat, et al. at 16. Chapter **89-91** does not take away a claimant's right to attorney's fees. This includes plaintiffs who had lawsuits pending on the effective date of the law, as well as claimants who choose to proceed to a hearing before a DOAH hearing officer with the right of appeal to the District Court of Appeal. Section 7 of Chapter **89-91** lists the factors which the hearing officer must consider in determining attorney's fees for those persons with pending lawsuits. The first three factors track language in Rule **4-1.5,** Rules of Professional Conduct. The last two were added to protect the state from paying duplicative attorneys' fees. Those who proceed to hearing are entitled to attorney's fees (section 7(13) of Chapter **89-91),** which are presumed to be no more than 10% of the amount recovered in excess of the net compensation. This presumption is not a cap, as it can be rebutted. The right of persons with pending lawsuits or those who proceed to hearing is intact.

Duda relies heavily on State Department of Pollution Control v. International Paper Co., **329** So.2d **5** (Fla. **1976).** But,

a close review of the case supports the Legislature's actions herein. In International Paper Co., the defendant had a specific statutory right to a judicial determination of liability and damages under s. 403.121(2), Florida Statutes (1969), due to a fish kill. The Florida Supreme Court held:

> When the Leuislature amended Chapter 403 in 1972, it eliminated the right of a defendant to require a judicial determination for liability and damages. This amendment restricts a right previously held and is substantive, not procedural. Under the circumstances of this cause, we decline to give retrospective effect to the 1972 amendments. (emphasis added)

In Chapter 89-91, Laws of Florida, the defendant (State of Florida, Department of Agriculture and Consumer Services) is waiving liability and agreeing to pay full compensation and damages, subject to an impartial quasi-judicial hearing and final judicial review. As discussed earlier, the plaintiffs or claimants in the citrus canker cases had no right to a jury trial or a judicial determination of damages.

In Department of Transportation v. Knowles, 402 So.2d 1156 (Fla. 1981), this Court stated, "As a matter of principle, it is undisputable that a retroactive application of the 1980 law has taken from Knowles something of value, and that nothing of value has been substituted or otherwise provided." (emphasis supplied) Department of Transportation v. Knowles, at 1158. By the passage of Chapter 89-91, Laws of Florida, something of substantial value, "has been substituted or otherwise provided" by the Legislature.

CONCLUSION

The Court's decision in Mid Florida resulted in extensive liability being imposed upon the State by the legitimate exercise of the police power. In trying to come to grips with this decision, the Legislature has crafted a procedure which provides for the payment of compensation while maintaining the integrity of the legislative appropriations power. The Legislature worked diligently to provide a reasonable and constitutional approach to this complex problem, and the Legislature's solution should be upheld by this Court.

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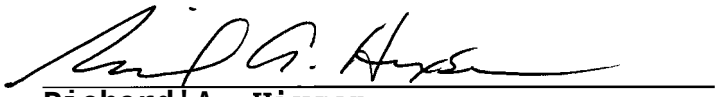

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