



October 17, 2006

Status of Funding

On October 5th, the federal government released another \$100 million to fund claims resulting from the Citrus Canker Eradication Program. (This brings the total compensation to \$636 million.) While this latest round of funding is expected by many to be the last funding for the program, we are hopeful it will exhaust all of the claims filed through January 2006.

Inverse Condemnation Statute of Limitations

In the event that the new funding is not enough to cover all of the claims submitted, growers will want to consider initiating an inverse condemnation claim.

The Florida Constitution prohibits the taking of private property for a public use without the payment of full compensation. When citrus trees are destroyed by the Department of Agriculture or other governmental entity, the trees are being removed to help protect the rest of the State's citrus industry; therefore, the removal of the trees is the taking of private property for a public purpose. Many grove owners and nurseries were paid, or expect to be paid, for the taking of their trees pursuant to the now-discontinued eradication program. For those who have not been paid, it is essential to monitor various deadlines related to the right to make a claim for the lost trees. The type of claim that an owner would make is called an "Inverse Condemnation" claim.

When the government (or a quasi-government agency or utility company) needs land for a road, park, public building, power line easement, etc., that entity either negotiates to buy the required land or files an eminent domain lawsuit. If a governmental action takes private property and the government does not initiate an eminent domain complaint, the property owner can start the eminent domain process by bringing an inverse condemnation action. Several procedural issues and time factors may impact an inverse condemnation action. While there is great debate among eminent domain attorneys regarding whether the statute of limitations for inverse condemnation matters is constitutional, the safer approach to such matters is to assume that one must file an inverse condemnation action within four (4) years of the taking.

The next questions are: What is the date of the taking and when does the four (4) year statute of limitations begin to run? While a strong argument can be made that the clock does not begin to toll until the trees are actually removed, or from when the owner was made aware that he will not receive government funds through an eradication program, there are others who will suggest the date of taking is the date the owner received an Immediate Final Order. In an abundance of caution, any inverse condemnation claim should be filed at least six (6) months before the expiration of the four year statute of limitations as measured from the earliest of the above referenced events. This will provide a margin of error to modify the lawsuit if the State successfully files an initial motion to dismiss. Claimants need to make sure that they do not lose their opportunity to file an inverse condemnation action against the State and should create a tickler file to remind them six (6) months before the earliest possible statute of limitations date.



e-newsletter

from the **citrus canker task force**

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