IN THE SUPREME COURT,
STATE OF FLORIDA

SYSTEM COMPONENTS CORPORATION,

Appellant,

v. CASE NO. SC08-1507

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Appellee.
_____/

INITIAL BRIEF OF APPELLANT, SYSTEM COMPONENTS CORPORATION

ON APPEAL FROM THE
FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA
CASE NO. 5D-06-2864

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PRELIMINARY STATEMENT

For purposes of this INITIAL BRIEF, the following abbreviations will be utilized:

The Appellant, System Components Corporation, will be referred to as "Appellant" or "System Components".

The Appellee, State of Florida Department of Transportation, will be referred to as "Appellee" or "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 underlying opinion, System Components Corporation v. Florida Department of Transportation, 985 So. 2d 687 (Fla. 5th DCA, 2008), of the Fifth District Court of Appeal will be cited as (System Components, at _____), followed by the appropriate page number of the opinion.

References to FDOT's Answer Brief in the underlying appeal will be cited as "FDOT 5th DCA Ans. Brief".

References to §73.071(3)(b), Fla. Stat., are to the 2003 statute in effect as of the date of taking. However, this portion of the statute has not been amended, and remains identical in the current version of the Florida Statutes.

STATEMENT OF THE CASE AND THE FACTS

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

System Components was a wholesale distributor of fluid purification, control and instrumentation (V.27, p. 515). It was the exclusive Florida distributer for a number of manufacturers, and serviced customers in food processing, drug manufacturing, municipal water and related areas (V.27, p. 516, 526).

The effective date of the taking was July 22, 2004 (R. 1661). After the taking, System Components was left with a .648 acre parcel and over half of its building taken (R. 1661-1662). There was insufficient space to rebuild on the remaining land, and therefore, the remaining parcel was unusable to reestablish the business (R. 1661). FDOT agreed that the remaining property was of nominal value (R. 1661).

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 (R. 1663-1664). At the time of trial, System Components was completing its move into its new facility (R. 1665).

The parties stipulated to the value placed on the property and building by FDOT's appraiser (R. 1663). 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). (R. 1663). The measure of those business damages, however, remained in dispute. System Components contends it is entitled to recover the total value of the business as business damages. FDOT contends System Components' business damages should be determined by taking into account its relocation.

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. 4th DCA 2005), System Components filed a motion in limine seeking to exclude all evidence of "off-site cure," i.e. that System Components was continuing to operate in another location. The trial court denied the motion, expressing its disagreement with the Tire Centers decision.

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 as of the date of taking was $2,394,964.00, but business

damages determined with reference to the ongoing off-site relocation were $1,347,911.00 (R. 2262-2265). Based on Tire Centers, System Components requested the Court enter judgment for the total value of the business, but the Court rejected Tire Centers and entered judgment for the jury's off-site, mitigated damage award.

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, 985 So. 2d 687 (Fla. 5th DCA 2008). FDOT agreed that the instant case is factually and legally indistinguishable from Tire Centers.

The Fifth District found that the Trial Court failed to follow binding precedent, 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. Pro. This Court accepted conflict jurisdiction on September 17, 2008.

SUMMARY OF ARGUMENT

This appeal arises out of a condemnation case in Marion County, Florida. The central issue at trial, and the issue in this appeal, is the construction and application of §73.071(3)(b), Fla. Stat., which is widely referred to as the "business damage" statute. This statute provides that a business can recover damages to its business, caused by a taking, in addition to the damage to or loss of real property.

In Florida Department of Transportation v. Tire Centers, LLC, 895 So. 2d 1110 (Fla. 4th DCA 2005), the Fourth District Court of Appeal held that evidence of an off-site relocation of the business was inadmissible, such that the measure of business damages was the full value of the business at the taken location, without regard to any cure or mitigation that may be conducted elsewhere. With this holding, the Court followed the long-standing "Parent Tract Rule" of condemnation law.

In the instant case, the Trial Court disagreed with the Fourth District's ruling, and allowed the jury to consider evidence of off-site relocation. Although the Fifth District Court of Appeal recognized that the Trial Court exceeded its authority by failing to follow Tire Centers, it upheld the judgment entered by the Trial Court for damages based upon off-site relocation.

In this conflict appeal, this Court is called upon to resolve the disagreement between the Fourth District and the Fifth District regarding §73.071(3)(b), Fla. Stat.. In large measure, this requires a policy decision by this Court.

While the Fourth District decision follows the "Parent Tract Rule", and properly defers to the Legislature to amend §73.071(3)(b), Fla. Stat., the Fifth District's view ignores the "Parent Tract Rule" and legislative domain. Thus, for the first time in Florida eminent domain jurisprudence, events away from the parent tract become relevant.

In stating its holding, the Fifth District seems to limit its application to those cases where a business owner voluntarily relocates, and seems to hold that a business owner has no duty to mitigate damages. Instead, the Fifth District seems to rely on its determination that System Components would receive a "windfall" if it received the full value of its business.

However, the Fifth District inherently assumes that the business will be successful in its new location. It ignores the fact that System Components had to significantly change its capital structure in order to finance its relocation, and moved to a site more than 11 miles away from the transportation hubs relied upon by its business. In fact, at the time of trial, System Components was just completing its move to its new location. Thus, the effectiveness of its off-site cure

was undetermined, especially when considered in light of §73.071(3)(b), Fla. Stat., requiring a business to be in existence for four or five years to make sure that it is viable, before it qualifies for a business damage claim.

Tire Centers provides a clear, understandable rule of business damages that is consistent with long-standing eminent domain precedent. On the other hand, System Components will lead to uncertainty, increased future litigation, and inconsistency as Florida Courts wrestle with this newly introduced concept of off-site mitigation.

Moreover, as recognized by the Fourth District, the Florida Legislature possesses the authority and ability to amend §73.071(3)(b), Fla. Stat., if it so desires. FDOT candidly admits it has not sought any legislative change to the business damage statute, neither before nor after the Tire Centers 2004 decision. Further, FDOT likewise admits that they view legislation favorable to their position to be unlikely, given Florida's pro-business stance.

In this appeal, System Components urges this Court to exercise judicial restraint. If mitigation of business damages is to be considered in eminent domain cases, there are numerous difficult issues that can only be resolved by appropriate legislation. For instance, even though the Fifth District indicated that there is no duty to mitigate, surely this will be an issue of further litigation. Likewise, FDOT

questioned and criticized System Components' decisions regarding its relocation, and will continue to do so in future cases, because legislative directives for relocation do not exist.

In making these determinations, it is important to note that there is no good faith deposit required for business damages, unlike real property takings cases. That is, if a business owner decides to relocate, they must do so using their own capital or borrowed capital, even though a business damages case can go on for years.

Thus, System Components respectfully requests this Court follow Tire Centers and reject the Fifth District's holding in System Components.

ARGUMENT

POINT ON APPEAL

The Fifth District Court of Appeal erred in rejecting Tire Centers and thereby upholding the Trial Court's entry of judgment based on business damages mitigated by off-site cure, where it was undisputed that System Components could no longer continue its business operations on the parent tract.

A. Standard of review

This appeal involves issues of statutory construction and the applicability of existing case law and, as such, raises a pure issue of law. Thus, the appropriate standard of review is de novo. See §6.4(c), Florida Appellate Practice, 6th ed. (The Florida Bar 2006); Racetrac Petroleum, Inc. v. Delco Oil, Inc., 721 So. 2d 376 (Fla. 5th DCA 1998); Brass & Singer, P.A. v. United Automobile Insurance Company, 944 So. 2d 252 (Fla. 2006). Further, at the district court level, FDOT agreed that the appropriate standard of review was de novo, and this is not expectd to be an issue in this appeal.

B. The Fifth DCA erred in rejecting the "Parent Tract" Rule.

In this appeal, this Court is asked to resolve the conflict between the Fourth District and the Fifth District and their respective interpretations of §73.071(3)(b), Fla. Stat.. This statutory provision is widely referred to as the "business damage statute", and states, in business can recover damages if its business property is taken by eminent domain, provided that certain criteria are met. The specific statutory provision provides that the jury is to determine the compensation to be paid, and states, in part:

> 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 of such damages. §73.071(3)(b), Fla. Stat., (2003).

The Fourth District Court of Appeal correctly construed §73.071(3)(b), Fla. Stat., (2003), in Tire Centers and the Fifth District Court of Appeal erred in construing the same statute in the instant case. This is so because Tire Centers follows well established and long standing principles of eminent domain law. In contrast, the Fifth District's decision in this case invades the legislative prerogative and brings about fundamental changes in eminent domain law, such that it effectively rewrites §73.071(3)(b), Fla. Stat..

At the outset, it is important to note that FDOT agreed that this case and Tire Centers are factually and legally indistinguishable (FDOT 5th DCA Ans. Brief at p. 4). Both cases address the specific issue of whether business damages are subject to a prospective off-site cure, where the business was actually relocated.

Tire Centers followed both Tampa-Hillsborough County Expressway Authority vs. K.E. Morris Alignment Service, 444 So. 2d 929 (Fla. 1983) and Mulkey v. Division of Administration, State of Florida, Department of Transportation, 448 So. 2d 1062 (Fla. 2nd DCA 1984). The condemnee in K.E. Morris had been in business for more than 30 years, but not at the property condemned for the requisite statutory five year period. K.E. Morris, at 929. Tire Centers quoted K.E. Morris at length in addressing the "Parent Tract Rule" as it relates to business damages. Tire Centers, at 1112. The K.E. Morris Court

recognized that the purpose of §73.071(3)(b), Fla. Stat., is to mitigate the hardship on a business when the State takes property by eminent domain, and recognized that a business can have substantial value and be damaged by a partial taking. However, the Court then held:

> To assure the existence of a substantial business interest in the location as a prerequisite to an award of business damages, the legislature included the requirement of five years of operation at the location. The requirement of "more than 5 years' standing," seen in the light of the legislative purpose, obviously refers to the length of time that the business has operated *at the location* where business damages are claimed to have been incurred due to condemnation of adjoining land. The length of time that the operator of the business has been in business at a previous or other locations, and the duration of its existence as a business entity are obviously irrelevant to the inquiry mandated by Statute. *(emphasis in original)* K. E. Morris, at 929.

Tire Centers also relied upon Mulkey in defining the "Parent Tract Rule". As the Fourth District Court of Appeal stated:

> Notwithstanding, Tire Centers argues that Mulkey prohibits business damages from being mitigated by the use of land outside the "parent tract". We find Tire Centers' argument to be persuasive. Mulkey 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, at 1113.

Tire Centers determined that the proper measure of damages in a business damages case, when the business cannot continue at its existing location, is the "total take" damages regardless of whether the business relocated to another site. And, as the Fourth District clearly acknowledged, the legislature clearly has the authority to change this rule if it chooses to do so.

In the instant case, the Fifth District disagreed with Tire Centers and held that evidence of off-site cure is admissible. Thus, for the first time in Florida's eminent domain law, factors away from and unrelated to the parent tract and the date of taking are admissible. While recognizing that a business owner has no duty to mitigate, the Fifth District, in effect, held that if a business owner chose to relocate, then evidence of mitigation shall be introduced to reduce business damages.

C. The Fifth District Court of Appeal erroneously determined that System Components would receive a "windfall" if it received the "total take" measure of damages utilized by the Tire Center's Court.

Condemnation business damages are statutory rather than constitutional damages. That is, there is no constitutional requirement for payment of business

damages, and many states do not provide for them. (K.E. Morris, at 928). Thus, the Florida legislature could eliminate business damages entirely. If they did so, a business owner would only receive compensation for its real estate interest, and would receive nothing for the separate and distinct value of their business, notwithstanding that a business is often a valuable asset that can be totally destroyed by a taking.

In enacting §73.071(3)(b), Fla. Stat., the Florida legislature recognized that a business has value separate and apart from its real estate and granted, under certain circumstances, compensation to the business for such damage. In doing so, the legislature shifted the financial burden of a public project from the private business owner to the public at large, and provided additional protection for private property rights.

However, not all business owners are compensated. First, if the taking includes all of the real property, the business owner is not compensated. §73.071(3)(b), Fla. Stat.. Thus, the business owner receives only the value of their real estate and loses the entire value of their business. In effect, in these instances it could be said that the condemning authority receives a "windfall" at the business owner's expense and loss.

Likewise, depending upon the date of taking, a business owner that has been in existence for less than four or five years at the specific location of the taking receives no compensation. This is true even if the business existed for many years at another location. (K. E. Morris, at 929).

Thus, the Florida legislature has determined that only a specific class of business owners may make a claim for business damages while those not in the class receive no compensation, even though their financial loss may be substantial. There is no dispute the included business owners must strictly satisfy each requirement in order to qualify for a claim. (K.E. Morris, at 928-929). While this may seem unfair, claims for business damages are a matter of legislative prerogative.

The Fourth District determined that the provisions of §73.071(3)(b) (Fla. Stat.), did not supersede the parent tract rule such that the condemning authority could introduce evidence of off-site measures taken by a business owner. (Tire Centers, at 1113). As such, the Court determined that the statute provided for the full value of the business, regardless of what was done at a new location. (Id.).

In its holding, the Fourth DCA correctly recognizes the uncertainty of off-site relocation. They reached their decision "even though a substantial portion of

lost goodwill may possibly be recaptured." *(emphasis added)*. (Tire Centers, at 1113).

In contrast, the Fifth District determined that the Fourth District's construction of the same statute provided for a windfall to business owners. In an effort to avoid such a windfall, the Fifth District construed the statute to permit evidence of an off-site relocation or cure.

This "windfall" argument requires an assumption that the business will be able to operate successfully in its new location, under different circumstances and conditions. It is axiomatic that location and capitalization are two of the most critical factors to the success of a business, both of which can be far different for a business forcibly relocated. Yet, the Fifth District's decision arbitrarily assumes that a relocated business would in fact be successful in its new location because there exists no statutory framework or standards to measure same.

While it is easy to use the term "windfall", it does not accurately describe a condemnation damage scenario. "Windfall" is defined as "An unanticipated benefit, usually in the form of a profit and not caused by the recipient." (Blacks Law Dictionary, 7th Ed.). This does not seem applicable where a business is disrupted by a public works project.

It is important to note that the legislature has provided a minimum amount of time for a business to operate before it qualifies to claim business damages. Depending upon the year of the taking, this requirement is either for four or five year's operation at its existing location to assure that the business's value can be reliably determined. The legislature's choice to enact no similar requirement for post taking damages analysis supports the Tire Centers' Court's ruling. Certainly, one cannot reliably determine a business's value after only a few months at a new location.

At the time of trial, System Components had just relocated to its new facility. (R. 1665). And, its capital structure had been changed dramatically. (V.28, p. 730; V. 29, p. 812). The principal owners of the business had to personally guarantee loans and even place a second mortgage on their home in order to finance the relocation. (V. 27, p. 600-601). Further, there was no similar property available at an affordable price, which resulted in the business being moved approximately eleven miles. (V.27, p. 570-576; V.28, p. 730). Still, these decisions were criticized by the Department of Transportation who argued System Components should have simply leased a building long term. (V.22, p. 73-75).

The approach taken by the Fifth District in the underlying decision creates much uncertainty in the law of eminent domain. In effect, it requires off-site mitigation of damages without providing any criteria for doing so. The inescapable result will be numerous judicial interpretations of the business damage statute and inconsistency in future litigation and court decisions.

More specifically, despite permitting evidence of an off-site cure, the Fifth District decision seems to follow prior case law in holding that a business owner has no duty to mitigate. (System Components, at 692). These portions of the holding cannot be reconciled and are certain to become an issue for future litigation. In the instant case, the Department of Transportation argued that there was an affirmative duty to mitigate, and the Trial Court agreed. (R. 1333). However, the Fifth District Court decision seems to say that a qualified business owner does not have to mitigate off-site, and can simply elect to receive the full value of the business. (System Components, at 692). To some degree, this will encourage business owners to close up shop and avoid the risk of relocation.

It is also important to note that there is no "good faith deposit" for business damages, as there is for taking of real property. (See §74.051, et seq., Fla. Stat.). Thus, System Components had to borrow additional money in order to rebuild, and opted to rebuild at a less desirable location in order to keep its relocation costs

down. (V.29, p 812). Still, FDOT criticized its choice of location, and went so far as to argue at trial that System Components should have legally challenged the development's restrictive covenants in order to build something more like their 20 year old condemned building. (V.37, pp. 1706-1708, 1737-1738).

Obviously, the Fifth District's ruling creates issues regarding the timing of trial and the appropriate evidence to determine business damages when a business relocates. Eminent Domain jurisprudence has long focused on the date of taking, and Tire Centers is straight-forward in applying the "date of taking" analysis.

If it takes four or five years to determine a business's viability for qualifying for business damages, should the same rationale apply post-taking? If so, trial could be substantially delayed, which means that the relocated business would likely have to operate on newly borrowed or invested capital, since there is no good faith deposit for business damages. And, this change in capital structure would likely impact the business's chances for success.

Clearly, none of this is contemplated nor covered by §73.071(3)(b), Fla. Stat.. Moreover, the Fifth District's opinion does not contemplate the potential failure of the business at its new location. In such a case, actual damages could exceed the "total take" damages, when the owner invested additional capital in order to relocate, as System Components did in the instant case.

D. Tire Centers properly exercises judicial restraint and correctly leaves amendment of §73.071(3)(b) to the legislature.

In order to answer the questions created by the Fifth District's decision below, Florida's judiciary will be required to act in a legislative capacity. Again, §73.071(3)(b), Fla. Stat., as specifically addressed by Tire Centers, does not provide for consideration outside of the parent tract. And, as FDOT candidly recognized in its answer brief, they have chosen not to seek legislative amendment or clarification. (FDOT 5th DCA Ans. Brief at 23-24). Further, FDOT admits that it does not view its chances for legislation supporting its position as favorable. Id.

In asking this Court to circumvent the legislative process and, in effect, amend the business damage statute, the Department ignores the well reasoned and self-imposed limitations on courts acting in a legislative capacity. As this Court stated recently in Florida Farm Bureau Casualty Insurance Company v. Cox, 943 So.2d 823 (Fla. 2006):

> Judicial restraint requires us to defer to the Legislature's broad power to enact substantive law in conformity with the state and federal constitutions, even if we are persuaded that a particular law may have negative consequences. In construing statutes we must hew as closely as possible to the statutory language…. and so holding we express no opinion regarding the merits either of the 2004 or of the 2005 version of the statute, matters

> which are properly for the Legislature not the courts, in the absence of any constitutional challenge.

Likewise, in Florida Department of Revenue v. Florida Municipal Power Agency, 789 So.2d 320 (Fla. 2001), the Florida Supreme Court stated:

> This Court does not have the authority to strike a modifying clause where such a revision would substantively change the entire meaning of the statute in a manner contrary to its plain meaning. Under fundamental principles of separation of powers, courts cannot judicially alter the wording of statutes where the legislature clearly has not done so. The court's function is to interpret statutes as they are written and give effect to each word in the statute. Id. at 324.

This Court went on to state that if the Department of Revenue was correct that the legislature erred in amending the statute, then the legislature was the only branch with the constitutional authority to correct the alleged error. Id.

On top of the fact that this is not an appropriate matter for judicial revision, the requested relief raises a host of problematic issues all of which are more appropriately addressed by the legislature. The legislative process, by design, allows for study and debate regarding the merits of limiting or expanding business damage rights.

The Fifth District's holding in the instant case generates many unanswered questions regarding off-site mitigation. As examples, would a business owner have to borrow money to effectuate a move, how far would a business owner have

to move, what if a like property is not available? In the instant case, mitigation activities by System Components required a move of over 11 miles and, more importantly, the borrowing of substantial sums of money. (V. 28, p. 730; V. 29, p. 812).

And, even then, FDOT criticized and found fault with System Components' mitigation efforts suggesting System Components hired the "crème de la crème" of real estate brokers to find replacement property, was somehow irresponsible for taking the suggestions of its banker, bought too large of a lot (despite the overall price being less than properties more comparable to the taking site), and should have litigated the architectural restrictive covenants for its replacement property (V. 27, pp. 571-575; V. 28, pp. 646, 676-677; V. 29, pp. 764, 789-797; V. 37, pp. 1706-1708, 1737-1738).

Another factor not considered in the position asserted by FDOT is the timing of the analysis. Historically, condemnation damages are limited to or fixed as of the date of taking. §73.071(2), Fla. Stat.. Of course, if business owners are required to mitigate off of the parent tract, additional time would be necessary for relocation and re-establishment of the business. In fact, in the instant case, the date of taking was July 22, 2004, but System Components had just completed its final move as the case went to trial in February 2006. (R. 1661, 1665). To rule as

requested by FDOT would require "legislative" determinations by the courts as to the date of valuation. Clearly, the legislature is best suited to entertain this issue along with all of the other issues that would flow from a ruling which mandates off-site cures in business damage cases.

These are just a few of the questions raised when one considers the can of worms opened by off-site mitigation. As Justice Shaw explained in Shands Teaching Hospital and Clinics, Inc. v. Smith, 497 So.2d 644 (Fla. 1986), "…of the three branches of government, the judiciary is the least capable of receiving public input and resolving broad public policy questions based on a societal consensus" and that it is the legislative branch which has the "greater ability to study and circumscribe the cause." Id. at 646 *citing* Zorzos v. Rosen, 467 So.2d 305, 307 (Fla. 1985).

CONCLUSION

In this appeal, this Court is asked to resolve a conflict between the Fourth District and the Fifth District in construing and applying §73.071(3)(b), Fla. Stat., which is the business damages provision of Florida's eminent domain law. Specifically, the Court is asked to determine whether evidence of a business's attempted cure by relocation to a site separate and apart from the "parent tract" is admissible in mitigation of business damages.

In Tire Centers, the Fourth District Court held that such evidence was not admissible, and that business damages must be determined by looking only at the parent tract, as of the date of taking. The Fifth District said otherwise in the instant case, and allowed evidence of an off-site relocation to be admitted and upheld a determination of damages based on this so called "off-site" cure.

For the reasons set forth herein, the Fourth District approach is the better view. It is consistent with the clear and long standing "Parent Tract Rule" as utilized in eminent domain jurisprudence. It establishes a rule that is clear and unequivocal, as well as understandable by both business owners and by condemning authorities. Tire Centers inherently recognizes Florida's pro-business and pro-property rights environment, and leaves it for the Florida legislature to change the business damage law if it so chooses.

On the other hand, the Fifth District opens condemnation cases to consideration of off-site occurrences without regard to the parent tract. It raises and leaves unanswered many other questions that will be the subject of litigation for years to come. In essence, it will lead to the judicial revision and revamping of §73.071(3)(b), Fla. Stat.as courts are called upon to determine the extent to which there is a duty to relocate, as well as all of the questions raised by the reasonableness and success of the relocation. Moreover, it raises substantial

questions regarding the timing of such analysis, and leaves business owners in a quandary as they try to determine whether to relocate, as well as how to pay for such a relocation pending resolution of their claim for business damages.

Obviously, the Fifth District was concerned with business owners receiving a "windfall". However, this overlooks the difficulties faced in relocation, as well as the importance of both location and capitalization to a business. In short, this is best left to the legislature to determine, so that it can also look at the numerous limitations found in §73.071(3)(b), Fla. Stat., which give a similar "windfall" to the condemning authority by excluding otherwise viable businesses from making a claim. Therefore, System Components respectfully requests that this Court adopt the reasoning and holding of Tire Centers and follow the clear and understandable "Parent Tract Rule", leaving it to the legislature to amend §73.071(3)(b), Fla. Stat..

Respectfully Submitted,

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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 October, 2008.

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CERTIFICATE OF TYPEFACE COMPLIANCE

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