



Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
800 North Magnolia Avenue, Suite 1500
P.O. Box 2346 (ZIP 32802-2346)
Orlando, FL 32803

407-841-1200
407-423-1831 Fax
www.deanmead.com

Orlando
Fort Pierce
Viera

MARK R. LEAVITT
407-428-5139
mleavitt@deanmead.com

January 2006

CITRUS CANKER AND EMINENT DOMAIN - A SYNOPSIS

Mark R. Leavitt, Esq.

Citrus Canker has the potential to pit two legal doctrines against each other. Both the Florida Constitution and the U.S. Constitution require that the government may not take (or destroy) private property without paying compensation. Additionally, both the Federal and Florida Constitution require that due process (usually court proceedings) be made available to resolve compensation disputes. The government may only acquire property through its eminent domain powers if that property is being taken for a public purpose and if full compensation is paid for the taken property and any affiliated damages to the remaining property.

The government however, also has an obligation to help protect the health, safety and welfare of the public through its police powers. When a nuisance threatens the health, safety and welfare of the public, the government often has the legal right or obligation to remove that nuisance. In many cases, a nuisance may be removed without compensation. Therefore, it is arguable that the government has the right to remove a tree that is infected with citrus canker without any obligation to pay the tree's owner. This is the position taken in a recent law review article.

Nuisance and eminent domain have the potential to collide if the Department of Agriculture claims that healthy trees are a nuisance due to the fact that those trees are within 1,900 feet of the infected tree. The law does not recognize a theory that property (healthy trees) may be sacrificed and labeled a nuisance to guarantee the continued health of more distant trees. It may serve a public purpose to prophylactically remove healthy trees to protect other healthy trees; however, just as is the case with roads, the military or public schools, the taking of property for a public purpose must be compensated. If healthy trees are removed to benefit the entire state (and the citrus industry) the cost must be paid by all that benefit (the taxpayers that need citrus to be a part of Florida's economy). The owner of healthy trees that, may or may not, become diseased, has no obligation to donate his property for the potential benefit of other grove owners and for the benefit of the State's economic health.

By way of example, if the owner of a small grove, say 100 acres, is adjacent to a grove that has one diseased tree, the 100-acre grove of healthy trees has to be totally destroyed because it is in the radius of 1,900 feet of the diseased tree. Let's say that this benefits the surrounding groves because they will now have a diminished risk of disease. It is difficult to imagine that the small grove owner will be paid nothing for the destruction of all of his healthy trees in order to benefit

the neighboring groves. The benefit is to the industry and to the state's economy, therefore the cost should be paid by the state, just as is the case with any public purpose taking.

The Department of Agriculture may issue an Immediate Final Order by placing the document in a conspicuous place on the owner's property (or by hand delivery, or by certified mail). Unless the grove owner is alert to the issuance of this order, the owner may be caught off guard when the State seeks to begin destroying trees. Additionally, even if the owner consents to the removal of the trees, the State will require the owner sign a waiver which allows the State's agents to enter the property and undertake the eradication. Therefore, please consider the following practical actions:

1. Be alert for the issuance of an Immediate Final Orders that may be "conspicuously" placed on the property. Consider immediately contacting a knowledgeable attorney upon receipt of the Immediate Final Order, your time to file an appeal is extremely short.
2. Do NOT sign any document or make any statements that may waive your rights until you consult with a knowledgeable attorney. Do not sign a potentially overbroad waiver if you consent to the eradication. Train employees not to sign any documents and not to make any statements.
3. Demand to see and receive a copy of the Immediate Final Order and any other related documents.
4. If caught off guard, attempt to delay the removal of the trees until you have the opportunity to confer with an attorney who is knowledgeable about canker issues.
5. Document, including taking video and photographs, the removal of any trees. Take photos before the removal of the trees, the actual removal of the trees and the property after the removal of the trees.
6. Be respectful to those individuals who are removing the trees. It is not worth getting thrown in jail, do not give anyone an excuse.