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Richard Toombs v. Alamo Rent-A-Car, Inc.

MR. CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE APRIL ORAL ARGUMENT CALENDAR AT THE FLORIDA SUPREME COURT. THE FIRST CASE WE HAVE ON THE COURT'S DOCKET THIS MORNING IS TOMBS VERSUS ALAMO RENT-A-CAR. MR. ANDERSON.

MAY IT PLEASE THE COURT. GOOD MORNING, YOUR HONORS. I AM HALF ANDERSON, AND I AM HERE, TODAY, ON BEHALF OF THE PETITIONER, RICHARD TOMS, WHO IS THE -- TOOMBS. SEATED WITH ME TODAY AT TRIAL COUNSEL IS WILLIAM PETROS. IT IS OUR INTENTION TO HAVE MR. PETROS DELIVER THE ORAL ARGUMENT PORTION OF THIS, THE REBUTTAL, AND MR. PETROS HAS STATED THAT HE HAS NO PROBLEM WITH IT. THE CASE IS BEFORE THE COURT, TODAY, ON A CERTIFIED QUESTION, DIRECT AND EXPRESSION PRESS -- EXPRESS CONFLICT, WHICH THE FIFTH DISTRICT HAS HELD, IN THE SECOND DISTRICT DECISION IN THE ENTERPRISE LEASING COMPANY VERSUS ALLY DECISION, IS WRONG, AND THAT THERE FOR THERE IS A CONFLICT JURISDICTION IN THIS CASE.

HOW ABOUT SIMPLIFYING THE ISSUE FOR US, BY STATING IT, WITH AS MUCH CLARITY AS YOU CAN.

THE ISSUE IN THIS CASE IS WHETHER OR NOT THE FACT THAT JULIA INSTITUTE ARRESTED, AT THE TIME OF -- STUTTARD, AT THE TIME OF HER DEATH, MAY NOT HAVE BEEN ABLE TO PAIN MAINTAIN A PERSONAL -- TO MAINTAIN A PERSONAL INJURY PROTECTION AGAINST ALAMO AND TO BRING A WRONGFUL-DEATH ACTION. THAT IS WHERE THE SECOND DISTRICT AND THE FIFTH DISTRICT PARTWAYS, THAN IS THE ESSENTIAL ISSUE IN THIS CASE, IN ADDITION TO WE HAVE A SUBSIDIARY ISSUE, DEALING WITH WHETHER OR NOT THE TRIAL COURT AND, ALSO, THE FIFTH DISTRICT PROPERLY CONCLUDED, AS A MATTER OF LAW, THAT JULIA STUTTARD WERE A CO-BAILEE, FOR THE CAUSE OF ACTION OF THIS ACTION.

IF SHE WAS A CO-BAILEE, THEN SHE WOULDN'T BE REQUIRED TO BRING A CAUSE OF ACTION.

IT IS UNDECIDED.

SO UNDER THAT, IN A WRONGFUL-DEATH ACTION, WOULD HER ESTATE BE ABLE TO RECOVER, OR IS THIS SOMETHING WHERE YOU WOULD BE SAYING THAT --

THAT IS SOMETHING THAT HAS NOT BEEN ARGUED BY THE PARTIES IN THIS CASE. THE FOCUS OF THE CASE HAS BEEN THE RIGHT OF THE MINOR CHILDREN SURVIVORS TO MAINTAIN A CAUSE OF ACTION, UNDER THE WRONGFUL-DEATH STATUTE.

WELL, THE REASON I AM ASKING THAT, IS, BECAUSE IN THE OTHER CASE, THAT IT HAS TO DO WITH THE IMMUNITY ISSUE, ONCE THE DEATH OCCURS, THE IMMUNITY HERE I DON'T SEE YOU MAKING THAT SAME ARGUMENT. SINCE SHE A COBAILEE STATUS, THE IMPLICATION OF, I GUESS, VICARIOUS LIABILITY, THEN, WOULDN'T THAT STILL REMAIN AS TO -- AFTER DEATH -- THERE IS NOTHING ABOUT THE COBAILEE STATUS THAT CHANGES, WITH THE FACT OF DEATH.

WHAT OUR POSITION IS, IS THAT THE WRONGFUL-DEATH STATUTE HAS CREATED A NEW AND INDEPENDENT CAUSE OF ACTION, IN FAVOR OF THE WRONGFUL-DEATH BENEFICIARIES,, WHICH IN THIS CASE, WOULD THE CHILDREN. THESE CHILDREN, UNDISPUTEEDLY, WERE NOT COBAILEES OR ANY TYPE OF BAILEE, AT THE TIME OF THIS ACCIDENT.

WHAT IF SHE HAD BEEN NEGLIGENT? WOULD YOU SAY THAT THE SURVIVORS, THAT HER NEGLIGENCE WOULDN'T BE --

I WOULD SUSPECT THAT, UNDER THE SHIVER RATIONALE, AND I HOPE I AM PRONOUNCING THAT RIGHT. I HAVE BEEN SAYING IT OTHERWISE FOR THE PAST TWO YEARS, BUT I GUESS IT IS SHIVER. UNDER SHIVER, THE DEFENSE WHICH ARE A TORT, ITSELF, ALSO ASSERTABLE, AS IT WERE, AGAINST THE STATUTORY SURVIVORS, AND SHIVER SPECIFICALLY NOTED THAT THE COMPARATIVE NEGLIGENCE OF THE DECEDENT WOULD BE SOMETHING THAT COULD BE RAISED AGAINST THE STATUTORY SURVIVORS. SHIVER ANSWERED THAT QUESTION, I BELIEVE.

BUT CAN SHIVER BE DISTINGUISHED AS ALMOST A SPORT IN THE LAW, DEALING WITH INTERSPOUSAL COMMUNITY?

WELL, YOUR HONOR, AT THE TIME THAT SHIVER WAS DECIDED, I THINK WE NEED TO LOOK BACK AT WHAT THE LAW WAS AT THAT TIME. THE DOCTRINE OF INTERSPOUSAL IMMUNITY WAS ALIVE AND WELL, IN 1966, WHEN THE LAW WAS DECIDED. AT THE TIME THE COURT LOOKED AT LANGUAGE WHICH IS SUBSTANTIVE IDENTICAL IN THE PREVIOUS WRONGFUL-DEATH ACT, AND STATED THAT, NOTWITHSTANDING THAT LANGUAGE, WHICH WAS ALONG THE LINES OF IF THE EVENT WOULD HAVE ENTITLED THE PERSON WHO WAS INJURED TO HAVE BROUGHT -- TO HAVE MAINTAINED AND RECOVERED DAMAGES, FROM THE TORTFEASOR, THAT WAS THE OPERATIVE LANGUAGE THERE. OBVIOUSLY, AT THE TIME, IF YOU LOOK AT THE ANALYSIS IN SHIVER, WHAT THEY WERE SAYING IS THAT, NOTWITHSTANDING THAT PERSONAL IMMUNITY, PERSONAL DISABILITY TO SUE, BECAUSE AT THE TIME OF THE ACCIDENT, HAD SHE NOT DIED, THAT DOCTRINE WAS ALIVE AND WELL TO PRECLUDE HER LAWSUIT, BUT THE SUPREME COURT, THIS COURT, IN THAT CASE, SAID NOTWITHSTANDING THAT LANGUAGE, WHAT WE HAVE TO DO IS LOOK AT WHAT WAS THE INTENT BEHIND THE WRONGFUL-DEATH STATUTE AND LOOK AT THE DISTINCT DIFFERENCES BETWEEN WHAT THE WRONGFUL-DEATH STATUTE TALKS ABOUT, AS WELL AS THE COMMON LAW. UNDER THE COMMON LAW, THE -- THERE IS NO WRONGFUL-DEATH ACT. BUT BY STATUTE, WHICH THE SUPREME COURT, IN SHIVER, AND THIS COURT HAS, SUBSEQUENTLY, HELD, THAT STATUTE CREATED, IN THESE STATUTORY BENEFICIARIES, CERTAIN RIGHTS THAT ARE INDEPENDENT OF THE UNDERLYING ACCIDENT INVOLVING THE DECEDENT.

BUT EVEN ACCEPTING THAT, WHAT -- YOU ARE ASKING US TO DO IS TO TAKE THE THEORY OF THE DANGEROUS INSTRUMENTALITY DOCTRINE AND TOTALLY TURN IT ON ITS HEAD, AREN'T YOU? I MEAN, WHAT DO YOU THINK THE THEORY BEHIND THE OLD SOUTHERN COTTON WOOD CASE IS?

THE THEORY BEHIND IT IS THAT THE OWNER OR LESS OR OR LESSEE -- OR LESSOR/BAILOR OF AN AUTOMOBILE IS GOING TO BE HELD FINANCIALLY RESPONSIBLE FOR THE NEGLIGENT OPERATION OF THAT VEHICLE, WHEN THE VEHICLE IS OPERATED BY SOMEONE WHO IS DRIVING IT WITH THE OWNER/LESSOR OWNER/LESSOR/BAILOR'S PERMISSION. THE BASIS FOR THAT RULE, WHICH WAS ADOPTED -- CERTAINLY THE SEMINOLE CASE IS THE SOUTHERN COTTON CASE IN 1920. THE BASIS FOR THE RULE IS THAT THESE VEHICLES ARE DANGEROUS INSTRUMENTAL ITS, AND THEY WREAK HAVOC ON OUR STREETS, AND THAT THERE SHOULD BE A FINANCIALLY-RESPONSIBLE PARTY UNDER THE CIRCUMSTANCES, AND THE BEST SOURCE THAT RESPONSIBILITY -- FOR THAT RESPONSIBILITY IS THE PERSON OR ENTITY THAT ALLOWS THAT DANGEROUS INSTRUMENTALITY TO GO OUT THERE ON THE ROAD AND BE OPERATED.

WHAT IS THE THEORY OF THE BAILOR HAVING --

BECAUSE THE BAIL OR, LIKE THE OWNER, HAS DOMINION POSSESSION AND AT LEAST CAN EXERCISE THE RIGHT TO CONTROL THAT VEHICLE. THAT IS THE STATED BASIS, UNDER THE RULE. BUT WHAT WE HAVE, HERE, IS THESE CHILDREN ARE NOT BAILESE OF THIS ACCIDENT VEHICLE. THERE IS A DEBATE. WE DEBATE WHETHER OR NOT MRS. STUTTARD WAS BAILEE, BUT LET'S ASSUME THAT SHE IS. SHE IS A BAILEE. BECAUSE OF THAT, UNDER THE RADOW LINE OF CASES, IF

SHE HAD NOT BEEN KILLED IN THIS INCIDENT, SHE WOULD HAVE BEEN PRECLUDED FROM BRINGING A LAWSUIT AGAINST ALAMO.

WHY IS THAT?

UNDER THE LINE OF -- RADOW BASICALLY SAYS THAT THE NEGLIGENCE OF THE COBAILEE DRIVER IS IMPUTED TO THE INJURED PARTY, AND THAT INJURED PARTY, THEREFORE, CANNOT GO UP THE CHAIN OF RESPONSIBILITY, AS IT WERE, TO THE OWNER OF THE VEHICLE.

SO IN THIS CASE, IT WOULD BE AS IF SHE WERE 100 PERCENT RESPONSIBLE FOR THIS ACCIDENT.

IF SHE WERE 100 PERCENT RESPONSIBLE.

YOU ARE IMPUTING THE NEGLIGENCE OF THE DRIVER OF THE VEHICLE BACK TO THE COBAILEE. CORRECT?

THAT IS WHAT THE RADOW ANALYSIS REQUIRES.

SO WHY WOULDN'T THAT, FOLLOWING THAT THROUGH, SINCE THAT IS AN IMPUTEATION OF THE NEGLIGENCE, BE THE SAME AS IF SHE HAD BEEN THE DRIVER, AND WHERE YOU HAVE ALREADY SAID THAT YOU AGREE THAT THE CHILDREN WOULDN'T BE ABLE TO SUE IN THAT CASE OR WOULD BE CHARGED WITH THE NEGLIGENCE OF THE DRIVER.

WELL, YOUR HONOR, I MAY NOT BE UNDERSTANDING YOUR QUESTION, AND I APOLOGIZE FOR THAT. BUT THE WAY THAT WE SEE THIS, IS THAT MRS. STUTTARD WAS A PASSENGER AT THE TIME. MRS. STUD ARRESTED -- STUTTARD WAS KILLED. THE TWO CHILDREN HAD NOTHING TO DO WITH THE DEATH WHATSOEVER. HE WOULD HAVE BEEN LIABLE TO HER, MR. STUTTARD, BECAUSE IS HE THE TORTFEASOR.

BUT ISN'T THE WHOLE ISSUE OF THE DANGEROUS INSTRUMENTALITY DOCTRINE, IMPTATION OF LIABILITY? IT HAS NOTHING TO DO WITH WHO THE CLAIMANT IS. IT HAS TO DO WITH WHO IS GOING TO BE THE RECIPIENT OF AN IMPUTATION OF LIABILITY.

CORRECT, YOUR HONOR, AND WHAT WE THINK THAT REALLY TALKS ABOUT, ALLAH THE ENTERPRISE -- ALA THE ENTERPRISE LEASING VERSUS ALLY CASE, WHAT THAT DEALS WITH IS A PERSONAL I AM UNIT FROM -- IMMUNITY FROM SUIT, ARISING FROM THE COBAILEE STATUS. NOW, THE ISSUE FROM THE STIFER ANALYSIS IS THAT DOES THAT ABILITY TO SUE ENTIRELY EVICIATE THE CAUSE OF ACTION? THE UNDERLYING TORT, HERE, WAS THE NEGLIGENT DRIVING BY MR. STUTTARD. MR. STUTTARD, AT THE TIME OF THIS ACCIDENT, COULD HAVE BEEN SUED BY MRS. STUTTARD, IN A PERSONAL INJURY ACTION, HAD SHE NOT DIED. BY VIRTUE OF THE DANGEROUS SNUMENTAL EIGHT -- INSTRUMENTALITY DOCTRINE, ALAMO IS RESPONSIBLE FOR THE NEGLIGENCE OF MR. STUTTARD. SO THAT IS BASICALLY OUR NLZ OF THIS -- OUR ANALYSIS OF THIS POINT.

I AM HAVING SOME TROUBLE IN GETTING OVER THIS TRANSITION, BECAUSE AS WE ALL KNOW, I GUESS IT WAS BACK IN THE -- AROUND 1970 OR THEREABOUTS, WE CHANGED FROM THE SYSTEM, TO PERMIT BENEFICIARIES TO RECOVER THEIR OWN DAMAGES, AS OPPOSED TO RECOVERING THINGS SUCH AS PAIN AND SUFFERING OF THE DECEDENT. BUT AT THE TIME WE MAKE THAT TRANSITION, WE HAVE INCLUDED IN THAT STATUTE, AND IT IS PURELY STATUTORY THE CONCEPT THAT THE EVENT WOULD HAVE ENTITLED THE PERSON INJURED TO MAINTAIN AN ACTION AND RECOVER DAMAGES, IF DEATH HAD NOT OCCURRED, AND I AM HAVING TROUBLE TRANSITIONING ACROSS THAT PHRASE, IN THIS ANALYSIS AND THIS ARGUMENT THAT YOU ARE MAKING NOW. COULD YOU ASSIST ME IN THAT UNDERSTANDING A LITTLE BIT.

SURE. WELL, IT COMES BACK TO SHIVER, AGAIN. AS I POINTED OUT PREVIOUSLY, THE STATUTORY

LANGUAGE AT ISSUE IN SHIVER, IS SUBSTANTIVE IDENTICAL TO THE LANGUAGE AT ISSUE IN ENTERPRISE VERSUS ALLY AND IN OUR CASE. AND INCIDENTALLY, IT IS, ALSO, THE LANGUAGE THAT WAS AT ISSUE IN DRESS LETTER VERSUS -- IN DRESSLER VERSUS TUBS, WHICH IS ANOTHER -- VERSUS TUBBS, WHICH ADDRESSED THAT ISSUE IN THIS COURT AND THE VIABILITY OF THE SHIVER DECISION. THAT GLOSS -- DON'T HOLD ME TO IT -- THAT WE ARE ALREADY TRYING TO PLACE ON THIS STATUTE HAS, ALREADY, BEEN PLACED ON IT BY THIS COURT SUBSEQUENTLY IN SHIVER AND IN DRESSLER VERSUS TUBBS AND SUBSEQUENTLY BY THE COURT, AND I THINK IT IS ABSOLUTELY ESSENTIAL THAT THIS COURT RECOGNIZE THAT SHIVER WAS DECIDED IN 1956. SINCE THAT TIME, THIS STATUTE HAS BEEN REVISITED BY THE LEGISLATURE NUMEROUS TIMES. SHAFER HAS BEEN ON THE BOOKS FOR OVER 40 YEARS, YET NOT ONCE HAS THE LEGISLATURE SOUGHT TO CHANGE, EXPLICITLY, THE STATUTORY LANGUAGE.

ISN'T THE LAW IN THE AREA RELATIVELY STABLE, EXCEPT SHIVER, AND IF WE DISTINGUISH SHIVER AS A CASE DEALING WITH INTERSPOUSAL IMMUNITY AND LEAVE IT AT THAT, AND LIMIT IT TO INTERSPOUSAL IMMUNITY, THEN ISN'T THE LAW RELATIVELY CLEAR IN THE AREA?

NO. I DON'T THINK SO. JUDGE.

SHIVER WAS A PROBLEM?

I AM SORRY?

I SAY ISN'T SHIVER THE PROBLEM?

IT IS A PROBLEM RESPECTFULLY, FOR ALAMO, IN THIS CASE, AND I DON'T THINK THAT YOU CAN -- I DON'T THINK THAT THE COURT SHOULD READ SHIVER AS BEING AN INTERSPOUSAL IMMUNITY CASE, PER SE, OR LIMIT IT TO THAT, BECAUSE THE ANALYSIS EMPLOYED BY THE COURT HAS A MUCH BROADER APPLICATION. AND I THINK THAT MY OPPONENT. I THINK THAT YOU WILL SEE THAT SHIVER DOES SAY WHAT WE SAY IT SAYS BURKES THEY JUST THINK THAT IT SHOULD BE OVERRULED.

ISN'T THERE A VAST DIFFERENCE BETWEEN THE DEFENSE OF IMMUNITY AND THE EXISTENCE OF A CAUSE OF ACTION, JUST IN THE BASIC LAW?

YES, THERE IS, AND IN SHIVER THEY TALK ABOUT THE EXISTENCE OF A CAUSE OF ACTION, BASICALLY FOCUSES ON THE OPERATIVE FACTS, WHICH GIVES RISE TO A TORT OR THE RIGHT OF ACTION, AND THAT IS WHY I THINK YOU NEED TO LOOK BACK, HERE, AT THE TIME THAT THIS ACCIDENT OCCURRED IN OUR CASE, THERE WAS A WRONG HERE, WHICH WAS LEGALLY COMPENSABLE, AND THAT WRONG WAS DONE BY MR. STUTTARD. UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE, THAT WRONG GOES TO OR IS THE RESPONSIBILITY OF ALAMO RENT-A-CAR.

BUT NOT UNDER RADELL.

RADELL WAS NOT A WRONGFUL-DEATH ACTION, YOUR HONOR, AND THAT IS WHAT WE HAVE BEEN ARGUING ALL ALONG, IS THAT RADELL WAS A PERSONAL INJURY ACTION, AND THAT IS WHAT THIS CASE COMES DOWN TO. THIS CASE COMES DOWN TO AN INTERPRETATION OF THE ENTER PLAY BETWEEN THE WRONGFUL-DEATH ACT, AND THE DANGEROUS INSTRUMENTALITY DOCTRINE. I SEE THAT I HIM ENCROACHING ON MY COLLEAGUE'S REBUTTAL TIME. IF THERE IS NO FURTHER QUESTIONS FOR ME RIGHT NOW, I WOULD DEFER TO MY OPPONENT AND REST ON OUR BRIEF, AS TO OUR SECOND POINT.

THANK YOU VERY MUCH.

THANK YOU.

MR. PEARSON.

DAN PEARSON FOR ALAMO RENT-A-CAR. WITH ME AT COUNSEL TABLE IS LENORA SMITH. UPON THE FURTHER REFLECTION THAT COMES WITH PREPARING FOR ARGUMENT AND AFTER BRIEFS ARE SUBMITTED AND REEVALUATED AND MAKE ITS POSITION CONSIDERED AND ARGUMENTS RETHOUGHT, I HAVE CONCLUDED THAT I ASKED THIS COURT TO DO FAR MORE THAN IT NEED TO DO, TO RESOLVE THE QUESTION BEFORE IT. IN THAT SENSE, I HAVE BEEN OF LITTLE HELP. I NOW REALIZE I, REALLY, CAN LIVE MOST COMFORTABLY WITH THE DISTINCTION THAT WAS TAKEN FROM SHIVER, HERE HAD, THAT IF JULIA STUTTARD'S DISABILITY TO SUE IS PERSONAL TO HERSELF, AND DOES NOT ADHERE IN THE TORT, ITSELF, THEN HER SURVIVORS CAN SUE. THAT IS THE SHIVER PROPOSITION. BUT IF NOT, IF IT IS, DOESN'T ADHERE, IN THE TORT, ITSELF, THEN THEY CAN'T. LET ME ADDRESS, THEN, THE DIFFERENCE BETWEEN THIS INTERSPOUSAL IMMUNITY PROPOSITION IN SHIVER, WHICH WAS RELIED ON IN ALLY, TO GET WHERE THEY GOT, AND THE DISABILITY OF A COBAILEE. ONE OF OUR AMICUS, THE FLORIDA DEFENSE LAWYERS ASSOCIATION SAID THAT, TO DESCRIBE AN INDIVIDUAL AS A COBAILEE SIMPLY DESCRIBES THAT INDIVIDUAL'S INVOLVEMENT IN THE OPERATIVE FACTS. AT FIRST, I THOUGHT, PERHAPS, THIS DISTINCTION BETWEEN STATUS AND ADHERES IN THE TORT, IS THE DIFFERENCE BETWEEN BEING SOMEONE AND DOING SOMETHING. IN THINKING IT THROUGH, I SAID WHAT IS THIS STATUS, AND THIS STATUS, THIS STATUS OF INTERSPOUSAL IMMUNITY, AND I AGREE WITH JUSTICE SHAW, THAT I THINK IT STANDS BY ITSELF. IT EXISTS, NO MATTER WHAT THE TORT. INTERSPOUSAL IMMUNITY WOULD BE THERE, WHATEVER TORT WE ARE TALKING ABOUT. WE CAN BE TALKING ABOUT DEFAMATION AND LIABLE AND BATTERY AND ANY KIND OF THING, ACT, AUTOMOBILE ACCIDENTS. IT COVERS EVERY CAUSE OF ACTION, NO MATTER WHAT THE CAUSE OF ACTION. SO IN INTERSPOUSAL IMMUNITY, ONE SPOUSE COULD NOT SUE ANOTHER, NO MATTER WHAT THE TORT, NO MATTER WHAT THE OFFENSE, NO MATTER WHAT THE CAUSE OF ACTION. IT FOCUSES, THEN, ON THE -- BUT INHERENT IN THE TORT, IT FOCUSES ON THE TORT, ITSELF. NOT ON THE TORTFEASOR AND THE PARTY HARMED. LET ME SEE, LET ME, I THINK, DEMONSTRATE TO YOU WHY THIS IS -- HAS, AS JUSTICE SHAW CALLED IT A "SPORT", THIS IMMUNITY CASE OF SHIVER. IN THE QUESTION BEFORE US, THAT IS THE COBAILEE STATUS, WHAT IS THE -- THIS ACTIVITY? WHAT IS THIS INHERENT IN THE TORT THING? WE HAVE THE STATUS, WHICH SAYS YOU HAVE BECOME RESPONSIBLE FOR THE ACTS AFTER COBAILEE. IT IS CALLED IMPTATION, BUT YOU DO IT BECAUSE YOU ARE BASICALLY CONSIDERED TO HAVE PLACED, IN THE NEGLIGENT DRIVER'S HANDS, THE OTHER BAILEE, THE CONTROL OF THE CAR, WHEN YOU HAD THE RIGHT TO DOMINION AND CONTROL OVER THE CAR. THAT IS THE ACT. YOU HAVE ENTRUSTED IT TO SOMEBODY ELSE. YOU HAVE CONSENTED. YOU HAVE CONSENTED TO IT BEING DRIVEN, IT FOR YOUR BENEFIT, OR FOR WHATEVER, BY THE COBAILEE. YOU ARE, IN A SENSE, THE, IN THAT SENSE, THE SAME DOCTRINE FROM THE DANGEROUS INSTRUMENTALITY LAW THAT YOU ASKED ABOUT, IS A DOCTRINE THAT, REALLY, RECOGNIZES THAT THE OWNER HAS PLACED INTO THE HANDS OF SOMEBODY ELSE, THIS VEHICLE, AND HAS CONSENTED TO ITS USE AND HAS PLACED A NEGLIGENT DRIVER IN CONTROL OF IT. THAT IS AN ACTIVITY. IN ALL OF THE FLORIDA CASES, OTHER THAN SHIVER, WE HAVE THIS SAME KIND OF ANALYSIS. BRALESFORD CAMPBELL, BACK IN 1956, INVOLVED THE GUEST PASSENGER STATUTE, WHICH HAS, OF COURSE, SINCE BEEN ABROGATED, BUT THE ANALYSIS IS USEFUL AGAIN. IN THAT CASE, ON A WRONGFUL-DEATH BASIS, IT WAS SAID THAT, BY VIRTUE OF THE GUEST PASSENGER STATUTE, UNLESS THE SURVIVORS COULD ESTABLISH THE KIND OF GROSS NEGLIGENCE THAT WAS NECESSARY FOR THE DECEDENT TO HAVE OR THE GUEST PASSENGERS TO HAVE ESTABLISHED, THEN THERE WAS NO CAUSE OF ACTION.

MR. PEARSON.

WRONGFUL-DEATH.

YOUR ARGUMENT SOUNDS VERY INTERESTING, BUT ISN'T THE STATUS THAT WE ARE TALKING ABOUT, WHETHER WE ARE LOOKING AT THE SHIVER'S CASE, REALLY, THE STATUS AS HUSBAND AND WIFE --

YES.

-- VERSUS THE STAUS OF -- THE STATUS OF -- VERSE INTERSPOUSAL IMMUNITY, SO I AM HAVING A HARD TIME FINDING HOW THAT STATUS, HUSBAND AND WIFE, WHICH IS NOT GOING TO CHANGE, AND THE STATUS AS COBAILEE ARE DIFFERENT. BOTH OF THEM BRING INTO PLAY SOMETHING. IT BRINGS INTO PLAY EITHER THE INTERSPOUSAL IMMUNITY, OR IT BRINGS INTO PLAY THE WHOLE PRINCIPLE THAT, AS A COBAILEE, YOU HAVE THIS IMPUTEED IMMUNITY, I MEAN IMPUTED NEGLIGENCE.

LET ME PUT IT THIS WAY. WHAT YOU ASK CAN BE SAID OF EVERY CASE THAT HAS EVER BEEN DECIDED. I COULD CALL THEM STATUS. I COULD CALL, FOR EXAMPLE, IN SANDERSON, FREEDOM SAVINGS, THE FIREMAN'S RULE APPLICATION, MUCH LIKE THE GUEST STATUTE, IN WHICH IT IS SAID THAT THE FIREMEN, THE FIREMEN OR THE POLICEMEN IN THAT PARTICULAR CASE, COULD NOT -- CANNOT -- COULD NOT HAVE A CAUSE OF ACTION, IN THE ABSENCE OF BEING ABLE TO ESTABLISH WILLFUL CONDUCT. THUS SURVIVORS COULD NOT HAVE A CAUSE OF ACTION, UNLESS THEY COULD ESTABLISH THE SAME THING. I COULD SAY, OF THAT, THAT IT IS THE SAME THING AS STATUS. THERE FOR IT IS CONTROLLED BY SHIVER. I COULD SAY THAT OF COBAILEES. I COULD SAY THAT OF GUEST PASSENGERS. I COULD SEE THAT OF WORKERS COMP PEOPLE, WHO ARE COVERED BY THAT. IN OTHER WORDS, I COULD SAY THAT, ALTHOUGH A WORKER'S COMP INJURED EMPLOYEE WAS COVERED BY WORKERS COMP, WHO HAS CONSENTED TO IT, HAS NO RIGHT OF ACTION AGAINST HIS EMPLOYER, FOR AN ACCIDENT ON THE JOB. THUS HIS SURVIVORS, AGAIN, IN THE ABSENCE OF WILLFUL MISCONDUCT, HAVE NO RIGHT OF ACTION, BUT I COULD SAY, OF THAT, THAT THAT IS CONTROLLED BY SHIVER, BECAUSE IT IS HIS STATUS AS AN EMPLOYEE OF A COMPANY, WHO HAS WORKERS COMPENSATION. I COULD CALL EVERY SINGLE ONE OF THESE ACTIVITIES STATUS AND, THUS, HAVE IT CONTROLLED BY THE SHIVER CASE. BECAUSE THAT IS A STATUS CASE, AND SHIVER TELLS US THAT, IF IT IS STATUS, THEN THERE IS A WRONGFUL-DEATH ACTION, BUT IF IT ADHERES IN THE TORT, IT IS NOT, SO I WOULD, THUS, REALLY, BY CALLING THEM ALL STATUS, BY CALLING COBAILESE STATUS -- COBAILEE STATUS, BY CALLING THE FIREMEN AND POLICEMEN STATUS, I COULD SIMPLY BE SAYING THAT THE LANGUAGE OF THE WRONGFUL-DEATH STATUTE, CLAUSE TWO, IN THE EVENT IT WOULD HAVE BEEN ENTITLED, FOR THE PERCH INJURED, TO MAINTAIN A -- FOR THE PERSON INJURED TO MAINTAIN AN ACTION, IF I AM A APPLIED THE SHIVER -- IF I APPLIED THE SHIVER ANALYSIS, TO SAY ALL OF THESE ARE NOTHING MORE THAN STATUS, I HAVE OBLITERATED THAT PROVISION OF THE WRONGFUL-DEATH STATUTE, AND THERE IS NO OPERATIVE WAY FOR IT TO BE APPLIED.

ADDRESS THIS QUESTION. IF WE DIDN'T JUST MAKE THE DISTINCTION BETWEEN STATUS AND WHAT ADHERES IN A TORT, AM I CORRECT THAT SHIVER, REALLY REALLY, IS, ALSO, BASED ON A POLICY THAT THE REASON FOR THE DISABILITY TO SUE IS REMOVED, ONCE THERE IS DEATH, AND THAT, IN THIS COBAILEE SITUATION, WHAT WE HAVE TO LOOK AT, IS THERE SOMETHING ABOUT THE DEATH THAT SHOULD REMOVE THE RATIONALE FOR THE DOCTRINE THAT PROHIBITS THE LAWSUIT, AND NOT WORRY ABOUT TRYING TO MAKE ADHERING IN THE TORT AND STATUS DISTINCTIONS, BUT JUST LOOK AT THE POLICY FOR WHY THE IMMUNITY OR WHATEVER IT WAS EXISTED IN THE FIRST PLACE.

ALL RIGHT. I THINK YOU ARE CORRECT, AND IT IS CERTAINLY PART OF WHAT IS IN SHIVER, AS ITS ANALYSIS. SHIVER WAS FACED WITH THE WRONGFUL-DEATH STATUTE, AND IT IS FACED WITH A SITUATION IN WHICH A STEP FATTER KILLS THE MOTHER, AND THERE IS FOUR SURVIVORS, AND THERE YOU HAVE IT. YOU HAVE WHAT WAS AN INTERSPOUSAL IMMUNITY THAT HAS, REALLY, IS GONE. THERE IS NO POSSIBILITY OF THE MARRIAGE BEING DISTURBED BY ANYBODY ANYMORE, IF THERE EVER WERE, AND WHAT YOU END UP, IN THAT SITUATION, IS NO MORE REASON IN THE WORLD TO POSSIBLY APPLY THIS IMMUNITY THING. IT IS UNIQUE IN THAT SENSES IS, BECAUSE THE IMMUNITY THAT WOULD HAVE PREVENTED THE SUIT HAS DISAPPEARED. HAS GONE.

SO UNDER SHIVER, EVEN THE ESTATE OF THE WIFE SHOULD BE ABLE TO RECOVER FOR ANY ESTATE DAMAGES.

I AM SURE THAT WOULD BE THE EXTENSION OF SHIVER. YEAH. IT IS GONE, AND SO WHAT YOU HAVE, AND I THINK THE COMMENT WAS MADE THAT IN 1955, INTERSPOUSAL IMMUNITY WAS ALIVE AND WELL. I THINK IT WAS ALIVE, BUT IT WAS BEGINNING TO BE NOT VERY WELL. IT WAS STARTING TO BE THE INROADS, AND ULTIMATELY THE AND AREGATION OF INTERSPOUSAL IMMUNITY -- AND ABROGATION OF INTERSPOUSAL IMMUNITY ENTIRELY, BUT IF I WOULD THINK ABOUT A COURT AND WHAT WOULD MOTIVATE A COURT TO SAY THAT HERE IS, TO MAKE THIS DISTINCTION BETWEEN STATUS AND ADHERES IN THE TORT, THE MOTIVATION FOR A COURT, IN THAT SENSE, IS IT HAS DISAPPEARED. THIS IS A DOCTRINE THAT HAS IS -- THAT IS BEGINNING TO SEE ITS DAY, AND THERE IS ABSOLUTELY NO REASON IN THE WORLD TO PREVENT THESE SURVIVORS TO HAVE A CAUSE OF ACTION FOR WRONGFUL-DEATH, UNDER THESE CIRCUMSTANCES. IT STANDS BY ITSELF.

WHAT IS THE UNDERLYING PURPOSE, THEN, OF THE COBAILEE DOCTRINE?

THE UNDERLYING PURPOSE OF THE DOCTRINE IS THAT ALL BAILESE ARE CONSIDERED TO HAVE CONTROL. DOMINION AND CONTROL OF THE VEHICLE. ALL BAILESE ARE CONSIDERED TO BE PEOPLE WHO WILL BECOME RESPONSIBLE FOR THE NEGLIGENCE OF ANY DRIVER OF THAT CAR, INCLUDING A COBAILEE, WHO DRIVES AND IS NEGLIGENT. THEY HAD CONTROL OF IT. THEY PLACED IT IN THE HANDS OF A DRIVER WHO WAS NEGLIGENT. IT IS -- THAT IS THE RESPONSIBILITY. THAT IS THEIR ACTIVITY. THAT IS WHAT ADHERES IN THE TORT. AND --

SO EVEN -- SO UNDER THAT, THEN, UNDER MRS. -- THE PERSON WHO DIED HERE, IF SHE -- IF THERE HAD BEEN A THIRD PERSON, OTHER THAN HER CHILDREN IN THE CAR, WHO WAS KILLED OR INJURED, THEY WOULD, STILL, HAVE A CAUSE OF ACTION AGAINST HER.

THIRD PERSONS. NOT COBAILESE. NOT PEOPLE IN CONTROL, PASSENGERS, AND THERE ARE CASES, I THINK, ALAMO VERSUS CLAY, IF I AM NOT MISTAKEN. THIRD PERSONS, THIRD PERSONS PASSENGERS, HAVE A SENSE, THE ABROGATION, I GUESS, OF THE GUEST PASSENGER STATUTE, HAVE THE SAME RIGHTS AS ANY OTHER PERSON AND WOULD NOT BE COBAILESE. THEY HAD NO DOMINION AND CONTROL.

THEY WOULD BE ABLE TO SUE HER ESTATE.

THEY WOULD BE ABLE TO SUE. SO BASICALLY ALL OF THE CASES, WE HAVE WORKERS COMP CASES. WE HAVE GUEST PASSENGERS. ALL OF THE CASES, EVERY CASE THAT HAS BEEN DECIDED BY FLORIDA, IN MY MY CRITICAL ANALYSIS, AND THIS IS WHAT I CAME TO REALIZES THAT EVERY CASE IS CONSISTENT WITH NO CAUSE OF ACTION IN WRONGFUL-DEATH, BECAUSE OF THE ACTIVITY. THERE IS, REALLY, AND WHY I THINK I COULD JUSTIFY A SHIVER CASE, NOT ONLY BY VIRTUE OF WHAT YOU SAY BUT ONCE THEY MAKE THIS DISTINCTION INHERENT IN THE TORT VERSUS STATUS, THAT WHAT IS IT, WHAT COULD BE CALLED THE ACTIVITY THAT ANYBODY WHO IS PREVENTED, BY SPOUSAL, INTERSPOUSAL IMMUNITY, ENGAGES IN? THEY ENGAGE THE ACTIVITY OF GETTING MARRIED. IT HAS NOTHING TO DO WITH A TORT. ALL OF THE OTHERS HAVE TO DO WITH A TORT.

LET ME BE SURE I UNDERSTAND YOUR ANSWER, JUSTICE QUINCE'S QUESTION.

YES.

BECAUSE I AM NOT SURE THAT -- SHE ASKED YOU WHETHER OR NOT THIS OTHER PASSENGER, UNRELATED TO THE TWO BAILESE, EITHER LEGALLY OR IN ANY FAMILY WAY, WOULD HAVE A CAUSE OF ACTION AGAINST THE COBAILEE, IN OTHER WORDS THE WIFE HERE, AND IS IT YOUR POSITION THAT WE ARE TALKING ABOUT THE SAME ACCIDENT, NOW, THE HUSBAND IS DRIVING,

OKAY, AND THERE IS 100 PERCENT ACCIDENT, NOW, AND YOU ANSWERED THAT THE PASSENGER WOULD HAVE A CAUSE OF ACTION AGAINST THE DECEASED WIFE'S ESTATE. IS THAT YOUR HUSIN OTHER WORDS BY REASON OF BEING A COBAILEE, THAT YOU, ALSO, HAVE OTHER BAENK PASSENGERS IN THE VEHICLE -- OTHER PASSENGERS IN THE VEHICLE, CONSISTENT WITH THE DRIVER?

WHAT I SAID BEFORE, THAT IS THAT THE COBAILEE HAS DOMINION CONTROL OF THE VEHICLE AND IS EQUALLY RESPONSIBLE FOR THE NEGLIGENCE OF THE BAILEE OF THAT AUTOMOBILE WHO, IS THE DRIVER, YES. THE ANSWER TO THAT IS A PASSENGER INJURED BY THAT DRIVER, BAILEES ARE RESPONSIBLE FOR THAT. AS WELL AS, IN THAT CONTEXT, THE OWNER 6 THE VEHICLE -- THE OWNER OF THE VEHICLE WHO ALLOWED THESE BAILEES TO HAVE THE DOMINION AND CONTROL OF THE VEHICLE. YES. THE INNOCENT PASSENGER, NONCOMPANY BAILEE, WOULD HAVE ACTIONS -- NONCOBAILEE, WOULD HAVE ACTIONS AGAINST THE BAILEE, CONSISTENT WITH THE WHOLE IDEA OF WHAT A BAILEE IS.

AND IF I UNDERSTAND, THE COBAILEE, IN THIS PARTICULAR CASE, WAS JUST SIGNED ON AS AN ADDITIONAL DRIVER?

WAS SIGNED ON, PAID FOR, LISTED, LICENSE, EVERYTHING ABOUT IT, YES. DID NOT, I BELIEVE, THE ONLY THING, DID NOT, I BELIEVE, SIGN AS RENTER. THAT IS IT.

IS THIS A VIABLE ISSUE WHETHER OR NOT THIS IS A COBAILEE OR NOT? ARE YOU IN DPITS ON THAT?

WE ARE IN DISPUTE. WELL, THEY HAVE DISPUTED THAT -- ARE YOU IN DISPUTE ON THAT?

WELL, THEY HAVE DISPUTED THAT. THEY HAVE SAID IT IS A FACTUAL ISSUE. IT IS NOT SUBJECT TO SUMMARY JUDGMENT. THAT IT IS -- THEY HAVE SAID THAT THE EVIDENCE THAT IS UNDISPUTED DOES NOT GIVE RISE TO A SUMMARY JUDGMENT. LET ME TELL YOU WHAT THE EVIDENCE IS THAT IS UNDISPUTED GEORGIA STUTTARD'S NAME WAS LISTED ON THE ALAMO RENTAL AGREEMENT AS AN ADDITIONAL DRIVER. HER LICENSE NUMBER APPEARS ON THAT AGREEMENT. SHE INTENDED TO DRIVE THAT VEHICLE, ACCORDING TO THE TESTIMONY OF HER HUSBAND. SHE, IN FACT, DROVE THE VEHICLE, AS A BAILEE OF IT. AND ALAMO CHARGED THE STUTTARDS FOR THIS ADDITIONAL DRIVER, AS PROVIDED IN THE AGREEMENT. THOSE FABLTHS ARE UNDISPUTED, AND I SAY TO YOU THAT THOSE FACTS -- THOSE FACTS ARE UNDISPUTED, AND I SAY TO YOU THAT THOSE FACTS, WITHOUT DOUBT, MAKE HER A COBAILEE. THERE IS THAT DISPUTE THOUGH. LET ME SEE IF I -- I WANT TO PUT, INTO A DIFFERENT CONTEXT FOR A MOMENT, I AM HAVING DIFFICULTY OH, YES, I CAN SEE. LET ME SAY THAT THERE ARE SOME OTHER CASES THAT HAVE TO DO WITH IT, AND I SAY TO YOU THAT THOSE ARE THE STATUTE OF LIMITATIONS CASES AND WHEN THE STATUTE BEGINS TO RUN AND ALL OF. THAT I THINK WE HAVE COVERED IT. THERE ARE A COUPLE OF CASES, LIKE VARIETY, PERKINS, AND ALL OF THOSE THAT, REALLY, HAVE TO DO WHEN SOMEBODY HAS EITHER GIVEN AWAY THE CAUSE OF ACTION, BY VIRTUE OF HAVING SETTLED IT DURING THEIR LIFETIME BEFORE THE DEATH OCCURS AND SO FORTH. BUT THE IMPORTANT PART OF THIS, AND I THINK JUSTICE QUINCE, I THINK THIS DIRECTS THE ANSWER DIRECTS IT TO YOUR QUESTION. IF EVERYONE, A WORKER COVERED BY WORKERS COMP, A POLICEMAN OR FIREMAN, INJURED IN THE PERFORMANCE OF THE DUTY, A PERSON WHO GETS VOLUNTARILY DRUNK, AND THAT IS A OUT-OF-STATE CASE THAT WE DISCUSS IN OUR BRIEF, A PERSON WHO IS THE BAILEE OF A REBTED VEHICLE, IS -- OF A RENTED VEHICLE, IS SIMPLY STATUS. IF THOSE ARE SIMPLY STATUS, THEN WE HAVE OBLITERATED THE CLAUSE OF THE WRONGFUL-DEATH STATUTE THAT WOULD PREVENT SURVIVORS FROM HAVING CAUSES OF ACTION THAT THEIR DECEDENT DID NOT HAVE, AND WE WOULD HAVE READ IT OUT OF THE STATUTE. THAT IS WHAT ALLY HAS DONE.

MR. PIERCE ONE, YOUR TIME IS UP. THANK -- MR. PEARSON, YOUR TIME IS UP. THANK YOU VERY

MUCH. REBUTTAL?

GOOD MORNING. IN THE BRIEF TIME THAF, I WOULD LIKE TO ADDRESS, VERY DIRECTLY, THE DISCUSSION OF WHETHER OR NOT THE CIRCUMSTANCES IN THIS CASE IN HERE IN THE TORT OR WHETHER OR NOT THEY ARE STATUS, BECAUSE I THINK THEY FRAME THAT ISSUE. ALSO IN SEVERAL COURTS, THE SHIVER DECISION HAS CONTINUING VITALITY IN THIS STATE, NOT ONLY BECAUSE OF THE DECISION, ITSELF, BUT ALSO BECAUSE OF THE PROGENY OF SHIVER, DRESS LETTER, PERKINS AND OTHERS, AND THEISH -- DRESS LETTER -- DRESSLER, PERKINS AND OTHERS, AND THE ISSUE --

WHY NOT RYDELL AND OTHERS?

BECAUSE OF THE ABILITY OF THE WRONGFUL-DEATH STATUTE AND THE RIGHTS CREATED BY THAT STATUTE

I KEEP HAVING DIFFICULTY WITH THE PROBLEM OF THE SOUTHERN CASE IS SIMPLY A DOCTRINE OF HAVING TO DO WITH IMPTATION OF LIABILITY. WHO IS LIABILITY GOING TO BE IMPUTED TO? RADELL SAYS IT IS GOING TO BE IMPUTED TO ALL OF THE BAILEES, AND IT SEEMS TO ME THAT -- I AM HAVING A HARD TIME WHY THAT DOESN'T ANSWER THE QUESTION.

WELL, THE DANGEROUS INSTRUMENTALITY DOCTRINE IS A DOCTRINE, AS YOU KNOW, NOT BASED ON FAULT, BUT BASED ON THE CONCEPT THAT THE VEHICLE AT ISSUE HERE IS ONE THAT CAN CAUSE CARNAGE, AND THEREFORE THE RESPONSIBILITY TO, THE FINANCIAL RESPONSIBILITY OF THAT VEHICLE, SHOULD BE SPREAD AS REASONABLY AS POSSIBLE. BUT THE WRONGFUL-DEATH STATUTE IN THIS CASE CREATED CERTAIN RIGHTS IN THE RIGHTS OF THE BENEFICIARIES. THE FACT THAT JULIA STUTTARD, THE PASSENGER AND ARGUABLY THE COBAILEE OF THIS CASE, COULD NOT IMPUTE THE NEGLIGENCE OF THE DRIVER TO THE OWNER OF THE VEHICLE, IS OF NO MOMENT TO THE CHILDREN, WHO VIEW THIS CASE FROM A DIFFERENT PERSPECTIVE, THAT IS THROUGH THE RIGHTS GRANTED TO THEM THROUGH THE WRONGFUL-DEATH STATUTE. FROM THEIR VIEW, FROM THE EYES OF THE CHILDREN, THEIR MOTHER WAS A BELTED, RIGHT FRONT SEAT PASSENGER, WHO WAS A NONNEGLIGENT PARTY. HER DEATH WAS CASED BY THE -- WAS CAUSED BY THE UNNORTH NATIONAL NEGLIGENCE OF THEIR FATHER. THAT VEHICLE WAS SUPPLIED TO THE FATHER BY THE RENTAL CAR COMPANY, AND UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE, THE ENTITY THAT SUPPLIED THE VEHICLE TO THE PERSON WHO CAUSED THE NEGLIGENCE IS LIABLE TO THESE CHILDREN, BECAUSE SOMETHING OF THEIRS, PARTICULARLY, WAS TAKEN AWAY.

UNDER RAID HE WILL -- UNDER RADELL, SHE ENTRUSTED THE VEHICLE TO THE HUSBAND.

UNDER RADELL, AND AS -- AND UNDER SHIVER, WHEN YOU TAKE THE TWO OF THEM TOGETHER, THE QUESTION HAS TO BE WHETHER THAT DISABILITY, TO HER, IS STATUS-RELATED, OR WHETHER IT INHERES IN THE TORT, ITSELF, AND I WANTED TO BRIEFLY RESPOND TO THE QUESTION AS TO WHETHER IT IN HEARS TO THE TORT ITSELF. THE WORKERS COMP STATUTE HAS A SITUATION WHICH ALLOWS FOR CIRCUMSTANCES IN DEATH. THE SAME IS TRUE FOR A GUEST STATUTE. IT ACTUALLY SPEAKS TO THE DEATH OF A PARTY. THERE YOU HAVE A CONFLICT BETWEEN THE DEATH STATUTE AND THE WRONGFUL-DEATH STATUTE ON THE ONE HAND AND OUR WRONGFUL-DEATH STATUTE ON THE OTHER. THE CASE OF THE FIREMEN'S RULE, WHICH IS A LITTLE CLOSER IN OUR CASE, BUT THE FIREMEN'S RULE IS NOT A STATUS-RELATED CASE AT ALL. IT IS NOT SIMPLY THE STATUS AFTER FIREMAN OR A POLICEMAN. WHAT THE FIREMEN'S RULE APPLIES TO IS THE ACTIVITY OF THE POLICEMEN. SOMEONE WHO CALLS ON THE PHONE IN FEAR OF THEIR LIFE, THEY HAVE TO ASSUME THAT THEY CALL A POLICE OFFICER TO THEIR PROPERTY TO ARREST SOMEONE WHO IS BURGLARIZING THE HOUSE, THAT IS THE STATUS OF THE POLICE OFFICER IN THIS PARTICULAR CASE, BUT IN THIS CASE, IT IS MERELY THE STATUS OF MRS. STUTTARD AS THE COBAILEE. THAT STATUS, UNDER THE ALLMAN DECISION --

JUSTICE SHAW HAS A QUESTION. I ASKED OPPOSING COUNSEL THE SAME QUESTION. IS THERE A DISPUTE AS TO WHETHER OR NOT THERE IS A COBAILEE?

THERE IS A SERIOUS DISPUTE, AND THE SIMPLE FACT IS THAT, IN ORDER TO ESTABLISH A BAILEE RELATIONSHIP, YOU HAVE TO HAVE EVIDENCE TO PROVE IT. THERE IS NO -- OF COURSE THAT EVIDENCE CAN BE SUBJECT TO DIFFERENT INTERPRETATION. IF YOU HAVE EVIDENCE. THE ONLY EVIDENCE IN THIS CASE IS SIMPLY THAT HER NAME APPEARS ON THE RENTAL AGREEMENT.

I UNDERSTAND.

MAY I JUST FOLLOW-UP ON THAT? HOW DO YOU GET AROUND THE RADELL CASE? MRS. RADELL DIDN'T EVEN HAVE A DRIVER'S LICENSE, DID SHE, IF YOU LOOK AT THE THIRD DIRECT OPINION IN THAT SDMAS.

HER DRIVER'S LICENSE DEFINITELY DID APPEAR ON THE RENTAL AGREEMENT. NO QUESTION ABOUT THAT. AND THE NAME APPEARS.

DID MRS. RADELL'S NAME APPEAR OR DID SHE HAVE A DRIVER'S LICENSE?

I DON'T KNOW.

THANK YOU, COUNSEL. YOUR TIME IS UP. THANK YOU FOR YOUR ASSIST AND ON THIS CASE.