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Linda Hagan v. Florida Coca-Cola Bottling Co.

THE NEXT CASE IS HAGAN VERSUS COCA-COLA BOTTLING COMPANY. I AM RECUSED ON THAT CASE AND SO JUSTICE SHAW WILL PRESIDE.

GOOD MORNING, YOUR HONORS. MY NAME IS RUSS BOHN FROM WEST PALM BEACH AND WITH ME IS DONALD WATSON, REPRESENTING ONE OF THE PARTIES BELOW. THE FIRST THING IS THAT EVERY COURT, EVERY JUDGE WHO HAS HANDLED ONE OF THESE CLAIMS WOULD LIKE ME TO MAKE, AND THAT IS COULD YOU PLEASE TAKE ON DIRECTLY, BECAUSE I THINK IT MAY GET INVOLVED IN OUR DISCUSSION, BUT TAKE ON DIRECTLY AND RESOLVE THE CONFLICT IN THE CASES OF THE DEFINITION OF THE "IMPACT RULE". THE CONFLICT IS SOME CASES SAY THAT PERSONAL INJURIES MUST STEM FROM THE EMOTIONAL STRESS. OTHERS SAY EMOTIONAL STRESS MUST DERIVE FROM THE INJURIES, AND SPECIFICALLY TANNER VERSUS HARTOG AND ARCHER VERSUS HUMANA, QUOTE, SAYS THE EMOTIONAL DAMAGE THAT IS ENCOUNTERED MUST STEM FROM THE INJURIES, BUT IN ZELL VERSUS MEEK, THE COURT SAID PLAINTIFF MUST SUFFER EMOTIONAL INJURY CAUSED BY THE PSYCHOLOGICAL TRAUMA I AM NOT TALKING ABOUT APPLICATION OF THESE PARTICULAR CASES. THIS IS DEFINITION OF THE GENERAL RULE, AND PEOPLE SHAKE THEIR HEADS AND IT CAUSES PROBLEMS.

THAT WOULD BE VERY NICE, BUT IN THIS CASE, ISN'T THE WHOLE PROBLEM THAT THERE WERE NO PERSONAL INJURIES THAT EITHER OF YOUR CLIENTS SUSTAINED?

YES, YOUR HONOR.

ALL RIGHT. SO IT WOULD BE VERY NICE TO STRAYS ENOUT ALL --

JUST TO TAKE THAT OPPORTUNITY, BECAUSE THERE IS A LOT OF TIME WASTED, BELOW, BY JUDGES AND LAWYERS, THINKING ABOUT IT.

IS YOUR POSITION IN THIS CASE THAT, WHEN THE COCA-COLA WAS INGESTED, THAT THERE WAS AN IMPACT?

YES. AND THAT IS BASED ON THE DOYLE CASE, AS YOU KNOW, WHICH, IN HUMANA, JUSTICE OVERTON CONSTRUED AS MEANING THAT INGESTION OF FOOD IS AN IMPACT. NOW, THE MATTER IS A LITTLE UNCLEAR, BECAUSE IN DOYLE, THE COURT QUASHED THE PORTION OF THE CASE BEFORE IT THAT APPLIED THE "IMPACT RULE", BECAUSE IT SAID AT LEAST IN CASES OF INGESTION OF FOOD, WHAT YOU ARE, REALLY, DEALING WITH, IS A BREACH OF WARRANTY ISSUE. YOU, STILL, MUST HAVE AN INJURY, BUT THE IMPACT ASPECT OF THE IMPACT RULE DOES NOT APPLY.

THIS WASN'T PLED AS A BREACH OF WASHINGTON I, WAS IT?

NO, IT WASN'T. BUT WE THINK THE IMPACT IS CLEARLY THERE IN DOYLE, AND IF THERE IS ANY BLANKET OF CLARITY ABOUT THAT, IF THE COURT AGREES WITH US, WE WOULD LIKE THE COURT TO SAY THAT.

AS YOU WORK YOUR WAY, YOU KNOW, DOWN THIS PATH, DOESN'T THIS SEEM TO BE A RATHER UNUSUAL CONTEXT TO CERTIFY THIS HUGE QUESTION ABOUT THE "IMPACT RULE"? THAT IS THAT THIS IS CERTAINLY AN UNUSUAL CONTEXT TO PRESENT US WITH THE -- THIS MUCH BROADER UNDERLYING PRINCIPLE ABOUT THE "IMPACT RULE". YOU, YOURSELF, OBVIOUSLY, TAKE THE

POSITION, WELL, THERE WAS AN IMPACT. MY CLIENTS CAME IN IMPACT WITH -- IN CONTACT WITH SOMETHING, HERE, WHEN THEY DRANK THE COKE, SO I AM HAVING A LITTLE DIFFICULTY TRYING TO FIT THIS IN.

ALL RIGHT. I UNDERSTAND YOUR POINT, BECAUSE THE COURT WAS VERY CLEAR IN ITS OPINION.

IN THE INTELLECTUAL ANALYSIS, HERE, OF THE "IMPACT RULE", FACTS AND CIRCUMSTANCES AND LAW OVER HERE AT ONE SIDE, THEN WE HAVE THE BUG IN THE COCA-COLA BOTTLE CASE COME UP, AND I AM TALKING ABOUT THE IMPACT. HELP ME A LITTLE BIT, BECAUSE I HAVE SOME CONCERN ABOUT WHETHER WE SHOULD BE ADDRESSING THE "IMPACT RULE" IN THE CASE HERE.

ALL RIGHT. JUSTICE HARDING MADE VERY CLEAR, IN THE GONZALEZ CASE, AND I THINK IT IS THE ONLY CASE WHICH STATES IT, THAT THE "IMPACT RULE" HAS TWO COMPONENTS. IMPACT AND INJURY. THEY ARE NOT THE SAME. THEY ARE NOT INTERCHANGE ABLE. THEY ARE SEPARATE. THIS CASE, AS YOU KNOW FROM OUR BRIEFING, INVOLVES THE INJURY COMPONENT, AND I THINK IT IS A GOOD CASE TO BRING THAT, AND I THINK, TO BE HONEST, I WAS SURPRISED THAT JUDGE SHARP JOINED IN A CERTIFICATION WITH JUDGE DOUCKS, AFTER THE THOROUGH OPINION THAT SHE WROTE, BUT THIS IS A CASE WHERE, IN THE COURT'S VIEW, THERE DOESN'T SEEM TO BE ANY DOUBT THAT WE HAD AN IMPACT WITH SOMETHING REALLY OUTRAGEOUS. AND SO THERE IS NO QUESTION, HERE, ABOUT AN IMPACT. THE QUESTION IS, AND MAYBE WHY THIS CASE IS A GOOD CASE FOR IT, WHEN THE IMPACT AND, BY THE WAY, THE IMPACT AND INGESTION IS NOT A SLIGHT IMPACT. IT IS AS AS DEEP AND INVASIVE AS IMPACT CAN GET. WHEN YOU HAVE A CASE LIKE THIS, WHERE WHAT IS INGESTED IS SO OUTRAGEOUS AND THE PEOPLE ARE OBVIOUSLY UPSET ABOUT A LOT OF THINGS, SHOULD THERE NOT BE A REEXAMINATION OF THE "IMPACT RULE", AND, YOUR HONOR, IF YOU NOTICE THE CERTIFIED QUESTION IS WHETHER THE RULE OUGHT TO BE ABOLISHED OR AMENDED. THEY DIDN'T JUST SAY ABOLISHED, AND I COULD NOT, AS COUNSEL FOR PLAINTIFFS IN THIS CASE, TAKE ON THE IMPACT ASPECT OF THE RULE, BECAUSE WE HAVE IMPACT HERE. AND I HAVEN'T GOT A PRAYER WITH YOU, IN GETTING YOU TO WITHDRAW FROM THE "IMPACT RULE". TO BE PERFECTLY HONEST, I THINK THE COURT IS CONVINCED OF ITS VALUE. WHAT WE ARE CONCERNED ABOUT IS THE INJURY COMPONENT, AND THAT IS, REALLY, THE ONLY COMPONENT THAT IS AT ISSUE IN THIS CASE.

BUT ISN'T THAT, ALSO, NOW, A SEPARATE, NARROW ISSUE? WE ARE, REALLY, TALKING ABOUT WHAT THE INJURY HAS TO BE, IN SORT OF A, IF YOU WANT TO CALL IT AN UNUSUALLY SITUATION WHERE THERE IS A -- AN UNUSUAL SITUATION WHERE THERE IS A FOREIGN SUBSTANCE, YOU KNOW, UNDER THE DEFENDANT'S CONTROL, AND THE PLAINTIFF HAS AN EMOTIONAL OR MENTAL REACTION, AND AREN'T WE, NOW, GOING OFF ON SOMETHING, REALLY, SEPARATE FROM THE "IMPACT RULE", AND WE ARE JUST TALKING ABOUT WHETHER OR NOT DAMAGES SHOULD BE ALLOWED FOR THIS, THE MENTAL STRESS, THE EMOTIONAL DAMAGES, HERE, AND REACTING TO SOMETHING THAT THE DEFENDANT, REALLY, HAS CAUSED, AND SOME JURISDICTIONS SAY YES, YOU KNOW, IF YOU HAVE GOT A FOREIGN SUBSTANCE IN THE BOTTLE AND IT CAUSES THIS -- WE ARE GOING TO ALLOW DAMAGES FOR STRESS, BECAUSE WE THINK THE DEFENDANT SHOULD BE RESPONSIBLE FOR THAT. OTHER JURISDICTIONS SAY NO. IT DOESN'T CAUSE SOME ACTUAL PHYSICAL INJURY THEY DEFINE IN VARIOUS WAYS, THAT WE ARE NOT, BUT AS WE ARE WORKING OUR WAY THROUGH THIS, AREN'T WE GETTING FURTHER AND FURTHER AWAY, THEN, FROM THIS VERY BROAD QUESTION THAT HAS BEEN SENT UP TO US, ABOUT WHETHER WE SHOULD ABOLISH THE "IMPACT RULE"? THAT DOESN'T HAVE ANYTHING TO DO.

THAT WASN'T A CERTIFIED QUESTION, YOUR HONOR. THE CERTIFIED QUESTION WAS ABOLISHED OR AMEND. I CHECKED THAT, BECAUSE I WAS CONCERNED ABOUT THAT, MYSELF, AND WHAT WE ARE ASKING IS AN AMENDMENT OF THE "IMPACT RULE", NOT THE IMPACT COMPONENT OF THE "IMPACT RULE", BUT THE PERSONAL INJURY COMPONENT, AND WE RECOMMEND THAT IT NOT BE -

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WHAT IS WRONG WITH EXISTING LAW, WITH REFERENCE TO FOREIGN SUBSTANCES IN SEALED CONTAINERS, THAT PEOPLE ARE EXPOSED TO? WHAT WOULD YOU SAY THE STATE OF THE LAW IS, IN FLORIDA, AND NATIONWIDE, ABOUT WHETHER OR NOT THERE IS A PROPER CLAIM FOR DAMAGES, UNDER CIRCUMSTANCES LIKE THIS, WHERE THERE IS AN EMOTIONAL REACTION OR DISTURBANCE? WHAT IS THE STATE OF THE LAW ON THAT? BECAUSE THAT IS SORT OF A VERY FINITE BODY OF CASE LAW, IS IT NOT?

MOST OF THE CASES, AND I THINK MY OPPONENT SPELLS THEM OUT IN HIS BRIEF WELL, MOST OF THE CASES IN INGESTION CASES OF FOOD, ACROSS THE COUNTRY, DO REQUIRE AN INJURY, BECAUSE MOST OF THE CASES, ALL ABOUT 14 -- ALL BUT 14 THAT I WAS ABLE TO PERCEIVE AND THERE MAY BE MORE IN THE LAST YEARS, BUT REQUIRE INJURY IN THE INFLECTION OF EMOTIONAL DISTRESS, BUT OUR POINT, YOUR HONORS, IN THIS CASE IS WE ARE NOT ADVOCATING OF DOING AWAY WITH THE IMPACT REQUIREMENT. IF YOU HAVE THE IMPACT REQUIREMENT, WHICH ACTS AS A LIMITING PRINCIPLE, BASED ON PUBLIC POLICY, AS WELL AS, AGAIN, IN GONZALEZ, OUT OF PROSER, AN INDICATION -- PROSSER, AN INDICATION OF AUTHENTICITY, IF YOU HAVE THE IMPACT, THEN GIVEN THE STATE OF LITIGATION, CAN WE, STILL, JUSTIFY PERSONAL INJURY IN THIS CONTEXT OF EMOTIONAL DISTRESS, AND THE BEST EXAMPLE THAT I CAN GIVE YOU AND MY ESSENTIAL POINT, HERE, IS THIS, THE WRONGFUL-DEATH STATUTE PERMITS RECOVERY FOR EMOTIONAL DAMAGES, MENTAL PAIN AND SUFFERING. THE COURT, IN ITS OPINIONS, HAS PERMITTED RECOVERY IN CASES OF INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS, BASED ON AN INTENTIONAL, OUTRAGEOUS ACT DONE TO THE PLAINTIFF. AGAIN, EMOTIONAL DAMAGES. IN NEITHER CASE IS THE PLAINTIFF REQUIRED TO SHOW A PHYSICAL INJURY. IN BOTH CASES, THE PROOF OF THAT EMOTIONAL DISTRESS IS NO DIFFERENT THAN THE PROOF OF THE EMOTIONAL DISTRESS IN THIS CONTEXT. SAME KIND OF EVIDENCE, AND IN ALL THREE INSTANCES, YOU HAVE A LIMITING PRINCIPLE, BASED ON PUBLIC POLICY, AS WELL AS AN INDICATION OF AUTHENTICITY, AND THAT IS IN THE CASE OF THE WRONGFUL-DEATH STATUTE, UNFORTUNATELY, A DEATH IN THE FAMILY. IN THE CASE OF AN INTENTIONAL INFLECTION CASE, THE OUTRAGEOUS BEHAVIOR OF THE DEFENDANT, AND IN A CASE OF NEGLIGENT INFLECTION, YOU HAVE THE REQUIREMENT OF AN IMPACT. SO --

ARE YOU SAYING, THEN, THAT THE PREMIER FACT OF THE IMPACT, IN THIS CASE THE DRINKING OF SODA, IS ENOUGH TO DEMONSTRATE YOUR EMOTIONAL DISTRESS? IS THAT WHERE YOU --

WHAT I AM SAYING IS THAT, IF THERE IS A IMPACT, THEN YOU SHOULD BE ABLE TO MAKE A CLAIM FOR EMOTIONAL DISTRESS WITHOUT REQUIRING A PHYSICAL INJURY, BECAUSE WE DON'T REQUIRE IT IN THE OTHER CONTEXT, INTENTIONAL INFLECTION OR WRONGFUL DEATH, AND IN NEITHER OF THOSE CASES IS THERE AN INJURY AND THE ANSWER IS THE SAME.

THE STATUTORY RIGHT, WRONGFUL-DEATH, IS THAT A STATUTORY CLAIM?

YES, IT IS.

WHAT ABOUT INTENTIONAL INFLECTION?

THAT IS NOT.

THAT IS A COURT MAY --.

RIGHT. AND IN BOTH INSTANCES, THERE IS THE LIMITING PRINCIPLE OF DEATH AND OUTRAGEOUS ACT. LET ME JUST TELL YOU WHAT I AM PROPOSING, FROM THE CASES, JUST REAL BRIEFLY. IN THE RODRIGUEZ CASE, THE COURT ADDRESSED IT AND SAID THAT WE OUGHT TO RELY ON THE CONTEMPORARY SOPHISTICATION OF THE MEDICAL PROFESSION, AND THE ABILITY OF THE COURT AND INJURY TO WEED OUT DISHONEST CLAIMS. THAT IS WHAT WE DO IN WRONGFUL-DEATH. THAT IS WHAT WE DO IN INTENTIONAL INFLECTION. IF WE ARE NOT DOING AWAY WITH AN IMPACT REQUIREMENT, TO LIMIT THE SCOPE OF THIS, THEN, WHEN SOMEBODY HAS BEEN

IMPACTED BY SOMETHING AS OUTRAGEOUS AS WHAT HAPPENED HERE, WHY SHOULD THEY NOT BE ABLE TO PROVE THEIR CASE, AS THE PLAINTIFFS IN THOSE OTHER TWO INSTANCES, JUST BECAUSE THEY HAVEN'T GOT A PHYSICAL INJURY.

DO YOU SEE INGESTION OF A NASEOUS, DISGUSTING SUBSTANCE, AS AN IMPACT CASE? THAT IS A IMPACT CASE IN YOUR OPINION.

YES. WELL, DEPENDS ON HOW YOU INTERPRET GOIL. DOYLE SEEMED TO INDICATE, IN CASE OF FOOD, IT IS REALLY A BREACH OF WARRANTY, BECAUSE YOU QUASHED THE IMPACT ON THE FOURTH DISTRICT CASE THERE, AND IN HEWELL AND A THE COURT SAID THERE ISN'T AN IMPACT. THAT WAS THE INTERPRETATION OF IT, WHEN LISTED OF THE PRIOR CASES.

DO YOU THINK IT IS AN IMPACT CASE?

I THINK IT IS A IMPACT CASE, BECAUSE THE INGESTION IS ONLY IN THE AREA OF INGESTION OF FOOD. SOMEONE COULD INGEST SOMETHING ELSE, THEORETICALLY, AND SO IT WOULDN'T AND BREACH OF WARRANTY, BUT IN BOTH INSTANCES IT IS THE SAME THING. IT IS LIKE AN EAGLE PICTURE VERSUS COX, WHERE THE COURT HELD THAT INHALATION IS INGESTION, SO I THINK IT IS A IMPACT.

SO IN THIS CASE, MY UNDERSTANDING IS THAT OUR LAW, IN FLORIDA, IS SUCH THAT SOMEBODY COULD INGEST A COCA-COLA THAT HAD -- JUSTICE SHAW, THAT, IS THAT A DISGUSTING OR NASEOUS OR LOATHE SOME, WE ARE AVOIDING WHAT THE PLAINTIFF THOUGHT IT WAS AND, APPARENTLY, SO DID COCA-COLA, IN THE TESTIMONY, BUT THAT THEY CAN SUSTAIN RELATED MEDICAL BILLS. THEY CAN UNDERGO THE TREATMENT THAT THEY WENT TO, WHICH IS DIRECTLY RELATED TO IT, BUT IF THEY DON'T THROW UP AFTER THEY DRINK THE SUBSTANCE, THEN WE ARE NOT ALLOWING THEM TO RECOVER. IS THAT THE STATE --

THAT IS THE STATE OF THE LAW TODAY.

SO THESE PLAINTIFFS WOULDN'T BE ABLE TO ARE RECOVER THEIR MEDICAL BILLS THAT THEY RECOVER THAT THEY INCURRED.

NOTHING. NOTHING.

NOW, ONE OF THE BRIEFS SEEMED TO SAY, AND THIS IS WHEN WE ARE TRYING TO SAY ARE WE GOING TO LIMIT THESE CLAIMS OR SHOULD WE LET THE JURY DECIDE HOW TO LIMIT THE AMOUNT OF DAMAGES, THAT WE CAN HAVE THE "IMPACT RULE", BUT IF THERE IS EMOTIONAL DAMAGES, IT SHOULD ONLY BE IF THERE IS SERIOUS EMOTIONAL DISTRESS. I SAW THAT IN THAT MAIN CASE.

RIGHT. I AM THE ONE WHO PUT THAT IN. IF I CAN EXPLAIN THAT.

THE JURY IS GOING TO HAVE TO DECIDE IF THIS IS A CASE THAT IS SERIOUS. YOU KNOW. EMOTIONAL DISTRESS.

THAT IS THE OTHER PART OF THIS THAT I AT LEAST THE WANTED TO GET INTO, SO -- THAT I AT LEAST WANT TO GET INTO, SO YOU WILL KNOW MY MAIN POINT OF THE CASE. RODRIGUEZ IS HAWAII AND MOGAN IS CALIFORNIA. THE CASE THAT I PRESENTED FROM THE GEORGETOWN LAW REVIEW ARTICLE, INDICATED A CASE BETWEEN A PRIMARY AND SECONDARY RESPONSE. I AM NOT AN EXPERT, BUT PRIMARY IS SOMETHING THAT IS TEMPORARY AND DOES NOT RESULT IN PHYSICAL DETERMINATIONS, A PRIMARY RESPONSE TO AN EMOTIONAL DISTRESS. A SECONDARY IS SOMETHING THAT IS LONG TERM AND DOES RESULT IN PHYSICAL PROBLEMS. WHAT THE COURTS, IN THOSE CASES, SAID WAS THE BEST THING FOR A PLAINTIFF IS TO HAVE A PRIMARY AND A SECONDARY, BUT THAT A PRIMARY REACTION, ALONE, JUST BECAUSE THE PRIMARY

REACTION SHOULD NOT BE DISMISSED AND THE COURT, IN BOTH RODRIGUEZ AND MOLIAN SAID, IN CASES WHERE THE MEDICAL DISTRESS IS NOT OF A MEDICALLY SIGNIFICANT NATURE, AND I SUPPOSE IF WE ARE NOT DEALING WITH AIDS EXPOSURE IN THIS CASE, THIS CASE IS AN EXAMPLE OF THAT, THE STANDARD OF PROOF IS SOME GUARANTEE OF GENUINENESS IN THE CIRCUMSTANCES OF THE CASE. AND IN -- WE HAVE THAT, HERE, BECAUSE YOU CAN'T GET WORSE THAN WHAT WAS IN THIS BOTTLE. IT TIES AWAY, REGARDING THE HARM HE WOULD LESS -- HARMLESS MOUSE. WHICH IS WORSE?

YOU ARE INTO YOUR REBUTTAL TIME.

I AM GOING TO CONTINUE WITH ONE THING, AND THAT IS NOT AN HIV CASE. I AM NOT GOING TO SPEND A LOT OF TIME ARGUING THOSE STANDARDS. I THINK THE MAJORITY CASE IS THE ONLY THING WE CAN ADOPT. THE ONLY THING WE CAN RELY ON IS THE REASONABLE STANDARD, BUT I JUST WANT TO DIRECT THE COURT'S ATTENTION TO THE AREA OF THE BRIEF THAT CONTAINS WE DIDN'T LITIGATE JUST AN HIV CASE. THESE WOMEN WERE UPSET, JUST BY WHAT IT WAS, AND THE ONE LADY SAID I DIDN'T KNOW WHAT IT WAS, AND SHE WAS CONCERNED ABOUT HER DAYCARE BUSINESS, BECAUSE PEOPLE WERE BECOMING SO AWARE AND SO FRIGHTENED OF DIFFERENT DISEASE. IN THE REMITTED AMOUNT, THIS VERDICT IS REASONABLE FOR WHAT THESE LADIES SUFFERED, AND I WOULD LIKE TO SAVE SOME TIME FOR REBUTTAL, IF THERE ARE NO OTHER QUESTIONS.

HOW DOES THE WHOLE IDEA, THAT THIS WAS NOT WHAT THE LADIES THOUGHT WAS IN THE BOTTLE BUT SOME KIND OF MOLE PLAY INTO THIS?

FOR LACK OF A BETTER WORD, THIS WAS A MAXIMUM GROSS OUT. IT WAS ABHORRENT WHAT THEY SWALLOWED.

OR WHAT THEY THOUGHT THEY SWALLOWED.

WHAT THEY THOUGHT THEY SWALLOWED, THE JURY FOUND IT. THEY NEVER CROSS-APPEALED THAT FINDING NOR DID THEY OBJECT TO IT ON VERDICT AT TRIAL THAT IT WAS A USED CONDOM, SO WITH REGARD TO THE FIFTH DISTRICT'S RESERVATIONS, WE HAVE TO ASSUME, BASED ON THIS RECORD, THAT THAT WAS IT, AND THAT IS WHAT THEY BELIEVED IT WAS, SO IF WE DON'T HAVE A FEAR OF AIDS ISSUE HERE, WE HAVE AN EMOTIONAL DISTRESS ISSUE, LOSING THEIR BUSINESS, BEING RIDICULED. THE ONE LADY WAS WORRIED ABOUT THE RELATIONSHIP WITH HER HUSBAND AS A RESULT OF THIS, BECAUSE SHE DIDN'T KNOW WHAT MIGHT RESULT, AND, YOU KNOW, IT WENT AROUND TOWN.

BUT GETTING OVER, INTO, REALLY, THE HIV AND THE AIDS THING, IS IT POSSIBLE, HERE, TO SAY -- IS IT POSSIBLE, HERE, TO SAY SOMETHING LIKE, WELL, ALL OF THE EVIDENCE OR THE ARGUMENTS ABOUT THE FEAR OF AIDS OR HIV WAS SORT OF HARMLESS ERROR? IN THE DAMAGES SITUATION HERE.

YOUR HONOR, THAT IS THE FACT THAT IT WAS A CONDOM ON THE SCREEN, WHICH CAN CARRY ALL SORTS OF DISEASE. JUST THE IDEA THAT THE WORD WAS OUT THAT THEY SWALLOWED FROM A BOTTLE A USED CONDOM, THAT, ALONE, IS SOMETHING WITH DAMAGES, IT IS A MATTER OF NOT JUST HIV BUT ANYTHING ELSE A CONDOM COULD CONTAIN.

BUT THE WAY THIS CASE WAS ARGUED WAS THAT IT WAS A FEAR OF AIDS AND HIV.

THAT WAS THEIR GREATEST FEAR, BUT AS THE FIFTH DISTRICT SAID, THAT WAS THEIR GREATEST FEAR. THAT WAS NOT THE ONLY FEAR. THAT IS THE POINT I AM TRYING TO MAKE TO YOU NOW.

BUT THE POINT IS IT COULD BE HARMLESS, COULDN'T IT? EVEN IF YOU HAVE A CAUSE OF ACTION HERE.

I UNDERSTAND THE QUESTION, NOW, YOUR HONOR.

YOUR COMMENT ABOUT THE MAJORITY RULE AND CLEARLY THAT WOULD BE HARMFUL, IN A CONTEXT LIKE THIS.

I DON'T THINK SO, BECAUSE OF THE FACT THAT THE JURY -- YOU KNOW WHAT IT MIGHT BE, IF WE ARE NOT TALKING ABOUT A REMITTED AMOUNT, BUT IN TERMS OF WHETHER OR NOT THE JURY BELIEVED WHAT WAS THERE AND REGARDLESS OF WHETHER OR NOT THEY FELT WHAT IT WAS, IT WAS SO DISGUSTING, IT WAS HARMLESS ERROR. I AM SORRY. I DON'T UNDERSTAND THE NUMBERS. HOW MUCH TIME DO I HAVE? THERE IS A INSTRUCTION ON THE PODIUM AND YOU RECEIVED AN INSTRUCTION.

I AM SORRY. I DIDN'T UNDERSTAND IT. ANOTHER MARSHAL CAN TELL YOU HOW MUCH TIME YOU HAVE.

ALL RIGHT. THANK YOU.

MAY IT PLEASE THE COURT. RAOUL CANTERO FOR THE RESPONDENTS. IN ORDER TO GRANT RELIEF THAT THE PLAINTIFFS REQUEST IN THIS CASE, THIS COURT WOULD HAVE TO DO TWO MAJOR THINGS THAT IT HAS NEVER DONE BEFORE. FIRST OF ALL, IT WOULD HAVE TO ABOLISH THE "IMPACT RULE", WHICH HAS STOOD AS THE LAW OF THE STATE FOR OVER A CENTURY, AND WHICH IS THE LAW OF OVER 30 STATES IN THIS COUNTRY. SECOND OF ALL, IT WOULD HAVE TO GO WHERE NO OTHER COURT IN THE UNITED STATES HAS EVER GONE, AND THAT IS THAT, TO RULE THAT A PLAINTIFF MAY HAVE A CAUSE OF ACTION FOR THE FEAR OF CONTRACTING AIDS, WHERE THERE WAS NO HIV PRESENT ANYWHERE, AND WHERE THERE WAS NO SCIENTIFICALLY ACCEPTED METHOD OF TRANSMISSION FOR THAT DISEASE TO THE PLAINTIFF.

YOU CAN SEE THIS AS A PURE IMPACT CASE?

NO. I DON'T THINK IT IS A PURE IMPACT CASE, BECAUSE THERE ARE TWO LEVELS OF ANALYSIS. EVEN IF THE KBHACKT, EVEN IF THERE WAS -- EVEN IF THE IMPACT, EVEN IF THERE WAS IMPACT AND INJURY, OR EVEN IF THIS COURT ABOLISHES THE "IMPACT RULE" ALL TOGETHER, THE OVERWHELMING MAJORITY OF THE STATES THAT HAVE CONSIDERED THIS ISSUE HAVE HELD THAT THERE IS NO CAUSE OF ACTION IN CIRCUMSTANCES SUCH AS THIS ONE, WHICH IS EXACTLY WHAT THE FIFTH DISTRICT COURT OF APPEAL SAID, IN ITS OPINION. THIS IS A CASE WHERE NO OTHER COURT HAS HELD, IN THE PLAINTIFFS FAVOR, EVEN THE MOST LIBERAL COURTS, LIKE THE SECOND CIRCUIT, IN AFUELA CASE, WHERE THAT IS A LIBERALIZED STANDARD, EVEN IN THAT KIND OF CASE, THERE WAS A SCIENTIFICALLY ACCEPTED METHOD OF TRANSMISSION, AND IN THE ALVAREZ CASE OUT OF MARYLAND, THAT IS ONE OF THE FEW CASES HERE, THE DOCTOR ACTUALLY HAD AIDS.

SETTING ASIDE THE AIDS AND THE HIV CONCERN, WHY SHOULDN'T THERE BE AN ALLOWANCE FOR SOME RECOVERY IN A SITUATION LIKE THIS, OF WHETHER OR NOT IT IS PERCEIVED TO BE A CONDOM OR IT IS A COCKROACH OR WHATEVER, AND THE DEFENDANT HAS TOTAL CONTROL OF THAT PRODUCT AND SEALS IT UP, AND THEN AN INNOCENT CONSUMER BELIEVES THAT THEY HAVE JUST CONSUMED A COCKROACH, FOR INSTANCE, WHICH, I THINK, WE WOULD ALL AGREE THAT COMMON SENSE TELLS US THAT THESE ARE THE MOST DANGEROUS, IN TERMS OF CARRYING DISEASE AND SUCH AS THAT, SO WHY SHOULDN'T THERE BE, AT A FUNDAMENTAL LEVEL, SETTING ASIDE ALL OF THE AIDS AND HIV AND THE "IMPACT RULE", A CAUSE OF ACTION FOR THE MENTAL DISTRESS, EMOTIONAL DAMAGES THAT ARE CAUSED TO A CONSUMER BY THE DEFENDANT? AS I SAY, THAT HAS HAD CONTROL OF THIS PRODUCT THAT IT PUTS OUT, AND NOW YOU BELIEVE GENUINELY, THAT YOU HAVE CONSUMED A COCKROACH, FOR INSTANCE, AND YOU ARE JUST DISTRESSED FOR A WEEK OR TWO, YOU KNOW, WONDERING WHEN IS SOMETHING GOING TO HAPPEN TO YOU, NOW THAT YOU DRANK A DECEASED COCKROACH, WHATEVER. DOESN'T THAT

JUST SOUND LIKE SOMETHING THAT A COURT SHOULD RECOGNIZE THAT THERE OUGHT TO BE SOME COMPENSATION FOR? AGAIN, I AM SETTING ASIDE THE HIV OR THE AIDS OR SOMEBODY COMING IN AND SAY, WELL, AS A RESULT OF THAT, NOW I DIVORCED MY HUSBAND AND RAN AWAY TO WHATEVER?

FLORIDA COURTS HAVE CONSISTENTLY RULED THAT DAMAGES FOR EMOTIONAL DISSTRESS CAN BE RECOVERED IN FOOD INGESTION CASES, WHERE THERE IS SOME ATTENDANT PHYSICAL INJURY, AND THAT IS CONSISTENT WITH CASES FROM AROUND THE COUNTRY THAT REQUIRE SOME PHYSICAL INJURY, AS AN INDITIUM OF EVIDENCE OF THE CLAIM, AND AS THE JUSTICE SAID, THAT LEVEL IS VERY LOW. IT ONLY REQUIRES VOMITING. THAT IS THE EXTENT OF THE PHYSICAL INJURY.

WHY IN THE WORLD SHOULD IT TURN ON SOMETHING LIKE THAT, THAT IS THAT ONE PLAINTIFF THAT CONSUMES THE COCKROACH, OKAY, IS DISGUSTED, AND EMOTIONALLY DISTRESSED AND ALL OF THAT, BUT NOT TO THE POINT WHERE THEY VOMIT OR THROW UP, AND THEN THE SAME PERSON, THAT THEY HANDED THE BOTTLE TO THEM AND SAID YOU TAKE A DRINK, AND THAT PERSON HAS A WEAKER STOMACH, AND NOW THEY, BOTH, DISCOVER, AT THE SAME TIME, THAT THEY HAVE CONSUMED A PORTION OF A COCKROACH, BUT THIS ONE WITH THE WEAKER STOMACH THROWS UP -- STOMACH THROWS UP, AND SO WE SAY, WELL, BOY, YOU CROSSED THE THRESHOLD WHEN YOU THREW UP THERE, BUT THE OTHER PERSON THAT IS EVEN MORE DISTRESSED OVER IT, NO DAMAGES FOR YOU. ISN'T THAT A RATHER ARTIFICIAL OR IRRATIONAL LINE TO DRAW?

AS THIS COURT HAS SAID, AND I THINK IT WAS IN HUMAN, A THAT THIS COURT HAS DRAWN ARBITRARY LINES, BUT IN THAT CASE AND IN OTHER CASES, IN THESE IMPACT CASES, THE COURT SAID THAT SOMETIMES WE HAVE TO DRAW ARBITRARY LINES, IN ORDER TO ESTABLISH SOME INDITIUM OF THE GENUINE -- INDITIUM ABOUT THE EVIDENCE AFTER CLAIM.

I CAN SEE ABOUT THE SPURIOUSNESS OF THE CLAIM. THAT IS ONE THING. THAT IS THAT WE HAVE GOT TO DRAW SOME BRIGHT-LINES AND THAT IS THERE, BUT WHEN YOU ARE TALK ABOUT DISTINGUISHING BETWEEN PEOPLE THAT THROW UP OR JUST HAVE A SEVERE EMOTIONAL REACTION, IS THAT, REALLY, A FAIR LINE TO DRAW?

I THINK IT IS, JUSTICE, BECAUSE OTHERWISE IN FLORIDA, YOU ARE GOING TO HAVE A LAW WHERE ANY TIME THERE IS A FLY IN MY SOUP, AND I DON'T HAVE TO INGEST THE FLY, UNDER FLORIDA LAW. I JUST HAVE TO TAKE A SIP OF THE SOUP. NOW I HAVE A CAUSE OF ACTION AGAINST THE RESTAURANT, FOR NEGLIGENT INFLECTION OF EMOTIONAL DISSTRESS. AND I CAN ARTICULATE OTHER, AND YOU CAN THINK OF OTHER EXAMPLES OF SUCH INGESTION CASES, WHERE THE EMOTIONAL DISSTRESS IS DIM I KNOW MUST, AND DO YOU -- IS DIMINIMUS, AND DO YOU WANT TO CLOG THE COURT WITH THOSE TYPES OF CASES? THIS COURT HAS CLOGGED, IN IMPACT CASES, STATED THAT, THERE MUST BE A LEVEL OF HARM WHICH ONE MUST BE REQUIRED TO SUFFER, WITHOUT RECOMPENSE, AS THE PRICE TO BE PAID FOR LIVING IN AN ORGANIZEED SOCIETY.

BUT THEY BOUGHT A COCA COLA. YOUR CLIENT SELLS A PRODUCT. THIS IS, IN ESSENCE, A. OF A PRODUCTS LIABILITY CASE. I DON'T KNOW ABOUT THE FLY IN THE SOUP, BUT THERE IS NO QUESTION, IN THIS CASE, OF THE GENUINENESS OF THE CLAIM, THAT IS THAT THERE WAS SOME DISGUSTING SUBSTANCE IN THIS COCA-COLA. YOUR OWN, WHOEVER RECEIVED IT THOUGHT IT WAS A CONDOM, SO THEY FOUND OUT, NO, IT WAS PROBABLY A MOLD, BUT IT WAS NO LESS DISGUSTING TO A CONSUMER, SO THEY INCURRED \$8,000 IN MEDICAL EXPENSES. THEY HAD, ALTHOUGH I DID DON'T KNOW THE EXTENT TO WHICH THE FEAR OF AIDS CONSUMED THE CASE, BUT I UNDERSTOOD THAT THE TRIAL JUDGE RECOGNIZED THAT IT WAS LIMITED TO THE PERIOD OF TIME UNTIL THE SECOND HIV TEST WAS TAKEN. WHAT IS NOT -- WHAT IS NOT GENUINE ABOUT THIS AND WHAT IS NOT -- WHY AREN'T INJURIES CAPABLE OF DETERMINING WHETHER SOMETHING IS DIMINIMOUS OR NOT?

THAT IS --

I GUESS WHAT I AM SAYING IS WHY SHOULD YOUR CLIENT ESCAPE LIABILITY FOR HAVING PUT A DEFECTIVE PRODUCT IN THE MARKETPLACE THAT WAS -- KNOWING IT IS GOING TO BE CONSUMED BY CONSUMERS?

AS YOU POINTED OUT BEFORE, JUSTICE, THIS WAS NOT TRIED AS A PRODUCTS LIABILITY CASE OR A BREACH WARRANTY CASE. IT WAS TRIED AS A NEGLIGENT INFLICTION OF OF EMOTIONAL DISSTRESS CASE, BECAUSE AS JUSTICE ANSTEAD POINTED OUT, THE SOLE DAMAGES THAT THEY WERE CLAIMING WAS THE FACT THAT THEY FEARED AIDS OR SOME OTHER DISEASE.

AND THE MEDICAL EXPENSES?

THE MEDICAL EXPENSES WERE ASSOCIATED WITH HAVING TO TAKE TRIPS TO THE DOCTOR AND HAVING TO TAKE AIDS TESTS, WHICH THEY ARGUED WAS NOT.

DID YOU ARGUE BELOW, WITH THE JURY INSTRUCTION, THAT THE DAMAGES REASONABLY FLOW FROM THE DEFENDANT AND THAT IS SOMETHING THAT THE DEFENDANT CAN ARGUE, IS THAT THIS WAS NOT REASONABLE?

ON THE ISSUE AS TO WHETHER AIDS CAN BE --

THAT IS SOMETHING AS TO THE MEDICAL EXPENSES WERE REASONABLY INCURRED, THE STANDARD JURY INSTRUCTION COVERS THAT, DOESN'T IT?

MY POINT IS THE PLAINTIFFS IN THIS CASE DIDN'T SAY WE WERE GOODIES DIS GUSTED OF THAT FINDING, SOLELY BY THE FACT -- IN FACT WHEN THEY TASTED IT, THEY SAID IT TASTED LIKE WATER. IT TASTED FLAT, AND IT WAS ONLY WHEN THEY FEARED IT WAS A CONDOM AND THE AIDS FEAR CAME INTO PLAY, IT WAS DISGUSTING, I MAY CATCH A DISEASE. ONE OF THE PLAINTIFFS DIDN'T EVEN TELL HER HUSBAND ABOUT IT, BECAUSE SHE WAS AFRAID OF SCARING HER HUSBAND. THEY WERE AFRAID THAT OTHER PEOPLE HAD AIDS OR SOME OTHER DISEASE, SO YOU CAN'T EXTRACT THE AIDS PART OF THIS CASE, JUSTICE ANSTEAD, FROM THE DISGUST AND INGESTION PART OF THIS CASE. BECAUSE, CONTRARY TO WHAT COUNSEL SUGGESTS, THE ENTIRE TRIAL IN THIS CASE WAS DEVOTED TO THE FACT THAT THEY HAD FEAR OF KRATING A -- OF CONTRACTING A DISEASE. MOST OF IT MEANT AIDS, BUT IT COULD HAVE BEEN, AS MR. BOHN POINTED OUT IN HIS ARGUMENT, IT COULD HAVE BEEN A VENEREAL DISEASE OR SOME OTHER TYPE OF DISEASE, BUT THE ANALYSIS IS, REGARDLESS OF THE TYPE OF DISEASE --.

MR. CANTERO, YOU MADE THE STATEMENT THAT THIS WAS NOT A PROD I CAN'T LIABILITY OR LIMITED WARRANTY CASE, BECAUSE YOU SAID SPECIFICALLY THAT IT WAS NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, BUT YOU ALSO ARGUE THAT THAT DOESN'T MAKE ANY DIFFERENCE, BECAUSE YOU SAY THE LAW IS THE SAME FOR PRODUCT LIABILITY. DO YOU NOT?

WHAT I AM SAYING IS, YES, SIMPLY IN AN INGESTION CASE, IN THE LAWS OF FLORIDA, WITH REGARDLESS OF WHETHER IT IS PLED AS AN INTENTIONAL INFLICTION OR A BREACH OF WARRANTY, NO APPELLATE CASE HAS EVER ALLOWED EMOTIONAL DISSTRESS WITH INGESTION CASE, REGARDLESS OF WHETHER IT INFLICTS EMOTIONAL INJURY, AND THAT IS THE WAY WE PLEADED.

IF YOU HAVE GOT A MAD COW DISEASE OR SOMETHING LIKE THAT, YOU HAVE GOT SOMETHING THAT IT TURNS UP THAT McDONALD'S OR SOME OTHER INSTITUTION HAS PLACED BAD MEAT ON THE MARKET, AND WE DON'T KNOW, FOR A PERIOD OF SEVERAL YEARS WHAT THE OUTCOME IS GOING TO BE ON THAT, SO WHAT WE WOULD BE SAYING, THEN, IS THAT, BECAUSE YOU HAVE NOT HAD THIS VIOLENT VOMITING, THOSE KINDS OF THINGS, THAT EVEN IF YOU END UP HAVING MAD COWS DISEASE, FIVE YEARS LATER, AFTER A STATUTE HAS EXPIRED, THERE IS NO CAUSE OF

ACTION.

ABSOLUTELY NOT JUSTICE. I THINK THAT THERE ARE SOME CASES, AND I THINK THAT, MAYBE, HUMANA OR OTHER CASES SPEAK TO THAT POINT AND SAY, IN FACT, ONE OF THE CONCURRING OPINIONS IN THE CASES SAY, IF, IN FACT, IT HAPPENS, THAT THIS PERSON ACQUIRES A DISEASE IN THE FUTURE, THEY WILL HAVE A CAUSE OF ACTION AT THAT POINT, AND I AGREE WITH THAT.

THAT IS A POLICY REASON THAT YOU SHOULD ADDRESS IT IN THAT FASHION, RATHER THAN IN ANTICIPATION OF.

ABSOLUTELY. AND I THINK THAT, IF SOMEBODY DEVELOPS A DISEASE, ABSOLUTELY THEY WOULD HAVE A CAUSE OF ACTION AT THAT POINT.

BUT IN THIS CASE, IF ONE OF THESE PLAINTIFFS OR BOTH OF THEM HAD, LOOKING AT THIS SUBSTANCE, THAT JUDGE SHARP, IN HER OPINION, SAYS WE ARE ACCEPTING FOR THE PURPOSES OF THIS CASE WAS A CONDOM, ALL RIGHT, AND THEY THROW UP, THEY THROW UP, BECAUSE THEY JUST -- THEY LOOKED AT THIS THING, AND THEN THEY GOT SICK TO THEIR STOMACH. EVEN THOUGH, IN THIS -- YOU MIGHT ARGUE, STILL, TO THE JURY, IT WASN'T REASONABLE FOR THEM TO THROW UP, BECAUSE, LOOK, IT IS A MOLD. YOU MAY THINK IT LOOKS LIKE A CONDOM BUT IT IS A MOLD, THAT WE WOULD ALLOW RECOVERY IN THAT CASE, BECAUSE THEY VOMITED. BUT NOT IF THEY JUST GOT SICK TO THEIR STOMACH, WENT TO THE HOSPITAL, GOT COUNSELING FOR AIDS, GOT A SHOT, GOT TESTED, HAD TO COME BACK IN SIX MONTHS, WE ARE NOT GOING TO ALLOW RECOVERY IN THAT CASE AND ALLOW A JURY TO EVALUATE WHAT THE REASONABLE A THE DAMAGES ARE?

JUSTICE, I THINK YOU ARE ASKING, REALLY, TWO QUESTIONS. NUMBER ONE IS SHOULD WE GIVE DAMAGES FOR EMOTIONAL DISTRESS, WITHOUT ANY PHYSICAL INJURY, NUMBER ONE.

THAT IS WHAT YOU ARGUED.

NUMBER TWO IS THE FEAR OF AIDS CLAIM.

LET'S JUST WORRY ABOUT THIS ONE, BECAUSE UNFORTUNATELY MAYBE IT HAS THE SECOND BEING THROWN INTO IT, AND WE CAN'T EVALUATE THAT. I AM MORE CONCERNED ABOUT IT REQUIRING SOME PHYSICAL INJURY THAT ISN'T THE VOMITING BEING THE PHYSICAL INJURY OR SOMETHING LIKE THAT OR GETTING, YOU KNOW, THAT, REALLY, ISN'T GOING TO SEPARATE OUT WHETHER THIS WAS A REAL CLAIM OR NOT. I MEAN, THIS IS A REAL CLAIM, BECAUSE IT IS A REALLY DISGUSTING SUBSTANCE IN THIS BOTTLE OF COCA-COLA. THERE IS A WRONG. NOW, WHETHER THERE SHOULD BE A REMEDY IS SOMEHOW COCA-COLA IS ARGUING THERE SHOULDN'T BE A REMEDY, BECAUSE THERE IS GOING TO BE A FLOOD GATE FOR ALL OF THESE MOM AND POP RESTAURANTS, BUT THAT IS NOT WHAT WE ARE LOOKING AT HERE IS IT SEEMS TO BE THAT THE RATS IN THE BOTTLE AND ALL OF THE DIFFERENT THINGS THAT COME IN THE BOTTLES ARE IN THE -- ARE PRODUCTS THAT ARE PLACED ON THE MARKETPLACE, AND THAT SHOULD BE A CONCERN, SHOULD IT NOT?

I THINK SO, JUDGE, BUT LET ME LIKEN IT TO ANOTHER CASE FROM THIS COURT IN ANOTHER CONTEXT, WHICH, I THINK, PRESENTS MUCH MORE EGREGIOUS FACTS. IN THE HUMANA CASE, RJ VERSUS HUMAN, A THE PLAINTIFF WAS MISDIAGNOSED WITH AIDS. I MEAN, HOW MUCH MORE OUTRAGEOUS CAN YOU GET THAN SOMEBODY TELLING YOU, YOU HAVE AIDS. YOU ARE GOING TO DIE, AND THAT WAS A MISS DIAGNOSIS. THE COURT, IN THAT CASE, SAID, WELL, WE DEFINITELY THINK THAT IS A WRONG, BUT WE ARE NOT -- WE ARE GOING TO, STILL, REQUIRE A PHYSICAL INJURY, EVEN IN THAT CONTEXT, BECAUSE THERE HAS GOT TO BE SOME LEVEL AT HARM WHICH PLAINTIFF SHOULD HAVE TO ABSORB, AS A PRICE TO BE PAID FOR LIVING IN AN ORGANIZEED SOCIETY. WE ARE NOT GOING TO GIVE YOU A CAUSE OF ACTION EVERY TIME YOU ARE UPSET ABOUT SOMETHING. OTHERWISE WHAT YOU HAVE IS A CAUSE OF ACTION IN FLORIDA, WHERE

YOU HAVE NEGLIGENT INFLICTION OF UPSETTING SOMEBODY, WHICH IS ALL EMOTIONAL -- WHICH IS ALL EMOTIONAL DISTRESS IS. YOU HAVE A DUTY NOT TO UPSET ME, AND YOU BREACHED THAT DUTY AND I AM UPSET. THAT WOULD, NOW, BE A CAUSE OF ACTION IN FLORIDA, AND THIS COURT HAS REPEATEDLY REJECTED THAT CAUSE OF ACTION OF.

I UNDERSTAND THAT THE ARGUMENT, TODAY, IS THAT WE ARE TO ACCEPT THAT THE IMPACT HERE, THE REQUIREMENT OF THE "IMPACT RULE" WAS MET BY THE INGESTION, SO IT SHALL NOT - - THAT IS WHAT I HEARD AS BEING ARGUED.

NO. NO.

THAT WE ARE LOOKING AT THIS NOT TO SAY THAT WE ARE GOING TO, IN THIS CASE, ABOLISH THE "IMPACT RULE", BUT THAT, WHEN THERE IS INGESTION OF A PRODUCT OR SOMETHING THAT HAS A FOREIGN, OBNOXIOUS SUBSTANCE, THAT THE DAMAGES FLOWING FROM THAT CAN INCLUDE EMOTIONAL DAMAGES, AND THERE SNOT A PREREQUISITE THAT THERE HAS TO BE A PHYSICAL RE-- AND THERE IS NOT A PREREQUISITE THAT THERE HAS TO BE A PHYSICAL REACTION. THAT SEEMS TO BE A PRETTY REASONABLE STEP TO BE TAKEN.

JUSTICE, WE AGREE, NUMBER ONE, THAT INGESTION OF FOOD CAN CONSTITUTE IMPACT, BECAUSE THAT IS WHAT THE FLORIDA CASES SAY, BUT WE, ALSO, AGREE, NUMBER TWO, THAT FLORIDA SDAZ -- CASES, UNDER THE "IMPACT RULE", REQUIRE NOT ONLY IMPACT BUT PHYSICAL INJURY, AS A RESULT, AND THAT IS WHERE THE ANALYSIS, HERE, IS, BECAUSE WE KNOW WE HAVE IMPACT, AND WE KNOW WE DON'T HAVE PHYSICAL INJURY. WE ALL AGREE ON THAT, SO THE ISSUE IS, UNDER THE "IMPACT RULE", WHICH REQUIRES PHYSICAL INJURY IN FLORIDA, FOR EMOTIONAL DISSTRESS, SHOULD WE, NOW, NOT REQUIRE PHYSICAL INJURY?

AND THAT IS WHAT WE ARE TALKING ABOUT, AND DON'T WE HAVE TO REEXAMINE A RULE THAT CAME INTO PLAY MORE THAN A CENTURY AGO, WHEN THERE WAS A REAL SKEPTICISM ABOUT THE CONCEPT OF EMOTIONAL DAMAGES AND EMOTIONAL INJURY? THAT THIS IDEA THAT THERE HAD TO BE, THAT IT WAS A PHYSICAL INJURY, THAT THAT IS GOING TO BE, REALLY, WHAT IS RECOVERABLE, WHEREAS, AS MANY OF THE COURTS HAVE SAID, THAT THAT CONCEPT, ANYWAY, IS BOTH OVER INCLUSIVE AND UNDER INCLUSIVE, AND SO, YOU KNOW, IF YOU ARE GOING TO BE - - HAVE A SYSTEM WHERE YOU RELY ON A JURY, YOU HAVE GOT TO HAVE THE JURY, THEN, AS THE GROUP THAT IS GOING TO LOOK AND SAY ARE THESE DAMAGES REALLY REASONABLE IN THIS CASE OR IS THIS, REALLY, AN OVERREACTION? ARE THESE TWO SILLY WOMEN THAT JUST SIMPLY OVERREACTED FROM HAVING INGESTED THIS COCA-COLA? THAT THAT WAS SILLY, AND JURIES, MANY TIMES, WILL GIVE ZERO, BECAUSE THEY FIND THAT SOMEBODY HAS EXAGGERATED THEIR, NOT ONLY THEIR -- ANY INJURIES, THEIR EMOTIONAL INJURIES. THAT THAT IS, HOPEFULLY, IF WE HAVE FAITH IN THE JURY SYSTEM, THAT IS WHAT WE SHOULD ALLOW JURIES TO DO.

IN 30 STATES, THEY HAVE SAID NO. THIRTY STATES HAVE SAID, EVEN THOUGH WE ARE NOW 100 YEARS LATER, THAT THE "IMPACT RULE" REQUIRING PHYSICAL INJURY INJURY STILL SERVES A VALID -- PHYSICAL INJURY STILL SERVED A VALID PURPOSE, AND THIS COURT HAS, REPEATEDLY OVER THE LAST FEW YEARS, IN HUMANA AND GONZALEZ, EVEN IN ESTABLISHING THE EXCEPTION, BECAUSE OF STATUTORY REASONS IN BURGER OR IN MEDICAL NEGLIGENCE, SUCH AS TANNER AND HARTOG AND OTHER CASES, THIS COURT HAS, ALSO, SAID, NO, THE "IMPACT RULE" CONTINUES TO SERVE A VALID PURPOSE IN FLORIDA.

THE IMPACT PART OF THE "IMPACT RULE".

NO. NO. NO. WHEN WE SAY, WHEN THE COURT SAYS "IMPACT RULE", IT MEANS IMPACT PLUS PHYSICAL INJURY. THAT IS, ALL, PART OF THE "IMPACT RULE".

GONZALEZ WAS THE ONE WHERE IT WAS DEAD BODY. IT WAS NOT AN IMPACT TO THE PLAINTIFF.

NO. AND THE COURT SAID, DIDN'T REALLY TALK IN TERMS OF IMPACT AS MUCH AS PHYSICAL INJURY, AND SAYING WE ARE GOING TO REQUIRE SOME PHYSICAL INJURY, AND THE SAME THING HAPPENED IN RJ VERSUS HUMAN, A WHERE THERE WAS, TECHNICALLY, A IMPACT, IN TERMS OF, MAYBE, NEEDLES BEING STUCK IN, AND THE COURT SAID AWARD -- THAT IS FINE, BUT WE ARE STILL GOING TO REQUIRE A PHYSICAL INJURY, AND ON REMAND, IF THE COURT FINDS THAT THERE WAS SOME INJURY IN THE SENSE OF HAVING TO TAKE SOME MEDICATION OR SOME KIND OF TREATMENT, BECAUSE THAT PERSON THOUGHT THEY HAD AIDS, THEN WE WILL FIND PHYSICAL INJURY, BUT ABSENT THAT, EVEN THOUGH THE PERSON WAS MISDIAGNOSED WITH AIDS, WE ARE NOT GOING TO ALLOW RECOVERY FOR THE EMOTIONAL ANAL DISSTRESS, AND I -- FOR THE EMOTIONAL DISTRESS, AND I EMPHASIZE THAT IS MORE THAN THE EGREGIOUS FACTS THAT WE HAVE IN THIS CASE.

THIS "IMPACT RULE" DEVELOPED, DID IT NOT, FROM A FEAR THAT YOU WOULD HAVE PERSONS OF VERY FRAIL SENSIBILITIES AND SOMEONE WOULD SAY SOMETHING TO THEM, AND IT WOULD CAUSE EMOTIONAL DISTRESS, AS OPPOSED TO THE ASPECT OF IN JESSING OF THINGS AND THAT -- OF INGESTION OF THINGS AND THAT KIND OF IMPACT. THE "IMPACT RULE" HAS NOT BEEN TIED TO FOODS OR PRODUCT LIABILITY, SO MUCH AS THE QUESTION ABOUT THE INJURY.

I THINK THE "IMPACT RULE" GREW OUTFIT THE CASES OF WIT WITNESSES TO CAR ACCIDENTS AND THE LIKE, WHERE THE COURT SAID, WELL, UNLESS YOU WERE PART OF THAT ACCIDENT, YOU WON'T BE ABLE TO RECOVER. BUT COURTS HAVE ANDALGIZED AND USED THE "IMPACT RULE" IN INGESTION CASES, AND IN FACT, IN DOYLE, THE COURT SAID, LOOK, YOU DON'T HAVE INGESTION, WHICH THEY EQUATED WITH IMPACT, AND OTHER COURTS IN FLORIDA AND OUTSIDE HAVE SAID YOU NOT ONLY NEED THE INGESTION PART, WHICH WE WILL DEMAS THE IMPACT PART. YOU, ALSO, NEED THE PHYSICAL INJURY PART.

ANT PART, HERE, THAT I BELIEVE THE FIFTH DISTRICT HAS SUGGESTED IN HAGAN, BECAME NAUSEOUS, THAT IS INSUFFICIENT, BECOMING NAUSEOUS AND SEEKING MEDICAL AT HENSION?

THAT'S CORRECT. BUT LET ME CLARIFY, WHEN WE SAY ABOUT SEEKING MEDICAL ATTENTION AND GOING TO THE DOCTOR, THOSE DO NOT ARISE OUT OF ANY NAUSEA OR DISGUST AT SEEING SOMETHING IN THE COKE BOTTLE. THEY AROSE SOLELY OUT OF THE FACT THAT THE PLAINTIFFS THOUGHT THEY HAD AIDS, AND SO THAT IS WHY, AGAIN, YOU CAN'T EXTRACT THAT AIDS ELEMENT OUT OF THIS CASE, BECAUSE THAT IS ALL THEY WERE ASKING HERE. THAT IS ALL THEY WERE SAYING. WE THOUGHT WE WERE GOING TO GET AIDS. AND SO IF THIS COURT IS CONSIDERING ABANDONING THE "IMPACT RULE" IN FLORIDA, AND NOT REQUIREING PHYSICAL INJURY, THIS IS SIMPLY NOT THE CASE TO DO, IT BECAUSE THERE ARE SO MANY OTHER ISSUES, AND IN ORDER TO DO SO, THEN THE COURT WOULD HAVE TO GO TO THE NEXT LEVEL OF ANALYSIS AND SAY THIS PERSON HAD A REASONABLE FEAR OF AIDS, EVEN THOUGH THERE WAS NO HIV PRESENT ANYWHERE AND NO SCIENTIFICALLY ACCEPTED METHOD OF TRANSMISSION FOR THAT DISEASE, AND NO COURT IN THE UNITED STATES HAS EVER SO HELD.

THANK, COUNSEL.

THANK YOU.

MY ONE MINUTE LEFT, I WILL LIKE TO RESPECTFULLY POINT OUT TO THE COURT THAT, SOMEWHERE IN ANY OPINION THAT IS WRITTEN, THERE IS GOING TO HAVE TO BE THE DEFINITION OF WHAT THE "IMPACT RULE" IS IN FLORIDA, AND THAT WOULD BE THE OPPORTUNITY TO RESOLVE THE CONFLICT, IF YOU WOULD, PLEASE, IT WOULD BE A GREAT SERVICE, REALLY, TO AVOID CONFUSION BELOW. BASICALLY OUR POSITION IS, WITH RESPECT TO THE WHOLE CATEGORY OF EMOTIONAL DISSTRESS, THE PUBLIC POLICY LINE DRAWING IS AC ONLY ACCOMPLISHED BY THE IMPACT REQUIREMENT. THE INJURY REQUIREMENT DOES NOT ACCOMPLISH THAT, AND THE WAY IT IS HANDLED IN THIS CONTEXT, IT TOTALLY IS IN

CONSISTENT WITH THE WAY THE SAME ISSUE IS HANDLED IN OTHER CONTEXTS, IN THE TERMS OF THE TRIAL PROCESS AND TRUSTING THE INJURIES, AND FINALLY, A CASE LIKE THIS, IT IS KIND OF LIKE THE COURT RECOGNIZED WRONGFUL BIRTH AND STILLBIRTH AS SUEGENEROUS, OF CASES IN A PARTICULAR CASE LIKE THIS. THIS CASE IS IN A CLASS BY THEMSELVES. THEY SHOULD NOT REQUIRE PERSONAL INJURY, AND THIS CASE IS ABOUT AS BAD AS IT GETS, SO WE RESPECTFULLY REQUEST THAT THE COURT RESTORE THE VERDICT, AT LEAST IN THE REMITTED AMOUNT.

THANK YOU. THE COURT STANDS IN RECESS. THE MARSHAL: PLEASE RISE.