

# In the Supreme Court of Florida

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CASE NO. SC00-490

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JOHN CASTILLO, a minor by and  
through his mother, next friend and  
natural guardian, DONNA CASTILLO, and  
DONNA CASTILLO and JUAN CASTILLO, individually,

Petitioners,

v.

E.I. DU PONT DE NEMOURS and COMPANY, INC.,  
and PINE ISLAND FARMS, INC.,

Respondents.

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ON DISCRETIONARY REVIEW FROM THE  
THIRD DISTRICT COURT OF APPEAL

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**PETITIONERS' REPLY BRIEF IN OPPOSITION  
TO RESPONDENT PINE ISLAND FARMS, INC.'S  
BRIEF ON THE MERITS**

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FERRARO & ASSOCIATES, P.A.  
200 S. Biscayne Boulevard, Suite 3800  
Miami, Florida 33131

-and-

RUSSO PARRISH APPELLATE FIRM  
6101 Southwest 76th Street  
Miami, Florida 33143  
Telephone (305) 666-4660

Attorneys for Petitioners

## **CERTIFICATE OF TYPE SIZE AND STYLE**

Petitioners are utilizing a fourteen (14) point Times New Roman font in this brief.

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**A. REPLY TO PINE ISLAND'S INTRODUCTION AND OVERVIEW AND STATEMENT OF THE CASE AND FACTS**

Respondent Pine Island Farms<sup>1</sup> Answer Brief contains a two page "Introduction and Overview," which (a) is not authorized by Fla.R.App.P. 9.210(b); (b) is an improper ad hominem attack upon the Petitioners and the trial court; and (c) violates the rules of appellate procedure because it does not contain a single record reference.

Pine Island does provide record references beginning on page three of its brief. However, Pine Island's brief becomes no more accurate or appropriate with the inclusion of record references. On the contrary, Pine Island's statement of the case and facts is a lawless and misleading attempt to lead this Court to view the facts contrary to the jury verdict returned in favor of the Petitioners Castillos in contravention of the most bedrock of appellate principles, i.e., that questions of fact, and particularly questions of credibility, are to be determined by the trier of fact, not by an appellate court.

The scope of Pine Island's brief - that is to say, what it addresses and what it does not address - also merits comment. The Third District held that the admission against interest by Pine Island's self styled "chief witness" Lynn Chaffin constituted "direct evidence of the use of Benlate." *Castillo*, 748 So. 2d at 1112. Pine Island does not challenge that legal ruling. Instead, it argues that there was insufficient evidence *other* than the "admission". But that argument, even if successful, could not possibly assist Pine Island as to whom the exposure aspect of the jury's findings would still stand

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<sup>1</sup> Respondent Pine Island Farms, Inc. is a commercial agricultural corporation which farms numerous large commercial fields in Miami-Dade County covering hundreds of acres of land, and its vice-president and main trial witness Lynn Chaffin is a former stockbroker. (*See, e.g.*, Tr.1062). The small U-Pic field which was the subject of this litigation is a minor part of Pine Island's operations. (Tr. 1121). For purposes of accuracy, we do not adopt Pine Island's euphemistic reference to itself as "Farmer."

- as they presently do under the Third District's decision. Rather, the sole beneficiary of that argument is *DuPont*, since the Third District (erroneously we submit) ruled that Chaffin's "admission" could not bind DuPont. By arguing a point that could only assist DuPont, Pine Island has freed DuPont to devote the lion's share of its brief to the Frye issue, safe in the knowledge that Pine Island has addressed the sufficiency of the evidence of Benlate use on the field in question, an issue which is no longer of any import to Pine Island in light of the Third District's legal ruling on Chaffin's admission.

It would be impossible in the space permitted in this reply brief to catalog every improper factual recitation and misleading record citation contained in Pine Island's Answer Brief. Nevertheless, a few examples will demonstrate the inexplicable inaccuracies which inhere in Pine Island's arguments throughout. And, since Respondents Pine and Island and DuPont adopt the arguments in each others' briefs - and both engage in improper credibility attacks attempting to discredit the Petitioners, we address both Respondents' comments in this regard.

Pine Island asserts: "The Castillos claim was *originally* predicated on allegations that [Pine Island] sprayed Benlate on *strawberries* during *aerial spraying*, and missed[.] . . . The claim 'morphed' over several years. *Eventually*, they claimed that Benlate drifted across the street during *tractor spraying of tomatoes*." (Pine Island Answer Brief, p. 3 *citing* R. 34-48). Pine Island thus seeks to argue to this Court - exactly as it did to the jury, who rejected the argument based on the actual evidence before them in the case - that Plaintiffs' claim was a mere fabrication; a "morphing" of a claim originally based on an *aerial* spraying of *strawberries* to one based on *ground* spraying of *tomatoes*. In fact, and as the actual record shows, the implied change from aerial to ground spraying is inaccurate, and the strawberries to tomatoes change was based only on a lack of information that *had no significance to the Plaintiffs' claim*.

On Pine Island's asserted aerial-to-ground change, the Plaintiffs' complaint actually alleged only that: "In or about November of 1989, Defendant Pine commenced *aerial and/or ground* spraying on its strawberry farm located in close proximity to the

plaintiffs' home." (R. 35). Accordingly, Pine Island's contention that the Plaintiffs' case "morphed" from a claim based on aerial spraying to one based on ground spraying is hardly a fair characterization, and apparently presumes that no one will check what the record actually shows.

And, as to the strawberries-to-tomatoes change, the fact is that at the time of making the allegations in their complaint the Plaintiffs had no reason to know all of the specific crops Pine Island had been growing on the strawberry U-Pic field. Mrs. Castillo just took walks past that and other fields in the area without actually going into the fields to conduct crop tallies or inspections. What Plaintiffs *did* know was that Pine Island's vice-president Lynn Chaffin had confirmed to a British reporter that Benlate was being sprayed on that particular field at the critical time in November of 1989, and that Benlate was the chemical known from animal studies to be a teratogen that causes the rare birth defect of microphthalmia, the very birth defect with which their child was afflicted.

As it turned out - and without dispute - Pine Island routinely planted a relatively small crop of tomatoes at that U-Pic field along with the more prominently-featured strawberries (Tr. 1120), and Benlate was used for the tomatoes rather than the strawberries. (Tr. 1120). But that was not a fact within the Castillos' knowledge when their complaint was filed, nor was it of any significance to their claim *what* crop was being sprayed with Benlate - only that Benlate was being sprayed on that field. Thus, the strawberries to tomatoes non-"morph" was hardly the sinister fraud by the Plaintiffs that Pine Island has suggested to this Court.<sup>2</sup>

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<sup>2</sup> In a related and similarly fabricated argument, Pine Island asserts that "When Mrs. Castillo realized [that Benlate is no longer used on strawberries] it required the change in her story". (Pine Island brief, p.7 fn. 5). There is no record reference for that assertion, because it has no support in the record. Mrs. Castillo was *still* calling it a strawberry field at the time of trial, because, as with most South Florida U-Pic fields, strawberries are the main feature.(Tr. 919).

Next, Pine Island asserts that "the undisputed facts clearly showed that the farmer possessed no Benlate to spray on November 1st or 2nd, and no tomatoes upon which to spray it." (Pine Island, p. 3). There is - and could be - no record reference to support that incredibly inaccurate and contrary-to-the-jury-finding assertion. At best, Pine Island tried to *argue* at trial that it possessed no Benlate on November 1st or 2nd and no tomatoes upon which to spray it, in true in Emperor's new clothes fashion given the admission of Pine Island's own vice-president Lynn Chaffin, and self-styled "chief witness" who was "primarily responsible for field operations, including spraying in 1989"<sup>3</sup> that Benlate *had* in fact been sprayed *on tomatoes on that U-Pic field* at the start of the growing season in November of 1989. (Tr. 1599-1600). Not surprisingly, the jury rejected that argument. Nor is the jury's resolution of that credibility issue assailable at this juncture. As the Third District has stated, Chaffin's admission against interest was "direct evidence that Benlate was sprayed on the field in November of 1989." *E. I. DuPont De Nemours and Company, Inc. v. Castillo*, 748 So. 2d 1108, 1112 (Fla. 3d DCA 2000).

Pine Island also misrepresents the record concerning the twelve pounds of Benlate that were purchased on May 4, 1989 from one of Pine Island's two regular Benlate suppliers. Pine Island asserts - as if it were an undisputed fact - that: "These twelve pounds of Benlate *were used in May 1989* before the end of that growing season." (Pine Island brief, p, 9 *citing* Tr. 1083, 1302). Mr. Chaffin's actual trial testimony was that it would be *speculation* on his part to testify that the 12 pounds of Benlate were actually used in May of 1989, since there were no spray records in existence. (Tr. 1086-87).

Next, Respondents unrepentantly present this Court with the same attack on Plaintiff Donna Castillo's credibility that they pitched to the jury at trial, which the jury also *rejected*. The Frye science issues in this case - on whether Plaintiffs' scientific

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<sup>3</sup> Affidavit of Lynn Chaffin; R. 3031.

experts used generally accepted principles and methodology in assessing Benlate's potential for causing birth defects in humans - are here on de novo review, but the suggestion that this Court should revisit the jury's credibility determinations on fact issues unrelated to the science is completely inappropriate. It is an inviolate rule of appellate review that the credibility of witnesses is for the jury alone to review, as this Court has recently reiterated in *Donaldson v. State*, 722 So. 2d 177, 182 (Fla. 1998) (witness' credibility is question solely for the jury: "It is not this Court's function to retry a case or reweigh conflicting evidence submitted to the trier of fact."). *See also, e.g., Tibbs v. State*, 397 So. 2d 1120, 1123 (Fla. 1981), *affirmed*, 457 U.S. 31(1982).

Pine Island - and DuPont, for that matter - made these same improper attacks upon Donna Castillo's credibility in the briefing before the Third District, which makes their reappearance here even more surprising. The Third District Court of Appeal's initial opinion (R. 8884-8912) contained a footnote which accepted the mischaracterizations of Donna Castillo's deposition testimony that had been set forth in the Respondents' Third District briefs (and which are now set forth *again* by Respondents before this Court). But, when the Third District improperly included credibility assessments in its opinion based on the Respondents' *inaccurate* versions of Mrs. Castillo's testimony rather than her actual testimony as it appears in the record, Petitioners moved for rehearing. (R.8913-8945). The motion for rehearing demonstrated from the actual record the inaccuracies in Respondents' characterizations of Donna Castillo's deposition testimony in their briefs, and, hence, the inaccuracies in the Third District's footnote. The Third District obviously agreed because it issued a revised opinion which ***removed the offensive and inaccurate footnote***. Compare (R. 8888) and 748 So. 2d 1108.

Donna Castillos' depositions appear in the record at R. 7579-7707 and 8450-8810, and we welcome a full review of same if Respondents' misguided efforts to achieve the appellate equivalent of 'throwing a skunk in the jury box' have in any way had the desired effect. Respondent DuPont states: "At her final deposition on April 24,

1996 (some three weeks before the beginning of trial), Mrs. Castillo for the first time claimed to have been drenched by the spray." (Respondent DuPont's brief, p.5 - without a record cite, of course, since the statement is untrue). The deposition transcripts show that Mrs. Castillo never changed her testimony at all. She consistently said that she had been "wetted" with the foggy mist on her skin on the day in question. "Drenched" is actually a complete fabrication by the Respondents, as Mrs. Castillo never said she had been "drenched" in any of her depositions. (R. 7579-7707; 8450-8810).

Mrs. Castillo's testimony at her very first deposition in 1993, which consisted of 350 pages and spanned two days of testimony, was that while out on a walk with her daughter that took her past the Pine Island U-Pic farm she saw "a huge foggy mist enveloping the whole farm tractor" (R. 8597), that the mist "was coming the way where I was across the street in the plaza" . . ."blowing toward my direction"(R. 8652, 8672); that she felt "surrounded by the foggy mist"(R. 8672); and that the mist was "wet, definitely wet".(R. 8753).

Q. *Was it wet to the point where your clothes actually got wet? It was like a spray?*

A. *I got wet. I got wet. \* \* \**

Q. *Was it a spray?*

A. *I felt sprinkles and, in fact, I thought it was beginning to rain when I was crossing through the plaza.*

(R. 8753).

In furtherance of their unsupported and unsupportable theme that Petitioners just made up everything and changed details as necessary to continue to perpetrate some kind of fraud, Respondents inaccurately claim that Dr. Howard also changed his testimony from relying only on inhalational exposure to relying on dermal exposure.

Again, the record shows how false this accusation is. At his very first deposition, Dr. Howard said that his work was not complete and that he needed to perform additional research and calculations in several areas. Notably, for present purposes, Dr. Howard said that he had prepared estimates as to inhalational exposure, but stated: "And I would also plan to make further calculations about dermal assimilation after being sprayed[.]" (R. 4489-90).

Q: That is one thing that you plan to do. You haven't done any work, if I understand you correctly, with regard to possible dermal absorption?

A: Well, there are papers in amongst the DuPont collection of papers which go into dermal assimilation, and I need to do some . . .

Q: More work?

A: Calculations, yes.

Q: So you are going to try and do some calculations- I wouldn't say exactly like this, but some calculations of a similar nature based upon a dermal exposure?

A: Yes.

Q: And you haven't done those yet?

A: No. \* \* \*

Q: There is no other written material that you would need to consult to do the rest of your work, that you don't already have?

A: Well, I need to get an estimate from Mrs. Castillo about how much of her surface area was wet from the spray; had spray impinging upon it.

(R. 4492, 4496).

It is, we respectfully submit, incomprehensible under these circumstances and given the actual record in this case - which is readily available to this Court for the very purpose of enabling the Court to have access to a recorded version of exactly what took place at the various stages in the litigation before it reached this Court for review - that the Respondents could continue to suggest that Petitioners changed their testimony. It is also incomprehensible that the Respondents could continue to ask appellate courts in this State to make credibility determinations for these Respondents - even if not for any other litigants - and to do so based on their own demonstrably misleading excerpting of the actual testimony. Respondents' versions of the testimony are the virtual equivalent of reciting a witness' testimony with a critical "not" removed from a sentence, when the transcript of the actual, unexpurgated testimony is in the record for all the world - and more importantly for the reviewing court - to see.

## **REPLY TO ARGUMENT**

### **POINT I**

#### **THE FRYE ISSUE**

For the most part, Pine Island leaves this argument to DuPont, and we will accordingly focus our response to this argument in our reply brief addressed to DuPont's answer brief on the merits.

We do note that neither of the Respondents has mentioned that the State of California which, like Florida, has continued to adhere to Frye, *see, e.g., People v. Leahy*, 882 P. 2d 321(Cal. 1994); *People v. Kelly*, 549 P. 2d 1240 (Cal. 1976), has determined that benomyl should be listed as a "chemical known to...cause reproductive toxicity", and, specifically as a *human teratogen*. *Western Crop Protection Ass'n v Davis*, 95 Cal. Rptr. 2d 631(Cal. Ct App. May 9 2000), referencing 22 Cal. Code of Reg. §12000(c)(1). The *Davis* court stated that in determining which chemicals are to be listed, California takes into account "the ethical prohibition in testing humans", and accordingly accepts "studies in experimental animals which indicate...an

association between adverse reproductive effects in humans and the toxic agent in question as biologically plausible." *Id.* at 636. Petitioners' experts are not, in short, the voices crying in the wilderness that Respondents and amici have made them out to be.

## POINT II

### **PETITIONERS PRESENTED MORE THAN SUFFICIENT DIRECT AND CIRCUMSTANTIAL EVIDENCE TO CREATE A JURY QUESTION ON THE ISSUE OF WHETHER THE SPRAY IN QUESTION WAS BENLATE**

First, we reiterate that the Third District Court of Appeal has determined as a matter of law that Lynn Chaffin's admission against interest constitutes "direct evidence that Benlate was sprayed on the field in November, 1989". *Castillo*, 748 So. 2d at 1112. Pine Island has not challenged that ruling. As to DuPont, it has been established that the Plaintiffs relied upon direct evidence in the form of Donna Castillo's testimony that she was misted by an odorless and colorless liquid that was being sprayed upon the U-Pic field by a tractor on the date in question. The Plaintiffs also relied upon circumstantial evidence--as well as direct evidence from Pine Island's own witnesses--that the substance could only have been Benlate. Since the first fact necessary to establish Mrs. Castillo was sprayed by the DuPont fungicide Benlate was established by direct evidence, the *Voelker* "inference upon inference" rule does not apply.

#### **a. Evidence that the spray to which Mrs. Castillo was exposed was a fungicide and that it was Benlate**

Pine Island's vice-president Chaffin told London Observer reporter John Ashton that he used Benlate *on this field* in November of 1989, and specifically that he used it at the *beginning* of the growing season and at intervals thereafter. (Tr. 1593, 1600). Defendant Pine Island's answers to requests for admissions propounded by the

Plaintiffs established that no other fungicide was being used at the field in question on November 1 or 2, 1989. (Tr. 1573-1579).<sup>4</sup> Benlate is a fungicide that can be used prophylactically, (Tr. 3587), and Wishart testified that Pine Island has used Benlate in that way, i.e., at first planting to prevent fungus. (Tr. 2605-2607).

The Third District also acknowledged that "additional evidence" was elicited during the Plaintiffs' case that:

. . .Pine Island's strawberry and tomato plants arrived from California on October 25, and that the strawberries were planted that day. The tomatoes were planted at sometime after that date. There was testimony which established that Benlate can be used prophylactically as early as the first week after planting of tomatoes. If the tomato plants were planted on the same day as the strawberries, or on the next day, such a prophylactic spraying of the tomato plants would have occurred on November 1st or 2nd.

748 So. 2d at 1111-12.

Evidence of record established that there were two authorized Benlate dealers supplying South Florida — S&M Farm Supply and Helena Chemicals — and that Pine Island bought from them both. (Tr. 1187). The Helena Chemicals records for Pine Island Farms showed that Pine Island had, historically, purchased Benlate in September and also specifically showed there was Benlate purchased from Helena Chemicals by Pine Island in 1989. (Tr. 3607). The S&M Farm Supply records were lost in Hurricane Andrew, but evidence of record established that S&M and Helena sold the same types of chemicals. (Tr. 1388).

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<sup>4</sup> Pine Island's responses to the request for admissions also denied using Benlate, but that could hardly serve to relieve Pine Island of Chaffin's previous direct admission to the contrary. Pine Island's unmeritorious argument about what it claims is the unfairness of allowing all of the responses to the request for admissions except their denial that they were using Benlate to be used is also addressed further below.

In short, the evidence showed that Benlate was purchased by Pine Island at the relevant time periods, and that the 12 pound amount purchased in May of 1989 was precisely the right amount for spraying the field in question. (Tr. 3607). All of the other Pine Island fields were for commercial crops with more than ten times as much acreage as the U-Pic field, so that amount of Benlate was *only* suitable for this field. (Tr. 2653). Chaffin testified that the last tomato crops are put in no later than January 1st of each year with a 65 to 70 day growing period and a 6 to 8 week harvest period, leaving no or scant few tomatoes to spray expensive chemicals on in May when the Benlate was purchased. (Tr.1071, 1082).

Pine Island apparently recognizes that there was but a single inference that needed to be proved by circumstantial evidence. Thus, Pine Island now shifts away from exclusive reliance on *Voelker*, and cites - unavailingly - to the principle that "a fact cannot be established by circumstantial evidence which is perfectly consistent with direct, uncontradicted, reasonable and unimpeached testimony that the fact does not exist." *Panniello v. Smith*, 606 So. 2d 626, 627 (Fla. 3d DCA 1992).

The problem with this argument is that Pine Island did not *have* "direct, uncontradicted, reasonable and unimpeached testimony" that Benlate was not used. Rather, each and every purported piece of "direct" evidence asserted by Pine Island was in fact contradicted and/or impeached either by inconsistent statements from Pine Island's own witnesses, or by other evidence. For instance, Mr. Chaffin's testimony that the Benlate purchased in May would have been used in May was, by his own admission, pure speculation. (Tr. 1086). The evidence as to the tomato growing season also showed that Chaffin's self-serving speculation that the Benlate purchased on May 4, 1989 was used on tomatoes that month was a virtually impossibility given that late April/first week of May is the extreme end of the tomato growing season when the very last of the tomatoes, planted 4 months earlier, would already be picked or dying on the

vine - and certainly not candidates for an expensive, work-intensive application of Benlate. (Tr. 1079-82).

Furthermore, Mr. Chaffin's credibility was seriously damaged, as even the Third District's opinion has indicated. British reporter John Ashton contacted Mr. Chaffin by telephone in May of 1993, and asked whether Pine Island had been using Benlate *on this U-Pic field in November of 1989*. (Tr. 1593). According to Mr. Ashton, Mr. Chaffin specifically and affirmatively responded by stating not only that Pine Island *had* used Benlate on this particular field in November of 1989, but also that Benlate had been used on the field *at the beginning of the growing season* in November of 1989. (Tr. 1599). Mr. Chaffin initially tried to deny that any such conversation had ever occurred. (R. 183-84; Chaffin's 1994 deposition, pp. 16-17). Even when confronted with telephone records the Plaintiffs had retrieved which, as the Third District's opinion notes, "confirmed an *eight minute* call originating from London, England in May of 1993" to Chaffin's own cell phone, 748 So. 2d at 1112, Chaffin still claimed that he could not recall the telephone call. (Tr. 1121). Chaffin then said at trial that what probably had happened was that he had purposefully misled, i.e., lied to, Mr. Ashton about using the Benlate in an effort to protect "trade secrets." (Tr. 1281; 1289).

In its brief, Pine Island asserts that Chaffin was "tricked" into lying to reporter Ashton. (Pine Island Answer Brief, p. 34). The gist of Pine Island's argument is that Ashton misrepresented the purpose of his call, by indicating that he was investigating *crop damage* caused by Benlate. Pine Island asserts that Chaffin knew that Benlate crop damage was "known. . . to be the subject of substantial litigation." (Pine Island Brief, p. 34). Next, and incredibly, Pine Island appears to complain that Mr. Chaffin was not allowed to explain to the jury the *real* reason that he had *lied* to Mr. Ashton, i.e., to position himself to make a fraudulent claim against DuPont for crop damage, because DuPont did not want any aspect of the notorious crop damage cases to creep

into this litigation. Accordingly, then, pursuant to Pine Island's own argument, Mr. Chaffin not only lied to Mr. Ashton at the time of the telephone call, but he subsequently lied to the jury about *why* he had lied to Ashton. And *this* is what Pine Island has submitted as its reason that this Court should depart from all principles of appellate review to intervene and reverse the jury's credibility finding against Mr. Chaffin.

The jury here was free to--and obviously did--reject Chaffin's after-the-fact attempts to divest himself of his admission about using the Benlate on the subject U-Pic field. This argument by Pine Island has no place before this Court.

**b. Pine Island was not deprived of a fair trial with respect to the request for admissions**

Pine Island takes the peculiar position that it was denied a fair trial because it was refused the right to read a denial of a request for admissions that it had applied Benlate to the U-Pic field in early November, 1989. Putting aside for the moment the legal admission to the contrary made by Chaffin during his telephone conversation with Mr. Ashton, we must point out that the *entire* defense presented by Pine Island was that Benlate had not been applied. How Pine Island could possibly be prejudiced by the purported "refusal" of the trial court to allow Pine Island to read one more denial that Benlate had been applied is beyond our understanding. At best, the reading of the denial would have been cumulative to their entire defense.

Furthermore, it is not at all clear from the record that the trial court precluded Pine Island from reading the denial. The trial court's ruling at (Tr. 5038) was that "So at the moment, the answer is no." Although Pine Island later asserts that it asked again to no avail, citing Tr. 5311, there is no such request at Tr. 5311, nor did Pine Island object when the Castillos' counsel mentioned the responses to the other requests for

admissions during closing argument (Tr. 5311; 5320). This lack of objection constituted a failure to preserve this issue for appeal.

**c. There was no "irrelevant and confusing evidence" on other farming matters**

Pine Island asserts that the Petitioners presented "irrelevant and confusing evidence regarding farming conduct other than activities by this farmer, on this field, in the year in question." (Pine Island brief, pp. 38, citing Tr.1073). For example, Pine Island suggests that the Plaintiffs elicited "testimony about when tomatoes were *generally* last planted on *any* field, in *any* year". (Pine Island's Answer Brief, p. 40 *citing* Tr. 1078-80)(Pine Island's emphasis). However, on the previous page of the trial transcript, Petitioners' counsel made it clear to Mr. Chaffin that all of his questions were *only* going to be directed to the field in question:

Q. Sir, *all the questions that I am going to ask you about here are going to relate to the field that is the subject of this lawsuit unless I say otherwise in my question*, okay, sir?

A. Okay.

(Tr. 1072). That point was made clear again at (Tr. 1078 and at Tr. 3415). The record also confirms that the only times when the Plaintiffs' questions had to move beyond the particular field and the particular year in question were when Pine Island witnesses were being evasive. (Tr. 3415). Pine Island's complaints on this point are, therefore, both inaccurate and irrelevant.

## CONCLUSION

For the reasons set forth herein, the Petitioners respectfully request that this Court reverse the opinion of the Third District Court of Appeal with directions that the

case be remanded for reinstatement the final judgment entered on the jury verdict in favor of the Petitioners.

Respectfully submitted,

FERRARO & ASSOCIATES, P.A.  
200 S. Biscayne Boulevard, Suite 3800  
Miami, Florida 33131

-and-

RUSSO PARRISH APPELLATE FIRM  
6101 Southwest 76th Street  
Miami, Florida 33143  
Telephone (305) 666-4660  
Attorneys for Petitioners

By: \_\_\_\_\_

PHILIP D. PARRISH  
Florida Bar No. 541877

By: \_\_\_\_\_

ELIZABETH K. RUSSO  
Florida Bar No. 260657

## **CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of Petitioners' Reply Brief in Opposition to Respondent Pine Island's Brief on the Merits was mailed this 27th day of November, 2000 to: Edward W. Warren, Esquire, Christopher Landau, Esquire, Jeffrey Bossert Clark, Esquire, Kirkland & Ellis, Counsel for Respondent E. I. DuPont de Nemours & Company, Inc., 655 Fifteenth Street, N.W., Suite 1200, Washington, D.C. 20006; Arthur J. England, Jr., Esquire, Greenberg Traurig, P.A., Co-Counsel for Respondent E. I. DuPont de Nemours & Company, Inc., 1221 Brickell Avenue, Miami, Florida 33131; and David Kleinberg, Esquire, Gaebe, Murphy, Mullen & Antonelli, Counsel for Respondent Pine Island Farms, Inc., 420 South Dixie Highway, 3rd Floor, Miami, Florida 33146, and Martin S. Kaufman, Esquire, Atlantic Legal Foundation, 205 East 42nd Street, 9th Floor, New York, New York 10017.

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