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IN THE SUPREME COURT OF FLORIDA

IDA FINKELSTEIN, et al.,

Petitioners,

v.

CASE NO. 83,308

STATE OF FLORIDA, DEPARTMENT
OF TRANSPORTATION

Respondent.

______________________________/

RESPONDENT'S BRIEF ON MERITS
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
(ON REVIEW OF A QUESTION CERTIFIED BY THE
FOURTH DISTRICT COURT OF APPEAL)

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PRELIMINARY STATEMENT

Ida Finkelstein, Alice Fox, and Tenneco Oil Company, defendants/appellees below and petitioners here, will be referred to as Finkelstein, Fox, and Tenneco, or collectively, as Petitioners. The Florida Department of Transportation, the petitioner/appellant below and respondent here, will be referred to as the Department.

Citations to the record on appeal will be indicated parenthetically as "R" with the appropriate page number(s). Citations to the appendix attached hereto will be indicated parenthetically as "A" with the appropriate tab number(s). Citations to Petitioners' brief on the merits will be indicated parenthetically as "PB" with the appropriate page number(s).

The decision of the lower court is currently reported as State, Department of Transportation v. Finkelstein, 629 So. 2d 932 (Fla. 4th DCA 1993). (A 1)

STATEMENT OF THE CASE AND FACTS

Petitioners' Statement of the Case and Facts is accurate but incomplete. Consequently, the Department submits the following information.

The Department filed a Motion in Limine seeking a pre-trial determination of the admissibility of evidence concerning petroleum hydrocarbon contamination of the subject property and the costs of remediation. (R 415-417) The Department took the position that the testimony regarding contamination and remediation represented factors affecting market value that would be considered by a willing buyer and that the testimony should be admitted under the principle that all evidence relevant to the issue of full compensation should be admissible in a valuation trial. (R 11-15, 19-20) Counsel for Tenneco argued that the testimony should not be admitted on the grounds that it was irrelevant and that the evidence of remediation costs was speculative because all the costs attributable to the subject parcel had not been established and because the amount the Department would be reimbursed under the Department of Environmental Regulation's Early Detection Incentive Program (EDI) program had not been determined. (R 18) The trial judge denied the Department's motion (R 20) and later confirmed that counsel for the parties would not be permitted to comment upon contamination during opening statements. (R 38)

The Department proffered the contamination and remediation testimony of its environmental consultants from Westinghouse Remediation Services, Inc. (R 22-24, 26-36) The consultants were

responsible for assessing the contamination, designing a remediation plan, and implementing the plan. (R 23)

Had he been allowed to testify, Luke France, the contract manager, would have indicated that the cost of remediation was between $750,000 to $800,000. (R 27) Mr. France also would have been able to explain to the jury why the Department was operating under certain time constraints and that this circumstance was not the fault of the landowner. (R 26)

Doug Ashline, an engineer with Westinghouse, completed the contamination assessment on the subject parcel and developed the remediation plan. (R 27) Mr. Ashline was going to testify that he performed this type of service for buyers, sellers, and lending institutions on a regular basis. (R 28, 34) His testimony was to address the average costs of an assessment, development of the remediation plan, and implementation of the plan with respect to a typical service station site with a contamination plume the same magnitude of the plume affecting the subject parcel. (R 28)

Mr. Ashline would have further testified that lending institutions regularly request his services, that it is likely that they would not want to do financing, and that the banks do not want to take back property in default if the property is "dirty". (R 33) Mr. Ashline also would have explained to the jury how the EDI program operates and the time frames associated with the clean-up and reimbursement. (R 30)

Robert Moody, the Westinghouse project manager, was the field person who supervised the implementation of the remediation plan

for the subject property. (R 34-35) His testimony would have dealt with the daily operation of the clean-up project, matters related to underground storage tanks, the placement of monitoring wells, and the fact that the site had soil as well as water contamination. (R 35-36)

Upon the conclusion of the Department's proffer, trial counsel for Tenneco requested a continuing objection as to all the matters raised in the proffered testimony. (R 37)

The parties agreed that the value of the improvements located on the subject parcel was $350,000. (R 105) At trial, Edward N. Parker, the Department's appraisal expert, testified that the value of the land was $300,000, yielding a total value of the land and improvements taken of $650,000. (R 103, 105) Mr. Parker's appraisal was based on the assumption that the subject parcel was not contaminated. (R 137)

In light of the trial judge's prior ruling on contamination and remediation testimony, the Department made the following proffer of Mr. Parker's testimony regarding those topics and their impact on market value:

> Judge, the testimony that Mr. Parker presented to the Court and to the jury yesterday was the testimony of the parcel as clean. It was appraised as clean, and that would have been my very next question to him. And then I would have asked Mr. Parker, but in reality, Mr. Parker, was the site clean as of May 16, 1990.
>
> And then he would have said it is not, then he would have discussed the information that he had on particulars, very briefly, but he would have essentially talked about his firm's experience in doing contaminated

> appraisals and his opinion of the affect of contamination on market value.
>
> He would have indicated that there is an increased risk to a purchaser, that there's a substantial risk that would increase the cost primarily because a purchaser, an interested buyer would likely come out of pocket for a phase one and phase two assessment, and possibly a formal contamination assessment report. So that would have been additional cost whether or not he had actually purchased the property.
>
> He would have indicated that there would be a restriction on the utility or the use of a vacant land site, and also that there is an appraisal theory, what is called a stigma of contamination, and all of those factors would affect marketability and desirability of the property, and in his opinion would have an impact on the value of at least twenty to twenty-five percent. That would have been his testimony.

(R 137-138)

At the conclusion of the Department's proffer, counsel for Tenneco indicated that had the matter been presented to the jury he would have raised objections as to Mr. Parker's "ability and his knowledge to testify, hearsay and so forth." (R 138) Counsel for Tenneco also proffered the testimony of Ed Lambert which would have been put on to rebut Mr. Parker's testimony. Essentially, Mr. Lambert would have given testimony indicating that within the industry there is no stigma associated with properties like the subject parcel and that such properties regularly sell in the market at full market price because the station can be operated while remedial action is being taken. (R 139-140)

After the Department rested its case in chief (R 140), Petitioners put on the testimony of David Felton and Donald Trask.

Mr. Felton is the president of a corporation that specializes in supplying development services, site analyses, and permitting services for the petroleum and fast food industries. (R 141) His testimony was directed to what he believed to be the unsuitability for service station/convenience store operations of the comparable parcels used by the Department's appraiser to arrive at the value of the subject parcel as vacant land. (R 141-183)

Mr. Trask was Petitioners' real estate appraiser. (R 184) Prior to Mr. Trask's discussion of summaries of the comparable sales he relied upon, the Department objected to Mr. Trask going forward with his testimony on the ground that he had placed a value on the subject parcel without any reference to contamination or consideration for any environmental effect on the market. (R 197-198) The trial judge overruled the objection. (R 198)

The Department proffered its cross-examination of Mr. Trask on the contamination issue and elicited testimony from him indicating that he knew the property was contaminated, that his valuation opinion was based on the assumption that the property was clean, and that the comparable sales he relied upon were sales of clean properties. (R 226) The trial judge denied the Department's subsequent motion to strike Mr. Trask's testimony. (R 226-227) Mr. Trask eventually expressed his opinion that the value of the land was $567,000 which, when added to the stipulated value of $350,000 for the improvements, produced a total value of $917,000. (R 233)

The jury returned a verdict of $525,000 for the value of the land and $350,000 for the improvements for a total award of

$875,000. (R 353-354) Final judgment was rendered thereon on July 27, 1992 (R 437-439) and the Department timely filed its notice of appeal on August 13, 1992. (R 441-442) The Fourth DCA concluded that the proffered contamination/remediation evidence had been improperly excluded, reversed the final judgment, remanded the cause for a new valuation trial, and certified the question. State, Department of Transportation v. Finkelstein, 629 So. 2d 932 (Fla. 4th DCA 1993).

SUMMARY OF ARGUMENT

The Fourth DCA properly concluded that the Department's contamination/remediation evidence was erroneously excluded. The contaminated status of the property and related consequences have a very significant affect on market value and the jury should have been permitted to consider all factors relevant to the issue of full compensation.

Petitioners take the contrary position claiming that the admission of evidence regarding the negative impact contamination/remediation factors have on market value impermissibly transforms an eminent domain proceeding into a forum for litigating environmental liability claims; that admission of the evidence could prevent a landowner from becoming financially whole and would thwart full compensation; and that addressing environmental contamination through eminent domain valuation is against sound public policy.

Petitioners' claims, to some extent, are premised upon the belief that the valuation proceeding was used as vehicle to arrive at a mathematical set-off for remediation costs and to determine liability for the contamination. Liability was not an issue below and it has never been the Department's position that it was seeking a dollar for dollar set-off based upon the costs of remediation.

Regarding Petitioner's first claim, the Department argues that the claim is meritless because the EDI program and related legislation is not an exclusive remedy for dealing with the effects of contamination. The legislation makes no provision for loss of

value of real property arising form the risk and stigma associated with contamination.

The Department next argues that Petitioner's second claim is uncompelling because it ignores the stigma and risk that adheres to contaminated property after it has been cleaned to the satisfaction of the governing regulatory agency.

Petitioners' public policy claim is based upon a misapprehension of the ends served by the admission of contamination/remediation evidence. The admission of such evidence goes to establishment of the market value of the property at issue and does not act to supplant the environmental regulatory scheme set out in Chapter 376. Nor does it operate to determine liability for the contamination in the first place.

Finally, Petitioners alternatively argue that if contamination/remediation evidence is found to be admissible, the condemning authority, as a predicate to admission, should be required to demonstrate that contamination exists, that action would be mandated by the governing agency, that the condemnee is liable, what remediation method would be approved, and the associated costs. The Department agrees that where the condemning authority's appraiser's opinion of value is based in part on the market's negative reaction to contaminated property, the condemnor should be required to put on evidence showing that the property was contaminated either prior to or on the date of taking and that the market reacts negatively to such property. However, requiring proof of the other matters suggested by Petitioners is

inappropriate because set-off of remediation costs and liability are not in issue. Furthermore, putting on the extensive technical or scientific testimony required to prove up those points would obfuscate the issue of full compensation and make an independent issue of "contamination vel non."

ARGUMENT

ISSUE

THE LOWER COURT PROPERLY CONCLUDED THAT EVIDENCE OF PETROLEUM HYDROCARBON CONTAMINATION OF THE CONDEMNED PROPERTY, THE COSTS OF REMEDIATION, AND THEIR IMPACT UPON THE MARKET VALUE OF THE PROPERTY WAS ADMISSIBLE IN AN EMINENT DOMAIN VALUATION TRIAL.

[Restated by Respondent]

Prior to the commencement of the valuation trial in this case, the Department filed a motion in limine seeking a ruling on the admissibility of evidence concerning petroleum hydrocarbon contamination and the costs of remediation. (R 415-417) The trial judge's denial of the motion resulted in the exclusion of the testimony of the Department's environmental consultants and portions of the Department's appraiser's testimony that would have dealt with the influence contamination of the subject parcel would have had on the property's market value.

Relying primarily upon this Court's decision in Florida Power & Light Co. v. Jennings, 518 So. 2d 895 (Fla. 1987), the lower court reversed holding, among other things:

> Jennings teaches that characteristics of the condemned property are the things of which a real estate expert's opinion is made. They are the factors which influence a purchaser in determining how much to pay for a piece of property. Some of those characteristics are fear generated by high voltage electric transmission lines, contamination of property by gasoline hydrocarbon, and toxic waste of all kinds.

> Thus, the evidence which DOT attempted to offer relative to the contamination of the property and the cost of remediation was relevant to the value of the property on the date of taking, but it was also relevant regarding the effect which the stigma of contamination would have on its market value in the mind of the buying public. DOT's experts were prepared to offer evidence that the opinion of an interested buyer would be affected by the fact that the property had suffered contamination as well as its present condition.

State, Department of Transportation v. Finkelstein, 629 So. 2d 932, 934 (Fla. 4th DCA 1993). The Fourth DCA's decision comports with this Court's decisions interpreting the full compensation requirement of the Florida Constitution and should be affirmed.

It is well settled in Florida that "our constitutional provision for full compensation requires that the courts determine the value of property by taking into account all facts and circumstances which bear a reasonable relationship to the loss occasioned by the owner by virtue of the taking of his property under the right of eminent domain." Jacksonville Expressway Auth. v. Henry G. Du Pree Co., 108 So. 2d 289, 291 (Fla. 1958). See also Florida Power & Light Co. v. Jennings, supra at 518 So. 2d 897 n. 2 (Fla. 1987). The trial judge's exclusion of the Department's evidence violated this fundamental principle because the testimony in and of itself demonstrated that contamination/remediation associated with a given property is a factor which affects market value. In fact, Petitioners implicitly concede that there is adverse market reaction to contaminated properties when they argue that "...public resentment of environmental contamination would

overshadow the appropriate issue of just compensation for the taking of property." (PB 12)

Petitioners observe that "[o]ut-of-state caselaw on the valuation of contaminated properties in eminent domain proceedings is sparse, so the emergence of even one opinion is relatively significant." (PB 22) The Department agrees and submits that a recent decision of the Supreme Court of Kansas, which for all practical purposes is on all fours with the instant case, is indeed significant and highly persuasive.

City of Olathe v. Stott, 861 P.2d 1287 (Kan. 1993) (A 2), addressed the issue of whether evidence of underground petroleum contamination is admissible in an eminent domain proceeding. In that case, parcels acquired by the city were contaminated with leakage from gasoline and diesel fuel underground storage tanks. Id. at 1289. At trial, appraisers for the city , over the landowners' objections, were allowed to discuss the impact of petroleum contamination on the fair market value of the property. Id. On appeal, the landowners contended that no evidence of contamination should have been admitted because a specific act, the Kansas Storage Tank Act, preempted the more general condemnation statutes and provided the only relief available in Kansas for contamination damage resulting from leakage of underground storage tanks. Id. The Kansas Supreme Court found the evidence to be admissible holding, in pertinent part:

> One of the primary purposes in any eminent domain proceeding is to determine the fair market value of the property taken. Underground petroleum contamination

> necessarily affects the market value of real property. Evidence of such contamination is therefore admissible in an eminent domain action unless, as the landowners contend, the Act provides the exclusive remedy for petroleum contamination.
>
> *   *   *
>
> The Act does not cover reduction in property value attributable to risk or stigma associated with the contamination that may remain after the property is cleaned up to KDHE's satisfaction.
>
> *   *   *
>
> The Act does not address what appears to be the primary cost at issue here--the reduction in value attributable to stigma and risk.

Id. at 1290, 1292, 1293.

A similar result was reached in Redevelopment Agency v. Thrifty Oil Co., 5 Cal.Rptr.2d 687 (Cal. App. 2d Dist. 1992) (A 3), which arose from an eminent domain proceeding involving condemnation of a parcel that was contaminated by gasoline spillage associated with the operation of a service station on the property. Id. at 688. The court soundly rejected the contention that the issue of remediation was not properly before the jury stating that: "[a]s a characteristic of the property which would affect its value, the remediation issue was properly before the trier of fact." Id. at 689 n. 9.

Both the Kansas and California courts recognized that evidence of contamination/remediation is a relevant factor influencing market value that should be presented to the jury. While no Florida cases, other than the lower court's decision, appear to be directly on point, this Court's disposition of Florida Power &

Light Co. v. Jennings, supra, conclusively demonstrates that the determinations made by the Kansas and California courts are consistent with Florida's concept of constitutionally mandated full compensation.

Jennings involved condemnation proceedings initiated by Florida Power & Light Co. (FPL) for a perpetual utility easement for its planned 500 kV transmission lines. Florida Power & Light Co. v. Jennings, supra at 896. The transmission lines were supported by 115 to 125 foot high structures with 99 foot crossarms. Id. The issue before the court concerned testimony of landowners' expert witnesses regarding the adverse health effects of 500 kV transmission lines. Id.

FPL filed a motion in limine to exclude the scientific experts from testifying. Id. The trial court denied the motion and ruled that the testimony was admissible because the evidence was relevant not only to the issue of damages to the taken property but was also relevant to the issue of severance damages. Id. The district court affirmed adopting a rule which provided that evidence of the existence of fear and its effect on market value may be admitted into 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 reasonable basis. Id. at 896-897.

This Court disapproved the district court's adoption of the above-stated rule and quashed the decision holding, in part:

> We reject as irrelevant the requirement that the landowner must prove to the jury that the public's fear of the alleged adverse health effects from these transmission lines has a

> reasonable scientific basis. Adverse health effects vel non is not the issue in eminent domain proceedings: full compensation to the landowner for the property taken is. Allowing such scientific testimony into evidence, albeit under the guise of explaining why the presence of transmission lines depreciates the value of adjacent property, is irrelevant to the issue of full compensation. Not only does allowing such scientific testimony into evidence confuse the true issue, it also presents the unacceptable risk that the jury will feel obliged, if it believes the landowners' experts, to fashion an award that encompasses possible future injuries to persons....
>
> * * * *
>
> We join the majority of jurisdictions who have considered this issue and hold that the impact of public fear on the market value of the property is admissible without independent proof of the reasonableness of the fear....[footnote omitted]
>
> * * * *
>
> Under the rule we adopt today, the reasonableness of the fear is either assumed or is considered irrelevant....
>
> * * * *
>
> In conclusion, we hold that any factor, including public fear, which impacts on the market value of land taken for a public purpose may be considered to explain the basis for an expert's valuation opinion.

_Id_. at 897-899.

In the case at bar, the excluded testimony of the Department's environmental consultants and its appraiser would have established the following:

1. The fact that the subject property was contaminated by petroleum hydrocarbons on the date of valuation and the extent of the contamination.

2. Remediation costs ranged between $750,000 to $800,000.

3. Buyers, sellers, and lending institutions routinely request contamination assessments of real property.

4. Banks are reluctant to finance "dirty" property or take back such property in default.

5. Increased costs related to procurement of contamination assessments, restrictions on use, and the "stigma of contamination" affect the marketability and desirability of the property and would have a negative impact on the value of the subject property of at least twenty to twenty-five percent.

Unlike the scientific testimony found to have been improperly admitted in Jennings, the excluded testimony of the Department's experts would not have made an issue of "contamination vel non." Instead, the testimony would have demonstrated that the market does consider and does react to contamination/remediation factors. The testimony would have also presented an expert opinion that the contaminated status of the subject parcel and associated remediation costs would have adversely impacted the value of the property in the range of twenty to twenty-five percent. The market reaction to contamination/remediation that would have been testified to by the Department's experts is no different from the evidence of "public fear" of high voltage transmission lines found to be admissible in Jennings.

As the Kansas and California courts held, and as the Department's experts' testimony would have demonstrated, contamination/remediation is a characteristic of the property which would affect its value. City of Olathe v. Stott, supra; Redevelopment Agency v. Thrifty Oil Co., supra. In light of this Court's holding that any factor, including public fear, which impacts on the market value of land taken for a public purpose may be considered to explain the basis for an expert's valuation opinion, Florida Power & Light Co. v. Jennings, supra at 518 So.2d 899, the trial judge's exclusion of the Department's evidence of contamination/remediation associated with the subject parcel and its impact on the value of the property was a clear abuse of discretion which the lower court properly set aside.

Urging a contrary result, Petitioners essentially claim that the admission of evidence regarding the negative impact contamination/remediation factors have on market value impermissibly transforms an eminent domain proceeding into a forum for litigating environmental liability claims (PB 10-14); that admission of the evidence could prevent a landowner from becoming financially whole and would thwart full compensation (PB 14-24); and that addressing environmental contamination through eminent domain valuation is against sound public policy (PB 24-27).

Each of Petitioners' claims, to some degree, are grounded upon the premise that the Department sought admission of the contamination/remediation evidence for the purpose of achieving a mathematical set-off and to establish liability for the

contamination of the property. Liability for the contamination was not in issue below and it is not now, nor has it ever been, the Department's position that it was entitled to a mathematical set-off of the costs of remediation against any potential compensation awarded. The only purpose for putting on the contamination/remediation testimony was to show the basis for the Department's appraiser's expert opinion that the contaminated status of the property on the date of taking would have had a negative impact upon the market value of the property in the range of twenty to twenty-five percent.

Regarding Petitioners' first claim, it appears that the thrust of their argument lies in their belief that the environmental legislation set out in Chapter 376 provides the exclusive remedy for matters arising from petroleum hydrocarbon contamination and that any consideration of the issue is improper in an eminent domain valuation proceeding. If the Court will recall, a similar line of argument advanced by the landowners in Stott was flatly rejected by the Kansas Supreme Court because the Kansas legislation did not cover reduction in property value attributable to risk or stigma associated with the contamination that may remain after the property is cleaned up to the satisfaction of the regulatory agency. City of Olathe v. Stott, supra at 861 P.2d 1292, 1293. No different result should obtain here because the applicable

environmental legislation suffers from the same deficiency.[1] See Section 376.3071, Florida Statutes.

Regarding their second claim, Petitioners argue that admission of contamination/remediation evidence would deprive them of full compensation because the reimbursement provisions in Chapter 376 render the property financially clean. (PB 15-16) Like the Kansas and Florida legislation, Petitioner's argument is flawed because it doesn't take into consideration the risk or stigma associated with contaminated property after it has been cleaned. See City of Olathe v. Stott, supra at 861 P.2d 1292, 1293. For the same reason, the Court should reject Petitioners' contention that the stigma of contamination should not be considered because it resulted from the Department's acquisition of the property before the owners could complete clean-up. (PB 19-20)

Next, Petitioners' attempted distinction of Jennings on the basis that the power lines in Jennings were permanent and contamination is temporary misses the mark. There was no evidence proffered at trial showing that the stigma of contamination is a temporary condition. Indeed, Stott indicates that it adheres to the property after clean-up is complete. Under these circumstances it is understandable why Petitioners believe that exclusion of evidence of the market's negative reaction necessarily would have to be based upon a legal fiction. (See PB 16-18)

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[1]A state of affairs Petitioners acknowledged when they observed that "[a]n action pursuant to Chapter 376 (Fla.Stat. 1993) is limited to recovery of clean up costs, and loss in market value due to contamination is not compensable." (PB 22)

Equally uncompelling is Petitioners' proposed distinction of Redevelopment Agency v. Thrifty Oil Co., supra. (PB 23) The posture of the case in terms of preservation of the issue does not detract from the court's recognition that the remediation issue was properly before the jury because it was a characteristic of the property which would affect its value. Id. at 5 Cal.Rptr.2d 689.

On the other hand, Murphy v. Town of Waterford, 1992 W.L. 170588 (Conn. Super. Ct. 1992), upon which Petitioners rely (PB 24), is readily distinguishable from the case at bar. That case did not involve the admission of contamination/remediation evidence for the purpose of showing the basis for an appraiser's opinion reflecting a negative market reaction based upon the contaminated status of the property. In fact, neither expert appraiser in Murphy took into consideration any potential contamination of the site in arriving at their opinions of value. Murphy at p. 4. Instead, the condemning authority, unlike the Department here, after discovering that the property was contaminated after the date of taking, sought to reduce the condemnation award by the amount expended by the condemnor for cleaning up the contamination.

Like their previous claims, Petitioners' public policy claim arises from an apparent, and fundamental, misconception of what ends are served by the admission of contamination/remediation evidence. (PB 24-27) The admission of such evidence goes to establishment of the market value of the property at issue. It does not supplant the environmental regulatory scheme set out in Chapter 376, nor does it operate to determine liability for the

contamination in the first place. Those issues are still within the purview of proceedings under Chapter 376. While, as Petitioners suggest, the public may have an interest in full compensation because every landowner is a potential condemnee (PB 24), the public also has an interest in condemnation awards being based upon consideration of factors that affect the market value of real property because every landowner is a taxpayer.

As a final point, Petitioners argue that if contamination/remediation evidence is admissible, the Court should fashion uniform procedural and evidentiary standards to guide condemnors and condemnees. (PB 27-28) Petitioners' position on this point should be rejected because it is based upon the mistaken premise that a mathematical set-off and a determination of liability for the contamination are in issue. As demonstrated above they are not.

In those instances where the condemning authority's appraiser's opinion of value is based in part on the market's negative reaction to contaminated property, the condemnor should be required to put on evidence showing that the property was contaminated either prior to or on the date of taking and that the market reacts negatively to such property. Requiring proof that action would be mandated by the governing agency, that the condemnee is liable, what remediation method would be approved, and the associated costs is inappropriate because set-off of remediation costs and liability are not in issue. Moreover, subjecting the jury to the extensive technical or scientific

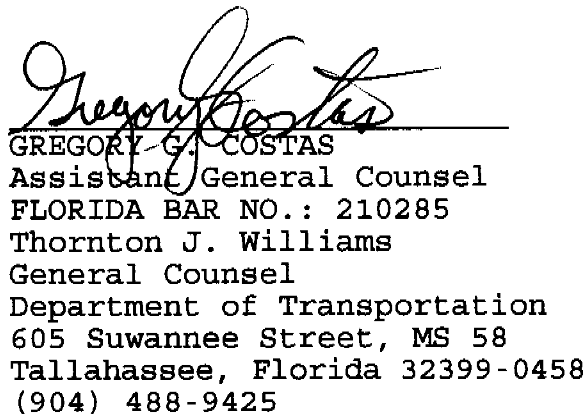
testimony required to prove up those points would run afoul of this Court's decision in Jennings because it would obfuscate the issue of full compensation and make an independent issue of "contamination vel non."

Here, had the Department's evidence been admitted, questions of set-off and liability for contamination would not have been put in issue. Instead, the jury would have been informed that the property was contaminated, that for a variety of reasons the market reacts negatively to contaminated properties, and that in the appraiser's opinion, the subject property would suffer a negative impact on its value in the range of twenty to twenty five percent.

CONCLUSION

Florida's constitutional requirement that a condemnee be afforded full compensation for a taking of his property necessarily requires consideration of all facts and circumstances which bear a reasonable relationship to the condemnee's loss. In addition to violating this unequivocal mandate, the trial judge's exclusion of evidence establishing the contaminated status of the property at issue in this case and the resultant negative impact on the property's market value produced an inherently unreliable jury verdict. Accordingly, the decision of the Fourth DCA reversing the final judgment and remanding the cause for a new trial should be affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail this 26th day of July, 1994 to AMY BRIGHAM BOULRIS, ESQUIRE, and ALAN E. DESERIO, ESQUIRE, Brigham, Moore, Gaylord, Schuster & Merlin, 203 S. W. 13th Street, Miami, Florida 33130-4219; ELIZABETH G. LOWREY, ESQUIRE, Messer, Vickers, Caparello, Madsen, Lewis & Goldman, 2000 Palm Beach Lakes Blvd., Suite 900, West Palm Beach, Florida 33409; and CHARLES M. PHILLIPS, JR., ESQUIRE, 1370 Pinehurst Road, Dunedin, Florida 34615.

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