

# Time For A Legislative Overhaul Of The Sunshine In Litigation Act

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The Sunshine in Litigation Act became law in 1990 at the time of a national movement to limit the availability of protective orders covering documents and information produced during discovery, particularly in product liability actions.[1] At the time, it was perceived that protective orders and sealed court records were being used with increasing frequency to hide product defects and, as a result, important information affecting public health and safety was concealed from public view. The legislative staff analysis noted this concern, citing the Oregon case of *Oberg v. Honda Motor Co.*, 851 P.2d 1084 (Or. 1993), where a jury ruled that Honda manufactured an inherently unsafe three-wheel all terrain vehicle, but the court entered a protective order requiring that all evidentiary documents obtained from Honda, which identified the inherent manufacturing flaws, be returned to the defendants.[2] The purpose of the act was, and still is, to protect the public from unreasonable hazards or defects that would be concealed by confidentiality orders and secret settlement agreements.

The act provides that “no court shall enter an order or judgment which has the purpose or effect of concealing a public hazard or any information concerning a public hazard.”[3] Under the act, “public hazard” means an instrumentality, including but not limited to any device, instrument, person, procedure, product, or a condition of a device, instrument, person, procedure, or product that has caused and is likely to cause injury.[4] The act further provides that an agreement which has the purpose or effect of concealing a public hazard, or any information concerning a public hazard, is void and may not be enforced.[5] Any substantially affected person has standing to contest an order or agreement that violates these prohibitions.[6] Although the purpose of the act is laudable, the act suffers from several problems that rob it of its effectiveness and limit its ability to accomplish its purpose.

Of greatest concern, the act fails to set forth clear standards to guide a court and litigants in its determination of what constitutes a public hazard. The act also raises several constitutional concerns, most notably that 1) the act is unconstitutionally vague and overbroad; 2) the act conflicts

with the procedures set forth in Fla R. Civ. P. 1.280(c) and impermissibility infringes on the Florida Supreme Court's exclusive rule-making authority, in violation of the separation-of-powers doctrine; and 3) the act violates the U.S. and Florida constitutions because it authorizes the taking of private property for public purposes without just compensation. All of these concerns weigh in favor of our legislature repealing or otherwise significantly rewriting the act.

**Public Hazard Determination** The act provides very little guidance as to the procedures a trial court needs to follow in order to make a public hazard finding for the purposes of the act. The cases applying or interpreting the act establish the need for a public hazard determination at the time the act is raised, as well as the need for a hearing to make a public hazard determination and to grant or set aside a protective order. But beyond that, they provide little guidance.

The Third District's decision in *Ford Motor Company v. Hall-Edwards*, 21 So. 3d 99 (Fla. 3d DCA 2009),<sup>[7]</sup> illustrates precisely what can occur when a plaintiff tactically uses the act to obtain an order finding the product at issue a "public hazard," and the trial court is unrestrained by an act that offers no due process protections to manufacturers. There, the plaintiff filed a "Notice of Public Hazard Pursuant to §69.081 and Motion to Prevent the Court from Entering Order Concealing Public Hazard" and noticed the motion for a one-hour evidentiary hearing. The motion asked the trial court to make a finding that "the Ford Explorer" is a "public hazard" under the act and to "enter no order concealing the 'public hazard' from the public and prevent Ford Motor Company from concealing any information related to the Ford Explorer, including but not limited to trade secrets and other protected, confidential, and/or privileged documents."<sup>[8]</sup>

At the time the motion was filed, there was no pending request by Ford to limit disclosure of case-related documents.<sup>[9]</sup> At the hearing, the trial court declined to hear Ford's witnesses.<sup>[10]</sup> Indeed, as the Third District described it, "the hearing was not an evidentiary hearing in any traditional sense of that term, but rather a lengthy colloquy between the respondent's counsel and the trial court, a limited amount of questioning directed by the court to Ford's counsel, and then a review by the court of documents that were not authenticated or introduced into evidence."<sup>[11]</sup> Nonetheless, the trial court granted the plaintiff's motion, finding various models of the Ford Explorer to be "public hazards" under the act. Ford's petition for writ of certiorari to the Third District followed.<sup>[12]</sup>

The Third District granted the petition, holding that the act does not invite motions simply to determine that a particular product is a public hazard; rather, the act governs attempts by a litigant to avoid disclosure of specific information or documents to the public. The court explained that the act "is applicable only if the trial court has entered a confidentiality order, or if there is a pending motion by the defending party for a confidentiality order."<sup>[13]</sup> Because the trial court never entered a confidentiality order in the case and there was no pending motion for a confidentiality order, the Third District concluded that the plaintiff's motion under the act should have been summarily denied.<sup>[14]</sup>

Moreover, the Third District went on to find that Ford was not afforded due process. The court stated:

*The label “public hazard” is not to be affixed to an allegedly-dangerous product “like you would buckle a collar on a bird dog or paste a tag on an express package that is being forwarded to a friend.” Attention to a proper evidentiary hearing and due process are plainly required. Such a label has significant and far-reaching consequences in a day when court orders can make it around the world before the sun sets on the day they are filed. The respondent’s counsel, who include lawyers and firms involved in many other lawsuits against Ford, wasted no time in disseminating the order. The statute was intended to preclude the concealment of specific information about a “public hazard,” not simply to provide a tactical pejorative for counsel to use in other cases.[15]*

Other cases addressing the act also make clear that a hearing is necessary. For example, in *E.I. DuPont de Nemours & Co. v. Lambert*, 654 So. 2d 226 (Fla. 2d DCA 1995), the plaintiff claimed that the defendant’s product harmed ornamental plants. The defendant filed motions pursuant to the Sunshine in Litigation Act to set aside a previously issued confidentiality order. Before a hearing was held on the issue, the jury returned a verdict for the plaintiff. Following the verdict, the trial court found that the defendant’s product was a “public hazard” within the meaning of the act and, based on this finding, vacated a protective order it previously issued to protect the defendant’s trade secrets.[16] The Second District reversed and held that it was a violation of the defendant’s procedural due process rights to set aside a protective order without a hearing.

In *Jones v. Goodyear Tire & Rubber Co.* (“*Jones I*”), 871 So. 2d 899 (Fla. 3d DCA 2003), Goodyear sought to have a confidentiality order entered to prohibit the plaintiffs from disclosing confidential documents obtained during discovery.[17] The plaintiffs responded that the tires at issue constituted a public hazard under the act, precluding the entry of a confidentiality order.[18] Rather than hold a hearing to determine the applicability of the act, the trial court entered the blanket confidentiality order sought by Goodyear and ruled that if the plaintiffs prevailed in the action, the documents would be permitted to be made public under the Sunshine in Litigation Act.[19] The case was ultimately tried, resulting in a jury verdict in favor of the plaintiffs. The trial court, however, entered a directed verdict and granted a new trial. On appeal, the plaintiffs argued that the trial court erred in directing the verdict and asked the Third District to reinstate the jury’s verdict and to vacate the confidentiality order issued by the trial court.[20] The Third District agreed with the plaintiffs and ordered that the jury’s verdict be reinstated and the confidentiality order be vacated pursuant to the act.[21]

On remand, in *Goodyear Tire & Rubber Co. v. Jones* (“*Jones II*”), 929 So. 2d 1081 (Fla. 3d DCA 2005), Goodyear sought a hearing and an in-camera inspection of the documents covered by the

confidentiality order, arguing the documents were not subject to disclosure under the act because they were trade secrets, and in any event, the act was unconstitutional.[22] The trial court found it lacked jurisdiction to consider Goodyear's requested relief and vacated the confidentiality order.[23] On appeal, Goodyear argued it was denied due process because a hearing and an in-camera inspection were never conducted.[24] The plaintiffs, however, argued that if the absence of a hearing and an in-camera inspection was error, it was caused by Goodyear who obtained the benefit of a confidentiality order without a hearing.[25]

The Third District held that the trial court erred in entering a protective order without first holding a hearing to determine which documents related to the claimed public hazard and which of those, if any, related to a trade secret.[26] But because Goodyear sought the confidentiality order, over the plaintiffs' objection, the Third District agreed with the plaintiffs' argument that Goodyear invited the error and, thus, waived its right to a hearing on remand.[27]

In *Goodyear Tire & Rubber Co. v. Schalmo*, 987 So. 2d 142 (Fla. 2d DCA 2008), Goodyear objected to a blanket confidentiality order entered during discovery which was applicable to all documents and all parties, because it was concerned the Sunshine in Litigation Act and the Third District's decision in *Jones II* required the trial court to conduct an in-camera inspection of the documents at issue before entering a confidentiality order.[28] Over Goodyear's objections, the trial court entered a confidentiality order setting forth procedures to designate the documents as "confidential." [29] Instead of an in-camera inspection of the documents, the court allowed each party to designate which documents were confidential.[30] The court stated it would review documents and resolve disputes if and when a party challenged the "confidential" designation of particular documents.[31]

The Second District noted that the trial court's approach was not supported by the plain language of the act and held that 1) the plain language of the act required the trial court upon motion and good cause shown by a party to examine the disputed documents to determine if they consist of information concerning a public hazard or information which may be useful to the members of the public in protecting themselves from injury which may result from a public hazard; 2) if the documents or information meet this standard, the court must allow their disclosure to the public; 3) a trial court cannot enter a confidentiality order without first determining whether any disputed documents relate to the public hazard alleged in the litigation; 4) and when the Sunshine in Litigation Act is raised, the possible existence of a public hazard must be determined upfront in order to comply with the requirements of the act.<sup>32</sup>

The foregoing cases demonstrate that parties should be cautious when entering into confidentiality agreements or agreeing to protective orders with regard to the production of documents that a party may later claim are subject to public disclosure under the act. But these cases and the act leave more questions than answers because they fail to set forth standards to guide the court in its assessment of whether a product is a public hazard. For example, at what stage in the litigation

should a party raise the act? What type of hearing is required? Does the court conduct an evidentiary hearing where live witnesses testify? Which party has the burden of proof? How does a defendant manufacturer prove that its product is not a public hazard short of putting on its defense? As the Third District also noted in *Hall-Edwards*, the act does not suggest what happens when the allegedly confidential documents sought to be disclosed on “public hazard” grounds are subject to the attorney-client privilege or work product doctrine.[33] These fundamental questions have yet to be answered by either the act or Florida courts and add to the numerous problems that plague the act. **Definition of “Public Hazard” May Be Overbroad and Vague** The test for substantive due process is whether the statute in question bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare, and is not discriminatory, arbitrary, or oppressive.[34] The combination of a broad and vague definition of a “public hazard” and the failure of the act to set forth adequate standards may result in an act that is unconstitutionally overbroad and vague, constituting a violation of due process.

Under the Sunshine in Litigation Act, a “public hazard” is defined as “an instrumentality, including but not limited to any device, instrument, person, procedure, product, or a condition of a device, instrument, person, procedure, or product, that has caused and is likely to cause injury.”<sup>35</sup> While the act is intended to protect the public from unreasonable hazards or defects,[36] it does not define public hazards as instrumentalities that cause injury because they are unreasonably hazardous or defective. Virtually all products have caused injuries and are likely to cause future injuries. Justice Breyer recognized, “over the next 13 years, we can expect more than a dozen deaths from ingested toothpicks....”[37] Injuries have been and will be caused by high-heeled shoes, snowmobiles, water skis, chairs, computers, televisions, ashtrays, aspirin, bicycles, and numerous other products. Consequently, it can be argued that the definition of “public hazard” is overbroad and not rationally related to the public purpose of the legislation. As was the case in *Hall-Edwards*, the overbreadth of the definition could lead to the public hazard label being affixed, and trade secrets destroyed because a product poses risks that the public routinely accepts as a part of daily life. For this reason, one can fairly argue that the act fails the rational basis test for substantive due process, which examines whether a statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare, and is not discriminatory, arbitrary, or oppressive.[38] As a result, the Sunshine in Litigation Act would be unconstitutional on its face.

An additional argument would be that the act does not specify the standard or circumstances under which a product has caused or is likely to cause injury in the future. For example, does the standard include products that are likely to cause injury only if they are used contrary to product instructions? Is the issue of causation limited to the facts of the case before the trial judge, or is a product a public hazard if it has caused and is likely to cause injury under any circumstances? Does the standard encompass only products found to be defective under Florida products liability law or does it include some undefined subclass of hazardous products somewhere between all products and defective products? These ambiguities support the argument that the act is unconstitutionally vague on its

face because it “fails to give a person of ordinary intelligence fair notice of exactly what conduct it prescribes.”[39] Without notice, there can be no due process.[40]

These constitutional infirmities have yet to be addressed head on by our appellate courts. While Ford raised substantial questions concerning the constitutionality of the act in *Hall-Edwards*, the Third District declined to address those issues, given that the court granted the petition and quashed the trial court’s order as a result of blatant due process violations.[41] Similarly, in *Jones II*, the Third District found it was barred by the law of the case from considering Goodyear’s as applied challenge that vacating the order without a hearing violated procedural due process. [ap]

The Third District, however, did consider and reject one substantive due process challenge asserted by Goodyear. In *Jones II*, Goodyear focused on the fact that the case had already proceeded to trial to argue that the act’s purpose is not served by requiring disclosure of confidential materials after a case proceeds to trial with a subsequent verdict and judgment against the manufacturer, because in such a situation, the hazard is a matter of public record.[43] The Third District disagreed, stating that the act not only prohibits a court from concealing a public hazard, but also from concealing “any information concerning a public hazard.” The court reasoned that although a judgment represents a finding that a particular product or design constitutes a public hazard and may reveal some information regarding the hazard, when a blanket confidentiality order is entered protecting a quantity of documents related to the hazard, information which could protect the public from the hazard would still remain concealed from the public. Thus, the court rejected this facial constitutional challenge.[44]

The challenge discussed in *Jones II* is different from the challenges discussed herein. Because the parties did not raise the vagueness and overbreadth of the act, described herein, they remain open questions. **The Act May Violate the Separation-of-Powers Doctrine** Although in *Jones II* Goodyear also asserted the act was unconstitutional because it violates the separation of powers doctrine, the Third District did not consider this challenge, finding it was not preserved for review.[45] Nor was the issue considered in *Hall-Edwards*.

The Florida Constitution provides for separation of power among the three branches of government by stating that “no person belonging to one branch of government shall exercise any power appertaining to either of the other branches unless expressly provided herein.”[46] The Florida Constitution also provides the Florida Supreme Court with the exclusive authority to “adopt rules for the practice and procedure in all courts.”[47] Although the legislature has the authority to enact substantive law, only the Florida Supreme Court has the authority to enact procedural law.[48]

There are several arguments supporting the position that the act is procedural in nature.[49] The legislature placed the statute in F.S. Ch. 69, which is titled, “Miscellaneous Procedural Matters.” While substantive law fixes the rights of individuals as to their persons and property and gives rise to

causes of action, procedural law controls the remedies available when substantive rights have been invaded. Procedural law includes all rules concerning enforcement and redress from the beginning of litigation until final judgment and execution.[50] The act does not create any substantive rights. Instead, it creates procedures for disclosure of confidential documents along with procedures for motions, hearings, and in-camera inspections.

Any attempt by the legislature to enact a procedural rule that conflicts with a court rule is unconstitutional.[51] Under Florida Rule of Civil Procedure 1.280(c), a trial court has the discretion to enter protective orders when it determines that it is necessary to do so. Rule 1.280(c)(7) specifically provides for the issuance of protective orders for trade secrets or other confidential information upon a showing of good cause. Section 69.081(7) divests the trial court of its discretion to enter an order to protect confidential documents or trade secrets when those documents are found to pertain to a “public hazard.” The section also prescribes the procedure, an in camera inspection, that a court must conduct whenever a party is attempting to prevent the disclosure of its trade secrets or other materials. In doing so, F.S. §69.081(7) effectively eliminates the balancing test that a trial court would conduct under Rule 1.280(c) when determining whether the value of a trade secret outweighs the public risk of keeping the information confidential. As the Florida Supreme Court has explained, however, it is unconstitutional for a portion of a statute to remove a trial court’s discretion under a rule of procedure.[52]

Notably, both the Florida House and Senate recognized this conflict and acknowledged that the act may violate the separation-of-powers doctrine. The House of Representatives Committee on Judiciary, Staff Analysis & Economic Impact Statement summarized the current law regarding protective orders in civil actions, as set forth in Rule 1.280(c), and proposed changes to that law.[53] In the “Comments” section of its analysis, the House staff noted: “The bill also may impinge upon the Florida Supreme Court’s authority under Article V, section 2 of the Florida Constitution to adopt judicial rules of practice and procedure.”[54] The Senate staff analysis expressed even stronger reservations about a potential problem with the constitutionality of the legislation and apparently believed that the problem could be overcome by “repealing” Rule 1.280(c) by a two-thirds majority of the membership of each house.[55] The staff analysis states: “A statute repealing a rule of procedure must pass the Legislature by a two-thirds vote of the membership of each house. *Fla. Const.* art 5, s.2. It has been held that the Supreme Court has the sole authority to promulgate, rescind and modify the Florida Rules of Civil Procedure. *Sen-Nestler, Inc. v. General Finance Loan Co. of Miami Northwest*, 167 So. 2d 230 ([Fla. 3d] DCA 1964).”[56] The attempted “repeal” of Rule 1.280(c) by the act failed by one vote. The legislative journal shows that the bill was one vote short of a two-thirds majority in the House of Representatives. Because the legislature declined to repeal the rule, the legislature cannot simply “amend or supersede” a rule by passing legislation that would have the effect of nullifying that rule.[57]

This supports the position that the act is a procedural rule that directly conflicts with Fla. R. Civ. P.

1.280(c). The act impermissibly encroaches upon the authority of the Florida Supreme Court in violation of the separation-of-powers doctrine as set forth in Fla. Const. art. II, §3 and, therefore, is unconstitutional. **The Act Constitutes an Unlawful Taking Without Just Compensation** The state may not deprive a party of a property right without due process of law and full and just compensation.[58] Trade secrets and other confidential information are property protected by the Taking Clause of the Fifth Amendment.[59] Florida law has long recognized this protection.[60] Nevertheless, the act can be read to allow disclosure of trade secrets and confidential information while offering no relief or protection for a litigant's proprietary information.[61] A compelled disclosure of trade secrets and confidential business information can have the effect of converting private property for public use and frustrate the party's investment-backed expectations.[62] As the Florida Supreme Court explains, "[o]nce the data that constitute a trade secret are disclosed to others, or others are allowed to use that data, the holder of the trade secret has lost his property interest in the data." [63] "In a competitive market, an entity's commercial information, its strategies, techniques, goals and plans can be its life blood." [64] Because a party's rights to trade secrets and other confidential business information are held subject to the fair exercise of the police power, [65] the "absolute destruction of property is an extreme exercise of the state's police power and is justified only within the narrowest limits of actual necessity, unless the state chooses to pay compensation." [66]

Under the provisions of the Sunshine in Litigation Act, a party's valuable property rights would be destroyed. Yet, the statute fails to offer any compensation to parties affected by it or any procedure for obtaining compensation. Accordingly, the act violates the constitutional requirements of both the Florida Constitution and the Fifth and 14th amendments to the U.S. Constitution. **Conclusion** The Sunshine in Litigation Act attempts to protect the public, but several problems within the act greatly reduce its effectiveness and pose significant due process concerns for product manufacturers. First, the act fails to set forth clear procedures in order for a court to determine what constitutes a public hazard. Second, the act is unconstitutionally vague and overbroad. Under the language of the act, almost every product manufactured today is a "public hazard." The act also fails to specify the standard under which a product has caused or is likely to cause injury in the future. Third, the act violates the separation-of-powers doctrine, because it is procedural in nature and conflicts with a court rule, Florida Rule of Civil Procedure 1.280. Lastly, the act authorizes the taking of private property for public purposes without just compensation, violating the U.S. and Florida constitutions. Trade secrets and other confidential information are protected property, and the act allows disclosure of this information while failing to provide relief or protection. Vital questions are still left unaddressed, such as what type of hearing is needed and which party has the burden of proof. These unanswered questions not only render the act ineffective, they render the act unconstitutional and require that the legislature repeal the act or otherwise clarify its language. This article was originally published in [The Florida Bar Journal](#), Vol. 85, No. 5 (May 2011). *1 Fla. Stat. §69.081.*

*2 Stivers v. Ford Motor Credit Co., 777 So. 2d 1023, 1025 (Fla. 4th D.C.A. 2000) (citing Fla. H.R. Comm.*

*on Judiciary, SB 278 (1990), Staff Analysis & Economic Impact Statement 2, (final August 28, 1990)).*

*3 Fla. Stat. §69.081(3).*

*4 Fla. Stat. §69.081(2).*

*5 Fla. Stat. §69.081(4).*

*6 Fla. Stat. §69.081.*

*7 The authors of this article were appellate counsel for Ford Motor Company in Hall-Edwards, 21 So. 3d 99.*

*8 Id. at 100-01.*

*9 Id.*

*10 Id. at 101.*

*11 Id.*

*12 Id.*

*13 Id. at 102 (citing Fla. Stat. §69.081(3); Goodyear Tire & Rubber Co. v. Jones, 929 So. 2d 1081, 1084 (Fla. 3d D.C.A. 2005)).*

*14 Id.*

*15 Id. at 103 (internal footnote omitted).*

*16 Lambert, 654 So. 2d at 228.*

*17 Jones I, 871 So. 2d at 906.*

*18 Goodyear Tire & Rubber Co. v. Jones (“Jones II”), 929 So. 2d 1081, 1084 (Fla. 3d D.C.A. 2005).*

*19 Id.*

*20 Jones I, 871 So. 2d at 900.*

21 *Id.* at 906.

22 *Jones II*, 929 So. 2d at 1083.

23 *Id.*

24 *Id.* at 1084.

25 *Id.*

26 *Id.*

27 *Id.*

28 *Schalmo*, 987 So. 2d at 144.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.* at 145.

33 *Hall-Edwards*, 21 So. 3d at 102.

34 *Haire v. Dep't of Agriculture & Consumer Servs.*, 870 So. 2d 774, 782 (Fla. 2004).

35 Fla. Stat. §69.081(2),

36 See *Stivers*, 772 So. 2d at 1023.

37 Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Management* at 14, quoting *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1223 n.23 (5th Cir. 1991).

38 *Haire v. Dep't of Agriculture & Consumer Servs.*, 870 So. 2d 774, 782 (Fla. 2004).

39 See *Commission on Ethics v. Barker*, 677 So. 2d 254, 255 (Fla. 1996) (“[s]tatute is unconstitutionally vague if it fails to give a person of ordinary intelligence fair notice of exactly what conduct it proscribes”).

40 See *Mahon v. County of Sarasota*, 177 So. 2d 665, 666-67 (Fla. 1965) (statute permitting state to remove from private property vegetation creating a “traffic hazard” must make clear “just how the measurement of the distance of a particular shrub (which could as well be a cherished and valuable ornamental plant as a noxious weed) from the ‘intersection’ is to be made in order to determine whether it constitutes a traffic hazard”).

41 *Hall-Edwards*, 21 So. 3d at 103.

42 *Jones II*, 929 So. 2d at 1086 (citations omitted).

43 *Id.*

44 *Id.*

45 *Id.*

46 Fla. Const. art. II, §3.

47 Fla. Const. art. V, §2(a).

48 *Massey v. David*, 979 So. 2d 931, 936 (Fla. 2008).

49 See *Ronque v. Ford Motor Co.*, 23 Fed. R. Serv. 3d 1299, 1992 WL 415427 at \*1 (M.D. Fla. 1992).

50 *Haven Fed. Sav. & Loan Ass’n v. Kirian*, 579 So. 2d 730 (Fla. 1991).

51 *Massey*, 979 So. 2d 931 at 937.

52 See *Haven*, 579 So. 2d at 732-33.

53 See Fla. H.R. Comm. on Judiciary, HB 839 (1990), *Staff Analysis & Economic Impact Statement*.

54 *Id.*

55 See Fla. Sen., SB 278 (1990), *Staff Analysis & Economic Impact Statement*.

56 *Id.*

57 See *In re: Clarification of Fla. Rules of Practice & Procedure*, 281 So. 2d 204 (Fla. 1973).

58 See U.S. Const. Amend. V (“No person shall...be deprived of...property, without due process of law; nor shall private property be taken for public use, without just compensation.”); U.S. Const. Amend. XIV; Fla. Const. art. X, §6 (“no private property shall be taken except for a public purpose and with full compensation”).

59 *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 987 (1984); see also *Carpenter v. United States*, 484 U.S. 19, 26 (1987) (“Confidential business information has long been recognized as property”).

60 See *Lee v. Cercoa, Inc.*, 433 So. 2d 1, 2 (Fla. 4th D.C.A. 1983) (finding property rights for confidential business information exist for information not generally known outside the owner’s business and that is kept secret through measures taken by the owner, has value to the owner and would have value to the owner’s competitors, has been developed or compiled through effort and expenditure of the owner, and could not easily be acquired or duplicated by others).

61 See Fla. Stat. §69.081(7), (if the court finds that information or material “including but not limited to alleged trade secrets” concern a public hazard, “the court shall allow disclosure of the information or materials”).

62 See *Ruckelshaus*, 467 U.S. at 1005; see also *Dep’t of Agric. & Consumer Serv. v. Mid-Florida Growers, Inc.*, 521 So. 2d 101 (Fla. 1988) (holding “full and just compensation is required” when a “taking occurs.”).

63 *Ruckelshaus*, 467 U.S. at 1011.

64 *Duracell Inc. v. SW Consultants, Inc.*, 126 F.R.D. 576, 578 (N.D. Ga. 1989).

65 *Haire*, 870 So. 2d at 783.

66 *Id.*

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