Amendments to the Florida Rules of Workers Compensation Procedure

NEXT ON THE COURT'S CALENDAR IS THE AMENDMENT TO THE FLORIDA WORKERS COMPENSATION PROCEDURE. MS. HUDSON.

MAY IT PLEASE THE COURT. I AM KATHLEEN HUDSON. I AM HERE ON BEHALF OF THE WORKERS COMPENSATION RULES COMMITTEE, TO PRESENT TO YOU THE PETITION WHICH, AS THE PAST CHAIR, I ACTUALLY FILED THE PETITION IN THIS THAT I AM HEAR TO PRESENT TO YOU. THE PROPOSED AMENDMENTS ARE BEFORE YOU, BASED UPON THE STATUTORY AUTHORITY OF SEXS 440.271, AND 440 -- OF SECTIONS 440.271 AND 44 -- SINCE THE PROCEDURE OF THIS COURT, WE HAVE ENJOYED AN ACTIVE TIME IN THE LEGISLATURE, DUE TO THE FACT THAT THE LAST PRESENTATION TO YOU WAS A SUBSTANTIAL REWRITE OF THE RULES, THE FOUR-YEAR CYCLE FOR THE RULES COMMITTEE HAS BEEN RELATIVELY QUIET AS WELL. THE MAJORITY OF THE CHANGES BEFORE YOU ARE PROPOSALS THAT ARE, REALLY, HOUSE KEEPING IN NATURE. THEY RESOLVE CONFLICTS THAT WE NOTED DURING THIS TIME. CLARIFY TIME LINES, FOR INSTANCE. THEY, IN SOME INSTANCES, CONFORM THE RULE TO THE STATUTE AND THE FORM TO THE RULE. WE CORRECTED STATUTORY REFERENCES AS WELL. IF YOU REVIEWED THE VOTES TAKEN BY THE COMMITTEE DURING THIS TIME, THERE WASN'T MUCH CONTROVERSY. WHAT I WOULD LIKE TO DO IS GO THROUGH SOME OF WHAT I BELIEVE ARE THE MORE SIGNIFICANT CHANGES THAT ARE BEFORE YOU FOR CONSIDERATION.

YOU ARE ALREADY AWARE OF SOME OF THE COMMENTS, HELPFUL COMMENTS, THAT HAVE BEEN MADE, SO WHILE YOU ARE MAKING YOUR PRESENTATION, COULD YOU, ALSO, RESPOND TO THE COMMENTS.

CERTAINLY. AND, IN FACT, THE FIRST RULE THAT I WOULD LIKE TO ADDRESS IS RULE 4.045, DEALING WITH THE PRETRIAL PROCEDURE, AND MR. MURPHY QUESTIONED, IN MISS HISS COMMENTS, THE INCLUSION -- IN HIS COMMENTS, THE INCLUSION OF THE EXPERT PROVIDER, IN THIS CASE ON DNA, AS TO WHETHER THAT SHOULD TAKE PLACE AT THE TIME OF THE PRETRIAL. I UNDERSTAND IN SOME DISTRICTS THERE IS A LENGTHY TIME BETWEEN THE PRETRIAL AND THE TRIAL, AND IN SOME DISTRICTS THAT IS NOT THE CASE, BUT I DO BELIEVE THAT THE RULE, AS PRESENTED, REQUIRES THAT THE EMA BE APPOINTED AT THE TIME OF THE PRETRIAL. IT SIMPLY READS THAT YOU SHOULD CONSIDER AND DETERMINE SUCH MATTERS AS TO WHETHER THEY COULD BE DEALT WITH AT THAT POINT IN TIME. IN FACT, WE HAVE, ALREADY, GOTTEN DIRECTION FROM THE FIRST DCA ON THIS POINT. THEY HAVE HELD, IN PALM SPRINGS "GENERAL HOSPITAL" VERSUS CAB REMEMBER, A AT 6 -- PALM SPRINGS GENERAL HOSPITAL, VERSUS CABRERRA, THE EMA, AFTER PRETRIAL, IF THAT IS WHEN IT ARISES, AFTER PRETRIAL TESTIMONY.

COULD WE ADOPT THE RULE IN RESPONSE TO NARROWING THAT OR SOMETHING? IN OTHER WORDS, IS THERE A DANGER, IN THE LANGUAGE OF THE RULE, THAT IT COULD BE CONSTRUED THAT WAY?

NO, SIR. IF -- BECAUSE THE RULE IS NOT REQUIRING THAT IT BE -- THAT IT TAKE PLACE AT THAT TIME, IT SIMPLY BRING TO SAY THE ATTENTION, PERHAPS, OF THE PRACTITIONER, THAT, IF THE CONFLICT IS ALREADY THERE, AT THE TIME OF THE PRETRIAL, YOU SHOULD BE ON NOTICE, BASED UPON THIS RULE, THAT IT NEEDS TO BE DISCUSSED AND ADDRESSED, IF YOU NAIL TO DO SO, YOU MAY LOSE THE RIGHT TO REQUEST IT.

YOU DON'T DISAGREE WITH THE COMMENT MR. MURPHY'S COMMENT. IT IS JUST THAT YOU DON'T THINK THERE IS A PROBLEM THERE.

CORRECT. CORRECT.

OKAY.

THE OTHER CHANGES TO THE PRETRIAL RULE CLARIFIES SOME TIME LINES. WE, ALSO, MADE IT CLEAR THAT THE ATTORNEYS COULD AGREE TO AMEND THE FINAL WITNESS LIST AND SO FORTH, LESS THAN 30 DAYS BEFORE THE FINAL HEARING, IF THEY COULD DO SO BY AGREEMENT, THEY DID NOT HAVE TO GO THE WAY OF A MOTION HEARING. THE NEXT AREA THAT, I THINK, BEARS SOME SIGNIFICANCE IS IN THE RULES, CONCERNING MOTIONS, RULE 4.065. WE CLARIFIED AND SPECIFIED THE PROCEDURE FOR THE HANDLING OF SUBSTANTIVE MOTIONS, BRINGING IT WITH --

BEFORE YOU MOVE ON TO THAT, AND YOUR PROPOSING A CHANGE TO THE COMMITTEE NOTE TO 4.055?

YES, MA'AM.

MY QUESTION TO YOU IS WHETHER OR NOT YOU ARE PROPOSING SOMETHING SUBSTANTIVE THAT SHOULD NOT BE INCLUDEDED IN A COMMITTEE NOTE BUT, PERHAPS, AN ACTUAL SUBSTANTIVE CHANGE TO THE RULE. YOU ARE SAYING, PROPOSING LANGUAGE THAT SAYS, LET'S SEE -- THAT, IN A DEPOSITION, YOU CAN WAIVE THE REQUIREMENT TO HAVE A NOTARY OR SOME SUCH PERSON THERE. CORRECT? ISN'T THAT WHAT THAT COMMITTEE NOTE SAYS?

YES, MA'AM. THAT THE RULE ACTUALLY READS THAT, IF THE DEPOSITION IS TAKEN BY PHONE, THE OATH IS TO BE ADMINISTERED IN THE PHYSICAL PRESENCE. THE FIRST DISTRICT COURT, IN THE EASY-SERVE CASE, WHICH IS REFERENCED IN THE COMMITTEE NOTE, HELD THAT ACTUALLY IT WAS IN A TRIAL SETTING AS OPPOSED TO A DEPOSITION SETTING, BUT INDICATED THAT THE PARTIES COULD WAIVE THE NECESSITY OF HAVING THE NOTARY IN THE PHYSICAL PRESENCE OF THE WITNESS.

MY COMMENT, THOUGH, IS THIS IS YOU ARE EXPANDING WHAT WAS SAID BY THE FIRST DISTRICT IN THAT CASE. THEY WERE TALKING ABOUT A TRIAL, AND, NOW, THIS COMMITTEE NOTE TALKS ABOUT DOING THAT, ALSO, IN A DEPOSITION, AND I AM WONDERING IF THE RULES SHOULD BE CHANGED, TO CONCLUDE INCLUDE THAT, AS OPENES -- TO INCLUDE THAT, AS OPPOSED TO JUST PUTTING IT IN A COMMITTEE NOTE, AS YOUR OR THE COMMITTEE'S REFLECTION OF AN EXPANSION OF THAT CASE.

I WOULD CERTAINLY NOT DISAGREE THAT A SENTENCE COULD BE ADDED, FOR INSTANCE, TO BOTH THIS RULE, AS WELL AS THE RULE DEALING WITH TRIAL TESTIMONY, SAYING THAT THE PARTIES CAN WAIVE. ANOTHER TRIAL TESTIMONY RULE. TO REFLECT THAT CASE.

I WOULD NOT DISAGREE AT ALL.

OKAY.

THAT THAT MIGHT VERY WELL BE MORE APPROPRIATE THAN PUTTING IT INTO THE COMMITTEE NOTE. USING THAT AS A FORMAT, AS OPPOSED TO PUTTING THAT WITHIN THE RULE, ITSELF. GOING BACK TO MOTIONS OR CONTINUING WITH MOTIONS, WE ADDED THE MOTION TO BIFURCATE THE ISSUES, AS ONE OF THE PROCEDURAL MOTIONS. THIS CAME ABOUT, DUE TO THE CHANGE IN THE APPELLATE RULES, APPEAL OF NONFINAL ORDERS. WE PROPOSE A CORRECTION OF A GLITCH TO ELIMINATE THE REQUIREMENT THAT YOU CONTACT OPPOSING COUNSEL, WHEN YOU ARE FILING A MOTION TO DISMISS FOR FAILURE TO PROSECUTE. THE COMMITTEE NOTE WAS AMENDED OR ENHANCED, TO, ONCE AGAIN, REFLECT THE COMMITTEE'S DESIRE TO MAINTAIN OUR

SYSTEM OF SUBSTANTIVE MOTIONS VERSUS PROCEDURAL MOTIONS, BUT TRYING TO MAKE THE LITIGANTS AWARE THAT DUE PROCESS IS GOING TO BE OBSERVED, NO MATTER WHAT THE SITUATION, AND IF YOU NEED A HEARING ON WHAT WE TERM A PROCEDURAL MOTION, BECAUSE EVIDENCE IS NECESSARY, THEN IT WILL CERTAINLY BE PRESENTED. AND IT IS NOT OUR INTENTION TO, IN ANY WAY, TREAD UPON THE DUE PROCESS NOTION. THE NEXT RULE THAT PRESENTS A SIGNIFICANT CHANGE HAS TO DO WITH THE MOTION FOR REHEARING, RULE 4.141. WE SHORTEN THE TIME FROM 20 DAYS TO TEN DAYS. THIS IS ALONG THE SAME LINES AS THE CIVIL RULES. BUT MORE IMPORTANTLY, WE SHIFTED THE BURDEN FROM THE LITIGANTS TO THE JUDGE, IN TERMS OF HANDLING THE MOTION. THE JUDGE, NOW, WILL HAVE AT LEAST 20 DAYS TO ADDRESS THE MOTION TO, EITHER, DENY IT, TO VACATE THE ORDER, OR TO HOLD A HEARING, AND THIS WILL PROVIDE, WE THINK, THE LITIGANTS WITH A MORE UNIFORM HANDLING OF MOTIONS FOR REHEARING AROUND THE STATE.

A QUESTION THAT COMES TO LIGHT IN THIS PARTICULAR AMENDMENT IS YOU ARE CHANGING THIS TO CONFORM TO THE CIVIL RULES OF PROCEDURE. AND YOU HAVE USED THE TERM, IN THIS PROPOSAL, OF FILING, VERSUS SERVING. AND SO DID YOU INTEND, IN THE CIVIL RULES, IT SAYS THAT THE MOTION MUST BE SERVED WITHIN TEN DAYS, AND THEN THIS RULE SAYS MUST BE FILED WITHIN TEN DAYS. WAS THERE ANY DISCUSSION ABOUT THE DIFFERENCE IN THOSE TWO RULES?

NO, MA'AM. THE RULE READ "FILED PREVIOUSLY", AND I THINK OUR ANALOGY TO THE CIVIL RULES IS SHRIMP AN INDICATION THAT ELSEWHERE IN VARIOUS RULES, A TEN-DAY PERIOD IS -- HAS BEEN USED, AND IT IS NOT AN UNREASONABLE PERIOD.

IF YOU GO TO THAT, THOUGH, SHOULDN'T IT BE APPROPRIATELY SERVED? IN OTHER WORDS THE LESS TIME YOU PROVIDE, WHICH IS TEN DAYS IS A RELATIVELY SHORT PERIOD OF TIME. THERE IS A SUBSTANTIVE DIFFERENCE BETWEEN GETTING SOMETHING FILED AND HAVING SOMETHING SERVED.

ABSOLUTELY. AND QUITE FRANKLY, THAT WAS NOT ADDRESSED IN THE COMMITTEE'S DISCUSSIONS. AGAIN, YOUR POINT IS VERY WELL TAKEN, THAT SERVICE AND FILING, OBVIOUSLY, ARE TWO VERY DIFFERENT THINGS, AND THAT WOULD GIVE --

SO THE COMMITTEE WOULDN'T HAVE ANY PROBLEM CHANGING THAT TO QUOTE SERVED", AS IS PROVIDED -- CHANGING THAT TO, "SERVED", AS IS PROVIDED IN THE CIVIL RULES.

NO, SIR. THE AREA HAVING TO DO WITH STIPULATIONS, IS RULE 4.143. WE ADDED A PARAGRAPH IN WHICH WE WOULD LIKE TO PROHIBIT GENERAL RELEASE LANGUAGE FROM BEING WITHIN THE JOINT PETITION STIPULATION, ITSELF. BECAUSE THE JUDGE OF COMPENSATION CLAIMS HAS NO JURISDICTION OVER NONWORKERS COMPENSATION MATTERS. PRACTICALLY SPEAKING, WHAT IS HAPPENING, WHEN A CASE IS SETTLED, IT IS VERY OFTEN A GLOBAL SETTLEMENT. A GENERAL RELEASE IS OBTAINED. VARIOUS OTHER ADA WAIVERS AND SUCH ARE ALL NEGOTIATED AND AGREED UPON AT THE SAME TIME. IT WAS, AFTER DISCUSSION BY THE COMMITTEE, DECIDED THAT, WHILE THE JUDGE OF COMPENSATION CLAIMS SHOULD BE MADE AWARE THAT THERE HAVE BEEN OTHER AGREEMENTS REACHED IN THIS WHOLE NEGOTIATION, BECAUSE THE JUDGE DOES NOT HAVE JURISDICTION OVER THESE MATTERS, WE DID NOT WANT THE ACTUAL RELEASE LANGUAGE CONTAINED WITHIN THE JPS. RATHER IT SHOULD BE WITHIN ANOTHER DOCUMENT.

HAS THERE BEEN, ACTUALLY, IN OTHER WORDS, IS THIS SOMETHING BY ANECDOTE OR BY COMING FORWARD, THAT THERE, REALLY, HAS BEEN A PROBLEM OUT THERE, IN THAT REGARD? AS YOU POINT OUT, AS A PRACTICAL MATTER, THERE ARE, TYPICALLY, GLOBAL SETTLEMENTS OF THESE THINGS, AND IS THERE A REAL PROBLEM OUT THERE, OR IS IT JUST DISCOMFORT, THE JUDGE OF COMPENSATION CLAIMS, IN SAYING, WELL, I DON'T KNOW WHETHER I HAVE ANY JURISDICTION OVER. THAT WHAT IS THE SOURCE, REALLY, OF THAT?

WELL, THE SOURCE SPECIFICALLY, RATHER THAN IT SIMPLY BEING ANECDOTAL, IS ANDERSON VERSUS TBA PARTNERSHIP LIMITED, AT 733 SO.2D 1032. THIS IS A 1998 DECISION FROM THE SECOND DISTRICT COURT, IN WHICH THEY AFFIRMED A SUMMARY JUDGMENT THAT WAS GRANTED TO THE DEFENDANT. IN THAT INSTANCE, MR. ANDERSON HAD, APPARENTLY, SETTLED HIS OR HER WORKERS COMPENSATION CASE, AND THE JOINT PETITION READ THAT, HAD IN IT LANGUAGE RELEASING ALL CLAIMS. WHEN ANDERSON SUBSEQUENTLY BROUGHT SUIT AGAINST A THIRD PARTY, SO TO SPEAK, FROM THE WORKERS COMP PERSPECTIVE, THE LANGUAGE WITHIN THE JPS WAS USED TO, FOR THE DEFENDANT TO OBTAIN A SUMMARY JUDGMENT, DISMISSING THE ACTION. SO --

WAS THERE ANY CLAIM, IN THAT CASE, THAT THERE HAD BEEN A FRAUD OR ANYTHING LIKE THAT?

THE OPINION OF THE SECOND DISTRICT WAS -- IT WAS A PROCURIUM AFFIRMANCE. WE HAVE A LENGTHY DISSENT FROM JUDGEALITY ENBURN, SEEMINGLY -- FROM JUDGE ALTENBURN, SEEMINGLY, SORT OF GRUDGINGLY SAYING THAT IS WHAT IT SAID BUT NOT LIKING IT AT ALL. HE TERMED IT "GOT YOU" LANGUAGE, AND WE TOOK THAT TO HEART, IN TRYING TO ADDRESS THIS AND NOT PROHIBIT A GLOBAL SETTLEMENT, BY ANY MEANS, BUT SIMPLY SAYING THAT THE JPS IS GOING TO DEAL WITH WORKERS COMPENSATION MATTERS AND WHAT COMES WITHIN THE JURISDICTION OF THE JUDGE OF COMPENSATION CLAIMS. AND I WILL SAY THAT, BECAUSE FLORIDA IS VERY HEAVILY A STATE INVOLVING SELF-INSURED EMPLOYERS, THIS GENERAL RELEASE QUESTION COMES UP VERY, VERY FREQUENTLY, IN THE SETTLEMENT OF WORKERS COMPENSATION CASES, SO I THINK IT GOES FAR BEYOND BEING ANECDOTAL, IN MY EXPERIENCE. IT IS THERE AT LEAST 7 A PERCENT OF THE TIME. -- AT LEAST 7 A PERCENT OF THE TIME.

YOU ARE IN -- AT LEAST 75% OF THE TIME.

YOU ARE IN YOUR REBUTTAL, IF YOU WOULD LIKE TO SAVE SOME TIME, OR YOU MAY CONTINUE.

I WOULD PREFER TO SAVE A FEW MOMENTS. THANK YOU.

MR. MURPHY.

CHIEF JUSTICE. YOUR HONORS. MAY IT PLEASE THIS COURT. MY NAME IS KEVIN -- I AM HERE, TODAY, ON BEHALF OF MY FIRM, TO COMMENT ABOUT THE PROPOSED CHANGES TO THE RULES OF WORKERS COMPENSATION PROCEDURE. YOU HAVE, ALREADY, HEARD A LOT, TODAY, IN PREVIOUS ARGUMENTS, ABOUT THE DIFFERENCE BETWEEN PROCEDURAL AND SUBSTANTIVE CHANGES. I THINK IT IS IMPORTANT TO REMEMBER THAT SOME OF THESE PROPOSALS FOR WORKERS COMPENSATION PROCEDURE MAY, ACTUALLY, KIND OF INFRINGE ON THAT SUBSTANTIVE ELEMENT OF THE LAW, AS WELL. THESE RULES ARE INTENDED TO GUIDE PRACTICES AND PROCEDURES. THEY ARE NOT INTENDED TO CHANGE THE LAW OR TO LEGISLATE SOME TYPE OF CHANGE THAT IS NOT IN THE STATUTE. AS MS. HUDSON INDICATED, WE HAVE FILED COMMENT ON SEVERAL PROPOSED RULES AND WE ARE HERE TO ONLY DISCUSS TWO RULES IN FORM. SPECIFICALLY PAGE 7 OF 4.145, IS THE FIRST RULE THAT WE WOULD LIKE TO ADDRESS WITH YOUR HONORS TODAY. THAT RULE SETS FORTH THAT, AT THE PRETRIAL HEARING, THE REQUEST FOR AN EXPERT MEDICAL ADVISOR OR EMA, MUST BE CONSIDERED AND DETERMINED. NOW, CONSIDERING WHETHER AN EMA MAY BE NECESSARY AT THE PRETRIAL IS ONE THING, BUT ACTUALLY MAKING A DETERMINATION THAT AN EMA IS NECESSARY, AT THE TIME OF THE PRETRIAL, MAY BE SOMETHING THAT, SIMPLY PUT, INSIDE THE PRACTICE PARAMETERS OF WORKERS COMPENSATION, IS NOT GOING TO BE PRACTICAL.

DO YOU HAVE AN ANY LANGUAGE THAT WOULD -- PROPOSED LANGUAGE THAT WOULD HELP WITH THE SITUATION THAT YOU THINK WOULD CARRY OUT THE SPIRIT OF WHAT THE WORKERS COMP COMMITTEE IS TRYING DO, WHICH IS LET'S DISCUSS THIS AT THE PRETRIAL CONFERENCE,

YET LEAVE IT OPEN TO DOING THIS AT SOME OTHER POINT, SHOULD IT BECOME NECESSARY.

CERTAINLY, YOUR HONOR. I BELIEVE THAT, TO ELIMINATE THE WORD "DETERMINED", AT LEAST INSOFAR AS WITH REGARD TO THE APPOINTMENT OF AN EMA, THAT THAT WOULD BE APPROPRIATE, IF WE COULD CONSIDER WHETHER AN EMA IS NECESSARY BUT NOT NECESSARILY MAKE A DETERMINATION. THAT DETERMINATION MAY BE PREMATURE. AT THE PRETRIAL HEARING, THERE MAY BE NO CONFLICT BETWEEN MEDICAL PROVIDERS. AT THAT TIME, IF THE PARTIES AGREE AND STIPULATE THAT, IN FACT, AN EXPERT MEDICAL ADVISOR IS NOT NECESSARY AT THAT TIME, THEN WE HAVE ACTUALLY INCREASED LITIGATION. WHAT WE HAVE DONE IS WE HAVE MADE IT SO THE PARTIES WILL HAVE TO COME BACK ON A PETITION TO MODIFY, TO HAVE THAT INITIAL PRETRIAL AGREEMENT MODIFIED OR THE ORDER APPROVING IT MODIFIED, TO ALLOW AN EMA, ONCE THE CONFLICT ARISES. ADDITIONALLY, I THINK IT IS IMPORTANT TO RECOGNIZE THE SERIAL NATURE OF WORKERS COMPENSATION LITIGATION. WE ARE NOT A VERY SIMPLE AND CUT AND DRY PROCEDURE. INSTEAD THE LITIGATION IN WORKERS COMPENSATION TENDS TO HAVE A SERIAL NATURE, WITH WORKERS' BENEFITS BEING FILED THAT DOESN'T ADDRESS MEDICAL ISSUES OR ANYTHING THAT WOULD REQUIRE A DETERMINATION AS TO WHETHER THERE IS A CONFLICT IN MEDICAL EVIDENCE. ULTIMATELY WHAT WOULD HAPPEN IS THAT PETITION WOULD GO TO PRETRIAL, AND THE PARTIES WOULD BE ASKED TO MAKE A DETERMINATION AS TO WHETHER AN EXPERT MEDICAL ADVISOR IS NECESSARY. THAT PETITION OR THAT PRETRIAL CAN, LATER, BE AMENDED, BY THE FILING OF NEW PETITIONS FOR BENEFITS, WHICH WOULD, THEN, PERHAPS, RAISE THE ISSUE AS TO WHETHER AN EXPERT MEDICAL ADVISOR IS NECESSARY, AND THEN WE WOULD BE STUCK WITH THE SITUATION, AGAIN, OF WONDERING CAN WE GET AN EXPERT MEDICAL ADVISOR AT THIS DATE, EVEN THOUGH, PERHAPS, THE CONFLICT BETWEEN MEDICAL PROVIDERS HAS JUST BECOME MATERIAL. AT THE INITIAL PRETRIAL, IT WAS NOT MATERIAL, AND NOW, ALL OF A SUDDEN, BECAUSE OF AN AMENDMENT, IT IS, AND WE ARE STUCK WITH THE STIPULATION, MARTION SEVERAL MONTHS PRIOR, SAYING THAT AN EXPERT MEDICAL ADVISOR IS NOTNESSES AREA. YOUR HONORS, I BELIEVE THAT THE CASE -- ADVISOR IS NOT NECESSARY. YOUR HONORS, I BELIEVE THE CASE LAW SPECIFICALLY CITED, WHICH IS PALM SPRINGS GENERAL HOSPITAL VERSUS CABRERRA, THAT CASE DOESN'T SAY THAT WE HAVE TO MAKE A DECISION AS TO AN EXPERT MEDICAL ADVISOR AT THE PRETRIAL HEARING. INSTEAD, IT SAYS THAT THE DECISION AS TO WHETHER OR NOT TO REQUEST AN EXPERT MEDICAL ADVISOR, MUST BE MADE WITH REASONABLE TIMELINESS OF THE DISCOVERY OF THE CONFLICT BETWEEN MEDICAL EVIDENCE AND MEDICAL PROVIDERS. I THINK THAT THAT IS IMPORTANT TO REMEMBER, IS THAT WE HAVE TO KEEP THAT REASONABLE TIME LIMITS ASPECT OF THE LAW OUT THERE, RATHER THAN SETTING A FIRM AND SOLID DEADLINE, AND IN THIS CASE, I BELIEVE THAT THE WAY THE RULE IS WRITTEN, IT DOES SET A DEADLINE FOR DETERMINATION OF THE EXPERT MEDICAL ADVISOR AT THE PRETRIAL. EXCUSE ME. THE NEXT RULE WE WOULD LIKE TO COMMENT ON IS RULE 1.14 -- 4.143, SUBPARAGRAPH C. AND THAT WAS, ALSO, ADDRESSED BY MISS HUDSON, THIS MORNING, AS WELL, AND IT IS THE RULE WHICH ADDRESSES THE PROHIBITION OF GENERAL AE LEASES. -- OF GENERAL RELEASES. THIS IS SOMETHING THAT DOES HAPPEN QUITE FREQUENTLY, IN WORKERS COMPENSATION PROCEEDINGS. AS JUSTICE ANSTEAD ASKED, IS THIS SOMETHING THAT IS ANECDOTAL OR IS THIS SOMETHING THAT IS ACTUALLY OCCURRING OUT THERE. IT DOES. IT DOESN'T MAKE SFONS AN EMPLOYER TO SAY I AM -- IT DOESN'T MAKE SENSE, FOR AN EMPLOYER TO SAY I AM GOING TO SETTLE YOUR WORKERS COMPENSATION CASE AND WHEN THERE ARE FOUR OR FIVE CASES PENDING. IT DOESN'T MAKE SENSE THAT A JUDGE WOULD MAKE A SENSE -- NO ONE IS TRYING TO MAKE AN ARGUMENT THAT THEY CAN MAKE A DECISION THAT THEY HAVE JURISDICTION OVER AMERICANS WITH DISABILITIES ACT CLAIMS OR SEXUAL DISCRIMINATION OR ANY OTHER TYPE OF DISCRIMINATION THAT MAY EXIST. INSTEAD, WHAT WE WOULD LIKE TO TRY AND SHOW IS THAT, LESS PUT EVERYTHING IN FRONT OF -- LET'S PUT EVERYTHING IN FRONT OF THE JUDGE. IF THE JUDGE OF COMPENSATION CLAIMS IS GOING TO APPROVE, WHAT WE CALL WASH OUT, THAT BEING A JOINT PETITION FOR SETTLEMENT, IF HE IS GOING TO APPROVE THAT, WE WANT HIM TO BE FULLY INFORMED, AND I BELIEVE THAT THE COMMITTEE NOTE ADDRESSES THAT TO SOME EXTENT. IT SAYS LET'S PUT ALL OF THAT IN A SEPARATE PACKET THAT GOES OVER TO THE JUDGE OF COMPENSATION CLAIMS AND THEY CAN

REVIEW THAT PACKET AND BE FULLY INFORMED AS TO WHAT IS HAPPENING. THE PROBLEM IS, AS TO WORKERS COMPENSATION PROCEDURE, THAT PACKET SPECIFICALLY INCLUDES A SIGNIFICANT NUMBER OF DOCUMENTS, NOT ONLY MEDICAL RECORDS, WHICH SOMETIMES MAY BE TEN OR 15 INCHES THICK, BUT IF WE START THROWING IN THESE JOINT PETITIONS, THERE IS NO GUARANTEE THAT THEY ARE GOING TO ALWAYS BE NOTICED AND GIVEN THE WEIGHT THAT THEY DESERVE. INSTEAD IF WE WERE TO ACTUALLY PUT THE LANGUAGE IN THE WORKERS COMPENSATION CASES, WHICH IS NOT SAYING THAT THE JUDGE HAS JURISDICTION TO MAKE AN ACTUAL RULING OVER THIS, BUT INSTEAD IT PUTS FORT ALL FOUR CORNERS OF THE CONTRACT, ALL FOUR CORNERS OF THE SETTLEMENT IN FRONT OF THE JUDGE OF WORKERS COMPENSATION CLAIMS, SO THAT THE JUDGE CAN SAY, OKAY, I KNOW EXACTLY WHAT IS GOING ON, AND THEY ARE FULLY INFORMED AT THEIR DECISION.

THE PROPOSED LANGUAGE, AT THE END OF THAT, SAYS ONLY ACCIDENTS AND INJURES DISCLOSED TO THE JUDGE, AND IT SEEMS TO ME THAT YOU ARE IN AGREEMENT WITH THAT, BECAUSE YOU ARE TALKING ABOUT MAKING SURE THAT THE JUDGE IS AWARE OF ALL OF THESE OTHER CLAIMS OR -- YOU MIGHT HAVE AGAINST THE CARRIER.

TO BE HONEST WITH YOU, YOUR HONOR, THAT PORTION OF THE RULE, I BELIEVE, ADDRESSES A LITTLE BIT OF A DIFFERENCE OF AN ASPECT OF THIS. I THINK, WHAT THE RULES COMMITTEE WAS TRYING TO DO,, AND CERTAINLY MISS HUDSON CAN ADDRESS THAT, IS THAT THEY WERE TRYING TO MAKE SURE THAT ALL OF THE WORKERS COMPENSATION ACTS AND INJURES ARE PRESENTED BEFORE THE JUDGE OF COMPENSATION CLAIMS. CERTAINLY A CLAIM FOR HARASSMENT, A CLAIM FOR -- UNDER THE AMERICANS WITH DISABILITIES ACT, WOULD, PROBABLY, NOT QUALIFY AS AN ACCIDENT OR INJURY, AND, YOUR HONORS, WE DO ACTUALLY -- WE FILED COMMENT, WITH REGARD TO THE RULE SETTING FORT THAT ALL ACCIDENTS AND INJURES MUST BE PRESENTED TO THE JUDGE OF COMPENSATION CLAIMS. TRADITIONALLY, WHAT I HAVE SEEN DONE, IN MY YEARS OF PRACTICE IN WORKERS COMPENSATION, IS THAT, IF A PARTY WANTS TO TRY AND RESOLVE ALL ACCIDENTS AND INJURES, THEY HAVE THE CLAIMANT STIPULATE THAT ALL ACCIDENTS AND INJURES HAVE BEEN DISIES CLOSED, AS PART OF -- DISCLOSED, AS PART OF A WORKERS COMPENSATION SETTLEMENT. WE HAVE TO REMEMBER THAT ACCIDENTS AND INJURES IS VERY BROAD. IF A PERSON HAPPENS TO GET A REALLY BAD PAPER CUT AND REPORT IT AS AN ACCIDENT OR INJURY, IT IS CONSIDERED TO BE AN ACCIDENT OR INJURY, UNDER THE WORKERS COMPENSATION LAW, AND IT IS SOMETHING THAT TECHNICALLY WOULD BE REQUIRED TO HAVE MAXIMUM MEDICAL IMPROVEMENT AND EVERY OTHER TECHNICAL REQUIREMENT TO BE SETTLED.

DO YOU READ THIS RULE AS PROHIBITING THE TOTAL RESOLUTION OF WHATEVER DISPUTES MAY BE THERE OR MERELY PROHIBITING THAT BEING ACCOMPLISHED IN A JOINT STIPULATION? BECAUSE IT SEEMS TO ME THAT IS THE WAY I WAS READING IT, IS THAT LET'S NOT PUT THAT IN THE JOINT STIPULATION, BUT IT DOES NOT, AT THE SAME TIME, PROHIBIT WHATEVER OTHER DOCUMENTS YOU MAY EXECUTE. AM I MISREAD SOMETHING.

NO, YOUR HONOR, I BELIEVE THAT IT DOES ALLOW US TO EXECUTE WHATEVER DOCUMENTS WE WOULD LIKE TO.

SO YOU CAN STILL SETTLE EVERYTHING. THEY ARE JUST SAYING DON'T SURPRISE SOMEBODY BY PUTTING IT INTO A JOINT STIPULATION, WHEN THAT IS, REALLY, THE DOCUMENT TO TAKE CARE OF THE COMP CLAIMS. IF YOU HAVE GOT SOMETHING ELSE YOU WANT TO SETTLE, GET OTHER DOCUMENTS.

CORRECT, YOUR HONOR, AND WHAT I DO, IN THE COURSE OF MY PRACTICE, IS I PUT THEM IN BOTH. I DO A SEPARATE AGREEMENT, AND THEN I ACTUALLY PUT THE SAME LANGUAGE IN THE JOINT STIPULATION, SO THAT THE JUDGE OF COMPENSATION CLAIMS KNOWS WHAT HE IS GETTING.

IS YOUR PRACTICE WITH, MOTHER-IN-LAW, DO YOU REPRESENT INJURED PARTIES OR DO YOU REPRESENT EMPLOYERS AND INSURED'S?

I REPRESENT EMPLOYER CARRIERS, YOUR HONOR, AND THAT IS EXCLUSIVELY WHAT WE DO IS WORKERS COMPENSATION.

WHAT SEEMS TO BE THE DISADVANTAGE TO YOUR CLIENTS, THE EMPLOYERS AND INSURED'S, TO HAVING THE LANGUAGE THAT WE ARE TALKING ABOUT, HERE, OF NOT HAVING IT IN AN ORDER THAT IS SIGNED BY A PERSON OF LIMITED JURISDICTION? RATHER RESERVING THAT FOR ANOTHER DOCUMENT?

YOUR HONORS, IN PART, WE WANT THE JUDGE OF COMPENSATION CLAIMS TO BE FULLY INFORMED. AS PART OF OFFER PRACTICE, WHAT WE DO IS WE PUT INTO OUR STIPULATIONS CERTAIN CATEGORIES AND DIVIDE UP THE MONEY OF THE SETTLEMENT STIPULATION IN A CERTAIN WAY. WE ALWAYS LEAVE A CERTAIN PORTION OF THAT AS CATAGORIZED AS OTHER, WHICH INCLUDES CONSIDERATION FOR ALL OF THE OTHER AGREEMENTS IN THE STIPULATION OR THAT MAY BE SEPARATE FROM THE STIPULATION. WHAT THAT WILL ALLOWS THE JUDGE OF COMP -- WHAT THAT ALLOWS THE JUDGE OF COMPENSATION CLAIMS TO DO AND ALLOWS US, AS WELL, IS IT INCREASES THE SIMPLICITY OF THE DOCUMENT AND, ALSO, AS I THINK IS INDICATED, IT PUTS EVERYTHING ON THE TABLE BEFORE THE JUDGE, AND THERE IS, REALLY, I DON'T THINK THAT THERE IS ANY DISADVANTAGE BY HAVING THE JUDGES FULLY INFORMED AS POSSIBLE.

DON'T YOU HAVE A CERTAIN AMOUNT OF MISS DIRECTION THAT CAN BE ON THE CLAIMANT'S PART, WHERE THE CLAIMANT IS PROCEEDING ALONG THE LINE THAT WE ARE ONLY DEALING WITH THE WORKERS COMP MATTER, AND THEN, ALL OF A SUDDEN, IT IS -- YOU HAVE GOT, IN THIS STIPULATION, WHICH IS FLASHED TO THE JUDGE TO SIGN AND EVERYTHING, HAS BEEN DEALT WITH, AND MY SECOND INQUIRY IS WHAT DIFFERENCE DOES IT MAKE TO THE JUDGE OF INDUSTRIAL CLAIMS, AS TO WHAT IS IN THESE OTHER MATT%?

YOUR HONOR, TO ADDRESS YOUR FIRST POINT, AND IF I COULD JUST ASK YOU TO REPHRASE THAT, AGAIN, TO ME.

WHAT I AM CONCERNED ABOUT IS THAT HERE, AS I UNDERSTAND WHAT WE ARE DOING IS, WE ARE GETTING AN APPROVAL OF THE SETTLEMENT OF THE WORKERS COMP CLAIM. CORRECT?

CORRECT.

AND SO IF YOU HAVE GOT A PARTY, THERE, THAT BELIEVES THAT WHAT THIS DOCUMENT IS DOING, IS APPROVING THE SETTLEMENT OF THE WORKERS COMP CLAIM AND THAT IS IT, AND THE PARTY IN MIAMI, WHO IS PAYING NOT AS CLOSE ATTENTION, READING ALL OF THE FINE PRINT, IN IT, LOOSE AND SAID, YEAH, THAT IS WHAT WE AGREED TO, AS FAR AS THE WORKERS COMP CLAIM IS CONCERNED. THEN IT GOES AHEAD AND ALLOWS THIS TO BECOME AGREED-TO DOCUMENT. NOW, IT HAS GOT A LOT OF EXTRANEOUS MATTERS INTO IT. DON'T WE HAVE -- RUN A RISK OF IT MISLEADING THAT CLAIMANT?

YOUR HONOR, I DON'T BELIEVE THAT IT DOES. IF THE CLAIMANT ACTUALLY READS THROUGH THE DOCUMENT, IT IS NOT HIDDEN IN THE MIDDLE OF SOME PARAGRAPH.

BUT IT DOESN'T HAVE ANY BEARING ON WHAT THE JUDGE OF INDUSTRIAL CLAIMS IS DOING, DOES IT?

NO, YOUR HONOR, IT DOES NOT, OTHER THAN FULLY INFORMING THE JUDGE OF ALL OF THE AGREEMENTS OF THE PARTIES AND, ALSO, I -- MAKING IT EASIER TO --

HOW DOES THAT BEN SNIT -- BENEFIT? YOU HAVE SAID THAT SEVERAL TIMES. WHAT I AM HAVING

A HARD TIME WITH, IS HOW DOES THAT BENEFIT THE JUDGE OF INDUSTRIAL CLAIMS, AS TO WHETHER HE APPROVES THE WORKERS COMP WASH OUT OR NOT?

YOUR HONOR, I BELIEVE THAT IT SIMPLY INFORMS HIM, AND I DON'T BELIEVE THAT WE SHOULD KEEP ANYTHING FROM THE JUDGE OF COMPENSATION CLAIMS. IN FACT, OUR RULES, EVEN, INDICATE --

THE COMMITTEE IS NOT SUGGESTING THAT YOU KEEP ANYTHING FROM THE JUDGE AT ALL. THEY ARE JUST TALKING ABOUT THE LANGUAGE THAT IS IN THERE. IS THERE A CONCERN THAT YOU MAY END UP, THEN, IF YOU ARE SETTLING THE PI CASE OR WHATEVER IT IS OUT THERE, TOO, THAT THE JUDGE OF COMPENSATION CLAIMS IS GOING TO START FEELING, WELL, I -- NOW I NEED TO HAVE EXPLAINED TO ME, IF IT IS GOING TO BE MY ORDER, THAT RELEASES THAT CLAIM, I BETTER HAVE THAT CLAIM EXPLAINED TO ME, AND LET ME BE SURE THAT THE INJURED PARTY KNOWS THAT THE EFFECT OF THIS, NOW, IS GOING TO BE TO TERMINATE THAT PI CLAIM, TOO, AND, YOU KNOW, WHAT ARE THE DAMAGES IN THAT CASE, AND, YOU KNOW, HOW MUCH PAIN AND SUFFERING, BESIDES WHAT HAS COME BEFORE ME AND EVERYTHING, AND I MEAN, ARE WE GOING TO START DRIBBLING OVER INTO THAT, IF WE ARE GOING TO PUT THE EFFECT OF THAT, AND I GUESS I AM COMING BACK TO THE CONCERN AND THE -- JUDGE ALTENBURN'S OPINION THAT THESE CAN BE IN THERE AND SAY WAIT A MINUTE. THAT WAS JUST SETTLEMENT 6 MY WORKERS -- OF MY WORKERS COMP. I DIDN'T KNOW THAT MY JUDGE WAS, ALSO, ORDERING THAT MY PI CASE BE DISMISSED BY THAT SAME THING. YOU CAN GET THINGS BEFORE THE JUDGE, AND I COMPLIMENT YOU ON THAT. OBVIOUSLY THAT SHOULD BE DONE. I AM WONDERING ABOUT THE NECESSITY, THOUGH, TO HAVE THAT RELEASE LANGUAGE IN THE ORDER SIGNED BY THE COMP JUDGE.

YOUR HONORS, I BELIEVE THAT, WHEN A STIPULATION IS ENTERED INTO, WHETHER IT BE WORKERS COMPENSATION STIPULATION OR ANY OTHER, ABSENT FRAUD, MISREPRESENTATION OR OVERREACH OVERREACHING, THIS COURT AND THE DISTRICT COURTS OF APPEAL HAVE HELD THAT THEY BELIEVE IN A FINALITY OF SETTLEMENTS, AND THAT THEY WANT TO MAKE THESE BINDING. IT IS ASSUMED THAT A PARTY IS FULLY INFORMED.

I ASSUME THAT YOU, AS THE PARTY REPRESENTING, FOR INSTANCE, THE EMPLOYER CARRIER, HAVE THE INJURED PARTY SIGN A COMPLETE RELEASE, IF THAT IS WHAT IS CONTEMPLATED, AND YOU HAVE GOT THAT SEPARATE DOCUMENT, YOU KNOW, THAT HAS THAT LEGAL EFFECT. AND THAT IS A SEPARATE DOCUMENT.

CORRECT.

AND YOU DO THAT, I ASSUME, IN EVERY CASE.

SOME OF OUR CLIENTS ACTUALLY HAVE REQUESTED THAT WE PUT IT INTO THE WASH OUT DOCUMENT, INSTEAD, AND WE HAVE ALWAYS RECOMMENDED DOING A SEPARATE DOCUMENT, ONE WAY OR THE OTHER, AND THAT HAS BEEN MY PRACTICE, TO ALWAYS DO THAT. I BELIEVE THAT IT IS THE SAFEST WAY IT DOING IT. BECAUSE I THINK --

CAUTIOUS. RIGHT.

I THINK IT CAN BE ARGUED THAT THE JUDGE OF COMPENSATION CLAIMS HAD NO JURISDICTION TO MAKE A RULING OVER AN ADA CASE OR HARASSMENT CASE.

RELEASE OF THOSE OTHERS.

THERE FOR IT COULD BE DETERMINED TO BE NOT BINDING. THE SECOND DISTRICT'S CASE, OF COURSE, FINDS THAT IT IS, BUT I BELIEVE THAT IT CERTAINLY COULD BE OVERRULED FOR LACK OF JURISDICTION. I DON'T BELIEVE THAT IT IS GOING TO CONSTITUTE FRAUD,

MISREPRESENTATION OR OVERREACHING, HOWEVER. YOUR HONORS, FINALLY, I WOULD LIKE TO, ALSO, COMMENT ON THE SECTION WHICH DEALS WITH ALL ACCIDENTS AND INJURES HAVE TO BE REVEALED TO A JUDGE OF COMPENSATION CLAIMS. I THINK IT IS IMPORTANT THAT WE REALIZE THAT, IN WORKERS COMPENSATION CASES, WE ARE DEALING WITH, SOMETIMES, EMPLOYEES WHO HAVE BEEN WORKING FOR AN EMPLOYER FOR ON, 25 YEARS, AND OVER THAT TIME THEY HAVE BEEN -- FOR 20, 25 YEARS, AND OVER THAT TIME THEY HAVE BEEN INJURED NUMEROUS TIMES.

WHAT RULE ARE YOU TALKING ABOUT?

RULE 143, SUBSECTION C, AND THE SECTION WHICH YOU READ OFF, JUSTICE QUINCE.

IS THAT TELLING THEM THAT ALL ACCIDENTS AND INJURES OR THAT THE STIPULATION CAN ONLY REFER TO INCLUDE ACCIDENTS AND INJURES THAT HAVE BEEN DISCLOSED. THAT YOU HAVE TO DISCLOSE ALL ACCIDENTS AND INJURES.

THE WAY I INTERPRET THE RULE, UNFORTUNATELY, IS THAT THE STIPULATIONS WILL ONLY COVER THOSE ACCIDENTS AND INJURES THAT ARE SPECIFICALLY LISTED IN THE JOINT PETITION FOR SETTLEMENT. IT HAS BEEN MY EXPERIENCE THAT WHAT WE HAVE RUN INTO, GIVEN THE LEG ANY NATURE OF SOME OF THE EM-- THE THIS EVENING ANY -- THE LENGTHY NATURE OF WHAT WE HAVE RUN INTO WITH EMPLOYMENT COMPENSATIONS, THERE MAY HAVE BEEN 20 OR 30 INJURES. YOU MAY GET HURT THREE TIMES IN 1987, ALL MINOR. STUBBED HIS TOW -- HIS TOE HAD, A BAD PAPER CUT OR THAT KIND OF THING, AND THEN IN 1998, SUFFERS A SIGNIFICANT BACK INJURY BUT CONTINUES TO WORK AND THEN SUFFERS ANOTHER INJURY IN 1999. OBVIOUSLY THESE MINOR INJURIES, MAYBE HE HAS NEVER SOUGHT MEDICAL TREATMENT FOR THEM, AND WHAT WE DO IS, ESSENTIALLY, YOUR HONORS, TO TRY AND GROUP IN ALL OF THOSE INJURES AND ACCIDENTS. THEY MAY NOT BE ANYTHING THAT THE CLAIMANT EVEN THINKS IS WORTH MENTIONSING TO THE JUDGE AND CERTAINLY THEY ARE NOT COMPENSATION, BUT WE NEED TO BE ABLE TO SETTLE OUT AN INJURY, HERE, AND CERTAINLY ALL ACCIDENTS AND INJURES, CERTAINLY, WHETHER REPORTED OR UNREPORTED, AND I THINK IT IS IMPORTANT THAT THIS PORTION OF THE RULE BE ANALYZED TO SOME EXTENT, TO SAY IF A CLAIMANT SAYS THAT IS ALL THAT HAPPENS TO ME IN A GENERAL SET OF CIRCUMSTANCES, THAT IS BINDING AND CREATES AN ESTOPPEL AGAINST THE CLAIMANT, RATHER THAN HAVING TO GO BACK AND TRACE, MAYBE, 20 YEARS, TEN DIFFERENT INSURANCE CARRIERS AND WHO KNOWS HOW MANY DIFFERENT ADJUSTORS AND SO FORTH, BACK INTO TIME.

DID YOU MEET WITH THE RULES COMMITTEE AT ALL, ABOUT THIS? IN OTHER WORDS DID YOU HAVE AN OPPORTUNITY FOR A GIVE AND TAKE? I ASSUME YOU ARE VERY ACTIVE, OBVIOUSLY, IN THE WORKERS COMPENSATION PRACTICE. IS THERE SOME REASON WHY YOU DID NOT DISCUSS THIS WITH THE COMMITTEE?

YOUR HONOR, TO BE HONEST WITH YOU, THE FIRST TIME I HAD HEARD OF THE RULE BEING PROPOSED, AND I WAS NOT AWARE OF THE RULES COMMITTEE MEETING, AT THE TIME THAT IT WAS TAKING PLACE ON THIS, BUT THE FIRST TIME I HAD HEARD OF IT BEING PROPOSED WAS IN THE FLORIDA BAR NEWS. WE PULLED IT UP OFF THE INTERNET AND SAW THE PROPOSED CHANGES AND MADE OUR COMMENTS AT THAT TIME. MISS HUDSON AND I HAD A CHANCE TO TALK ABOUT IT THIS MORNING, BUT TO BE QUITE HONEST WITH YOU, WE REALLY HAVEN'T HAD A CHANCE TO, BEFORE NOW.

I AM TALKING ABOUT ALL OF THE CLAIMS. THAT WOULD HAVE BEEN A CONCERN, I ASSUME, THAT PREEXISTED PUTTING FORTH THIS RULE.

I BELIEVE THAT IT IS A CONCERN. I HAD NOT RUN INTO IT, AS BEING AN ISSUE, PRIOR TO THE FIRST TIME I HAD SEEN THIS RULE. I HAVE NEVER HAD A PROBLEM WITH THE JUDGE APPROVING A STIPULATION WHICH INDICATED THAT ALL KNOWN ACCIDENTS WERE REVEALED AND THIS STIPULATION COVERS EVERYTHING. YOUR HONORS, I SEE MY TIME IS EXPIRED. I APPRECIATE THE

TIME.

THANK YOU. MISS MURPHY, DO YOU HAVE A REBUTTAL?

YES. JUST A COUPLE OF COMMENTS. AGAIN, I DO NOT BELIEVE THAT THE PROPOSED LANGUAGE DEALING WITH THE APPOINTMENT OF THE EM A OR CONSIDERATION OF THE EMA AT THE PRETRIAL CREATES ANY KIND OF DEADLINE.

WHAT ABOUT HIS SUGGESTION THAT YOU TAKE THE WORD "DETERMINE" OUT OF IT THAT?

I WAS LOOKING AT THAT, AS HE WAS SPEAKING, AND I THINK THAT THE USE OF THE WORD DETERMINE, IN THAT INSTANCE, GOES BACK TO OLDER LANGUAGE. IT IS, PERHAPS, EXCESSIVE. SUPERFLUOUS.

HOW ABOUT A PHRASE, LIKE, AS APPROPRIATE, AFTER DETERMINED. WOULD THAT HELP SOLVE?

THAT, EITHER TAKE IT OUT OR INCLUDE THE ADDITIONAL PHRASE. I THINK WOULD, BOTH, WOULD ACCOMPLISH THE SAME THING, AND THAT IS JUST TO LET -- OUR INTENT WAS TO LET THE PARTIES KNOW THAT, IF THERE IS A CONFLICT BEFORE YOU COME INTO THE PRETRIAL, YOU BETTER RAISE THE QUESTION, THEN, OR YOU ARE GOING TO RUN THE RISK OF NOT BEING ABLE TO RAISE IT SUBSEQUENTLY. WHEN THINGS CHANGE, SUBSEQUENTLY, OF COURSE, THE CASE LAW IS TELLING US CLEARLY, AS IT SHOULD, THAT YOU CAN RAISE THE REQUEST FOR THE APPOINTMENT OF THE EMA. THE CONCERN WITH USING LANGUAGE AS TO THE -- WHETHER THE ACCIDENTS HAVE BEEN REVEALED, THERE IS A DISTINCTION, HERE, THAT I WANT TO MAKE, BECAUSE SOME OF THE LANGUAGE COMING IN IS DISCLOSED OR NOT. AND IT IS THE "OR NOT" THAT PRESENTS THE PROBLEM -- AND THE LANGUAGE THAT MR. MURPHY WAS REFERRING TO, THAT HE APPARENTLY USES, WHERE THE CLAIMANT OR INJURED WORKER SAYS THESE ARE ALL MY ACCIDENTS, AND I WILL AGREE THAT THESE ARE ALL OF THE ACCIDENTS THAT I HAVE HAD, THAT, I SEE, AS A DIFFERENT CIRCUMSTANCE, THAN THE SITUATION WHERE THE JPS SAYS WE ARE SETTLING ALL ACCIDENTS, WHETHER DISCLOSED OR NOT, AND, AGAIN, IT IS THE "OR NOT" THAT THE JUDGE IS PARTICULARLY HAVING PROBLEMS WITH. AND THAT IS WHAT WE ARE TRYING IT TO DO AWAY WITH, IN THIS INSTANCE. AND THE FINAL AREA IN WHICH HE COMMENTED HAD TO DO WITH OUR PRETRIAL STIPULATION FORM WE BROUGHT THE FORM, I BELIEVE, INTO CONFORMANCE WITH THE RULE. IT REQUIRES THAT YOU NOTE WHAT A WITNESS IS TO TESTIFY TO OR THE SUBJECT MATTER OF THEIR TESTIMONY. MR. MURPHY QUESTIONED WHETHER THIS WOULD PRECLUDE THAT WITNESS FROM TESTIFYING AS TO OTHER MATTERS, AND I DON'T THINK SO. IF IT -- SO LONG AS IT IS WITHIN THE KNOWLEDGE OF THE WITNESS AND SUDDENLY, IN THE MIDDLE OF THE HEARING, YOU REALIZE THAT THIS KNOWLEDGE IS IMPORTANT AND YOU HADN'T REALIZED IT BEFORE, IT IS NOT GOING TO PREVENT THE INDIVIDUAL FROM TESTIFYING AS TO THAT. BUT THIS WILL HELP, PARTICULARLY IN THE AREA, I THINK, OF EXPERT WITNESSES, TO MAKE IT CLEAR THIS EXPERT IS COMING IN ON THIS -- FOR THIS REASON. THIS EXPERT IS COMING IN FOR THAT REASON. IT IS TO ENHANCE THE NOTICE THAT THE PARTIES ARE GIVING TO EACH OTHER, AS THEY COME BEFORE THE COURT. FOR THEIR HEARING. IF THERE IS NO FURTHER QUESTIONS, I APPRECIATE YOUR TIME.

THANK YOU VERY MUCH. THANK BOTH OF YOU FOR YOUR PRESENCE HERE, TODAY, AND FOR -- I THANK THE COMMITTEE FOR ALL OF ITS HARD WORK IN THIS AREA.