

**IN THE SUPREME COURT,  
STATE OF FLORIDA**

SYSTEM COMPONENTS CORPORATION,

Petitioner,

v.

CASE NO. SC08-

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

Respondent.

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**JURISDICTIONAL BRIEF OF PETITIONER,  
SYSTEM COMPONENTS CORPORATION**

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ON PETITION FOR REVIEW OF THE DECISION OF THE  
FIFTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA  
CASE NO. 5D-06-2864

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**MARTY SMITH**  
FLA. BAR NO. 438952  
**ANN MELINDA CRAGGS**  
FLA. BAR NO. 0896837  
BOND, ARNETT, PHELAN,  
SMITH & CRAGGS, P.A.  
P.O. BOX 2405  
OCALA, FL 34478-2405  
(352) 622-1188

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## **PRELIMINARY STATEMENT**

System Components Corporation, the appellant below and Petitioner here, will be referred to as System Components. The State of Florida, Department of Transportation, the Appellee below and Respondent here, will be referred to as FDOT.

References to the RECORD ON APPEAL will be cited as (R. \_\_\_\_), followed by the appropriate page number or numbers of the record.

The transcript of the jury trial, conducted February 13, 2006 through February 24, 2006, is found in Volumes 23 through 38 of the RECORD ON APPEAL. The transcripts will be cited by the appropriate volume number as (V.23, p. \_\_\_\_), followed by the appropriate page number or numbers of the transcript.

The Answer Brief of FDOT will be cited as (Ans. Brf. \_\_\_\_ ) followed by the appropriate page number of the Answer Brief.

The Appendix accompanying the Jurisdictional Brief of System Components will be cited as (App. \_\_\_\_), followed by the appropriate page number or numbers of the Appendix.

## **STATEMENT OF THE CASE AND THE FACTS**

The facts of this case, as set forth in pertinent part in the Fifth District Court's opinion below, are as follows:

In 2004, FDOT filed a condemnation action seeking to take property for the widening of State Road 40 west of Ocala. This included the business location of System Components....

The effective date of the taking was July 22, 2004. After the taking, System Components was left with a .648 acre parcel and over half of its building taken. Because there was insufficient space to rebuild due to setback lines, the remaining parcel was unusable to reestablish the business. DOT agreed that the remaining property was of nominal value.

System Components relocated its business operations, initially by leasing an interim facility and then by purchasing real property and constructing new office and warehouse space. At the time of trial, System Components had moved into its new facility.

The parties stipulated to the value placed on the property and building by DOT's appraiser. The parties also agreed that System Components qualified for a business damage claim by meeting the requirements set forth under §73.071(3)(b), Fla. Stat. (2003). The measure of those damages, however, remained in dispute. System Components contends that it is entitled to recover as business damages the total value of the business, as if it had ceased to exist due to the partial taking. DOT contends that its business damages only include its actual damages, taking into account the continuing operation of the business.

During the litigation, relying on §73.071(3)(b), Fla. Stat. (2003), and Florida Department of Transportation v. Tire Centers, LLC, 895 So. 2d 1110 (Fla. 4<sup>th</sup> DCA 2005), System Components filed a motion in limine seeking to exclude all evidence of what it terms "off-site cure,"

i.e. that System Components was continuing to operate in another location. The trial court denied the motion, expressing disagreement with the Tire Centers decision and undertaking to distinguish it....

To assess System Components' business damage claim, the lower court instructed the jury to determine both measures of damage: the total value of the business as of the date of taking and the mitigation of that loss due to the relocation and continued operation. The jury accordingly returned its verdict, finding that the total value of the business was \$2,394,964.00, but business damages actually suffered by System Components were \$1,347,911.00. System Components requested that the court enter judgment for the total value of the business, but the court entered judgment for the jury's damage award, calculated by taking into account the fact of the relocation and continuing operation of the business. On appeal, System Components sought reversal of the judgment and remand with directions to enter a final judgment for the full value of the business. System Components Corporation v. Department of Transportation, 33 Fla. L. Weekly D1702 (July 3, 2008).

The Fifth District recognized that the instant case is factually and legally indistinguishable from Tire Centers, but expressly disagreed with the Fourth District. In so doing, the Fifth District held that evidence of an "off-site cure" was admissible, and upheld the verdict entered by the Trial Court. Then, the Fifth District certified conflict with Tire Centers.

On July 31, 2008, System Components timely filed its notice invoking this Court's discretionary jurisdiction pursuant to Article V, §3(b)(3) of the Florida Constitution and Rule 9.030(a)(2)(A)(iv), Fla. R. App. Proc.

## **SUMMARY OF ARGUMENT**

The Fifth District certified conflict in this case with the Fourth District Court of Appeal's decision in Florida Department of Transportation v. Tire Centers, LLC, 895 So.2d 1110 (Fla. 4<sup>th</sup> DCA 2005). In so doing, the Fifth District recognized that this case is factually and legally indistinguishable from Tire Centers. The lower court's holding that the trial court properly admitted evidence of System Component's off-site cure conflicts with the Fourth District Court of Appeals decision in Tire Centers, which holds that the duty to mitigate business damages only extends to mitigation possible on the remainder property. In both cases, the businesses relocated to other sites.

In reaching its conclusion, the Fifth District ignored the long standing rule of eminent domain law, that evidence of damages is limited to the site that is the subject of the condemnation. (The "parent tract" rule).

## ARGUMENT

### ISSUE

THE LOWER COURT'S DECISION HEREIN EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL.

In Tire Centers, the Fourth District Court of Appeal held, as follows:

Mulkey v. Division of Administration, State of Florida, Department of Transportation, 448 So. 2d 1062 (Fla. 2nd DCA 1984), clearly acknowledges a duty to mitigate. On the other hand, that duty only extends to mitigation of the remaining property. Eminent domain law focuses only on the land taken, notwithstanding that in a case such as this a substantial portion of lost goodwill may possibly be recaptured by way of a nearby relocation. As such, the taking of the specific property at issue is the sole focus of business damages under section 73.071(3)(b). If the legislature had intended business damages to be subject to mitigation by an off-site cure, it could have easily done so.

Tire Centers, 895 So.2d 1110, 1113 (Fla. 4<sup>th</sup> DCA 2005). FDOT concedes “there is no material factual or legal distinction between Tire Centers and the instant case...” (Ans. Brf., p. 15). Notwithstanding that the cases are factually and legally the same, the Fifth District Court of Appeal has ruled, in the instant case, that a duty to mitigate business damages does, in fact, extend beyond the specific property at issue. (System



Components, at App. 10). Therefore, presently, the fate of a business damage claim in Florida is treated significantly differently based only upon the geographic location of that business.

A strict interpretation of §73.071(3)(b) does not reconcile the conflict between the lower court and Tire Centers. This is so because FDOT has also conceded that System Components satisfied the requirements of §73.071(3)(b) and was, therefore, entitled to claim business damages.<sup>1</sup> §73.071(3)(b) provides no criteria as how to measure or award business damages and, instead, provides the prerequisites necessary in order to make a claim of business damages. Therefore, a strict construction of the

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<sup>1</sup> More specifically, §73.071(3)(b) provides, in pertinent part, as follows:

3) The jury shall determine solely the amount of compensation to be paid, which compensation shall include:...(b) Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking, including, when the action is by the Department of Transportation, county, municipality, board, district or other public body for the condemnation of a right-of-way, and the effect of the taking of the property involved may damage or destroy an established business of more than 4 years' standing before January 1, 2005, or the effect of the taking of the property involved may damage or destroy an established business of more than 5 years' standing on or after January 1, 2005, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his or her written defenses the nature and extent

statute does not assist in resolving the conflicting opinions now before this Court.

In addition, there is a compelling statewide interest in this Court reconciling the conflict between the instant case and Tire Centers. FDOT's power to condemn property encompasses all five (5) appellate districts. No reasonable basis can be cited for evidence of off-site cures being barred in business damages cases in parts of the State while other business owners are subjected to the opposite standard in other parts of the State. Given the significant number of both condemnors and condemnees affected by this conflict, varied results will disrupt Florida's long history of permitting business damages.

Although this Court denied review of Tire Centers, no conflict was certified by the Fourth District Court of Appeal despite FDOT's assertion that Tire Centers conflicted with Tampa-Hillsborough County v. K.E. Morris Alignment, 444 So.2d 926 (Fla. 1983). With the lower court's decision in the instant case and its certification of conflict with Tire Centers, the issue of whether a business owner is required to mitigate business damages off-site is ripe. This Court's decision is needed to eliminate the opposite results reached by the Fifth District and the Fourth District and thereby provide statewide uniformity for business owners and condemning authorities.

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of such damages.



## **CONCLUSION**

The lower court's decision expressly and directly conflicts with the Fourth District Court of Appeal's decision in Tire Centers. This Court has a proper basis to exercise its discretionary jurisdiction pursuant to Article V, §3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

WHEREFORE, Petitioner, System Components Corporation, respectfully requests this Honorable Court exercise its discretionary jurisdiction over this cause.

Respectfully Submitted,

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**Marty Smith, Esquire**  
Florida Bar No. 438952  
**Ann Melinda Craggs, Esquire**  
Florida Bar No. 0896837  
BOND, ARNETT, PHELAN,  
SMITH & CRAGGS, P.A.  
Post Office Box 2405  
Ocala, Florida 34478  
(352) 622-1188

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF PETITIONER has been furnished by regular U.S. Mail to Gregory G. Costas, Esquire, 605 Suwannee Street, Tallahassee, Florida 32399-6544; and M. Stephen Turner, Esquire, and Robert J. Witmeyer, Esquire, 215 South Monroe Street, Suite 400, Tallahassee, Florida 32301; this \_\_\_\_ day of August, 2008.

By: \_\_\_\_\_

**Marty Smith, Esquire**  
Florida Bar No. 438952  
**Ann Melinda Craggs, Esquire**  
Florida Bar No. 0896837  
BOND, ARNETT, PHELAN,  
SMITH & CRAGGS, P.A.  
Post Office Box 2405  
Ocala, Florida 34478  
(352) 622-1188

**CERTIFICATE OF TYPEFACE COMPLIANCE**

I **HEREBY CERTIFY** that Petitioner’s Jurisdictional Brief has been prepared using Times New Roman 14 point font.

By: \_\_\_\_\_

**Marty Smith, Esquire**  
Florida Bar No. 438952  
**Ann Melinda Craggs, Esquire**  
Florida Bar No. 0896837  
BOND, ARNETT, PHELAN,  
SMITH & CRAGGS, P.A.  
Post Office Box 2405  
Ocala, Florida 34478  
(352) 622-1188

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**APPENDIX TO  
PETITIONER'S JURISDICTIONAL BRIEF**

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ON PETITION FOR REVIEW OF THE DECISION OF THE  
FIFTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA  
CASE NO. 5D-06-2864

---

**CHARLES MARTIN SMITH**  
FLA. BAR NO. 438952  
**ANN MELINDA CRAGGS**  
FLA. BAR NO. 0896837  
BOND, ARNETT, PHELAN,  
SMITH & CRAGGS, P.A.  
P.O. BOX 2405  
OCALA, FL 34478-2405  
(352) 622-1188  
ATTORNEYS FOR THE PETITIONER

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**I HEREBY CERTIFY** that a true and correct copy of the foregoing APPENDIX TO PETITIONER’S JURISDICTIONAL BRIEF has been furnished by regular U.S. Mail to Gregory G. Costas, Esquire, 605 Suwannee Street, Tallahassee, Florida 32399-6544 and M. Stephen Turner, P.A., and Robert J. Witmeyer, Esquire, Broad and Cassel, 215 S. Monroe Street, Suite 400, Tallahassee, Florida 32301, this \_\_\_ day of August, 2008.

By: \_\_\_\_\_

**Marty Smith, Esquire**  
Florida Bar No. 438952  
**Ann Melinda Craggs, Esquire**  
Florida Bar No. 0896837  
BOND, ARNETT, PHELAN,  
SMITH & CRAGGS, P.A.  
Post Office Box 2405  
Ocala, Florida 34478  
(352) 622-1188  
Attorneys for System Components Corporation