Case No. 93,229

In the

SUPREME COURT OF FLORIDA

Gus Boulis,

Appellant,

vs.

Department of Transportation et al,

Appellees.

ON REVIEW OF A QUESTION CERTIFIED FROM
THE FIFTH DISTRICT COURT OF APPEAL

BRIEF FOR THE APPELLANT

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QUESTION PRESENTED FOR REVIEW

Whether a condemnee in an eminent domain proceeding is entitled to prejudgment interest on expert witness fees necessarily expended to achieve "full compensation" at trial.

OPINION BELOW

The Fifth District Court of Appeal affirmed the order of the trial court denying prejudgment interest and certified a question to this Court.

JURISDICTION

This Court has jurisdiction to review this case pursuant to Art. V, § 3(b)(4), Fla. Const.

CONSTITUTIONAL PROVISION INVOLVED

Art. X, § 6, Subsection (a), Fla. Const.; Eminent Domain.

"No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner."

STATUTORY PROVISION INVOLVED

Chapter 73, Eminent Domain, §73.091, Costs of the proceedings. -

The Petitioner shall pay all reasonable costs of the proceedings in the circuit court, including a reasonable attorney's fee to be assessed by the court

History. - s. 1, ch. 65-369; s. 2, ch. 87-148; s. 52, ch. 90-136; s. 1, ch. 90-303; s. 2,

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STATEMENT OF THE CASE

An action in eminent domain was filed by Petitioner, Florida Department of Transportation [FDOT] on October 13, 1994, against Gus Boulis [Boulis]. After a very contested "taking issue" on valuation the parties agreed to allow the "taking" in exchange for the FDOT making a good faith deposit of $550,000,00, over $315,000 above their last estimate. The parties further agreed that this case was to be decided under the pre-1994 provisions of Chap 73. [A- 1] Immediately thereafter, FDOT obtained an Order of quick take on January 19, 1995. [A- 2] After a mistrial was declared on the 6th day of the first valuation trial, a second trial began on December 11, 1995, and a verdict was rendered on December 21, 1995, placing a value on the subject property at $705,000.00. [A-3] A Final Judgment was entered on January 17, 1996, in a total sum of $705,000.00 plus prejudgment interest. [A-4] FDOT timely filed a notice of appeal with the Fifth District Court of Appeal. [A-5]

On January 26, 1996, Boulis filed his Verified Motion to Tax Expert Witness Fees. [A-6] On April 29, 1996, Boulis supplemented the original motion with a Verified Motion for Hearing to Assess Attorneys Fees, Costs and Pre-judgment Interest. [R. 181-185] On May 31, 1996, Boulis filed a Memorandum of Law in support of the foregoing motion. [R. 186-191] The parties agreed to defer the issue on the determination of the amount of attorneys' fees until after the appeal then pending in the Fifth District Court of Appeals.

On October 10, 1996, the parties entered into a stipulation agreeing to the amounts to be ordered by the court on the majority of the costs. On the costs that were not agreed to, the parties stipulated that the amount of the fees charged by Ace Blackburn were reasonable and only compensability was being contested, and further, that the other internal costs submitted by Boulis' attorney were "reasonable and necessary to the defense of this eminent domain action." On October 15, 1996,

the court entered an order confirming those stipulations. [R. 212-215] On November 19, 1996, Boulis filed his second Memorandum of Law in support of his motion to tax expert witness fees and costs. [R. 216-221] On November 20, 1996, a Notice of Hearing was served calling up the Verified Motion [A-7] and on December 9, 1996, FDOT filed its Memorandum of Law in opposition to the assessment of expert witness fees of Ace Blackburn. [R. 222-225]

The contested issues on the costs came on to be heard on December 13, 1996, in front of Judge Kennedy, out of which the court issued two written orders. On December 30, 1996, the court issued an order denying expert witness fees for Ace Blackburn finding that he was a "fact witness"; and finding that the hourly rate charged by the site selection expert Monette Klein-O'Grady was reasonable, however, the amount of time spent was not, and as a result cut her total bill in half even though FDOT did not contest the amount of time spent. [T. 32-33]

On January 11, 1997, the court amended its order by adding a finding that it was denying Boulis' claim for prejudgment interest on site selection expert's witness fee. [R. 231-233] This is the order appealed from. The court also entered an order on December 31, 1996, awarding the in-house costs for Boulis, [R. 229-230], and also not providing for any prejudgment interest.

On May 15, 1998, the Fifth District Court of Appeals affirmed the trial court's order denying pre-judgment interest on the expert witness fees and certifying the following question to this Supreme Court as one of great public importance: whether a condemnee in an eminent domain proceeding is entitled to prejudgment interest on litigation costs necessarily expended in preparation for trial.

STATEMENT OF THE FACTS

This case involved the total taking of a parcel wholly owned by Gus Boulis for the expansion of the Seabreeze Bridge in Daytona Beach. Boulis had owned the property since 1979 and had the property continuously leased for a Subway sandwich shop. Boulis contested both the taking of the property and the valuation of the property and was forced to employ the services of several experts in order to establish the value of the property. [R. 255] FDOT offered him $220,000.00. [R. 253] Ultimately, a jury on November 21, 1995, returned a value of $705,000.00. [A-3] FDOT appealed the Final Judgment on the issue of the expert witnesses method of evaluating rental advantage enjoyed by the tenant. The District Court reversed finding that the expert's method was flawed. The case is set for a third trial.

In regard to the subject property, Subway had been and was continuing to pay a rental value some two to three times the amount that would be paid for other properties due to its superior ability to generate a 2-3 times increase in the annual revenue stream. [T. 24] Even though this property had been leased continuously to a national fast food restaurant chain, the FDOT took the position that the rents were excessive. Because very few real estate appraisers have experience in appraising national food chains' property, and further because the records for obtaining comparable rents are not matters of public record but, in fact, are leases that are entered into between franchisees and the national fast food chains that are generally confidential, Boulis was forced to obtain the services of a site selection specialist who had an extensive familiarity with locating high volume sites for national franchise chains. [T. 23-24]. Boulis paid these fees in advance out of his own pocket. [T. 25-27] These experts are not commonly utilized in eminent domain cases but on a daily basis are in the process of acting as skilled brokers for national chains who are desirous of obtaining superior properties in order to maximize the revenue streams

at these locations for their products. [T. 23] Additionally, the site selection experts are familiar with the negotiations that take place in determining the reasonable rental value and its relationship to the revenue streams.

These highly specialized experts command very high fees for their services. In order to obtain the services of such an expert Boulis had to employ someone who would work only on the condition that she receive $300.00 per hour paid in advance. [T. 25] Boulis accepted these terms and entered into the contract [R. 259-260] in order to be able to present to the trier of fact the evidence of how the national fast food industry determines the reasonable rental value for various parcels. The specialist was paid for her services by the client as bills were submitted for her services. [R. 251-252] Her bill totaled 106.25 hours in the following categories:

For introduction and orientation .....3.25 hours

For market research .....18.75 hours

For preparation for deposition and deposition .....9.50 hours

For visits to the property (total 4) .....43 hours
(including the travel time from Miami to Daytona Beach)

Trial prep and trial for the first trial .....17.5 hours

Trial prep and trial for the second trial .....16.75 hours

The main valuation witness for the FDOT received $79,999.79 for his testimony [R. 411] FDOT's other appraiser received $38,131.18, and just these two appraiser put in over 865 hours in this case. [T. 30-33] The site selection expert for the FDOT received $20,095.90 for his services even though he did not testify. [R. 411] He put in over 152 hours in this case. [T. 30] As is customary, the contract between FDOT and its experts entitled the experts to payment in full within 40 days of each billing or the remaining balance was subject to **daily** interest. [T, 83-88]

O'Grady's bill totaled $32,176.53. [R. 251-252] The interest amount on O'Grady's bill, which amount was not contested, was $2,140.59 at the time of the

hearing, for a total bill of $35,308.12. [R. 257-258] The court awarded the sum of $16,200.00. The court determined that the $300.00 per hour was reasonable based "not only on her proven experience in the field but also her stated need to delay or refuse other projects to accept Boulis' accelerated time constraints." However, the Court based upon testimony of the FDOT's witness, Scott McWilliams, ruled O'Grady could have used "fifty-four hours, not the one hundred and eight hours she claimed," even though FDOT did not contest the propriety of the number of hours. [R. 32-33, 165] Additionally, the court denied Boulis' claim for prejudgment interest on those fees. [R. 232]

SUMMARY OF THE ARGUMENT

"Full compensation" in an eminent domain proceeding is the measure of pecuniary damages suffered by the condemnee. Since 1950, reasonable and necessary expenses for experts employed by a condemnee have been considered a component of full compensation. Since the turn of the century, prejudgment interest has been considered by Florida courts as an element of pecuniary damages. In 1985, the Supreme Court clarified that notion with its approval on the "loss theory" where the court held that plaintiff is to be made whole from the date of the loss once a finder of fact has determined the amount of damages and defendant's liability therefor. Because the "amount of damages" in an eminent domain proceeding includes certain expenses incurred by the condemnee who is forced to defend the taking of his property, under the loss theory such costs must be included in the calculation of prejudgment interest.

ARGUMENT

I. BECAUSE THE CONTROLLING "LOSS THEORY" ENTITLES APPELLANT TO PREJUDGMENT INTEREST ON PECUNIARY LOSSES AND APPELLANT HAS SUFFERED SUCH LOSSES, VIS-À-VIS REASONABLE EXPERT WITNESS FEES IN AN EMINENT DOMAIN PROCEEDING, THE APPELLATE COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO AWARD PREJUDGMENT INTEREST TO APPELLANT ON SUCH COSTS.

By refusing to award Appellant prejudgment interest on reasonable costs expended on expert witnesses in an eminent domain proceeding, the lower court committed reversible error. In this case, Appellant was forced to incur over $40,000 in expenses for expert witness fees after FDOT offered him a fraction (32%) of what was determined to be full compensation. FDOT spent over $150,000 on its experts in support of the low compensation figure. Appellant now seeks prejudgment interest on such expenses from the date the expenses were incurred. The very narrow issue presented is whether a condemnee is entitled to prejudgment interest on costs necessarily expended in defense against FDOT's efforts to obtain his property for less than full compensation.

In certifying this issue as one of great public importance, the Fifth District recognized that equity and logic lead to its answer in the affirmative. Boulis v. Department of Transportation, et al, 709 So.2d 206 (Fla. 5th DCA). However, the court balked at the opportunity to rule in favor of Appellant, stating in its brief opinion, "[i]t is our determination that no legal precedent exists to support appellant's position, even though logic and fair play do." Id. at 206.

The determination of whether prejudgment interest on a condemnee's reasonable expert witness expenses should be considered part of the "full compensation" mandated by the Constitution necessarily begins with an analysis of the existent status and trajectory of the law concerning prejudgment interest. In Argonaut Insurance Co. v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985) this Court

adopted a "loss theory" of prejudgment interest, holding that such interest constitutes "another element of pecuniary damages." Id. at 214. The loss theory recognizes that "interest is the natural fruit of money." Id. (quoting Sullivan v. McMillan, 19 So. 340 (Fla. 1896)). Because loss suffered by a plaintiff includes the wrongful deprivation of property by a defendant, plaintiff can only be made whole by adding prejudgment interest to the amount of damages determined by the fact finder. Id. at 215. Thus, "when a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses, plaintiff is entitled as a matter of law to prejudgment interest at the statutory rate from the date of that loss." Id. Thus, under the loss theory, then, because the jury verdict in the instant case had the effect of liquidating Appellant's damages as of the date of loss, he is entitled to prejudgment interest on all of his pecuniary loss.

A. The "full compensation" to which Appellant is Constitutionally entitled includes pecuniary costs he was forced to incur in order to meet FDOT on equal footing.

Because Appellant is clearly entitled to prejudgment interest on his pecuniary losses under Argonaut, the next issue is what constitutes a pecuniary loss in an eminent domain proceeding. In Dade County v. Brigham et al, 47 So. 2d 602 (Fla. 1950), this Court first recognized that the costs incurred by a condemnee to establish the abstract value of the subject property should be included in the definition of full compensation. In Dade, such costs were held to include reasonable expert witness fees. In its opinion, this Court focused on the need for a private citizen to be able to make certain expenditures in order to be able to meet the Condemnor on equal footing.

The Court quoted extensively from the "logical and cogent" reasoning of the lower court's order, including the following passage:

> "Freedom to own and hold property is a valued and guarded right under our government. Full compensation is guaranteed by the Constitution to those whose property is divested from them by eminent domain. The theory and purpose of that guaranty is that the owner shall be made whole so far as possible and practicable.
>
> "The court sees that the County produces appraisers, expert witnesses relating to value, usually more than one in number, whose elaborate statement of their qualifications, training, experience and clientele indicate a painstaking and elaborate appraisal by them calling for an expenditure by the County of fees to such experts and appraisers which are commensurate therewith, and customary for like services of such persons. A lay defendant whose property is to be taken is called upon to defend against such preparation and expert testimony of the County. It is unreasonable to say that such a defendant must suffer a disadvantage of being unable to meet this array of able, expert evidence, unless he shall pay for the same out of his own pocket."
>
> "Can the County contend that such high priced evidentiary items are not part of the 'cost of the proceedings' when they themselves by presentation of the same in their case, make them a part of the proceedings in their behalf?"

Id. At 604. Based in large part on this passage, this Court ultimately upheld the lower court's award of fees to the condemnee. In light of such reasoning, there can be no doubt as to Appellant condemnee's entitlement under the Constitutional mandate of full compensation to those costs which he reasonably expended on expert witness fees.

Some fifteen years after Dade, the Florida Legislature codified the right to such compensation in § 73.091, Fla. Stat. (1965). The current statute states, "The Petitioner shall pay attorney's fees as provided in § 73.092 as well as all reasonable costs incurred in the defense of the proceedings." § 73.091(1), Fla. Stat. (1994). Subsection (2) goes on to set forth the manner in which the condemnee's attorney must submit fee and other information related to its experts to the condemnor at least 30 days prior to any hearing on costs. § 73.091(2), Fla. Stat. (1994-*).

B. Appellant's loss of the use value of funds reasonably expended in an eminent domain proceeding amount to a compensable loss of a vested property right.

Having determined that Appellant is Constitutionally and statutorily entitled to pecuniary costs associated with the hiring of expert witnesses, the next issue is whether Appellant's loss of the use of the money expended on expert fees represents the deprivation of a recognized property right. Therefore, because the right to use one's pecuniary resources is a recognized property interest and Appellant was deprived of such an interest when he was deprived of the right to use his resources for some purpose other than the defense of the FDOT taking, then next inquiry is whether the loss of such a property interest is compensable via an award of prejudgment interest.

Under the loss theory, prejudgment interest has been upheld in incidents involving the loss of vested property rights not unlike the property interest of which Appellant has been deprived. In Alvarado v. Rice, 614 So. 2d 498 (Fla. 1993), this Court held that plaintiff would have suffered a loss of vested property right had she paid medical bills incurred as a result of defendant's negligence. Similarly, in Mason v. Reiter, 564 So. 2d 142 (Fla. 3rd DCA 1990), the court held that the mother in a paternity suit was entitled to prejudgment interest on delivery expenses she incurred when she gave birth to her child. In Barnes Surgical v. Bradshaw, 549 So. 2d 1189 (Fla. 2d DCA 1989), the Second District Count determined that a salesman had a right to prejudgment interest on commissions which were improperly withheld, based on the notion that he had a property interest in said commissions at the time of the sale. Finally, in International Community Corp. v. Overstreet Paving Co., 493 So. 2d 25 (Fla. 2d DCA 1986), the Second District Court ruled that a subcontractor has a right to prejudgment interest on a valid mechanic's lien. In

each of these cases, the underlying property right upon which the court applied prejudgment interest was on the lost use value of resources which were either wrongly withheld from the plaintiff or which the plaintiff was improperly made to expend on a cost that was ultimately determined to be the burden of the defendant.

It follows that Appellant's reasonable payment of fees to expert witnesses in an effort to achieve full compensation, amounted to his loss of a vested property right in the pecuniary resources he expended. Absent the eminent domain proceedings against Appellant in which FDOT failed to offer full compensation, he would have been free to use his $40,000 in any number of ways, ranging from college tuition for his children, to investment, to home improvement. The lost use-value of that money must be included in his award to achieve full compensation.

C. Appellant's loss of the vested property right in the use of funds which he was forced to expend on expert fees is a loss which must be reimbursed under the mandate of full compensation.

Returning to the wisdom of the Dade County decision, the definition and scope of "full compensation" has evolved to include all reasonable costs of the eminent domain proceeding including, among other things, attorney's fees, appraisal fees, and expert witness fees. Department of Transportation v. Springs Land Investments, 695 So. 2d 414 (Fla. 5th DCA 1997) (citing § 73.091, Fla. Stat. (1993) and Dade County v. Brigham et al, 47 So. 2d 602 (Fla. 1950)). If a condemnee is forced to make such expenditures in his or her struggle to achieve full compensation, and is thus deprived of a vested property rights both in the out-of-pocket amount of the expenditure as well as the use value of that money, then such condemnee must be awarded prejudgment interest in order to be made whole.

Florida law has long held that a successful plaintiff must be able to recover

the total amount of the pecuniary loss that has been suffered. Becker Holding Corporation v. Becker, 78 F.3d 514, 516 (11th Cir. 1996). Thus, under Argonaut, when the jury verdict liquidated Appellant's out-of-pocket, pecuniary losses, which included moneys Appellant was forced to spend to hire experts, he should have been awarded prejudgment interest on such expenditures, as a matter of law, from the date he made such expenditures. After all, prejudgment interest is appropriate when the underlying recovery is compensatory in nature. First American Bank & Trust v. Windjammer Time Sharing Resort, Inc., 483 So. 2d 732 (Fla. 4th DCA 1986) (citing American Timber & Trading Co. v. First National Bank, 690 F.2d 781 (9th Cir. 1982)).

II. APPELLEE'S RELIANCE ON THE "LITIGATION COSTS ARE NOT LIQUIDATED DAMAGES" ARGUMENT IS IMPROVIDENT IN LIGHT OF THIS COURT'S REJECTION OF THAT ANALYSIS AND IN LIGHT OF THE INCLUSION OF REASONABLE EXPERT WITNESS FEES IN THE DEFINITION OF "FULL COMPENSATION."

Appellee's attempts to defeat Appellant's claim based upon the "litigation costs" versus "liquidated damages" distinction must fail for two primary reasons. Number one, the limitations of such a distinction were exposed by this Court's analysis in Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So. 2d 929 (Fla. 1996). Second, as discussed supra, this Court has determined that certain "litigation costs" in eminent domain proceedings are, in fact, elements of "full compensation" under the Constitution.

In Quality, this Court was asked to determine whether prejudgment interest should be awarded on attorney fees from the time of the determination that a party is obligated to pay them to the time at which the amount is set. The Second DCA had answered the issue in the negative, relying – as do Appellees – on the decision in Temple v. Temple, 539 So. 2d 564 (Fla. 4th DCA 1989), where the Fourth DCA held

that attorney fees were litigation costs and not liquidated damages and were thus not subject to prejudgment interest. In its review of the lower court's decision, this Court measured the reasoning of the Temple decision against several other conflicting decisions out of the First, Third, and Fifth District Courts and found the reasoning of the latter courts more persuasive. Id. (citing Visoly v. Security Pacific Credit Corp., 625 So. 2d 1276 (Fla. 3d DCA 1993); Bremshey v. Morrison, 621 So. 2d 717 (Fla. 5th DCA 1993); Mason v. Reiter, 564 So. 2d 142 (Fla. 3rd DCA 1990); Inacio v. State Farm Fire & Casualty Co., 550 So. 2d 92 (Fla. 1st DCA 1989).)

This Court was apparently persuaded to follow the reasoning of the First District Court because of its sound foundation in the principles of the Argonaut decision and its sensitivity to the unfairness which results to a party entitled to the payment of attorney fees when the party who owes the fees withholds payment. Quality, Id. at 930. As the First District noted in a passage quoted by this Court, to allow the party who owes attorney fees to enjoy the interest free use of such money prior to payment, "would be inconsistent with the intent and purpose of statutory provisions allowing attorney's fees to the prevailing party." Inacio, supra. at 97, 98. A more reasoned approach necessitates analyzing the principle aspects of Argonaut and the underlying intent and purpose of the Constitutional and statutory provisions which entitle condemnees to full compensation.

In reaching its decision in Argonaut, this Court relied in part on the reasoning from a case decided before the turn of the century which discussed the importance of fully restoring victims of property right deprivation and the propriety of including interest in any measure of damages aspiring to "just compensation." From Jacksonville, Tampa & Key West Railway v. Peninsular Land Transportation & Manufacturing Co., 9 So. 661 (1891), a case dealing with the negligent burning of plaintiff's property, this Court quoted the following passage:

> "The law as to what is the 'measure of damage' in the abstract, in cases where the property of one has been destroyed . . . is well settled to be 'just compensation in the money for the property destroyed;' such an amount as will fully restore the loser to the same property status that he occupied before the destruction. To arrive at the amount of such compensation, inquiry . . . is necessarily confined strictly to the ascertainment of the value of the properties destroyed, with such incidents of interest for the retention of such value from the person entitled thereto as may be sanction by law."

Id. at 214. The Argonaut Court followed with this quote from Sullivan v. McMillan, 19 So. 340 (1896):

> "On general principles, once admitted that interest is the natural fruit of money, it would seem that, wherever a verdict liquidates a claim and fixes it as of a prior date, interest should flow from that date."

Id. at 214.

It is clear from these passages that the underlying principle of Argonaut was that the restoration of the injured party to his or her original position, vis-a-vis full compensation, requires that the injured party be awarded the prejudgment interest on his or her losses from the date they are incurred.

Because the right to full compensation for Appellant was determined by a jury and the goal of such compensation is to place Appellant in the position he enjoyed prior to the taking, full compensation must not only include the abstract value of the land and the reasonable expenses for experts witnesses, but it must also include compensation for "the natural fruit of money" which Appellant was unable to enjoy, namely: the right to use or invest his $40,000 as he would like. Under the dictates of Argonaut, prejudgment interest would properly be calculated from the date the fees were paid by Appellant because the verdict liquidated the damages as of the date the costs were incurred. Id. See also, Barnes.

III. APPELLEE'S ATTEMPT TO DISTINGUISH THE INSTANT CASE FROM QUALITY MUST FAIL BECAUSE ATTORNEY FEES **ARE** LITIGATION COSTS AND, THEREFORE, THE QUALITY OPINION OFFERS PERSUASIVE, ALBEIT NON-ESSENTIAL, AUTHORITY FOR APPELLANT'S POSITION.

Though Appellant need not rely upon Quality for its position, as that case dealt with the lesser protected right to damages under contract as opposed to the Constitutionally protected right to full compensation, Appellee's attempt to distinguish Quality from the instant case and assail Quality's early progeny is at once remarkable and poorly founded. In its brief to the Fifth District Court, Appellee states that the opinion in Quality "did not address the question of entitlement to prejudgment interest on litigation costs". {Appellee's Reply Brief, p. 8]. Appellee goes on to assail the Second DCA's holding in Stoler v. Stoler, 679 So. 2d 837 (Fla. 2d DCA 1996), as affording Quality "too expansive a scope" because the Second DCA affirmed the lower court's finding that interest on attorney's fees and costs accrue from the date of entitlement.

The problem with Appellee's reasoning is that attorney fees have long been held to be litigation costs. NCN Electric, Inc. v. Leto, 498 So. 2d 1377 (Fla. 2d DCA 1986); Grasland v. Taylor Woodrow Homes Ltd., 460 So. 2d 940 (Fla. 2d DCA 1984), rev. denied, 471 So. 2d 43 (Fla. 1985); First American Bank & Trust v. Windjammer Time Sharing Resort, Inc., 483 So. 2d 732 (Fla. 4th DCA 1984), rev. denied, 494 So. 2d 1150 (Fla. 1986). In fact, the statutory entitlement to attorney fees in eminent domain proceedings is set forth in § 73.091 which is entitled "Costs of the proceedings." Therefore, there is no merit to Appellee's contention that this Court's decision did not address entitlement to prejudgment interest on litigation costs.

Another infirmity in Appellee's attempt to limit the impact of Quality on the instant analysis is the suggestion that the opinion does not speak to the award of prejudgment interest on either attorneys' fees or costs in eminent domain

proceedings. [Appellee's Reply Brief, p. 8] Though that statement on its face is true, the underlying inference that the opinion thusly does not provide an analogue to the instant case is not true. In fact, juxtaposed with this Court's decision in Lee v. Wells Fargo Armored Services, 707 So. 2d 700 (Fla. 1998), which serves to limit the application of Quality, Quality provides a sound basis from which to address the question presented in the instant case.

In Wells Fargo, supra, this Court was asked whether its ruling in Quality should be applicable to Workers' Compensation proceedings. Wells Fargo, Id. at 700. In answering that question in the negative, this Court reasoned that the statutory language of § 440.34(1), which establishes the scope of Workers Compensation claimants' entitlement to attorneys fees, prohibits entitlement until such time as the fees have been set. Wells Fargo, Id. at 702. The Court also noted that Workers' compensation is a statutory creation of the legislature that was designed to "simplify employees' insurance responsibilities and also give workers swift and certain payment for workplace accidents." Id. (citations omitted)

Based on this Court's reasoning in Wells Fargo, the determination of whether the ruling in Quality is applicable to the instant case properly begins with an analysis of both the scope and nature of the underlying entitlement, namely: the right of a condemnee to be compensated for reasonable expenses incurred to hire expert witnesses. As has been discussed supra, the statutory entitlement to "all reasonable costs incurred in the defense of the proceedings" in an eminent domain case springs from the People's Constitutional mandate of full compensation. Thus, unlike Wells Fargo, the broad language of the underlying statute, the Constitutional source of the entitlement, and the creator of the entitlement, all favor the extension of the Quality to apply to eminent domain proceedings.

It is noteworthy that a condemnee's right to attorney's fees is stated in the

current section concerning this area, entitled "Cost of the proceedings," subsection 73.091(1) of the Eminent Domain Chapter. The scope of that right, however, is defined in subsection 73.092 which presently offers a very specific formula for such entitlement. The language of § 73.092 Fla. Stat. is not nearly as broad as the language in subsection 73.091(1) under which Appellant is entitled to "all reasonable costs incurred," including expert witness fees. Because different sections of Chapter 73 set forth the scope of general costs versus the scope of the specific cost of attorney's fees, the analysis as to the applicability of Quality to Appellant's demand for prejudgment interest on expert fees may be necessarily different than an analysis of the applicability of Quality to a demand for attorney's fees under Chapter 73.

Finally, based on the fact that different sections of Chapter 73 define a condemnee's right to expert witness fees and attorney's fees, Appellee's assertion that Department of Transportation v. Brouwer's Flowers, Inc., 600 So. 2d 1260 (Fla. 2d DCA 1992) is a case which is "squarely on point" for the instant case is not accurate. In Brouwer's, which was pre-Quality, the Second District Court, in rather shrift fashion, dispensed with a claim to prejudgment interest on attorney fees in an eminent domain proceeding. Id. at 1260. In coming to its decision, the court stated, "[w]e find no statutory authority for entitlement to interest on attorney's fees in eminent domain cases before the trial court's determination of the amount of attorney's fees." Because the Brouwer's court was without benefit of Quality and Wells Fargo, and because it spoke to prejudgment interest on attorney's fees as opposed to expert witness fees, the persuasiveness of its authority as to the instant case is nominal at best.

IV. EQUITY AND PRACTIBILITY FAVOR CONDEMNOR LIABILITY FOR PREJUDGMENT INTEREST ON REASONABLE COSTS INCURRED BY A SUCCESSFUL CONDEMNEE IN LIGHT OF THE UNFAIR LEVERAGE CONDEMNOR CAN EXERT ON THE PROCESS BY DISPUTING SUCH FEES AND DELAYING PAYMENT.

Those who are experienced in eminent domain proceedings understand as a practical matter how difficult it can be for a successful condemnee to obtain reimbursement from the Condemnor for fees necessarily and reasonably expended in the proceedings. Such difficulty is often a function of the Condemnor's strategic decision to engage in delay in an effort to reduce the amount it must pay for such costs. The dynamic is not unlike that discussed by this Court in the Quality decision relating to delays by a party obligated to pay attorney fees. Id. at 930.

In condemnation proceedings where the Condemnor, backed by the public purse, faces off against a private party who is forced to protect its Constitutional entitlement out of its own pocket, there is certainly no equity in yielding the Condemnor the benefits of delay without exacting costs for delay. The Condemnor, by definition, comes to the table with far greater resources and power than the condemnee. It can thus withstand and afford protracted proceedings better than the condemnee. After the jury verdict and any appeals taken by the Condemnor arrives the first time when the condemning authority will discuss the payment of fees for the property owner's experts. During these discussions it is common for the Condemnor to reduce each of these bills anywhere from 20 to 40 percent across the board. The reason is that the most the property owner can get is only the total amount of the billing whenever it gets to hearing, and then the Condemnor can suggest that they can take an appeal of the cost award to even make the property owner have to wait months and years to be reimbursed for these moneys. The uneven playing field at this point insures that most property owners will accept

what is being offered rather than risk the time it would take to get what they are entitled to. Property owners when faced with bills of several thousand dollars, as with the other experts in the instant case, will cave in and accept what the Condemnor offers as they have the power and resources to offer less and drag out the process via litigation without any penalty. This gives an unjust advantage to the Condemnor and imposes high costs on our judicial system.

Strategy based in delay and procedural morass can prove quite effective for condemning authorities for a number of practical reasons. Number one, the condemnee has just gone through major litigation and is generally weary from the process. Further, the Condemnor knows that the experts hired by the condemnee may well have been waiting for years on their fees, unlike the Condemnor's witnesses who are usually guaranteed quick payments and interest on outstanding balances. If the property owner has been forced to pay these fees in order to obtain well qualified experts, as the better experts can commend prompt payment, then the Condemnor knows that the condemnee may well have been waiting for years on reimbursement of these expert fees. These are indications of a system operating out of equipoise. The bottom-line is that the Condemnor who is obligated to pay fees to the condemnee enjoys a time-measured benefit in holding onto its resources for as long as possible. Prejudgment interest should be awarded to provide a modicum of balance to the expert witness situation, and encourage the obligated party to internalize all of the costs, including the time cost of money associated with its decision to delay payment for that which it has been found to be liable.

While it is not likely that this Court's pronouncement of a condemnee's right to prejudgment interest on litigation costs will completely level the playing field between Condemnor and condemnee in eminent domain proceedings in the State of Florida, such a pronouncement would go a long way to ensuring that

condemning authorities internalize the costs of their decisions which are otherwise being borne by the persons most at risk, the private citizens who are forced to defend their property rights against the power of the State.

CONCLUSION

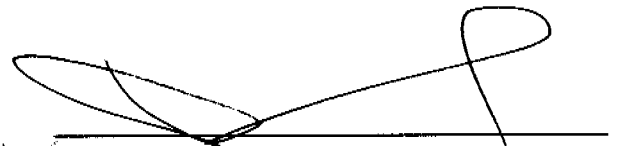
Based upon the foregoing facts and legal authorities, Appellant, Gus Boulis, respectfully request that this Court reverse the Appellate Court's decision and award Appellant prejudgment interest on his reasonable and necessary expert witness fees.

Respectfully submitted,

Counsel for Appellant
(name omitted pursuant to rules)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies hereof were furnished by U. S. Mail to Pamela S. Leslie, General Counsel and Gregory C. Costas, Assistant General Counsel, Department of Transportation, 605 Suwannee Street, Tallahassee, FL 32399-0458 and Edgar M. Dunn, Esquire, Post Office Drawer 2600, Daytona beach, FL 32115-2600 this 20 day of July, 1998.



DOMINICK J. SALFI
FL BAR NO.: 070016
Law Offices of Dominick J. Salfi, P.A.
999 Douglas Avenue, Suite 3333
Altamonte Springs, FL 32714
(407)774-2700
Attorneys for Appellant

APPENDIX

Appendix

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO. 94-32300-CICI
DIVISION 31 (J. Kennedy)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,

Plaintiff,

vs.

CLARENCE ROGERS, et al,

Respondents.

Parcel 113

JOINT STIPULATION

The Plaintiff, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) and Respondents, GUS BOULIS, landowner of Parcel 113 and SUBWAY, U.S.A. I, INC., tenant of Parcel 113, by their undersigned counsel, hereby show that FDOT is desirous of obtaining an Order of Taking Respondent's parcel and Respondents are agreeable to waiving their rights to contest that taking order based upon the following:

Whereas, the FDOT has made the representation that it needs to take occupancy of the subject property within thirty days after deposit of the good faith estimate into the registry of the court and further that the FDOT does not know of any facts that would bring about any extended occupancy of the subject property.

1. Based upon that representation the parties have agreed that a $550,000.00 good faith deposit will be placed in the registry of the Court within 20 days after the entry of an Order of Taking.

2. FDOT agrees that the Respondents' opposition to the taking was reasonable and proper under the circumstances and agrees to the payment of reasonable costs and attorney fees for the time and expense incurred in the investigation and challenge of the taking. The determination and payment of attorney fees and costs will take place after the final "full compensation" determination and FDOT agrees to raise no objections to the inclusion of an appropriate premium to be paid on the attorney fees and costs due to the extended delay in the payment of these fees and costs to the Respondents. The resolution of attorney fees and costs are to be determined under the prior statute, FS§73.092 (1993).

3. FDOT agrees to deposit in the registry of the court for final payment the sum of approximately $75,460.00 for the tangible personal property including trade fixtures being taken from Subway U.S.A. I, Inc., the tenant in the subject property. FDOT agrees to pay the reasonable expenses of the Respondent's Subway U.S.A. I, Inc., tangible property appraiser, to be agreed to by the parties or determined by the Court and to be paid for at the convenience of the parties. The deposit will be made pursuant an order prepared by FDOT within ten days of the date of the agreement, providing for deposit within thirty days.

4. FDOT agrees that Subway U.S.A. I, Inc., the tenant in the subject property, is entitled to reasonable relocation costs as provide by law or administrative procedure, not to include any of the tangible property which has been purchased through paragraph 3 above.

5. The parties agree to present this stipulation to the Court on January 19, 1995.

DOMINICK L. SALFI, ESQUIRE
Fla. Bar No. 070016
LAW OFFICES OF DOMINICK L. SALFI, P.A.
1051 Winderley Place, Suite 206
Maitland, FL 32751-7243
[407] 660-2242
Attorneys for Respondent Gus Boulis

EDGAR M. DUNN, JR., P.A.
DUNN, ABRAHAM & SWAIN
Fla. Bar No. 103983
P. O. Drawer 2600
Daytona Beach, FL 32115-2600
[904] 258-1222
Attorneys for Respondent
Subway U.S.A. I, Inc.

HAROLD A. LASSMAN, ESQUIRE
Fla. Bar No. 156826
Eminent Domain Attorney
State of Florida
Department of Transportation
719 S. Woodland Blvd.
DeLand, FL 32720
[904] 943-5497
Attorneys for Plaintiff

Appendix

IN THE CIRCUIT COURT OF FLORIDA
IN AND FOR THE COUNTY OF VOLUSIA

CIVIL ACTION 94-32300-CI-CI DIV 31

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION,

Petitioner,

vs. Parcels 101, 113 and 701

CLARENCE ROGERS, et al.,

Respondents.
_____/

ORDER OF TAKING

THIS CAUSE coming on to be heard by the Court, it appearing that proper notice was first given to all the respondent, and to all persons having or claiming any equity, lien, title or other interest in or to the real property described in the Petition, that the Petitioner would apply to this Court on the 19 day of January, A.D., 1995, for an Order of Taking, and the Court being fully advised in the premises, upon consideration, it is, therefore,

ADJUDGED:

1. That the Court has jurisdiction of the subject matter of and the parties to this cause.

2. That the pleadings in this cause are sufficient, and the Petitioner is properly exercising its delegated authority.

3. That the Estimate of Value filed in this cause by the Petitioner was made in good faith, and based upon a valid appraisal.

4. That upon the payment of the deposit hereinafter specified into the Registry of the Court, the right, title or interest specified in the Petition as described herein shall vest in the Petitioner:

SECTION 79220-2510 STATE ROAD 430 (MASON AVE) VOLUSIA CO. DESCRIPTION

FEE SIMPLE - RIGHT OF WAY

PARCEL NO. 101

THAT PART OF:

Lot 1, Block A, Audubon Park subdivision, as recorded in Map Book 6, Page 190, public records of VOLUSIA COUNTY, FLORIDA, in Section 38, Township 15 South, Range 33 East,

DESCRIBED AS FOLLOWS:

Commence at a 1" iron pipe marking the Northeast corner of Lot 41, of said Block A, Audubon Park subdivision; thence South 25°21'38" East along the West line of Daytona Avenue, 958.86 feet to the Southeast corner of Lot 1, of said Block A, Audubon Park subdivision, for the POINT OF BEGINNING; thence South 64°26'55" West along the existing Northerly right-of-way line of State Road 430, a distance of 100.04 feet to the Southwest corner of said Lot 1; thence North 25°22'38" West along the West line of said Lot 1, a distance of 21.41 feet to a point of intersection with a non-tangent curve, concave Northwesterly, having a radius of 7594.19 feet, and a chord bearing North 61°46'13" East; thence Northeasterly along the arc of said curve through a central angle of 00°45'21", a distance of 100.17 feet to the point of intersection with the East line of said Lot 1 and the West line of said Daytona Avenue; thence South 25°21'38" East along said line, 26.09 feet, to the POINT OF BEGINNING;

Containing 2365 square feet, more or less.

GOOD FAITH ESTIMATE OF VALUE $ $234,700.00

SECTION 79220-2510 STATE ROAD 430 (MASON AVE) VOLUSIA CO. DESCRIPTION

FEE SIMPLE - RIGHT OF WAY

PARCEL NO. 113

ALL of Lots 16 and 17, BALLOUGH SUBDIVISION, as recorded in MAP BOOK 6, page 61, Public Records of Volusia County, Florida, in Section 37, Township 15 South, Range 33 East (EXCEPTING therefrom that portion of the described property, heretofore taken for highway purposes).

CONTAINING 13,314 square feet, more or less.

GOOD FAITH ESTIMATE OF VALUE $550,000.00

SECTION 79220-2510 STATE ROAD 430 (MASON AVE) VOLUSIA CO. DESCRIPTION

TEMPORARY CONSTRUCTION EASEMENT

PARCEL NO. 701

THAT PART OF:

Lot 1, Block A, Audubon Park subdivision, as recorded in Map Book 6, Page 190, public records of VOLUSIA COUNTY, FLORIDA, in Section 37, Township 15 South, Range 33 East,

DESCRIBED AS FOLLOWS:

EXTENDING no more than 5 feet beyond the new right-of-way line of State Road 430 (Mason Avenue) as described in Parcel 101, Project Section 79220-2510.

Containing 500 square feet, more or less.

For the purpose of sloping, grading, tying in, harmonizing and reconnecting existing features of the grantor's property with the highway improvements which are to be constructed together with incidental purposes related thereto.

This Easement is granted upon the condition that any work performed upon the above described land shall conform to all existing structural improvements within the limits designated, and all work will be performed in such a manner that the existing structural improvements will not be damaged.

It is understood and agreed by the parties hereto that the rights granted herein shall terminate upon completion of this transportation project, but no later than the last day of January, 1997.

GOOD FAITH ESTIMATE OF VALUE $ $1,300.00

5. That the deposit of money will secure the persons lawfully entitled to the compensation which will be ultimately determined by final judgment of this Court.

6. That the sum of money to be deposited in the Registry of the Court within twenty (20) days of the entry of this Order shall be in the amount of $234,700.00 for Parcel 101, $550,000.00 for Parcel 113 and $1,300.00 for Parcel 701, for a sum totalling $786,000.00.

7. That on deposit as set forth above and without further notice or Order of this Court the Petitioner shall be entitled to possession of the property described in the Petition.

DONE AND ORDERED this 19 day of January A.D. 1995 in the State of Florida, County of Volusia.

/s/ PATRICK G. KENNEDY

CIRCUIT COURT JUDGE

Copies to be furnished by Petitioner to all interested parties.

SCHEDULE A

Gregory P. Holder, Esquire
One Tampa City Center, Suite 2600
Tampa, FL 33602
Attorney for: Clarence Rogers;
Wareco Inc.;
Nancy S. Leonard;
Sandra A. D'alessandro

Unknown Heirs of Helen Bishenauer, deceased

Ware-Rogers Oil Co.
ATTN:
Clarence Rogers, Registered Agent
101 Gull Dr.
Daytona Beach, FL 32019

Wareco, Inc.
ATTN:
Richard L. Ware, Registered Agent
908 60th Street So.
Gulfport, FL 33707

Coastal Inc.
Richard P. Jackson, Registered Agent
1605 Yount Dr.
Merritt Island, FL 32952

Daniel D. Eckert, Esquire
Legal Department
123 W. Indiana Ave.
DeLand, FL 32720-4613
Attorney for: County of Volusia

William W. Sydnor
1051 Winderley Place, Suite 206
Maitland, FL 32751-7248
Attorney for: Gus Boulis

James Exarhos
10 Devonshire Court
Plainview, NY 11803

Bessie Exarhos
10 Devonshire Court
Plainview, NY 11803

MyKonos Motel Corporation
A Dissolved Florida Corporation,
a/k/a Mykonos Corporation
ATTN:
John Rhodis, Trustee & Sole Director
1 Riverside Drive
Rockville Centre, New York 11570

Edgar M. Dunn, Jr. P.A., Esquire
Dunn, Abraham & Swain
347 South Ridgewood Ave.
Daytona Beach, FL 32115-2600
Attorney for: Subway U.S.A. I. Inc.

Appendix

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN
AND FOR VOLUSIA COUNTY, FL.

Civil Action: 94-32300 CI-CI
DIV.31

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Petitioner,

vs. Parcel 113

CLARENCE ROGERS, et al.,

Defendants.

_____/

Filed In Open Court
Seventh Judicial Circuit
Volusia County, Florida
DEC 21 1995
. CLERK
By _____
Deputy Clerk

V E R D I C T

We, the jury, find for the petitioner(s), as follows:

First: That an accurate description of the property taken herein is the following:

SECTION 79220-2510 STATE ROAD 430 (MASON AVE) VOLUSIA CO. DESCRIPTION

FEE SIMPLE - RIGHT OF WAY

PARCEL NO. 113

ALL of Lots 16 and 17, BALLOUGH SUBDIVISION, as recorded in MAP BOOK 6, page 61, Public Records of Volusia County, Florida, in Section 37, Township 15 South, Range 33 East (EXCEPTING therefrom that portion of the described property, heretofore taken for highway purposes).

CONTAINING 13,314 square feet, more or less.

SECOND: That the compensation to be made by the Petitioner(s) for the above-described parcel of land is as follows:

For Parcel 113, described above, owned by Gus Boulis, (fee) and Subway U.S.A.I, Inc., (tenant), we find the compensation therefore to be:

Value of the land taken, including all improvements taken, (full compensation) $ 705,000

SO SAY WE ALL, this 21ST day of December A.D., 1995, at Daytona Beach, Volusia County, Florida.

FOREPERSON

Are you able to allocate your verdict between

BOULIS 560 ~~600~~

TUTERA 145 ~~200~~

as an advisory verdict only? If not, IT IS OK.

Appendix

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO. 94-32300-CICI
DIVISION 31 (J. Kennedy)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,

Petitioner,

v. Parcel 113

CLARENCE ROGERS, et al.,

Respondents.

_____/

FINAL JUDGMENT

This action was tried before a jury which returned a verdict on December 21, 1995 [the "Verdict"]. A copy of the Verdict is attached hereto as Exhibit "A." Based on the Verdict and being otherwise fully informed in the premises, it is --

ADJUDGED as follows:

1. Respondents shall have and recover from petitioner, Florida Department of Transportation [the "FDOT"] the sum of $705,000 as full compensation for the taking of Parcel 113 (including the land and all improvements), plus pre-judgment interest at the rate allowed for circuit court judgments[1] from the date of possession to the presumed date of payment (February 20, 1996) in the amount of

[1] See § 74.061, Fla. Stat. (1993) and § 55.03, Fla. Stat. (1994 Supp.). The Comptroller's certified rates of interest for judgments during 1995 at 8% and during 1996 at 10% per annum.

$12,304.40, for a total of $717,304.40[2] [the "Unitary Award"]. No part of the Unitary Award represents severance damages.

2. Within 30 days from the receipt by it of a conformed copy of this final judgment, FDOT shall cause to be deposited in the Registry of this Court the sum of $167,304.40 [the "Additional Deposit"], being the difference between the Unitary Award and the good faith deposit ($717,304.40 - 550,000 = $167,304.40), which is due the respondents in this action.

3. The title to the property described in the Verdict was vested in FDOT pursuant to the Order of Taking, dated January 19, 1995, effective as of January 26, 1995, and it was taken by FDOT for the purpose of constructing a dual span, high-rise bridge on State Road 430 across the Halifax River.

4. This court reserves jurisdiction of this action to apportion the Unitary Award and to determine, award and enforce the assessment of pre-judgment interest, attorney's fees and other costs of this action, pursuant to sections 73.091 and 73.092, Florida Statutes (1993).

SO ORDERED, at Daytona Beach, Florida, this 17 day of January, 1996.

/s/PATRICK G. KENNEDY

Circuit Judge

[2] Interest is calculated on $155,000, the difference between the good faith deposit and the final award ($705,000 - $550,000 = $155,000). Interest at the rate of 8% on $155,000 is $12,400 per year or $33.973 per diem. Interest at the rate of $10% on $155,000 is $15,500 per year or $42.466 per diem. Accordingly, interest due during 1995 (from March 6, 1995 to December 31, 1995), a total of 300 days, at the $33.937 per diem, is $10,181.10, and interest due during 1996 (from January 1, 1996 to February 20, 1996), a total of 50 days, at the $42.466 per diem, is $2,123.30. Therefore the total pre-judgment interest is $12,304.40.

CERTIFICATE OF SERVICE

I hereby certify that a conformed copy of the foregoing Final Judgment has been furnished by mail to:

Harold A. Lassman, Esquire
Eminent Domain Attorney
State of Florida
Department of Transportation
719 S. Woodland Blvd.
DeLand, FL 32720
Attorney for Petitioner

Dominick J. Salfi, Esquire
Dominick J. Salfi, P.A.
1051 Winderly Place, Suite 206
Maitland, FL 32751-7248
Attorneys for Respondent, Gus Boulis; and

Edgar M. Dunn, Jr., Esquire
Dunn, Abraham & Swain
Post Office Drawer 2600
Daytona Beach, FL 32115
Attorneys for Respondent, Subway U.S.A. 1, Inc.

this _____ day of January, 1996.

_____
Judicial Assistant

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN
AND FOR VOLUSIA COUNTY, FL.

Civil Action: 94-32300 CI-CI
DIV.31

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Petitioner,

vs.

Parcel 113

CLARENCE ROGERS, et al.,

Defendants.

_____/

Filed in Open Court
Seventh Judicial Circuit
Volusia County, Florida

DEC 21 1995

. CLERK

By _____
Deputy Clerk

V E R D I C T

We, the jury, find for the petitioner(s), as follows:

First: That an accurate description of the property taken herein is the following:

EXHIBIT
"A"

SECTION 79220-2510 STATE ROAD 430 (MASON AVE) VOLUSIA CO. DESCRIPTION

FEE SIMPLE - RIGHT OF WAY

PARCEL NO. 113

ALL of Lots 16 and 17, BALLOUGH SUBDIVISION, as recorded in MAP BOOK 6, page 61, Public Records of Volusia County, Florida, in Section 37, Township 15 South, Range 33 East (EXCEPTING therefrom that portion of the described property, heretofore taken for highway purposes).

CONTAINING 13,314 square feet, more or less.

SECOND: That the compensation to be made by the Petitioner(s) for the above-described parcel of land is as follows:

For Parcel 113, described above, owned by Gus Boulis, (fee) and Subway U.S.A.I, Inc., (tenant), we find the compensation therefore to be:

Value of the land taken, including all improvements taken, (full compensation) $ 705,000

SO SAY WE ALL, this 21ST day of December A.D., 1995, at Daytona Beach, Volusia County, Florida.

FOREPERSON

Are you able to allocate your verdict between

BOULIS 560 ~~[illegible]~~ 00

TUTERA 145 ~~[illegible]~~ 000

as an advisory verdict only? If not, IT IS O/K.

Appendix

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

Petitioner,

vs. CASE NO. 94-32300-CI-CI

CLARENCE ROGERS, et al.,

Respondents.
_____/

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the Petitioner, STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, appeals to the District Court of Appeal, Fifth District of Florida, a Final Judgment rendered Januany 17, 1996, by the Honorable Patrick G. Kennedy, Circuit Judge, in an eminent domain valuation proceeding. A copy of the judgment is attached.

Respectfully submitted,

GREGORY G. COSTAS
Assistant General Counsel
FLORIDA BAR NO. 201285
Thornton J. Williams
General Counsel
Department of Transportation
605 Suwannee Street, MS - 58
Tallahassee, Florida 32399-0458
(904) 488-6212

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 12th day of February, 1996, to DOMINICK J. SALFI, ESQUIRE, 1051 Winderly Place, Suite 206, Maitland, Florida 327-7248 and EDGAR M. DUNN, ESQUIRE, Dunn, Abraham & Swain, Post Office Drawer 2600, Daytona Beach, Florida 32115.

GREGORY G. COSTAS

Appendix

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO. 94-32300-CICI
DIVISION 31 (J. Kennedy)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,

Plaintiff,

vs.

CLARENCE ROGERS, et al,

Respondents.

VERIFIED MOTION TO TAX EXPERT WITNESS FEES AND COSTS

Respondent, GUS BOULIS, by and through his undersigned Attorneys, and pursuant to Florida Statute § 73.091, move this Court for an Order taxing expert witness fees and costs incurred in this matter against Petitioner, and as grounds would allege:

1. That on April 28, 1994, Respondent retained the law firm of Dominick J. Salfi, P.A., to represent him in this matter.

2. On or about October 21, 1994 an eminent domain action was filed against Respondent's property by the Petitioner.

3. Respondent directed his attorneys to challenge the Petitioner's right to take his property and ultimately to challenge the Petitioner's valuation as to the worth of his property in trial.

4. Respondent retained the following experts and incurred expert fees and costs, as more fully set forth in the attached Composite Exhibit 1.

5. The fees and costs incurred by Respondent are taxable as costs in this matter pursuant to Florida Statute § 73.09 and, accordingly, Respondent respectfully requests that this Court enter an Order taxing the expert witness fees and costs incurred in this matter pursuant to the Law of the State of Florida.

I HEREBY CERTIFY that a true copy hereof has been furnished by Hand Delivery to: Harold A. Lassman, Esquire, Florida Department of Transportation, 719 S. Woodland Avenue, Deland, FL 32720 and Edgar M. Dunn, Jr., Esquire, 347 South Ridgewood, Daytona Beach, Fl 32114 this 26th day of January 1996.

DOMINICK J. SALFI
Fla. Bar No. 070016
LAW OFFICES OF DOMINICK J. SALFI, P.A.
1051 Winderley Place Suite 206
Maitland, FL 32751-7248
(407) 660-2242
Attorney for Respondent, Boulis

VERIFICATION

I, Dominick J. Salfi, having been duly sworn, depose and say that I have been duly appointed by Respondent Gus Boulis to execute this affidavit on his behalf. I am the principal in the law firm of Dominick J. Salfi, P.A. attorneys of record for the Respondent, and I am the attorney responsible for the handling of this case and base this verification on personal knowledge. I have carefully reviewed the amounts contained in Respondent's Verified Motion to Tax Expert Witness Fees and Costs, and the document attached thereto. I hereby verify under oath that the documents set forth in the Verified Motion to Tax Expert Witness Fees and Costs are true and correct.

FURTHER AFFIANT SAITH NAUGHT

Dominick J. Salfi

The foregoing instrument was acknowledged before me this 25th day of January, 1996, by Dominick J. Salfi, who is personally know to me and who did take an oath.

My Commission Expires:

Gayle Hair

GAYLE HAIR

Printed Name

Notary Public, State of Florida

GAYLE HAIR
Notary Public, State of Florida
My Comm. expires June 18, 1999
No. CC 473325
Bonded Thru Official Notary Service
1-(800) 723-0121

Appendix

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO. 94-32300-CICI
DIVISION (J. Kennedy)

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

Petitioner

v.

CLARENCE ROGERS, et al.,

Respondents.

Parcel 113

NOTICE OF HEARING ON RESPONDENT, GUS BOULIS', VERIFIED MOTION TO TAX EXPERT WITNESS FEES AND COSTS

TO: HAROLD A. LASSMAN, ESQUIRE
Department of Transportation
719 S. Woodland Blvd.
DeLand, FL 32720

EDGAR M. DUNN, ESQUIRE
Post Office Drawer 2600
Daytona Beach, FL 32115-2600

PLEASE TAKE NOTICE that Respondent, GUS BOULIS, by and through his undersigned attorneys, will call up for hearing before the **Honorable Patrick J. Kennedy**, in his chambers at the **Volusia County Courthouse, 125 East Orange Avenue, Daytona Beach, Florida** on **Friday, December 13, 1996,** beginning **at 9:00 a.m.**** or as soon thereafter as counsel may be heard in the following matter:

RESPONDENT, GUS BOULIS' MOTION TO TAX EXPERT WITNESS FEES AND COSTS

**3 1/2 HOURS HAVE BEEN SET ASIDE FOR THIS HEARING

I hereby certify that copies of the foregoing have been furnished by U. S. Mail to all persons listed above this 20th day of November, 1996.

DOMINICK J. SALFI
Florida Bar No. 070016
LAW OFFICES OF DOMINICK J. SALFI, P.A.
1051 Winderley Place, Suite 206
Maitland, Florida 32751-7248
Florida Bar No. 070016
(407) 660-2242
Attorneys for Respondent, Boulis

PERSONS WITH A DISABILITY WHO REQUIRE SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COURT ADMINISTRATOR AT 125 EAST ORANGE AVENUE, ROOM 201, DAYTONA BEACH, FLORIDA, TELEPHONE (904) 257-6097, NOT LATER THAN SEVEN (7) DAYS PRIOR TO THE PROCEEDING. IF HEARING IMPAIRED, (TDD) 1-800-955-8771, OR VOICE (V) 1-800-955-8770, VIA FLORIDA RELAY SERVICE.