

COURTS

Citrus canker battle finally goes to trial

A class-action suit is seeking compensation for thousands of homeowners who lost trees

State officials argue that public interest outweighed private-property rights

At stake: more than \$120 million in potential damages from the state

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At the height of the citrus canker wars 16 years ago, state agriculture inspectors deployed crews with chainsaws to mow down hundreds of thousands of orange, grapefruit and key lime trees — even if they showed no signs of infection.

Ever since, outraged Florida property owners have been struggling to be compensated by the state for their losses.

On Monday, a Miami-Dade County couple finally had their day in court.

For decades, Brian Patchen and his wife, Bunny, enjoyed the bounty of fruits picked from the half-dozen robust citrus trees growing on their Miami Beach property. Then, without warning, the state chopped them all down to stumps in the fall of 2000.

“On Halloween, our trees got tricked instead of treated,” Patchen, a longtime Miami attorney, testified on Monday.

Patchen is the lead plaintiff in a class-action lawsuit representing an estimated 100,000 property owners in Miami-Dade who believe they were wronged by the state. Depending on the outcome of the class trial, they could be eligible for more than \$120 million in damages from the state of Florida for having cut down about 250,000 of their citrus trees at the height of the canker wars between 2000 and 2006.

In that period, the state Department of Agriculture and Consumer Services removed any residential citrus tree that came within 1,900 feet of a canker-

infected tree — even if they didn't have any telltale lesions on their leaves or fruit. Agriculture officials expanded that distance, which was initially limited to 125 feet, as they battled the wind-whipped spread of a bacterial disease they said threatened Florida's prized citrus industry.

Florida officials maintain that the private-property takings served a greater public interest, and that those who lost their citrus trees were already compensated under statewide settlements.

Miami-Dade residents are only the latest to take their class-action case to court. Others who lost hundreds of thousands of citrus trees to the state's eradication program have

already won multimillion-dollar jury awards for their losses in Broward, Palm Beach, Orange and Lee counties.

Agriculture officials already provided some compensation to property owners whose citrus trees were chopped down because of canker fears — with the state issuing \$55 checks as well as Walmart gift cards for each lost tree. But the various county lawsuits have sought damages far beyond those amounts, with state officials and their lawyers fighting them every step of the way.

On Monday, plaintiffs attorneys Robert Gilbert and Joseph Serota began their long-awaited trial against the state in Miami-Dade Circuit Court. Judge Thomas Rebull will determine whether the state should be held liable for damages, then, if necessary, a jury would be convened to decide damages.

Patchen's testimony set the stage for trial, as he detailed his rude awakening to the state's policy. He testified that he and his

wife, a former flight attendant, were never notified by the state about its stepped-up eradication policy or its decision to target the half-dozen citrus trees in the couple's yard on North Bay Road.

Patchen said that he and his wife felt blindsided by the state's destruction. “The trees were green,” he testified. “The fruit was unmarked.”

An expert witness who had worked as a senior state agriculture official for 40 years defended the eradication program, saying the absence of canker lesions on leaves and fruit didn't mean a tree was not diseased.

“It's difficult to detect citrus canker in the early stages,” said Richard Gaskalla, former director of the state Division of Plant Industry, which oversaw the program. Gaskalla said that as he directed the eradication program, he was looking out for not only the interests of the citrus industry but those of property owners.

“I gave them equal weight in my mind,” he testified.

Gaskalla acknowledged that while the state is responsible for the taking of private property to serve a public interest, he said the ultimate legal question boils down whether they received “full compensation” for their losses.



Work crews mulched trees and plants throughout South Florida to stop the spread of the canker war.