IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

FLORIDA DEPARTMENT OF
TRANSPORTATION,

Petitioner,

vs. Case No.: SC06-333

CAUSEWAY VISTA, INC.,

Respondent.

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RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, Causeway Vista, Inc. refers to itself as "Causeway Vista."

Causeway Vista refers to Petitioner, Florida Department of Transportation, as the "Department."

Causeway Vista refers to the record on appeal by the prefix "R volume/page number."

Causeway Vista refers to the initial brief filed by the Department by the prefix "IB."

STATEMENT OF THE CASE AND FACTS

Causeway Vista accepts the facts as set forth in the opinion at *Causeway Vista, Inc. v. State Department of Transportation,* 918 So. 2d 352 (Fla. 2d DCA 2005). The face of the verdict reflected no inconsistency (R 6/1142)(Causeway Vista argues below that it was not inconsistent, but rather was inadequate).

In its appeal in the district court, and before this Court, the Department has recognized its expert testified to an amount for severance damages. 918 So. 2d at 353; IB 3, 6.

In opposing Causeway Vista's post-trial motions, the Department repeatedly contended its expert had not testified that there were severance damages (R 6/1185-1186; 7/1225). In its memos, the Department argued:

> The claim by the Defendant that the Petitioner's appraiser expert witness, Stanley Reed, testified that there were severance damages is incorrect. Mr. Reed testified that the value contribution of the submerged land is included in the value of the usable uplands; all the uplands were acquired in Parcel 106 leaving only a nominal value of $100.00 for the taking of the easement over the balance of the submerged lands, Parcel 804. Therefore, Mr. Reed found no severance damages to the submerged lands.

(R 6/1185-1186; 7/1225). Yet the Department argued Causeway Vista should have objected to the verdict while the jury was present, based on what the Department characterizes as a verdict "inconsistent" with its expert's testimony (R 6/1185; 7/1220; IB 6, 9).

The transcript reflects that the jury returned at 4:29 p.m. (R 18/1556). The foreman read the verdict, which occupies one page of transcript (R 18/1557). The judge thanked the jury for the next one and one-half pages of the transcript, and the court reporter reflects the proceedings concluding at 4:43 p.m. (R 18/1559).

SUMMARY OF THE ARGUMENT

No portion of the Causeway Vista verdict conflicted with any other portion. In other words, there was no inconsistency on the face of the verdict. Rather, the verdict was inadequate. All five of Florida's District Courts of Appeal hold that inadequate verdicts are addressed by a motion for new trial, and the party need not object before the jury is discharged.

This Court has held that a party need not object to the substance of a verdict before a jury is discharged, but only as to the form of the verdict. Here, the problem was one of the substance: failing to award an item of damages, the same issue addressed in this Court's prior decision on the subject.

If this Court is going to hold that an "inconsistent" verdict requires an objection before the jury is discharged, it should limit such a requirement to inconsistencies that appear on the face of the verdict. It would be unreasonable to require a party to evaluate whether each and every aspect of a multi-part verdict was arguably inconsistent with some evidence in a multi-day or multi-week trial, in the few seconds after hearing the verdict read and the court discharging the jury.

Under any of these analyses, the Second District's order for a new trial should be affirmed.

ARGUMENT

I. NO OBJECTION BEFORE THE JURY IS DISCHARGED IS REQUIRED FOR AN ERROR IN THE SUBSTANCE OF THE VERDICT OR FOR AN INADEQUATE VERDICT. IF AN OBJECTION IS TO BE REQUIRED FOR AN "INCONSISTENT" VERDICT BEFORE THE JURY IS DISCHARGED, IT SHOULD ONLY BE FOR AN INCONSISTENCY THAT APPEARS ON THE FACE OF THE VERDICT, AND NOT AN ALLEGED INCONSISTENCY WITH EVIDENCE OR THE MANIFEST WEIGHT OF THE EVIDENCE.

A. Introduction and Standard of Review.

The issue of how to deal with inadequate or inconsistent verdicts can be addressed at several levels. Under each of these analyses, the Second District's new trial order should be affirmed. These legal questions are reviewed under a de novo standard.

B. Florida decisions hold that a party does not need to object to an inadequate verdict before the jury is discharged.

The Department wants to argue the severance damage award to Causeway Vista is inconsistent and not "merely" inadequate (IB 9). Causeway Vista will address the inconsistency issues below, but even by its own characterization, the Department recognizes the verdict is at least inadequate.

Florida's district courts of appeal unanimously hold that where a verdict is inadequate, the proper method to challenge that verdict is to file a motion for new trial, and a party challenging the adequacy does not have to ask the trial court to have the jury deliberate further. *See, e.g., Scott v. Sims,* 874 So. 2d 21, 23 (Fla. 1st DCA 2004)("A verdict that is both inconsistent and inadequate can be raised by a motion for new trial, even in the absence of an objection to the verdict's form."); *Deklyen v. Truckers World, Inc.,* 867 So. 2d 1264, 1266 (Fla. 5th DCA 2004); *Avakian v. Burger King Corporation,* 719 So. 2d 342, 344(Fla. 4th DCA 1998); *Cowen v. Thornton,* 621 So. 2d 684, 687 (Fla. 2d DCA 1993); *Cowart v. Kendall United Methodist Church,* 476 So. 2d 289 (Fla. 3d DCA 1985).

Thus, under this analysis, because the severance damage verdict was admittedly inadequate, the Second District was correct in ordering the new trial. Causeway Vista disagrees that the verdict was inconsistent as well as inadequate, but even if it were both, the Second District was correct in ordering a new trial. *See, e.g., Scott v. Sims,* 874 So. 2d at 23; *Howard v. Perez,* 707 So. 2d 845, 847 (Fla. 2d DCA 1998) ("A verdict that is both inconsistent and inadequate can be reviewed by a motion for a new trial without an objection to the form of the verdict.").

To argue that an inadequate verdict should be treated as if it were an inconsistent verdict, the Department relies on statements in two cases, and primarily dicta in one of those cases (IB 10-13, citing *State Department of Transportation v. Denmark,* 366 So. 2d 476 (Fla. 4th DCA 1979) and *Florida Department of Transportation v. Stewart,* 844 So. 2d 773 (Fla. 4th DCA 2003)).

The statement the Department quotes from *Stewart* was dicta, citing to a concurring opinion that had not been adopted by the majority in the original case (IB 13). In *Stewart,* the Department was a defendant in a personal injury case where the jury found that the plaintiff had not sustained any permanent injury in an automobile accident, yet awarded future medical expenses and lost income. 844 So. 2d at 774. The Fourth District held the Department's claim for a new trial based on an inconsistent verdict was not preserved. 844 So. 2d at 774. The court went on in dicta to quote a concurring opinion from another case that most inconsistent verdicts, in some respect, would either be inadequate or contrary to the manifest weight of the evidence. 844 So. 2d at 774. This was dicta, because the Department was not claiming that the award was inadequate.

As support for this dicta, the *Stewart* opinion cited to a concurring opinion in a per curiam affirmed opinion, *Hendelman v. Lion Country Safari,* 609 So. 2d 766 (Fla. 4th DCA 1992). That concurrence demonstrated the claimed inconsistency

appeared on the face of the verdict. The plaintiff had not been awarded any non-economic damages for the past, but was awarded future non-economic damages. 609 So. 2d at 766. The concurring opinion stated this verdict was "facially and internally inconsistent," so that if the appellant had informed the trial court of this error before it dismissed the jury, the jury's intent could have been ascertained and the verdict corrected. 609 So. 2d at 766. Here, the *Causeway Vista* verdict was not facially inconsistent, a subject discussed in more detail below.

The Fourth District in *Stewart* did not discuss its opinion in *Avakian, supra*, where the court held that inadequate awards for certain types of damages were inadequate verdicts, rather than inconsistent. 719 So. 2d at 344. The *Avakian* opinion discussed inconsistency in the terms of comparing portions of the verdict to other portions and concluded "the issue is the adequacy of the award, not its consistency with any other award by the verdict." 719 So. 2d at 344.

The Department quotes language from the *Denmark* decision, saying the situation there "is similar" to that in *Lindquist v. Covert,* 279 So. 2d 44 (Fla. 4th DCA 1973)(IB 11). However, the facts in *Lindquist* show the verdict there again reflected a facial inconsistency. Thus, whatever the *Denmark* opinion may have meant by saying it was "similar," the inadequate verdict in *Denmark* differed materially from the facially inconsistent verdicts in *Lindquist* or *Hendelman*.

Lindquist involved a three-car collision where the plaintiff, Covert, sued the defendants, Smith and Lindquist. The jury returned a verdict in favor of the plaintiff against both defendants. 279 So. 2d at 44. Defendant Lindquist had also cross-claimed against defendant Smith. The jury returned a verdict against defendant Smith and in favor of Lindquist on Lindquist's cross-claim.

Lindquist predated the adoption of comparative negligence. Thus, the court noted that the verdict for the plaintiff against both Lindquist and Smith necessarily implied that Lindquist was negligent. The verdict in favor of Lindquist necessarily meant Lindquist was not negligent (or he would have been barred by contributory negligence principles). Thus, in *Lindquist*, the verdict presented a facial inconsistency. That is not the situation with an inadequate award for severance damages (or other inadequate awards).

The Department's attempt to apply the *Hendelman* concurrence to a non-facial verdict situation ignores the would-be impact. The concurring opinion said most inconsistent verdicts would be either inadequate or contrary to the manifest weight of the evidence. The converse is also true: inadequate verdicts or verdicts that are contrary to the weight of the evidence would necessarily be inconsistent with the evidence.

Thus, the Department would eliminate a party's ability to seek review of an inadequate verdict or a verdict against the manifest weight of the evidence through post-trial motions, by asserting they were inconsistent with some evidence. The rule the Department wants – that any alleged inconsistency with evidence must be raised before the jury is discharged – would mean that counsel would have to ask the court to detain the jury while he or she revisited all the evidence in the trial that may have been inconsistent with the verdict. In a lengthy trial, this could take hours. Otherwise, every manifest weight argument, as well as many other arguments, would be deemed waived.

As discussed below, if the Court is going to adopt a rule that a party must raise an inconsistency in the verdict before the jury is discharged, that rule should be limited to inconsistencies that appear on the face of the verdict.

C. This Court has held that no objection is required where the defect in a verdict is one of substance rather than form.

In *Nix v. Summitt,* 52 So. 2d 419 (Fla. 1951), a husband and wife sued jointly and the jury returned a verdict that entered a sum for the plaintiff wife, but placed a check mark in the blank by the husband's name. 52 So. 2d at 419. This Court reversed and held the husband was entitled to a new trial.

The defendant attempted to rely on two earlier decisions from this Court to argue the husband had waived a right to a new trial by not objecting before the jury's discharge. *Atlantic Coast Line R. Co. v. Price,* 46 So. 2d 481 (Fla. 1950) and *General Motors Acceptance Corporation v. Judge of Circuit Court,* 102 Fla. 924, 136 So. 621 (Fla. 1931). This Court rejected that argument because "the defect in this verdict is one of substance rather than form." 52 So. 2d at 420.

In *Price*, the jury was apparently provided with two verdict forms, one that found for the plaintiffs and provided lines for amounts and one that found for the defendant. The jury used the form finding for the plaintiffs, but entered the amount of zero for one of the four plaintiffs. This Court found the jury's intent was plain, and noted that no objection was made so that any exception was waived. 46 So. 2d at 483. This Court did not describe the verdict as "inconsistent." Further, the finding for the plaintiffs and placing nothing in the amount line for the one plaintiff appeared on the face of the verdict. 46 So. 2d at 482.

In *General Motors*, the verdict read that "we, the jury, find the right of the property to be in the plaintiff." 136 So. 2d at 621. The Court held this verdict was equivalent to a simple verdict in favor of the plaintiff, that the intent of the jury in rendering the verdict could be ascertained with certainty from the words used, and

that because no objection was made to the form of the verdict when the same was presented to the court, the form thereof was waived. 136 So. 2d at 621-622.

When one reads these decisions together, it is apparent this Court announced that if there is an objection as to the form of the verdict, it must be made at trial in order to preserve it. However, when the objection is to the substance of the verdict returned by the jury, no objection is required before the jury disperses. The defect in substance in *Nix v. Summitt* was the failure to award any amount for damages, the same defect in *Causeway Vista*.

In *Higbee v. Dorigo,* 66 So. 2d 684 (Fla. 1953), this Court reiterated that defects as to form of a verdict are waived if there is no objection. Like *Price*, in *Higbee*, the jury found for the plaintiffs, but awarded no damages to one plaintiff, Mrs. Higbee. The jury also entered another verdict form finding for the defendant as to that plaintiff. 66 So. 2d at 685. The Court noted that the verdicts reflected a plain intention that Mrs. Higbee have no recovery, and addressed the evidence that supported such a result. 66 So. 2d at 685.

It appears some district court cases citing to these decisions have failed to appreciate the distinction this Court drew between the necessity for an objection to the form of a verdict before the jury is discharged, and this Court's holding that such an objection is not required for a defect in substance, rather than form. Some

district court opinions may have used the term "inconsistent verdict" as a shorthand for a defect in the form of a verdict, a defect that would appear on the face of the verdict.

By this Court adhering to its precedent in *Nix v. Summitt*¸ the confusion presented in some district court cases would be resolved. Following this rule dictates that problems in the substance of a verdict – whether the inadequate verdict in *Nix v. Summitt* or the inadequate severance verdict here – would be preserved by a motion for new trial. As discussed below, there are sound policy reasons for such an approach, in contrast to requiring trial counsel to evaluate all the possible nuances of a verdict he or she has just heard read in the succeeding seconds before the jury is discharged.

D. If an objection to an inconsistency is to be required before the jury is discharged, the inconsistency must appear on the face of the verdict, and not be an alleged "inconsistency" with evidence.

As noted above, this Court's decisions actually speak in terms requiring an objection to the "form" of the verdict before the jury is discharged, rather than to an inconsistent verdict. In the three cases where that statement is made, this Court also noted that the intent of the jury was clear in each of those cases. By contrast, a failure to award damages in a blank was treated by the Court as a defect in

substance, to which no objection was required before the jury was discharged. *Nix v. Summitt*.

Citing those cases, some district court opinions have said that a party is obligated to object to an inconsistent verdict prior to discharge of the jury, but may challenge an inadequate verdict by post-trial motion. *See, e.g., Avakian,* 719 So. 2d at 344. *See also Scott v. Sims,* 874 So. 2d at 23. (A verdict that is both inconsistent and inadequate can be raised by a motion for new trial, even in the absence of an objection to the verdict's form).

Assuming this Court wishes to adopt this gloss on its earlier decisions, then the better approach would be to hold that a party must object to an alleged inconsistent verdict only when the inconsistency appears on the face of the verdict. Numerous district court decisions have said as much. In *Deklyen v. Truckers World, Inc.,* 867 So. 2d 1264, 1266 (Fla. 5th DCA 2004), the court said, "the jury made no finding of fact that was inconsistent with any other finding it made." The opinion addressed a verdict that awarded past and future medical expenses and loss of income damages, but no non-economic damages, which the court held was inadequate, rather than inconsistent.

In *Avakian,* the Fourth District rejected the argument that a verdict was inconsistent because it had failed to award enough money, or perhaps no money at

all, for certain claims. The court made clear that determining inconsistency required looking at other portions of the verdict, rather than at evidence. After stating a verdict is not inconsistent because it fails to award enough money, or perhaps no money at all for certain categories of damages, the court said: "Under such circumstances, the issue is the adequacy of the award, *not its consistency with any other award by the verdict*". 719 So. 2d at 344 (emphasis added).

Allstate Insurance Company v. Daugherty, 638 So. 2d 612, 613, n.1 (Fla. 5th DCA 1994), noted that "the lower court found no internal inconsistency in the verdict, only an inconsistency with the proofs. An internal inconsistency would have to be raised prior to the jury's discharge."

In *Cowart v. Kendall United Methodist Church,* 476 So. 2d 289 (Fla. 3d DCA 1985), the court held a contemporaneous objection was not required when the jury awarded nothing for the husband's consortium claim while awarding $400,000 for the wife's non-derivative claim. The court held the husband did not complain that his verdict was "inconsistent" with his wife's, but rather that it was contrary to the evidence that he, in fact, sustained damages.

Causeway Vista does not claim that the jury's failure to award severance damages is inconsistent with another portion of the verdict. Rather, it is contrary to the evidence that Causeway Vista sustained severance damages.

In *Crawford v. DiMicco,* 216 So. 2d 769 (Fla. 4th DCA 1968), the court stated that where the findings of a jury's verdict in two or more respects disagree with regard to a material fact so that both cannot be true, they are in fatal conflict. The court looked at the face of the verdict holding for the plaintiff against an agency, which required a finding there was no insurance coverage, and against the insurer, which required a finding that there was insurance coverage. The court concluded the verdict was inconsistent and self-contradictory. 216 So. 2d at 771.

If an objection to an alleged inconsistent verdict is to be required before the jury is discharged, sound policy reasons dictate such a rule should be limited to situations where the inconsistency appears on the face of the verdict.

When the jury returns a verdict, respective counsel hear it read aloud, and can try to read along on their copy of the verdict form while listening. In the short time between when the verdict is read and the jury is discharged, counsel may be able to discern if there is an inconsistency on the face of the verdict. But it would create an unrealistic and unfair burden to require that counsel, within a matter of seconds, review all of the evidence and implications from that evidence that may have been submitted during a one or two-week trial to instantaneously evaluate if the verdict is inconsistent in any fashion with that evidence.

It is reasonable for a party to have the opportunity to review the evidence with regard to an inadequate verdict, or a verdict for which there was no conflict on the face of the verdict. Here, in opposing Causeway Vista's request for a new trial, the Department repeatedly argued in post-trial pleadings that its expert had not testified to a minimum amount of severance damages (R 6/1185-1186; 7/1225). Now the Department admits its expert did testify to an amount of severance damages (IB 3, 6). Yet, it claims Causeway Vista should have recognized the issue and objected in the seconds after the verdict was read.

In sum, if this Court is going to move from the form versus substance analysis of its earlier precedent to an inconsistency analysis, any requirement to object based on an inconsistency should be limited to an inconsistency on the face of the verdict.

The Department cites *Cocca v. Smith,* 821 So. 2d 328, 331 (Fla. 2d DCA 2002), to argue that an inconsistent verdict is not limited to facial inconsistency, but can arise through an inconsistency with the instructions or the evidence (IB 12). At best, the Department is attempting to rely on dicta, and it is not dicta that really says what the Department wishes it said. *Cocca* held that the verdict was not inconsistent. It stated, "there are no patent inconsistencies in the verdict itself." 821 So. 2d at 331.

The opinion went on to say that there was also nothing about the verdict that was inconsistent with the instructions given or the evidence. The court did not say that if the verdict contained no inconsistency on its face, but been inconsistent with evidence or instructions, then counsel would have to make a contemporaneous objection based on inconsistency. The Second District went on to review the alleged inadequacy of the verdict, stating that issue was properly before the court based on the motion for new trial. 821 So. 2d at 331.

The Second District in *Causeway Vista* cited to its opinion in *Cocca v. Smith.* 918 So. 2d at 355. Thus, the Second District did not read its earlier opinion as requiring an objection as to an inadequate verdict before the jury is discharged, which the opposing party contends was also inconsistent based on the evidence. Put another way, these decisions, and numerous others, can be reconciled only if the requirement for a contemporaneous objection is limited to inconsistencies that appear on the face of the verdict.

The failure of the jury to award severance damages to Causeway Vista was not an inconsistency on the face of the verdict. It was an inadequate award, a problem in the substance of the verdict, and if it could be described as inconsistent at all, inconsistent only with the evidence and not an inconsistency on the face of the verdict.

E. "Inconsistent" product liability verdict cases support a rule that permits a new trial for this inadequate verdict.

The Department quotes at length from *Moorman v. American Safety Equipment,* 594 So. 2d 795 (Fla. 4th DCA 1992)(IB 15-16). The Fourth District in *Moorman* addressed and criticized a Fifth District case, *North American Catamaran Racing Association, Inc. v. McCollister,* 480 So. 2d 669 (Fla. 5th DCA 1985). The Department does not address another more recent Fourth District case that reaches a different result from *Moorman, Nissan Motor Co., Ltd. v. Alvarez,* 891 So. 2d 4 (Fla. 4th DCA 2004), *review denied,* 917 So. 2d 191 (Fla. 2005).

In *North American Catamaran, Moorman,* and *Nissan v. Alvarez,* the plaintiffs in products liability cases all alleged claims based on both strict liability and negligence. In each of these three cases, the jury found there was no defect (no strict liability), but found there was negligence. *North American Catamaran,* 480 So. 2d at 671; *Moorman*, 594 So. 2d at 798; *Nissan v. Alvarez,* 891 So. 2d at 6. In none of these cases did the defendant manufacturer ask the trial court to have the jury resolve an inconsistency before it was discharged.

In *North American Catamaran,* the Fifth District found this inconsistency was of a fundamental nature, and that there was no other evidence to sustain the verdict (namely, other than the evidence offered regarding both the strict liability

defect and the negligence claims). The Fifth District reversed the verdict for entry of a judgment in the defendant's favor.

The Fourth District in *Moorman* criticized the *North American Catamaran* conclusion that the defendant did not have to raise the inconsistency point before the jury was discharged (and went on to state the jury did not have to find strict liability to find for the plaintiff on negligence under the facts of *Moorman*).

In *Nissan v. Alvarez,* the Fourth District recognized that it had addressed a "similar situation" in *Moorman.* But in *Nissan,* the Fourth District found the verdict was fundamentally insupportable, citing *North American Catamaran.* It agreed with the Fifth District's statement that the inconsistency was of a fundamental nature and reversed the judgment, with directions to enter a judgment for the defendants who had not objected to the allegedly inconsistent verdict while the jury was still present. 891 So. 2d at 8.

Thus, when one reads the Fourth District opinion that comes after the *Moorman* case cited by the Department, the *Nissan v. Alvarez* decision supports the result the Second District reached. That is, a jury verdict that is unsupportable by the evidence is to be reversed, and does not require the party to have objected before the jury was discharged.

In *Nissan v. Alvarez,* the appellate court concluded the jury finding on negligence could not be sustained based on the evidence. In *Causeway Vista,* the jury finding of no severance damages cannot be sustained based on the evidence. Indeed, if there is an "inconsistency" that would have required an objection, it would have been clearer on the face of the verdict in *Nissan v. Alvarez.* And it is indisputable that the *Causeway Vista* verdict contains no inconsistency on the face of the verdict (R 6/1142). The issue of inadequacy of the verdict in *Causeway Vista* was not present in these product liability cases.

If Florida courts are going to hold that inconsistent findings in products liability cases based on the evidence are so fundamental that a large foreign manufacturer is entitled to overturn a jury verdict to which it did not object when the verdict was returned, then the constitutionally guaranteed right of full compensation for a Florida landowner is just as fundamental. Severance damages are part of full compensation. *E.g., Partyka v. Florida Department of Transportation,* 606 So. 2d 495, 496 (Fla. 4th DCA 1992).

F. Under any of several appropriate bright line tests, the new trial order for Causeway Vista will be affirmed.

This Court can resolve this issue in any one of several ways. The Court could reaffirm its precedent that requires an objection only when there is a problem

with the form of the verdict, as opposed to the substance. *See Nix v. Summitt.* The Court could adopt a bright line rule that requires an objection to an inconsistent verdict only when the inconsistency appears on the face of the verdict. Under either of these bright line tests, the Second District's ruling ordering a new trial for Causeway Vista stands. Should the Court adopt as a third option the rule recognized by the five district courts of appeal that an inadequate verdict is preserved by a post-trial motion, then the new trial order for Causeway Vista will be affirmed.

The Department's argument rests primarily on two Fourth District decisions, *Denmark* and *Stewart*. As the discussion above demonstrates, the result reached in those Fourth District decisions is inconsistent with other opinions of the Fourth District, such as *Avakian. See also Allstate Insurance Company v. Manasse,* 681 So. 2d 779, 783 (Fla. 4th DCA 1996), *reversed on other grounds,* 707 So. 2d 1110 (Fla. 1998)(Fourth District discussing decisions that do not require contemporaneous objection where verdict is inadequate or both inconsistent and inadequate). In sum, there are as many or more decisions from the Fourth District that reject the Department's position as there are cases the Department characterizes as supporting it.

The prior decisions of this Court and the majority of opinions of the district courts of appeal do not support the Department's position, but rather support the new trial ordered for Causeway Vista.

The Department's attempted reliance on the contemporaneous objection rule in the context of closing arguments or evidentiary points ignores the difference in those settings (IB 13, citing *Murphy v. International Robotic Systems,* 766 So. 2d 1010 (Fla. 2000)). Objecting to a discrete piece of evidence or comment involves a different analytical process than attempting to determine if some aspect of the multiple questions a jury determines may conflict in some respect with evidence that has been submitted over the course of a multi-day or multi-week trial. The purpose of the contemporaneous objection rule would not be served by applying it to prevent a party from receiving a fair trial when the counsel has only a few seconds to react to a jury verdict before the jury was discharged.

The Department should not be heard to complain that the new trial will force it to expend resources (IB 17-18). The Department was present and heard the same verdict read. It was free to ask the court to send the jury back to deliberate further, but it did not do so. *See Simpson v. Stone,* 662 So. 2d 959, 962 (Fla. 5th DCA 1995).

As a subdivision of the state, the condemnor taking the private property of its citizens owes a higher duty to those citizens. This Court has cautioned the condemnation of private property by the government should not be litigated by the Department as a matter of "dog eat dog" or "win at any cost." *Shell v. State Road Department,* 135 So. 2d 857, 861 (Fla. 1961).

CONCLUSION

Causeway Vista respectfully requests this Court affirm the Second District's holding that it is entitled to a new trial on severance damages. This Court can do so by any of several rationales: (1) Hold that an objection before the jury is discharged is not required to preserve review of an inadequate verdict; (2) Reaffirm a bright line test that an objection before the jury is discharged is not required for an error in substance, as opposed to the form of the verdict; or (3) Adopt a bright line rule that if an objection is to be required before the jury is discharged, then it is only required for an inconsistency that appears on the face of the verdict.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: GREGORY G. COSTAS, ESQ., Department of Transportation, Haydon Burns Building, MS 58, 605 Suwannee Street, Tallahassee, Florida 32399-0458, Attorney for Petitioner; LUCY JULIA HAWRSK, 3700 Dana Shores, Tampa, Florida 33634, Representative of the Estate of John Hawrsk, deceased; and JAMES L. ESTES, JR., ESQ., Senior Corporate Counsel, TECO Energy, P.O. Box 111, Tampa, Florida 33601, Attorney for Tampa Electric; on July 21, 2006.

/s/Raymond T. Elligett, Jr.
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared using 14-point Times New Roman type, a font that is proportionately spaced.

/s/Raymond T. Elligett, Jr.
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