Amerace Corp. v. Gary E. Stallings

MR. CHIEF JUSTICE: THE NEXT CASE ON THE COURT'S CALENDAR THIS MORNING IS AMERACE CORPORATION VERSUS STALLINGS FORM MR. GASSLER. -- VERSUS STALLINGS. MR. GASSLER.

MAY IT PLEASE THE COURT. MY NAME IS FRANK GASSLER, AND I REPRESENT THE PETITIONER, AMERACE CORPORATION. THERE ARE TWO ISSUES, TODAY, THAT WE WOULD LIKE THE COURT TO CONSIDER, AND I WILL BE RESERVING FIVE MINUTES. THE FIRST ISSUE IS, IN A PRODUCTS LIABILITY CASE, SHOULD AN EXPERT WITNESS BE PERMITTED TO RENDER AN OPINION ON A SUBJECT THAT, BY HIS OWN ADMISSION, WAS NOT WITHIN THE AREA OF HIS EXPERTISE? AND TO CONCLUDE THAT THERE WAS A DEFECT, BASED UPON AN ALTERNATIVE DESIGN THAT HE ADMITTED WAS NEVER TESTED AND MIGHT NOT WORK. SECOND ISSUE, TOTALLY INDEPENDENT, IS WHETHER THE COURT SHOULD DEPART FROM ITS PRIOR OPINIONS, IN ARGONAUT,AL VARIETIES ADD-AND -- ALVARDO AND FALERY AND AWARD DAMAGES IN A PERSONAL INJURY CASE, WITH THE DAMAGES BEING LIQUIDATED IN THE FINAL VERDICT.

THAT IS THE ISSUE THAT WE ARE HERE ON. THAT ISSUE WASN'T EVEN ADDRESSED IN THE SECOND DISTRICT'S OPINION WAS IT?

IT WAS NOT ADDRESSED BY THE SECOND DISTRICT COURT OF APPEAL. THAT'S CORRECT.

IN TERMS OF WHY SHOULD THIS COURT, UNDERSTANDING THAT WE HAVE DISCRETION TO LOOK AT OTHER ISSUES, WHY SHOULD WE TAKE SUCH A FACT-SPECIFIC ISSUE AND RENDER AN OPINION ON AN ISSUE THAT THE SECOND DISTRICT DIDN'T EVEN DISCUSS?

BECAUSE THIS IS AN OPPORTUNITY TO ASSIST THE TRIAL JUDGES AND THE TRIAL LAWYERS, LIKE MYSELF, WHO TRY PRODUCT LIABILITY CASES, IN TELLING US WHAT THE RULE IS. WE WENT, IN THIS CASE, THROUGH AN ENTIRE ROLLER COASTER, ARGUING THE RAMIREZ CASE, WHICH INCLUDES ARGUING FRYE, TO DISCUSSING QUALIFICATIONS, TO DISCUSSING RULE 702, TO DISCUSSING RULE 704 AND THE UNDERLYING OPINION, BECAUSE YOU MAY RECALL THAT THE ONE WITNESS WHO TESTIFIED THAT THERE WAS A DEFECT, THERE DARLINGTON, INITIALLY TESTIFIED THAT HE SAW AN ENTIRE TERMINATE OR, WHEN IN FACT, ONLY A PORTION OF THE TERMINATOR HAD BEEN SALVAGED FOLLOWING THE ACCIDENT, AND FROM THERE WE WENT TO THE LEVEL OF THE SECOND DISTRICT COURT OF APPEAL, THE OPINION IN PERCENT I AND THE ISSUE OF -- THE OPINION IN PERCY AND THE ISSUE OF PURE OPINION.

WE RELY ON THE DISTRICT COURTS OF APPEAL, REALLY, TO SCREEN THESE ISSUES FOR US AND TO TELL US, SOMETIMES EXPRESSLY, BY CERTIFYING AN ISSUE OF GREAT IMPORTANCE OR AT LEAST BY WRITING AN OPINION. HERE THE DISTRICT COURT HAS NOT TREATED THIS ISSUE, NOT GIVEN ONE WORD TO IT. IS THAT CORRECT?

THAT IS CORRECT. BUT I WOULD LIKE YOU TO RECOGNIZE THE DIFFICULTY.

THE APPLICATION FOR REVIEW TO THIS COURT, TOO, THE PETITION FOR REVIEW, IS AS TO THE OTHER ISSUE THAT THE COURT DID RULE ON. IS THAT CORRECT?

-- COULD YOU ADDRESS THAT ISSUE FIRST AND THEN, WITH THE BALANCE OF YOUR TIME, DISCUSS, BUT WOULD YOU ADDRESS THE ISSUE THAT DISTRICT COURT ADDRESSED AND THE WISH EW THAT YOU PETITIONED FOR REVIEW HERE.

YES, YOUR HONOR. YOUR HONOR, AN OBLIGATION TO PAY INTEREST SHOULD ONLY BE CREATED, WHEN MONEY IS OWED OR WHEN THERE IS A LEGAL RIGHT TO THE MONEY. DAMAGES BECOME LIQUIDATED, WHEN A JUDGMENT IS ENTERED AND FILED. BEFORE THERE IS A JUDGMENT ENTERED, THERE IS NO LEGAL OBLIGATION, NO MONEY IS OWED. NO MONEY IS EARNED. THE COURTS HAVE ALWAYS TALKED IN MATERIALS OF A VESTED PROPERTY RIGHT. THE PLAINTIFF HAS NO VESTED PROPERTY RIGHT, UNTIL A JUDGMENT IS ENTERED. AND THE MONEY IS OWED. THAT IS CONSISTENT WITH --

THAT IS A LEGAL FICTION THAT CAN BE INDULGED, JUST LIKE IT IS LIQUIDATED AT THE TIME OF THE VERDICT. THAT IS THE LEGAL FICTION. WOULD YOU TELL US WHY ONE IS MORE APPROPRIATE THAN NOT?

-- BOTH OF THEM ARE, IN EFFECT, LEGAL FICTION THAT WE DEAL WITH, TO GET A CERTAIN POINT.

JUSTICE SHAW, I AGREE WITH YOU THAT IT IS A LEGAL FICTION, BUT CERTAINLY ONE PROMOTES CERTAINTY, WHERE THE OTHER DOES NOT. LET ME GIVE YOU A CONCRETE EXAMPLE. LET'S ASSUME THAT WE DO WHAT THE FOURTH DCA HAS DETERMINED, THAT INTEREST SHOULD ATTACH, AT THE TIME OF A VERDICT. VERY SIMPLE PROBLEM. LET'S ASSUME THAT YOU ARE A DEFENDANT, AND YOU ARE TRYING TO AVOID THE PAYMENT OF INTEREST. WHICH, I BELIEVE, IS A FAIR THING TO TRY TO DO. YOU CAN'T GO TO THE PLAINTIFF AND PAY MONEY, BASED UPON THE VERDICT, BECAUSE THE PLFER PLAINTIFF HAS NO -- BECAUSE THE PLAINTIFF HAS NO OBLIGATION TO GIVE AWE SATISFACTION OF A VERDICT. -- TO GIVE YOU A SATISFACTION OF A VERDICT. YOU WOULD NEED A SATISFACTION OF A JUDGMENT, BUT THE JUDGMENT HAS NEVER BEEN ENTERED. ANOTHER PRACTICAL PROBLEM, OFTENTIMES, BETWEEN THE TIME THAT THE VERDICT IS ENTERED AND THE JUDGMENT IS ENTERED, THERE ARE SET OFFS THAT MAY APPLY. THERE ARE FABRE ISSUES THAT MAY HAVE TO BE RESOLVED. THERE ARE ISSUES REGARDING HEARINGS BEFORE THE COURT, AS TO WHAT GAGES -- DAMAGES MAY BE ULTIMATELY ALLOWED AND ULTIMATELY DAMAGES THAT ARE NOT ALLOWED.

BUT AREN'T THOSE, ALL, REALLY ISSUES THAT CAN BE RESOLVED -- LET ME ASK YOU THE QUESTION IN A DIFFERENT FORM, AND THAT IS IF YOU TRY A CASE TO THE JUDGE AND THE JUDGE ENTERS A JUDGMENT, THEN, IN FAVOR OF THE PLAINTIFF, THEN I TAKE IT YOU WOULD AGREE INTEREST STARTS RUNNING, AS SOON AS THE JUDGE ENTERS THE JUDGMENT. SHE HAS TRIED THE CASE, AND NOW SHE ENTERS A JUDGMENT FOR THE PLAINTIFF. WOULD YOU AGREE, EVEN THOUGH THERE IS A MOTION FOR REHEARING OR WHATEVER, THAT THE INTEREST WOULD START TO RUN THEN?

GENERALLY, YES, EXCEPT THE FIRST DISTRICT, ALSO, NOTES THAT THE JUDGMENT HAS TO BE FILED, BUT WITH THAT MINOR EXCEPTION, I AGREE WITH YOU, JUSTICE ANSTEAD.

WHY SHOULD IT BE ANY DIFFERENT, WHEN IT IS THE JURY THAT IS MAKING THE DETERMINATION OF LIABILITY AND DAMAGES IN DOING THAT, THAN IT WOULD BE IF A JUDGE DID IT?

BECAUSE THE JURY DOES NOT IMPOSE THE JUDGMENT. THE COURT DOES.

BUT ISN'T THAT MORE OR LESS A PRO FORMA SORT OF THING? IT DOESN'T ELIMINATE ANY OF YOUR RIGHT TO ARGUE FOR A NEW TRIAL OR ANY OF THE OTHER ISSUES, YOU KNOW, THAT MIGHT BE IMPORTANT, AND THAT MIGHT POTENTIALLY SET THAT ASIDE. IT IS, REALLY, ALMOST A CLERICAL MATTER, IS IT NOT? THAT IS OF GETTING A JUDGMENT ON THAT VERDICT AS SOON AS POSSIBLE FOR INSTANCE, SO YOU CAN GET THE INTEREST TO START RUNNING, EVEN THOUGH THERE MAY BE REASONS, LATER, TO SET THAT ASIDE?

I DON'T BELIEVE IT IS A CLERICAL MATTER, BECAUSE THERE IS NO PROPERTY RIGHT, UNDER THE LAW, UNTIL THE JUDGMENT HAS BEEN ENTERED. AND I REALIZE THAT IT MAY BE A LEGAL FIX SHRUB, BUT WE -- FICTION, BUT WE ARE TALKING, HERE, ABOUT A JURY THAT, BASICALLY,

ADVISES A COURT AS TO HOW CERTAIN FACTUAL MATTERS SHOULD BE DETERMINED. IT IS, THEN, THAT COURT THAT DETERMINES WHAT JUDGMENT SHOULD BE ENTERED, BASED UPON THOSE FACTUAL FINDINGS.

BUT ABSENT SOMETHING BEING DEMONSTRATED TO PREVENT THAT JUDGMENT FROM BEING ENTERED, WHY SHOULDN'T, IN OTHER WORDS OBVIOUSLY IF THE COURT GRANTS A NEW TRIAL OR SOMETHING LIKE THAT OR VACATES, YOU KNOW, SAYS, NO, THERE WAS REALLY NO EVIDENCE TO SUPPORT THAT VERDICT, WHICH ARE ALL POSSIBILITIES, ABSENT THOSE THINGS HAPPENING, AND THOSE THINGS DIDN'T HAPPEN IN THIS CASE, RIGHT? THEN WHY SHOULDN'T THE INTEREST RUN FROM THE TIME OF THE VERDICT JUST LIKE IT WOULD BE, WITH A JUDGE ENTERING A JUDGMENT?

IF THE DEFENDANT SHOULD HAVE THE OPPORTUNITY TO AVOID THE PAYMENT OF INTEREST, THEN I WOULD BELIEVE WE WOULD HAVE TO HAVE AN ENTIRELY DIFFERENT SYSTEM. FOR EXAMPLE, LET'S ASSUME THE VERDICT GETS ENTERED. THEN THERE WOULD BE AN OPPORTUNITY FOR THE DEFENDANT TO PAY INTO THE REGISTRY OF THE COURT, THE ENTIRE AMOUNT OF THE VERDICT, AND THEN THE COURT WOULD ENTER ITS JUDGMENT, AND AFTER THE COURT ENTERS ITS JUDGMENT, THE CLERK WOULD, THEN, PARCEL OUT TO THE PARTIES, WHO RECEIVES WHAT, BASED UPON THE JUDGMENT. NOW, I DON'T THINK WE NEED THIS FRAMEWORK, AND I WOULD, ALSO, URGE THAT, IF WE ARE GOING TO CHANGE THE LAW THAT, THAT SHOULD BE DONE BY THE LEGISLATURE. I WOULD RESPECTFULLY SUGGEST THAT THAT IS WITHIN THE PURVIEW OF THE LEGISLATURE AND NOT WITHIN THE PURVIEW OF THE COURT, TO CHANGE WHAT HAS BEEN THE LAW IN THE STATE OF FLORIDA FOR MANY MANY YEARS.

DOESN'T OR AS FAR AS VARIOUS ARGUMENTS THAT YOU ARE MAKING, LET'S ASSUME, IN THIS CASE, THAT THERE WAS CLEAR LIABILITY, AND THE DAMAGES WERE AWARDED, AND THERE WERE NO SET OFFS AND NO FABRE ISSUES AND NO COMPARATIVE NEGLIGENCE. THE PLAINTIFF COULD HAVE GONE OR WOULD HAVE GONE THE NEXT DAY OR THE SAME DAY AND GOT THE JUDGMENT ENTERED.

CORRECT.

AND THERE WERE -- THERE WOULDN'T HAVE BEEN ANY POST TRIAL MOTIONS, AND THEN IN THAT CASE, THERE WOULD HAVE BEEN JUDGMENT AND THE VERDICT WOULD HAVE BEEN ESSENTIALLY COEXTENSIVE. NOW, I GATHER THAT, IN THIS CASE WHAT HAPPENED WAS WITHIN TEN DAYS AFTER THIS VERDICT, YOU HAD FILED A MOTION FOR A NEW TRIAL, AND THERE WERE VARIOUS POST TRIAL MOTIONS PENDING, CORRECT?

CORRECT.

IF THIS PLAINTIFF HAD GONE AND TAKEN THAT VERDICT AND GONE WITH A JUDGMENT IN THE AMOUNT OF THE VERDICT, THE NEXT DAY, WOULD YOU HAVE OPPOSED THE ENTRY OF A JUDGMENT FOR THE FULL AMOUNT OF THE VERDICT?

JUSTICE PARIENTE, WE WOULD HAVE, BECAUSE THERE WERE STILL LEGAL ISSUES TO BE DETERMINED, WHICH IS, FOR THE MOST PART, THE FIRST ISSUE THAT I BROUGHT BEFORE THIS COURT.

SO ISN'T IT SORT OF, BECAUSE IN THIS FABRE SET OFF COLLATERAL SOURCE, COMPARATIVE NEGLIGENCE AREA, IT IS REALLY TO THE DEFENDANT'S ADVANTAGE THAT, TO PROLONG THIS POST-TRIAL PERIOD, AS LONG AS POSSIBLE, IF THERE IS NO INCENTIVE, AS FAR AS IF THE CLOCK ISN'T GOING TO START TICKING OPPOSE THE JUDGMENT OR POST VERDICT INTERESTS -- OPPOSE THE-JUDGMENT VERDICT OR POST -- IN POST-JUDGMENT VERDICT OR POST POST-JUDGMENT INDREST, AS LONG AS YOU HAVE THE JUDGMENT INTEREST, THAT WOULD BE MONEY THAT WOULD BE IN THE POSSESSION OF THE DEFENDANT, CORRECT?

YES, BUT KEEP IN MIND THAT THAT IS WITHIN THE COURT'S CONTROL. THE TIME FOR POST-TRIAL MOTIONS ARE VERY SHORT.

IN THIS CASE IT WASN'T UNTIL NOVEMBER THAT THERE WAS A HEARING ON THIS. CORRECT?

I WOULD HAVE TO CHECK THE DATES. IT WAS A VERY LONG TIME, JUSTICE PARIENTE, FROM THE TIME THERE WAS AN ARGUMENT, UNTIL THE TIME THERE WAS A RULING BY THE TRIAL COURT.

SO IT REALLY WAS HAPPENING, INSTEAD OF A UNIFORM RULE OF ALLOWING INTEREST TO RUN FROM THE DATE OF A VECKD VERDICT -- OF A VERDICT WHEN THE AMOUNT OF DAMAGES ARE FIXED, WE HAVE GOT A VARIATION BEING HOW LONG IT TAKES TO GET A HEARING BEFORE A TRIAL JUDGE OR HOW LONG A TRIAL JUDGE GETS TO RULE. DOES THAT STRIKE YOU AS BEING SORT OF FAIR AND I CAN GETABLE?

-- AND EQUITABLE?

I THINK WHAT IS FAIR AND EQUITABLE IS TO GIVE THE DEFENDANT AN OPPORTUNITY TO PAY A JUDGMENT WITHOUT PAYING INTEREST.

WELL, NOW WE HAVE, THOUGH, THE PROBLEM IS THAT IF THIS WAS A CONTRACT CLAIM, FIRST OF ALL, WE WOULD HAVE INTEREST RUNNING FROM THE DATE OF THE LOSS, EVEN THOUGH THE DEFENDANT WOULD HAVE DISPUTED THE AMOUNT OF THE LOSS, CORRECT? THERE IS NO FARNS THERE, ESSENTIALLY -- FAIRNESS THERE, ESSENTIALLY, IF YOU WANT TO LOOK AT IT THAT WAY. THE DAMAGES AREN'T FIXED, AND YET YOU PAID FROM THE DATE THAT THE LOSS OCCURRED. CORRECT?

CORRECT.

AND IN ADDITION, AFTER ARGNAUGHT, REALLY, THE DIFFERENCE IS THERE MAY BE ALL SORTS OF THINGS THAT MAY MAKE THE AMOUNT SUBJECT TO DISPUTE, DOESN'T PREVENT THE DAMAGES FROM THE INTEREST BEING FIXED FROM THE DATE OF THE LOSS. HOW CAN WE JUSTIFY IN THE TORT CLAIM, WHEN THE ONLY REASON THAT PREJUDGMENT INTEREST IS NOT AWARDED IS BECAUSE OF THE FACT THAT THE AMOUNT IS SPECULATIVE? HOW CAN WE SAY THAT, WHEN THE AMOUNT IS NO LONGER SPECULATIVE, WHICH IS WHEN IT IS SET BY A JURY VERDICT, TO SAY THAT INTEREST SHOULDN'T RUN FROM THAT TIME?

WELL, FIRST OF ALL THERE, IS A DISTINCTION TO BE DRAWN THERE, BECAUSE AS YOU CORRECTLY POINTED OUT, WITH REGARD TO CONTRACT CLAIMS, AND WITH REGARD TO CERTAIN CLAIMS, ALSO DISCUSSED IN ARGONAUT, SUCH AS THE PREPAYMENT OF MEDICAL BILLS, THOSE CLAIMS RUN FROM THE DAY OF THE LOSS.

YOU MEAN ALVARADO.

EXCUSE ME. I MISSPOKE. HOWEVER, WITH REGARD TO PERSONAL INJURY CLAIMS, THE CLAIMS DO NOT RUN TO THE DAY OF THE LOSS. NOW, WE HAVE CREATED THIS, AS JUSTICE SHAW HAS POINTED OUT, THIS ARTIFICIAL, PERHAPS, CONSTRUCT, WHERE IT NOW RUNS FROM THE DAY THE VERDICT IS RENDERED, AS OPPOSED TO THE DAY OF THE LOSS. BEAR IN MIND THAT, IN PERSONAL INJURY CASES, THERE IS VERY LITTLE PRECISION IN THE NUMBERS THAT ARE ATTRIBUTED TO THE VALUE OF THAT CLAIM BY THE JURY. IT IS NOT LIKE A CONTRACT CLAIM N A CONTRACT CLAIM, A PERSON HAS A VESTED RIGHT, WHICH CLEARLY CAN BE QUANTIFIED. YOU CAN CHECK THE AMOUNT OF THE CONTRACT. THAT IS NOT TRUE IN A PERSONAL INJURY CLAIM.

WHAT ABOUT THE -- WELL, THERE ARE CERTAINLY LOSS OF EARNINGS. THAT WOULD BE SOMETHING THAT IS SUSCEPTIBLE TO SPECIFIC CALCULATION, BUT LET ME ASK YOU, IN TERMS

OF, AGAIN, TRYING TO FIGURE OUT HOW THE SYSTEM WORKS IF, IN THIS CASE, A VERDICT HAD BEEN ENTERED, AND THEN YOU MOVED BECAUSE OF YOUR ALLEGATIONS ABOUT THE EXPERT WITNESS, THAT, FOR A JUDGMENT NOTWITHSTANDING A VERDICT, IN OTHER WORDS, THAT YOU MOVED FOR A JUDGMENT FOR THE DEFENDANT AND THE JUDGE ENTERED THAT, WHAT, AND THEN IT WENT UP ON APPEAL, AND THE SECOND DISTRICT REVERSED IT. THERE WAS SUFFICIENT EVIDENCE. WHAT -- WHERE -- AT WHAT POINT WOULD INTEREST RUN IN THAT SITUATION?

WELL, KEEP IN MIND THAT, ONCE THE JUDGMENT IS ENTERED, THE INTEREST BEGINS TO RUN.

I AM SAYING THE JUDGMENT WAS FOR ZERO. THE JUDGE BOUGHT YOUR ARGUMENT THAT THERE WAS THE EXPERT TESTIMONY WAS NOT ENOUGH, AND IT WENT UP ON APPEAL. NO JUDGMENT WAS EVER ENTERED FOR THE PLAINTIFF. DON'T OUR APPELLATE RULES ALLOW FOR INTEREST TO RUN FROM THE DATE OF THE VERDICT?

IF THE VERDICT GETS REINSTATED, IT RUNS FROM THE DAY OF THE JUDGMENT NOT FROM THE DAY OF THE VERDICT.

THANK YOU, COUNSEL. YOU ARE IN YOUR REBUTTAL TIME.

GOOD MORNING. MAY IT PLEASE THE COURT. ROBERT FREEZER FOR MR. AND MRS. STALL -- ROBERT FRASER FOR MR. AND MRS. STALLINGS. THE PREJUDGMENT INTEREST QUESTION BRING TO SAY MIND, I THINK IT WAS JUSTICE HOLMES WHO OBSERVED THAT THE PROBLEMS IN THE LAW ARE A RISE OF THE USE OR MISUSE OF LANGUAGE, AND THAT IS WHAT WE HAVE IN THIS AREA, BECAUSE IT IS CHARACTERIZED, AND IT WAS BY THE PARTIES, BELOW, AS PREJUDGMENT INTEREST, WHEN IT ACTUALLY IS POST VERDICT INTEREST, AND IF THE COURT COULD DRAW THAT DISTINCTION FOR THE BENCH AND BAR, IT MIGHT ALLEVIATE SOME OF THE CONFUSION. ACTUALLY THERE ISN'T THAT MUCH CONFUSION, OR THERE SHOULDN'T BE IN THIS AREA, BECAUSE OF THIS COURT'S DECISION IN ARGONAUGHT INSURANCE COMPANY VERSUS MAY PLUMBING.

BUT IT HAS TRADITIONALLY.

PARDON ME?

IT HAS TRADITIONALLY, IT IS A SITUATION THAT YOU DON'T BEGIN TO GET INTEREST ON PERSONAL INJURY VERDICTS, UNTIL YOU RUN OVER TO THE COURTHOUSE AND GET THE COURT TO ENTER THE JUDGMENT.

WELL, I UNDERSTAND YOUR POSITION, CHIEF JUSTICE WELLS. I MEAN, THAT IS TRADITIONALLY.

BUT, I MEAN, THAT IS THE WAY IT HAS WORKED IN REAL LIFE, RIGHT?

WELL, THAT IS VERY TRUE, ALTHOUGH IN LIGHT OF ARGONAUGHT, I CAN'T UNDERSTAND WHY. ARGONAUGH. IT WAS A $250 VERDICT ON A SUBJUGATION -- A $250,000 VERDICT ON A SUBROGATION CLAIM. THIS COURT LOOKED AT IT AND AWARDED INTEREST. THE COURT OF APPEAL REVERSED, AND THIS COURT REVERSED THE COURT OF APPEAL, GOING WITH THE FIRST DISTRICT DECISION.

BUT ARGO NAUGHT WAS A '85 CASE, AND WE HAVE CONTINUED, AND IT WOULD SEEM TO ME THAT CHAPTER 55 CONTINUES TO CONTEMPLATE THERE ARE BEING A -- THERE BEING A DIFFERENCE, WHEN JUDGMENT, THE JUDGMENT IS ENTERED, THAT POST-JUDGMENT INTEREST IS STILL SOMETHING THAT IS WITHIN OUR CONTEMPLATION, BECAUSE PREJUDGMENT INTEREST IS SOMETHING THAT ACTUALLY, IN ALVARADO AND IN THE ARGO NAUGHT CASE, IS A LOSS-TYPE THEORY, AND SO THEORETICALLY IT RUNS FROM THE TIME AN EXPENDITURE IS MADE, ISN'T THAT RIGHT?

YES, SIR. UNDER -- WELL, NOT UNDER ARGONAUGHT. UNDER ARGONAUGHT RAN FROM THE VERDICT. ALVARADO WAS A MEDAL BILLS -- WAS A MEDICAL BILLS CASE, AND WE HAD THAT BEEN LOW AND A BANDONED IT -- AND ABANDONED IT, BECAUSE THERE WERE REASONS THAT WE WEREN'T GOING TO PURSUE IT, BUT ARGONAUGHT PRECEDES THAT AND WHETHER IT WAS A TORT CLAIM OR A CONTRACT CLAIM, IT DIDN'T MAKE ANY DIFFERENCE. THIS COURT RULED IN 1985. THE ONLY THING THAT IS WONDERING WHETHER I AM MISSING SOMETHING IS WHY THE FIRST DISTRICT DIDN'T ADDRESS IT IN EAST GOLD VERSUS BOLD AND ARGO NAUGHT VERSUS BARNES AND NEVER DISCUSSED IT. INSTEAD, THIS FIRST DISTRICT GOT INTO THIS VERY FACT-INTENSIVE ANALYSIS. THE PLAINTIFF, IN EAST GOLD VERSUS RHODES, HAD FILED POST TRIAL MOTIONS, HAD REFUSED THE CONDITIONAL TENDER OF THE VERDICT. THE CASE WAS REVERSED ON APPEAL, REVERSED BY THIS COURT, THEN SOUGHT DAMAGES, I AM SORRY, THEN SOUGHT INTEREST FROM THE DATE OF VERDICT. THE FIRST DISTRICT SAID NO. WELL, THAT IS A PRETTY FACT-INTENSIVE SITUATION. MONTGOMERY, PALM BEACH COUNTY SCHOOL BOARD VERSUS MONTGOMERY, THIS CASE AND THE OTHER CASES, DECIDED BY THE SECOND, THIRD AND FOURTH DISTRICTS, SEEMED TO STATE A VERY SIMPLE BRIGHT-LINE RULE THAT THE VERDICT LIQUIDATES THAT THERE FOR IF IT IS LIQUIDATED, IT IS EASILY DETERMINED. IN TERMS OF THE DEFENDANT'S PROBLEM, THE UNCONDITIONAL TENDER OF THE VERDICT AMOUNT WITH INTEREST WOULD CURE THAT. THE FIRST PROBLEM. THE SECOND PROBLEM IS ONE OF SET OFFS, AND I THINK THE COURT RECOGNIZES THAT THE SET OFFS ARE CUSTOMARILY MADE. IN THIS CASE WE HAVE, BOTH, AN EXCESS MONEY JUDGMENT OR MONEY VERDICT FOR MEDICAL BILLS, WHICH WE CONCEDED FROM THE OUTSET, AND THEN WE HAD 60 PERCENT FABRE FINDING. WELL, THOSE ARE, THAT IS NOT EVEN A MATHEMATICAL COMPUTATION. THAT IS ARE AIETHMATIC. -- THAT IS ARITHMETIC. WE SIMPLY DEDUCT THEM FROM THE DATE OF THE VERDICT AND COMPUTE THE INTEREST FROM THEN.

WHAT IF WE HAVE A VERDICT THAT COMES IN, A $10 MILLION VERDICT, A HUGE CASE, THERE AND IS A REAL FIGHT ABOUT $1 MILLION $2 MILLION OF SET OFF. WHAT AMOUNT IS REQUIRED TO BE PAID, SO THAT A DEFENDANT CAN STOP THE RUNNING OF INTEREST?

AND HOW DO YOU -- AND HOW DO YOU DO IT, UNDER YOUR SCENARIO?

THE -- UNDER MY SCENARIO, THE UNCONDITIONAL TENDER, AND THIS IS CONTEMPLATED BY EAST GOLD, SEEMS TO BE THE ONLY WAY TO DO IT. THE UNCONDITIONAL TENDER OF THE AMOUNT IN CONTROVERSY, WITH THE INTEREST, THAT SEEMS TO BE THE ONLY THING TO DO. IN TERMS OF THE DISPUTE OVER THE SET OFF, WE DIDN'T HAVE IT IN THIS CASE. WE READLY RECOGNIZE THE SET OFF. BUT WHY NOT SIMPLY SAY, OKAY, IF THE SET OFF IS ALLOWED, THEN IT IS DEDUCTED FROM THE VERDICT AMOUNT. IF IT IS NOT ALLOWED, THEN THE VERDICT AMOUNT STANDS, AND THE INTEREST RUNS FROM THAT POINT.

THE INTEREST RUNS FROM WHICH? NOT FROM THE VERDICT. IT RUNS FROM A DIFFERENT TIME?

NO, SIR. I RESPECTFULLY SUBMIT THAT IT SHOULD RUN FROM THE VERDICT IN ANY AMOUNT, IN ANY EVENT.

THE DEFENDANT, THEN, WOULD BE REQUIRED TO PAY MORE THAN, OUT OF THEIR POCKETS, INTO, WHAT, A REGISTRY IS THAT HOW YOU WOULD CONTEMPLATE THIS?

THAT IS ONE WAY.

WOULD A CLERK ACCEPT IT, UNDER THESE CIRCUMSTANCES?

I THINK THE CLERK WOULD. NOW, THE QUESTION IS WHAT INTEREST IS GOING TO BE DRAWN THERE?

THAT'S RIGHT.

WELL, THE CLERK ISN'T GOING TO PAY 11 PERCENT INTEREST. THAT IS REALLY THE RUB HERE. BUT THE ESSENTIAL ISSUE, AND THIS IS REALLY WHAT IT COMES DOWN TO, IS THERE IS A PRESUMED GROWTH ON MONEY. THE AMOUNT OF THE PLAINTIFFS' ENTITLEMENT, NOTWITHSTANDING ANY LATER DISPUTE ABOUT SET OFFS, MEDICAL BILLS OR WHAT HAVE YOU, IS SOMETHING THAT CAN BE RESOLVED AS OF A DATE CERTAIN. IN THIS CASE, THE DATE CERTAIN WAS THE DATE OF THE VERDICT, JUNE 13, 1998. THERE IS THIS PRESUMED GROWTH BETWEEN THEN AND THE ENTRY OF THE FINAL JUDGMENT, THE INITIAL FINAL JUDGMENT, NOVEMBER 18, 1998.

IT IS NOT GOING TO OCCUR, IF YOU DON'T PAY IT TO THE REGISTRY. THEY DON'T PAY INTEREST IN THE REGISTRY, DO THEY?

NO, SIR.

SO YOU DON'T HAVE INTEREST RUNNING ON ANYONE. YOU HAVE MUST NOT THAT I IS PAID AND SETTING THERE, AND, AGAIN, GOING BACK TO MY TEN MILLION, TWO MILLION SET OFF DIVIDES PUT, WHAT DOES -- DISPUTE, WHAT DOES THE DEFENDANT PAY AND WHAT IS IN DISPUTE AND THEY LOSE MONEY, UNDER THAT SCENARIO, DO THEY NOT?

I AM NOT SURE THERE IS A HONEST ANSWER TO YOUR QUESTION, AND I WILL TELL YOU WHY. THE INTEREST ISN'T GOING TO BE PAID BY THE CLERK, NOT AT 11 PERCENT. IN THE EVENT THAT THE DEFENDANT ELECTS TO PROCEED OR THE PLAINTIFF ELECTS TO PROCEED, HERE IS THE ESSENTIAL ISSUE. THE MONEY IS GROWING. WHO IS ENTITLED TO IT? THE INJURED PLAINTIFF. IF THIS WERE A CONTRACT DISPUTE UNDER THAT SCENARIO, THERE WOULDN'T BE ANY QUESTION THAT, NOTWITHSTANDING ANY SET OFFS OR ANYTHING ELSE, THE WRONGED PARTY IN THE CONTRACT CASE IS GOING TO GET THAT MONEY. THERE ISN'T ANY REAL DISTINCTIONS TO BE DRAWN HERE.

BUT HE GETS THE MONEY FROM THE TIME OF THE LOSS, RIGHT?

YES, SIR. RIGHT. THAT IS FROM THE TIME OF THE CONTRACTUAL LOSS, WHICH IS WELL BEFORE THE VERDICT.

AND THAT WAS REALLY WHAT ARGONAUGH. IT WAS GOING ON. ARGONAUGHT SPECIFICALLY TIES IT TO THE LOSS, BUT IT SAYS THAT THE VERDICT LIQUIDATES IT, BUT IT GOES TO THE LOSS, BUT THE STATUTE IS CONSTRUCTED 5503, ON THE -- 55.03, ON THE BASIS THAT DAMAGES WHICH YOU DON'T HAVE DATING BACK TO THE DATE OF THE LOSS, THEY ARE GOING TO DATE FROM THE TIME OF THE JUDGMENT, AND THAT RUNS AT THE RATE THAT IS ESTABLISHED AT THE TIME THAT THE JUDGMENT IS ENTERED. NOW, IF WE ARE GOING TO CONSTRUCT SOME NEW LAW FOR WHEN THE VERDICT IS ENTERED, HOW ARE WE GOING TO DETERMINE THAT RATE?

AS FAR AS 55.03 IS CONCERNED, I MUST HAVE MISREAD THE STATUTE, BECAUSE THE ONLY THING THAT PERTAINS, THERE, TO THE JUDGMENT AND INTEREST, IS UNDER 55.03, MY READING OF IT. I WILL STAND CORRECTED.

NO. THAT IS WHAT I SAY. 55.03. THE RATE ESTABLISHED AT THE TIME OF THE JUDGMENT IS OBTAINED, SHALL REMAIN THE SAME UNTIL THE JUDGMENT IS PAID.

WELL, MY UNDERSTANDING OF THE STATUTE IS IT ONLY PERTAINS TO WHEN YOU DELIVER THE JUDGMENT TO THE SHERIFF FOR EXECUTION. THERE IS ONE SUBSECTION, IT IS EITHER TWO OR THREE, AND I APOLOGIZE. I MUST HAVE MISREAD THE STATUTE. BUT 55.03 CERTAINLY DIDN'T IMPEDE THE SECOND, THIRD, OR FOURTH DISTRICTS IN DECIDING THAT THE BETTER RULE AND THE ONE THAT IS SUPPORTED BY ARGONAUGH. IT IS DATE OF VERDICT. AGAIN, WE ARE NOT GOING BACK TO THE DATE OF THE ACCIDENT IN 1992. WE ARE SIMPLY SAYING THAT, AS OF THE

DATE OF THE VERDICT, WHEN THE JURY DECIDES WHAT THE ENTITLEMENT IS, AT THAT POINT, IT IS LIQUIDATED. EVERYBODY KNOWS WHAT IT IS. THERE IS NO WAY TO KNOW AT THE DATE OF THE ACCIDENT. I WILL BE THE FIRST TO CONCEDE THAT, UNLIKE YOUR CONTRACT CASE, WHERE THAT CAN BE CALCULATED, SO BASED ON THOSE IDEAS, I UNDERSTAND YOUR HONOR'S PROBLEM WITH THE STATUTE AND THE STATUTE I RESPECTFULLY SUBMIT, MY READING OF IT DOESN'T APPLY TO THIS SITUATION. I MIGHT BE WRONG, BUT IN ANY EVENT, THIS IS AREA IN WHICH THE COURT HAS A GREATER INTEREST, I SUBMIT, IN ALLOCATING THE GROWTH OF THE MONEY TO THE WRONG PARTY. BECAUSE IT SEEMS NONSENSICAL TO DISTINGUISH BETWEEN TORT AND CONTRACT CLAIMANTS, THE WAY THAT THE FIRST DISTRICT DOES. AND THE FIRST DISTRICT IS SIMPLY SAYING, WELL, WHEN YOU GET THAT PIECE OF PAPER, THAT JUDGMENT, THEN AT THAT POINT, YOU CAN START COLLECTING INTEREST. WELL, THAT IS SIMPLY UNREASONABLE, GIVEN THE SCENARIO WE HAD HERE, WHERE THE TRIAL JUDGE WAITED MORE THAN FIVE MONTHS BEFORE MAKING A DECISION AND ENTERING JUDGMENT ON IT, AND I AM CERTAINLY NOT FAULTING HIM FOR THAT, BUT THERE WAS ANOTHER MONTH INVOLVED, BEFORE WE COULD HAVE THE COSTS INCLUDED. NOW, THE COSTS WOULD NOT BE SUBJECT TO THIS RULE, BECAUSE THE COST ARE ARE NOT LIQUIDATED AT THE TIME OF THE VERDICT. WE ARE NOT SUGGESTING FOR A MOMENT THAT THE $15,000 OR SO IN COSTS THAT JUDGE FICERODA AWARDED, SHOULD RELATE BACK TO JUNE 13, WHEN THE VERDICT WAS ENTERED. THAT WOULD, ONLY THE INTEREST ON THAT WOULD ONLY START TO RUN, AS OF THE DATE THAT IT WAS INCLUDEDED IN A FINAL JUDGMENT, BUT AS FAR AS THE REST OF IT IS CONCERNED, THERE DOESN'T SEEM TO BE ANY GOOD REASON TO TREAT THE TORT AND CONTRACT CLAIMANTS DIFFERENTLY, AND IN MY READING OF ARGONAUGHT, WHILE IT IS A SUBROGATION CASE, IT IS CERTAINLY CLEAR, AS THE FOURTH DISTRICT FOUND IN MONTGOMERY HAD, THAT THE VERDICT LIQUIDATES THE DAMAGES. ONCE LIQUIDATED, THEY ARE KNOWN. I REALLY HAVE, IF THE COURT HAS NO OTHER QUESTIONS IN THIS AREA, THEN I WILL MOVE ON TO THE SECOND POINT, WHICH IS REALLY THE FIRST POINT RAISED BY THE PETITIONER. I CAN ONLY SAY, ON THE FIRST POINT RAISED BY THE PETITIONER, THAT IS MR. DARLINGTON'S OPINION THE COURT HAS ALREADY OBSERVED THE SECOND DISTRICT MADE NO RULING ON THIS. THE TRIAL JUDGE HEARD 111 PAGES OF DIRECTION PROFFER, CROSS-EXAMINATION VOIR DIRE, AND MADE A FACTUAL DECISION, AND THAT IS ENTITLED TO ALL OF THE DEFERENCE THAT ANY TRIAL JUDGE'S FACTUAL DECISION IS ENTITLED TO. IF HE WERE WRONG, AND I RESPECTFULLY SUBMIT THAT MR. DARLINGTON WAS WELL-VERSED AND WELL-QUALIFIED TO REACH THE OPINION THAT HE REACHED, IF HE WAS WRONG, THE PLAINTIFFS HAD AN ALTERNATIVE THEORY, AND THAT IS ONE THAT WENT HAND IN GLOVE WITH THE DEFENSE THEORY OF LIGHTNING CAUSING THE MELTING OF THIS TERMINATOR AND ITS LATER SEPARATION, AND WE INTRODUCED THE DEPOSITION TESTIMONY OF A MEDICAL OR JUST MR. CEASE, WHO BASICALLY TESTIFIED THAT THIS EXPOSED ALUMINUM HAD CORRODED, AND THAT, IN SOME UNKNOWN AND UNDEFINEABLE WAY, HAD ENHANCED THE SIGNIFICANCE OF THE LIGHTNING, AND THAT A REASONABLE JURY COULD LOOK AT THAT EVIDENCE AND INFER FROM IT THAT THIS PRODUCT WAS DEFECTIVE, WHEN IT SEPARATED WITHOUT WARNING AND INJURED MR. STALLINGS. IF THE COURT HAS ANY QUESTIONS ON THAT ISSUE, I WILL BE HAPPY TO ENTERTAIN THEM. OTHERWISE I HAVE NOTHING ELSE.

THANK YOU.

THANK YOU VERY MUCH.

MR. GASSLER.

THE POINT WAS RAISED ABOUT AN UNCONDITIONAL TENDER OF THE MONEY. THAT IS VERY, VERY UNLIKE A SETTLEMENT. IN A SETTLEMENT, YOU TENDER THE MONEY, AND YOU GET A RELEASE. THERE WOULD BE NO OBLIGATION ON THE PART OF THE PLAINTIFFS IN THE CASE, TO SIGN A RELEASE. I DON'T KNOW HOW YOU WOULD TENDER THE MONEY. AND AS JUSTICE LEWIS POINTED OUT IF THE MONEY WERE TENDERED TO THE COURT, THERE PROBABLY WOULD BE NO INTEREST. THIS IS NOT A PERFECT SITUATION. I BELIEVE IT HAS ALWAYS BEEN CLEAR THAT,

FROM THE POINT AT WHICH YOU HAVE BEEN DEPRIVED OF A RECOGNIZED PROPERTY RIGHT, YOU ARE ENTITLED TO INTEREST, BUT YOU MEAN YOU ESTABLISH THAT PROPERTY RIGHT, BY VIRTUE OF OBTAIN AGO JUDGMENT, IT -- OF OBTAINING A JUDGMENT, IT IS NOT A MEANINGLESS PIECE OF PAPER, IT IS AT THAT TIME THAT YOU HAVE THE PROPERTY RIGHT, AND YOU ARE ABLE TO COLLECT INTEREST ON THAT JUDGMENT.

WELL, GOING BACK TO WHAT I ASKED YOU BEFORE YOU SAT DOWN, THE RULES, 9.340, DOES, IN FACT, SAY THAT, IF THERE IS A JUDGMENT OR REVERSAL THAT IS ENTERED THAT REQUIRES THE ENTRY OF A MONEY JUDGMENT ON A VERDICT, THE MANDATE SHALL BE DEEMED TO REQUIRE SUCH MONEY JUDGMENT TO BE ENTERED, AS OF THE DATE OF THE VERDICT, SO GOING BACK TO THIS OVERALL FAIRNESS, UNDER THAT CIRCUMSTANCE, REALLY, THE DEFENDANT DIDN'T KNOW, UNTIL THE APPELLATE COURT SAID THAT THERE WAS A REVERSAL, THAT THEY HAD TO PAY THE MONEY, YET WE ESTABLISHED THAT THE DATE OF THE VERDICT IS THE DATE THAT THE INTEREST IS TO BE PAID, SO I GUESS, IN TERMS OF JUST LOOKING AT THE OVERALL, IT IS AN IMPERFECT SYSTEM. WE HAVE GOT, NOW, A SITUATION WHICH DIDN'T EXIST 20, 30 YEARS AGO, WITH LOTS OF POTENTIAL POST VERDICT ISSUES, SUCH AS THE FABRE ISSUES AND THE LIKE, WHY ISN'T THAT AN UNBALANCED UNDERSTANDING IT IS NOT PERFECT, A FAIRER, MORE UNIFORM TO APPLY, WHICH IS THAT THE -- THAT THERE SHOULD BE POST VERDICT INTEREST FROM THE DATE OF THE VERDICT, AND THEN ANY OF THE POST-JUDGMENT ISSUES, POST-VERDICT ISSUES GET RESOLVED IN DUE COURSE. WHY IS, YOU KNOW, IF, SINCE, IT CERTAINLY IS PARALLEL TO THE APPELLATE PRINCIPLE, ISN'T IT?

WELL, FIRST OF ALL, I APOLOGIZE. I MISUNDERSTOOD YOUR POINT, BUT THE CLEAR POINT THERE, IS, AGAIN YOU ARE PICKING A DAY, AND, AGAIN, AS WAS APPOINTED OUT BY JUSTICE SHAW, IT IS A ARTIFICIAL DATE. YOU HAVE TO PICK A DATE, IF YOU ARE GOING TO GO BACKWARDS, TO SAY THAT IS WHEN THE JUDGMENT SHOULD HAVE BEEN ENTERED. AND IT IS AN ARTIFICIAL DATE.

ONE OTHER AREA, AS FAR AS THE ARTIFICIAL DATE, WHEN THE JURY IS TOLD, AND THIS GOES ALONG WITH MY LOSS OF EARNINGS, TO REDUCE FUTURE DAMAGES TO THE PRESENT MONEY VALUE, SO, SAY, THAT THE LOSS THAT A PLAINTIFF SUSTAINED IS, MIGHT BE OVER THE LIFETIME, YOU KNOW, SEVERAL HUNDRED THOUSAND DOLLARS, BUT THE JURY HAS TO FIX THAT LOSS OR IS TOLD TO REDUCE THE DAMAGES TO THE PRESENT VALUE, AS OF THE DATE OF THE VERDICT. DOESN'T THAT, AGAIN, DON'T WE, THEN, HAVE ANOTHER GAP BETWEEN THE VERDICT AND THE JUDGMENT, WHERE THERE IS NO COMPENSATION FOR THOSE TYPES OF DAMAGES FOR WHICH THERE ARE FUTURE MONEY DAMAGES?

I AGREE WITH WHAT YOU ARE SAYING, EXCEPT THAT I THINK WE SHOULD, ALSO, RECOGNIZE THE I AM PRECISION HA BY WHICH -- THE IMPRECISION BY WHICH THE JURY ADDEMENTS TO JUSTIFY MONEY AS OF A CERTAIN DAY.

WHAT WOULD BE WRONG WITH A RULE THAT, IF THE ENTRY OF THE JUDGMENT WERE A MERE MINISTERIAL ACT, THAT IT SHOULD RUN FROM THE VERDICT, BUT IF WE REQUIRE OR THE CASE REQUIRED OR THE PARTIES BECAME EMBROILED IN A DISPUTE THAT REQUIRED POST-VERDICT PROCEEDINGS, TO DETERMINE THE AMOUNT OF THAT JUDGMENT, WOULD BE THE DETERMINATIONTIVE FACTOR FOR INTEREST, AND HAVE -- THE THE DETERMINATIVE FACTOR FOR INTEREST, AND HAVE THAT PUNITIVE RESULT?

BECAUSE THAT WOULD BE POST-JUDGMENT RELIEF. LET ME END BY SAYING I WOULD STRONGLY URGE YOU TO TAKE A LOOK AT SULLIVAN VERSUS McMILLAN, WHICH IS WHAT THIS COURT SAID IN 1986. AS SOON AS IT IS THE LEGAL DUTY OF THE DEFENDANT TO PAY, IT IS AT THAT TIME, AND THIS IS NOT A QUOTE, BUT IT IS AT THAT TIME THAT THE DEFENDANT SHOULD BE LIABLE TO PAY INTEREST. THANK YOU.

THANK YOU, COUNSEL, FOR YOUR ASSIST ANSWER A -- ASSISTANCE IN THIS CASE.