Elizabeth L. Davis v. Helen K. Monahan

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS DAVIS VERSUS MONAHAN. JUSTICE PARIENTE IS RECUSED.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. I AM GREG McLOSKEY AND ALONG WITH DAVID PASS KUS I, WE -- PASCUZZI,EREPRESENT THE -- WE REPRESENT THE PETITIONERS THIS. IS BASED UPON IN THE CAUSES BELOW THE PLAINTIFF BROUGHT SEVERAL, AT THE TIME OF THE HEARING, FOR CIVIL THEFT AND SUPERVISE AND UNJUST ENRICHMENT AND CONSPIRACY. BECAUSE THEY COMPLAINED ABOUT THE TRANSACTIONS IN 1990 AND DID NOT ASSERT THE CLAIMS UNTIL APRIL 5, 1998, WE FILED, AS APPLICABLE DEFENSE, THE FOUR FOUR-YEAR STATUTE OF LIMITATIONS TO ALL OF THE CAUSES EXCEPT CIVIL THEFT, WHICH IS FIVE YEARS. THE PLAINTIFF RESPONDENT BELOW HERE DID NOT FILE ANY REPLY TO THAT DEFENSE.

BUT ARE THERE SUFFICIENT ALLEGATIONS TO THE DEFENSE THAT WOULD SHOW ON ITS FACE AN EQUITABLE ESTOPPEL TO ASSERT A STATUTE OF LS? WERE THERE, WITHIN THE COMPLAINT ITSELF, SUFFICIENT FACTS, OR NO, AND IF NOT, THEN WHY NOT?

GOOD QUESTION. WITH RESPECT TO THE FIFTH AMENDMENT COMPLAINED, THE PLAINTIFF INDEED ALLEGED THAT THE TRANSACTIONS ABOUT WHICH HE COMPLAINED WERE CONCEALED UNTIL 1995, SO THAT IS NOT EQUITABLE ESTOPPEL NECESSARILY BUT ALONG THE SAME LINES THAT ARGUABLY COULD BE DEEMED A REPLY IF YOU WILL OR AT LEAST PUT AT ISSUE WHETHER OR NOT THERE WOULD BE SOME REASON TO EMPLOYEE THE DISCOVERY RULE OR DEVELOP THE -- TO VIOLATE THE DISCOVERY RULE.

WHEN YOU SAY CONCEALED, CONCEALED IN WHAT FASHION?

JUDGE, OUR POSITION WAS NUMBER ONE IT WASN'T CONCEALED. NUMBER TWO, MORE IMPORTANTLY THEY DIDN'T ALLEGE THAT AND THAT WAS ONE OF OUR COMPLAINTS MUCH THE BODY OF LAW EXISTING AT THE TIME UNDER ECKERD DRUGS WAS IN ORDER TO PROVE AND PLEAD SUCCESSFULLY FRAUDULENT CONCEALMENT, YOU MUST DO. THAT YOU MUST PROVE AN ACTUAL CONCEALMENT EFFECTUATED BY FRAUDULENT MEANS. ONE OF THE ARGUMS UPON THE TRIAL JUDGE S, NUMBR ONE, Y PLEAD IT, AND NUMBER TWO, EQUALLY IMPORTAHERE WAS ABSOLUTELY NO COMPT ECORD EVIDENCE TO SUPPORT SUCH AN ALLEGATION. > WHAT, WERE WE DEALING WITH AN ELDERLY PERSON WHO COULDN'T HEAR WELL AT A CERTAIN POINT AND COULDN'TE WELL AND THEN SHE GOT A HEARING AID AND THEN HER SIGHT IMPROVED?

YES, SIR.

AND THIS IS DISABILITY THAT WE ARE TALKING ABOUT?

NO, YOUR HONOR. THERE IS NO ISSUE. THERE IS NO CONTENTION BY THE RESPONDENT THAT MISS MONDAY A A HAS NOT WAS INCOMPETENT --T MISS MON WAS INCOMPETENT AT YE FRYER 1999. THE -- AT ANY TIME PRIOR TO 1999. AT THE TIME THEY TOOK HER DEPOSITION, SHE WAS CERTAINLY PROVED INCOMPETENT. THERE WAS A GUARDIAN FOR MS. SADLER. MS. SADLER AND THE REST OF HER FAMILY DON'T WANT TO ARGUE THAT MISS MONAHAN WAS INCOMPETENT PRIOR TO JUNE OF 1995, BECAUSE ONCE SHE MOVED AND STARTED LIVING WITH HER BROTHER, SHE APPOINTED A A NEW POWER OF ATTORNEY AND ISSUED A NEW WILL, SO THERE IS NO CONTENTION HERE THAT MISS MONAHAN WAS IN COMPETENT, IF YOU WILL, AT ANY TIME PRIOR

TO 1999. 9 ALLEGATION WAS THAT THERE WAS A CON -- THE ALLEGATION WAS THAT THERE WAS A CONCEALMENT, AND THAT BOYS BASED UPON THE CONCEALMENT, THERE WAS NO KNOWLEDGE OE TRATION BEFORE 1995.

IS THERE SOME ALLEGATION THAT SHE IS SUFFERING FROM SOME SENILE DEMENS H OR SOMETHING IS -- DEMENTIA OR SOMETHING? DID THAT COME AFTER THIS PERIOD?

WHAT HAPPENED WAS MISS MONAHAN WAS LIVING WITH HER SISTER IN SOUTH FLORIDA. MY CLIENTS DIDN'T THINK SHE WAS CAPABLE OF LIVING BY HERSELF WHILE SHE WAS GONE TO OHIO TO VISIT HER BROTHER AND UNFORTUNATELY WHILE SHE WAS GONE HER SISTER DIED, AND THE LAWYER GOT A LETTER IN OHIO SAYING MISS MONAHAN HAS DECIDED TO MOVE UP HERE. WE HAVE REVOKED ALL PREVIOUS POWERS OF ATTORNEYS AND DEMAND AN ACCOUNT. MY CLIENTS DIDN'T KNOW WHAT TO DO AND ONE OF THEM WROTE TO A LAWYER AND HE WROTE BACK AND WE QUESTION HER COMPETENCY OKE A POWER OF ATTORNEY. WE WOULD LIKE TO HAVE A PSYCHIATRIC EXAMINATION FOR ON TELLHAT SHE IS CAE ANDOMPETENT OF DOING WHAT E IS CLAIMING TO DO.

WHAT DID THEY BASE THAT ON?

EXCUSE ME?

WHY DID YOUR CLIENT BASE ANY ALLEGATION THAT SHE MAY NOT BE COMPETENT ON?

BECAUSE MISS MONAHAN HAD BEEN LIVING IN SOUTH FLORIDA SINCE THE SPRING OF 1990.

BASED ON THE EVIDENCE FROM THIS TIME THAT SHE ACTUALLY WAS WITH THEM THAT HER MENTAL STATE WAS --

SHE DIDN'T LIVE WITH THEM. SHE DIDN'T LIVE WITH EITHER OF THE PARTIES HERE. SHE LIVED WITH THE SISTER, NOT MISS CURB MAN, NOT MS. DAVIS. NONE OF THE PARTIES TO THE ACTION. HER SISTER, JULIE EVENS, WHO -- EVANS, WHO SINCE DIED. THEIR ALLEGATION THAT, WHEN THE HUSBAND DIED IN NEW YORK, SHE THOUGHT BECAUSE OF AGE AND% SEEFD MENTAL DISABILITIES, SHE WASN'T CAPABLE OFIVING BY HERSELF, SO THAT IS WHY THEY QUESTIONED. WHEN THEY GOT A LETTER FROM A LAWYER IN OHIO SAYING SHE REVOKED ALL POWERS OF ATTORNEYS AND ISSUE A NEW POWER OF ATTORNEY AND WE DEMAND AN ACCOUNTING ON HER BEHALF, SHOW US SHE IS CABLE OF MAKING THOSE DECISION, THEY POND SPODED, BUT -- THEY RESPONDED, BUT MS. CURB MAN'S STATUS AS A GUARDIAN IS NOT CHALLENGED UP TO 199. THE ONLY ALLEGATION IN THE COMPLAINT WASN'T THAT MISS MONAHAN WAS INCOMPETENT PRIOR TO 1994 NOT THAT SHE HAD DEMENS YEAH -- DEMENTIA, BUT THAT CONCEALMENT WAS ALLEGED.

WHAT DOES THE RECORD SHOW US ABOUT HER KNOWLEDGE?

THE RDSHO-

HER TRANSACTIONS IN QUESTION.

THE RECORD SHOWS US THREE THINGS, YOUR HONOR. FIRST WE HAVE AN AIT OF TIMONY OF MISSAVISNDMISS CURB MAN -- OF MISS DAVES AND MISS CURB -- MISS S AND MISS CURB MAN, WHERE HAD HE RATIFIED ALL TRANSACTIONS. NUMWO, WE HAVE THE TESTIMONY OF MS. DAVIS, WHEN SHE WAS ASKED WHETHER OR NOT SHE EVER PROVIDED AN ACCOUNTING TO MS. MONAHAN. HER ANSWER WAS YES, I PROVIDED AN ACCOUNTING TO HER. SHE WAS WITH ME WHEN THEY OCCURRED. THERE WERE THREE ACTIONS WHICH OCCURRED. REDEMPTION OF BONDS AND CLEANING OUT OF BANK ACCOUNTS IN NEW YORK. HER RESPONSE WAS MISS MONAHAN WAS WITH ME AND CANNOT BE CONTROVERTED AND EVEN IF THIS COURT WANTS TO DISREGARD THE UNCONTROVERTED TESTIMONY BY AFFIDAVIT AND DEPOSITION OF MY CLIENT,

THEY CAN'T AVOID THAT IN 1993, MISS MONAHAN WAS OUGHTTED BY THE I.R.S. AND IT IS UNCONTROVERTED THAT THE LETTER WENT TO MISS MONAHAN HAS NOT SHE GAVE IT TO ONE OF MY CLIENTS, MISS KISH ANDE FILED AN AMENDED RETURN, BASED UPON INCOME T SHE FAILED TO REPORT RESULTING FROM THE THREE TRANSACTIONS ABOUT WHICH SHE CLAIMS.

WHEN DO YOU MAINTAIN THS CAUSE OF ACTION ACCRUED? YONORECTFULLY I SUBMIT THESE CAUSE OF ACTIONS ACCRUED AT THE TIME THE TRANSACTIONS OCCURRED IN 1990.

IN 1990.

YES, SIR.

OKAY. AND WHAT, DESCRIBE FOR US, WHAT THE LAST ELEMENT WAS OF THE ACCRUAL OF CAUSE OF ACTION.

THE LAST ELEMENT WAS WHAT T ARELLEGING S ESLLY THAT MY NT E THE MONEY, SO WHEN THEY ALLEGE LLEGEEDLY ILY LIQUIDATED THE BONDS AND CLEANED OUT THE ACCOUNTS AND TOOK THE MONEY, THAT WAS E LAST ELEMENT.

NOW, ISE BASIS OF THE DETERATION EIS THAT THE CAUSE OF ACTION DID NOT ACCRUE UNTIL WHEN?

WHAT THE RESPONDENT IS ARGUING IS THAT THE CAUSE OF ACTION DID NOT ACCRUE UNTIL 1995 WHEN THE SAD LETTERS FIRST GOT INVOLVED -- THE SADLERSIRST GOT INVOLVED AND THEY STARTED LEARNING WHAT TRABS PIRD.

WAS THERE -- TRANSPIRED.

AND TOLLING HASN'T GOT ANYTHING TO DO WITH IT?

TOLLING IS NOT THE ISSUE HERE AND THE REASON WE RESPECTFULLY SUBMIT THE FOURTH DISTRICT WAS WRONG IS THE ISSUE HERE IS A CRUEL NOT TOLLING, AND WHAT THIS COURT HAS DONE IS TAKEN THIS -- AND WHAT THE FOURTH DISTRICT HAS DONE IS TAKE THIS COURT'S GRAHAM DECISION AND I SUBMIT HAS EXPANDED IT IMPROPERLY. HERNDON VERSUS GRAHAM WAS AN UNIQUE CASE AND THAT HOLDING WAS SPECIFICALLY LIMITED TO A FINDING THAT THE DISCOVERY RULE, THE LATE DISCOVERY DOCTRINE, APPLIES TO SEXUAL ABUSE CASES IN WHICH THERE IS REPRESSED MEMORY OR AMNESIA.

ISN'T THERE LANGUAGE THAT SAYS THAT THIS IS A THEORY THAT HAS BEEN AROUND FOR YEARS. IS THERE A RECOMMENDATION IN HERNDON THAT IT IS NOTHING CUT FROM NEW CLOTH?

THE ANALYSIS IN WHICH THAT STATEMENT WAS MADE, JUSTICE SHAW HAD TO DO WITH WHETHER OR NOT THE ACCRUAL DEALT WITH WHETHER THAT WAS AN EXCEPTION TO THE TOLLING STATUTE OR WHETHER IT DED THE ACCRUAL OF A CAUSE OF ACTION. WHAT THIS COURT HAS RULED TWICE, PREVIOUSLY HAD, IN THE WAGNER VERSUS FLANAGAN -- PREVIOUSLY, IN THE WAGNER VERSUS FLANN AHERST RETIREMENT HOME, IS THAT BECAUSE THE LEGISLATURE HAS SPOKEN AS A RESULT OF THE 1974 AMENDMENTS TO CHAPTER 95, THE STATUTE OF LIMITATIONS AND SPECIFICLY WITH RESPECT TO SECTION 95.031, DEFINED WHEN A CAUSE OF AN ACCRUED, AND WHEN YAD ACT, ITSELF, IT SAYS THIS AN ACTCREATING, AMONGSTHER THINGS, THE TIMING OF WHEN A CAUSE OF ACTION ACCRUES, AND WHAT THIS COURT HAS HELD IN FEDERAL INSURANCE AND IN WAGNER, NUGENT VERSUS FLANAGAN, IS BECAUSE THE LEGISLATURE HAS SPOKEN ON THAT ISSUE AS TO WHEN A CAUSE OF ACTION ACCRUES, BECAUSE THEY SAY BUT FOR THE ENUMERATED EXCEPTIONS OF FRAUD, PRODUCTS LIY AND THE OTHER PROVISIONS OF THE ACT THAT PROVIDE A DISCOVERY RULE THAT, IT IS I AM PROPER FOR THE COURTS TO IMPLY A DISCOVERY RULE WHEN THE LEGISLATURE HAS NOT. THEY HAVE MADE THE POLICY DECISION

AND THIS COURT SHOULD GIVE THAT POLICY DECISION TESTIFY DEFERENCE.

NOW -- POLICY DECISION DEFERENCE.

ASSUMING YOU ARE CORRECT ON THAT POINT AND A REPLY WAS NOT FILED, BASED ON EQUITABLE ESTOPPEL.

CORRECT.

YOU WOULD RECOGNIZE THAT EQUITABLE ESTOPPEL HAS NOTHING TO DO WITH A CRUEL. IT IS JUST AN EQUITABLE DOCTRINE THAT PRECLUDES ONE FROM RELYING ON.

IN BASEBALL VERSUS --

WHY WOULD NOT THAT APPLY HERE?

THEY DID NOT PLEAD IT. START WITH THAT PREMISE, YOUR HONOR. THEY DID NOT PLEAD IT.

IS THERE NECESSARY THAT THERE BE A REPLY? WHAT IT APPEARS FROM THE FACE OF THE COMPLAINT.

ILL ACCEPT THE PREMISE THAT LET'S ASSUME THE PLEADING WAS THERE.

YES, SIR.

I AM NOT SURE I UNDERSTAND THE QUESTION.

IF WE ASSUME THAT THE FACE OF THE COMPLAINT WOULD GENERATE SUFFICIENT FACTS TO CREATE AN ISSUE OF WHETHER EQUITABLE ESTOPPEL SHOULD PRECLUDE OPERATION OF THE STATUTE OF LIMITATIONS, IF WE ASSUME THAT.

OKAY.

IS IT ABSOLUTELY ESSENTIAL THAT THERE BE A SEPARATE REPLY FILED?

BASED UPON THE OPINION BY JUDGE WELLS IN THE MAJOR LEAGUE BASEBALL CASE, I SUBMIT, YES, THERE DOES NEED TO BE, IN FACT T WAS THE POINT HE MADE IN HIS CONCURING OPINION, BUT AN EQUAL POINT IS THERE WAS ABSOLUTELY NO COMPETENT EVIDENCE TO SUPPORT THAT THEORY, EVEN IF IT HAD BEEN PROPERLY PLED, YOUR HONORS, AND IT WASN'T.

IF THERE IS NO EVIDENCE YET, THEN THE ISSUE WOULD BE WHETHER A SUMMARY JUDGMENT IS APPROPRIATE AND WHETHER A REMAND TO HAVE IT FERRETED OUT, WOULD IT NOT?

JUDGE, I THINK THIS COURT CAN DETERMINE, AS A MATTER OF LAW, THAT IT IS NOT, BASED UPON THESE CAUSES OF ACTION THE DISCOVERY RULE IS NOT APPLICABLE AND YOU DON'T NEED TO REACH WHETHER OR NOT THERE WAS EVIDENCE OR NOT.

I AM TALKING ABOUT DELAYED -- I AM TALKING ABOUT NOT DELAYED DISCOVERY NOW.

IF IT WAS PROPERLY PLED.

IF IT WAS PROPERLY PLED, THEN WOULD WE NOT SEND IT BACK TO THE TRIAL COURT TO ANALYZE IT AND PROCEED WITH THAT THEORY, OR DO WE NOT RULE AS ATEF LAW? THAT IS WHAT THE ISSUE IS?

YOU COULD RULE ON A MATTER OF LAW. IN OTHER WORDS, IT IS AKIN TO WHAT WE WERE

DEALING WITH IN --

YOU ARE SAYING THE RECORD CLEARLY REBUTS THAT CLAIM, IS THAT CORRECT?

YES, YOUR HONOR.

BECAUSE OF THE EVIDENCE THAT YOU OUTLINED BEFORE.

ABSOLUTELY.

AND THAT THERE IS NO CLAIM OF ANY DISABILITY. > THAT'S CORRECT. AND THAT IS NOT GOING TO BE IN DISPUTE, BECAUSE THEY RELIED UPON HER CENCY AT LEAST UNTIL JUNE OF 1995, TO HAVE THEM APPOINTED THE POWERS TO WHICH THEY ARE GRANTED, THE POWEF ATTORNEY, THE TRUSTEE, THE BENEFICIARIES. THE REASON I SUBMIT TO YOUR HONORS, ALSO, THAT WHYS AS A MATTER OF LAW, THE DISCOVERY -- THAT WHY, AS A MATTER OF LAW, THE DISCOVERY RULE IS NOT APPLICABLE IN THIS ACTION IS THREE FOLD. FIRST, THE LEGISLATURE HAS SPOKEN. AS RECOGNIZED IN THE CASES, BASED UPON STATUTORY CONSTRUCTION, THAT THIS CANNOT BE FOUND THAT THESE ARE CAUSES OF ACTION,NUMBER ONE. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU, YOUR HONOR. MR. CHIEF JUSTICE

MS. SHIELDS SHIELDS.

> MAY IT PLEASE THE COURT. NAY MY NAME IS AMY SHIELDS, AND -- MY NAME IS AMY SHIELD, AD T COUNSEL TABLE, THE TRIAL COUNSEL IS BARRY EISENSON, AND WE ARE HERE TO ADDRESS SOME OF THE ISSUES THAT WERE RAISED BY THE PETITIONER.

LET ME ASK, RIGHT OFF THE BAT IT IS, YOUR OPPOSING COUNSEL'S POSITION IS THAT THE STATUTE BEGAN RUNNING, WHEN THESE TRANSACTIONS OCCURRED, AND NOTHING HAS HAPPENED, NO FRAUDULENT CONCEALMENT, NO DISABILITY, TO STOP THE ACCRUAL OF RUNNING OF THE STATUTE. TELL US, IF YOU WILL, WHY OR WHAT OCCURRED THAT WOULD STOP THE STATUTE FROM RUNNING FROM THE TIME THAT THE TRANSACTIONS OCCURRED.

OKAY. WE BELIEVE THAT THIS ISN'T A SITUATION THAT IS A TOLLING, WHICH IS WHAT IT APPEARS YOUR QUESTION IS ASKING. WE BELIEVE THE SITUATION BEFORE THE COURT, HERE, IS A A CRUEL SITUATION, JUST AS WHAT WAS EFORE TURT IN HERNDON. FIRST OF ALL, AS FAR AS WHEN THE STATUTE WOULD BEGINO RUN, THE STATUTE WOULD BEGIN TO RUN WHEN THE LAST CAUSE OF ACTION ACCRUED. AND THAT WOULD BE, IN OUR PARTICULAR CASE, WE MAINTAINED THAT THESE FRAUDULENT ACTS CONTINUED, THEM TAKING, DAVIS AND KISH, BOTH, TAKING PROPERTY BELONGING TO MRS. MONAHAN, FROM 1990, WHEN THE POWER OF ATTORNEY WAS FIRST GIVEN TO DAVIS, AND IN THE COMPLAINT ITSELF, AND I CAN TELL YOU WHAT PORTION --

CONTINUED UNTIL WHEN?

THEY CONTINUED, REALLY, THROUGH 1997. THE COMPLAINT, ITSELF, TALKS ABOUT, ON ITS FACE, THROUGH 1995 AND THE PORTIONS OF THE COMPLAINT THAT REFERRED TO THAT WERE, FIRST OF ALL, WITH KISH --

EXPLAIN HOW YOU CAN REACH BACK, THOUGH, IN TERMS OF ASSUMING THAT YOU CAN OBVIOUSLY SHOW ACTS THAT OCCURRED THAT AREN'T ON THEIR FACE, PROHIBITED BY THE LIMITATIONS PERIOD.

OKAY.

WHAT IS YOUR THEORY, AS FAR AS THAT THERE IS A TALE THERE -- A TAIL THERE THAT ACTS, REACHING BACK --

TO 1990?

IN OTHER WORDS, IF I UNDERSTAND YOUR ARGUMENT, IF THERE IS A MORE RECENT ACT WITHIN, IT WOULDN'T BE BARRED BY THMIS PE THAT THAT ACT HAS A TAIL TO IT THAT REACHES BACK TO ACTS THAT ORDINARILY WOULD BE BARRED, AND I AM HAVING DIFFICULTY UNDERSTANDING THE THEORY THAT YOU HAVE FORE THAT -- THAT YOU HAVE FOR THAT.

OUR THEORY BASICALLY IS TWOFOLD. ONE WOULD BE, ON THE POWER OF ATTORNEY, WHICH IS ONE OF THE FIRST THINGS THAT WE ARGUED, THAT THIS WAS NOT, THAT THIS, REALLY, SEPARATES OUR CASE ON ITS UNIQUE FACTS, FROM THE OTHER CASES THAT HAVE BEEN CITED BY E PETITIONER. IN THIS CASE, WHEN YOU HAVE AN AGENCY RELATIONSHIP, A POWER OF AN ATTORNEY, THE LAW INIDA IS CLEAR THAT A POWER AFTER ATTORNEY IS A WRITTEN INSTRUMENT THAT A PRINCIPAL GIVES AN AGENT, IT TO HANDLE ACTS ON THEIR BEHALF.

BUT AREN'T YOU TALKINBOUT THREE TRANSACTIONS? AREN'T WE LIMITING OURSELVEO THREE TRANSACTIONS, PRIMARILY, WHERE YOU ARE ALLEGING THAT THERE WAS IN OVER REACHING OR --

THERE WERE FAR MORE THAN THREE TRANSACTIONS. THERE WERE A NUMBER OF DIFFERENT TRANSACTIONS, MUCH MORE THAN THREE, BUT THE TRANSACTIONS THAT WE ARE TALKING ABOUT, THE FIRST SET OF TRANSACTIONS, THEN, I WANT TO CLARIFY --

ARE THEY SEPARATE TRANSACTIONS?

WELL, THEY ARE SEPARATE TRANSACTIONS, BUT IT A CONTINUING PATTERN, A CONTINUING TORT THAT THE, THAT DAVIS AND KIPED, AND I WANT TO CLARIFY SOMETHING, BECAUSE THERE IS, WE ARE HERE ON A SUMMARY JUDGMENT, AND THERE ARE CONFLICTS IN THE RECORD. PETITIONER HAS MAINTAINED THAT MRS. MONAHAN WAS THERE AT THE TIME WHEN THESE TRANSACTIONS WERE TAKING PLACE, AND IT WAS DONE WITH HER CONSENT. THE RECORD IS VERY CONTRADICTED ON THIS POINT. THAT IS NUMBER ONE, SO SHE DID NOT HAVE THE KNOWLEDGE OF IT. FOR EXAMPLE, THE POWER OF ATTORNEY, ITSELF, WAS SIGNED WHILE MRS. MONAHAN WAS IN FLORIDA. SHE LIVED IN FLORIDA. DAVIS WAS HANDLING THESE TRANSACTIONS 1200 MILES AWAY. WE, ALSO, HAVE TESTIMONY FROM DAVIS --

BUT YOU ARE GETTING AWAY FROM --

MAYBE I DON'T UNDERSTAND, YOUR HONOR.

WHY WOULDN'T THE STATUTE RUN ON EACH ONE OF THESE TRANSACTIONS, IF THEY ARE DISCREET TRANSACTIONS WHERE THIS WOMAN WAS SWINDLED OUT OF SOMETHING.

OKAY.

WHY WOULDN'T THE STATUTE RUN, WHEN THAT TRANSACTION WAS OVER? THE STATUTE RUN ON THAT, THEN IF THERE WAS ANOTHER INDISCRETION, THE STATUTE WOULD RUN ON THAT.

OKAY. ASSUMING THAT --

HOW DO YOU GET THIS CONTINUING RIGHT UP AND WHEN DOES THIS CONTINUING END?

CONTINUING ENDED, YOU CAN A SAY IT, WHEN YOU -- YOU CAN SAY IT, WHEN SHE HAD KNOWLEDGE, WHICH WOULD HAVE BEEN 1995. THAT WOULD HAVE BEEN THE EARLIEST, OR THE

CONTINUING WOULD HAVE ENDED UNDER THE CONTINUING TORT DOCTRINE, IN 1997, WHEN THEY FINALLY STOPPED, BUT EVEN IF WE ASSUMED FOR PURPOSES THAT EACH ACT IS SEPARATE AND STARTS, THE SE OF LIMITATIONS RUNNING AT THE TIME, WE ARE PURSUING, AND WE PLED IT, AND WE ARGUED IT AT THE SUMMARY JUDGMENT HEARING, AND AS WELL AS ON THE FOURTH DCA LEVEL, THAT IT WAS A DELAYED DISCOVERY, THAT YOU HAVE HERE AN INDIVIDUAL WHO WAS BLAMELESS. SHE DID NOT KNOW IT WAS HAPPENING. YOU HAVEDERSTAND WHEN R HUSIED, THIS FROM EH OF MRS. DAVIS IN HER DEPOSITION, SHE TESTIFIED THAT THIS WOMLNOURISHED, THAT SHE WAS TERRIFIED, THAT SHE PUT ALL OF HER TRUST, SHE WAS LOOKING FOR ANYONE WHO WOULD HELP HER AND FAMILY STEPPED IN AND SAID WE WILL TAKE CARE OF YOU.

HOW DO YOU ADDRESS THE PETITIONER'S ARGUMENT THAT THE CAUSE OF ACTION THAT YOU HAVE PLED UNDER CHAPTER 95, THEY ARE NOT LISTED AS THE KINDS OF CAUSE OF ACTION THAT THE DELAYED DISCOVERY RULE APPLIES TO? HOW DO YOU ADDRESS THAT?

I THINK YOU HAVE TO LOOK AT, JUST LIKE THE COURT DID IN HERNDON, AND THAT, IN THE ALLOPATA SERVICES, THE FEDERAL COURT DID, I THINK THAT YOU HAVE TO MAKE A DISTINCTION, BECAUSE WHAT WE ARE TALKING ABOUT, AS FAR AS THOSE FRAUDULENT ACTS, THOSE ARE TOLLING STATUTES, EXCUSE ME, THOSE ARE STATUTES OF REPOSE, AND SO THEY ARE VERY DISTINCTIVE FROM A A CRUEL STATUTE. THOSE -- FROM AN ACCRUAL STATUTE. THOSE STATUTES, WHEN THERE IS A STATUTE OF LIMITATION ON ITS FACE, AND IT IS VERY SPECIFIC AS TO WHEN AN EVENT STARTS --

ARE YOU SAYING HERNDON IS NOT A A CRUEL CASE?

NO. HERNDON IS ABSOLUTELY A AN ACULE -- NO. LEARN DON IS ABSOLUTELY AN ACCRUAL -- NO. HERNDON IS ABSOLUTELY AN ACCRUAL CASE. AND THE FRAUD STATUTE IS A STATUTE OF REPOSE. IT SETS AN OUTSIDE LIMIT, AND IT IS VERY SPECIFIC AS TO, IF YOU LOOK AT THOSE STATUTES, THOSE STATUTES ARE ONLY CONCERNED WITH OUTER LIMITS.

YOU ARE TALK BINGT MALPRACTICE?

THE MALPRACTICE. THE FRAUD.

IT IS IT YOUR POSITION THAT THE HERNDON CASE HAS BASICALLY CHANGED ALL OF FLORIDA LAW INTO A POSTURE, SO THAT ONE CAN ASSERT, WELL, I DIDN'T DISCOVER, SO FLORIDA IS NOW A DISCOVERY STATE, BECAUSE THE HERNDON CASE WAS INTENTIONAL ACTS INFLICTED UPON A MND YOU HAD TRAUMATIC AMNESIA, AND I AM MISSING SOME OF THOSE ARGUMENTS HERE. I DON'T SEE THERE IS, AT LEAST I AM TOLD THAT THERE IS NO ALLEGATION OF INCOMPETENCE OR ANYTHING AT ALL, WITH REGARD TO THAT, AND THAT THE EVIDENCE IS SHOWING INTERNAL REVENUE SERVICE ACTIVITIES AND ALL OF THESE THINGS.

I THINK YOU HAVE TO LOOK AT, LIKE, FOR EXAMPLE THE INTERNAL REVENUE SERVICE ACT TICKETS. YOU KNOW, I THINK -- ACTIVITIES. I THINK THAT WE ARE REALLY TAKING IT OUT OF CONTEXT BY JUST SAYING SHE GOT A LETTER IN 1993. YOU HAVE TO LOOK AT THE WHOLE FACTUAL SITUATION HERE. HERE WAS A WOMAN THAT WAS BASICALLY KEPT BY HER FAMILY WHO WAS SUPPOSEDLY TAKING CARE OF HER. SHE COULD NOT SEE. SHE HAD GLAUCOMA AND SHE HAD CATARACTS. SHE COULDN'T HEAR, AND THEY BASICALLY TOOK HER DOWN AND HAD HER SIGN THINGS. SHE DIDN'T KNOW WHAT SHE WAS SIGNING. WE HAVE GOT TESTIMONY --

I GUESS YOU ARE SAYING SHE WAS INCOMPETENT THEN. THAT BASICALLY IS THE ARGUMENT YOU ARE MAKING. WITHOUT BEING ADJUDICATED.

HER OWN ATTORNEY, DAVIS'S OWN ATTORNEY IN 1995 SAID IN A LETTER THAT WE THINK SHE IS INCOMPETENT.

ARE YOU BASING THE STATUTE, NOT THE ACCRUAL POINT NOT ARISE ARISING BECAUSE OF HER NOT BEING ABLE TO SEE AND NOT BEING ABLE TO HEAR?

I THINK --

IS THAT WHAT YOU ARE --

I THINK YOU HAVE TO TAKE EACH FACT, EACH CASE ON ITS PARTICULAR FACTS, AND IN OUR PARTICULAR SITUATION, THIS WAS A WOMAN WHO HAD GIVEN A POWER OF ATTORNEY TO HER LOVED ONES. SHE WAS ELDERLY. SHE WAS IN A VERY DEBILITATED PHYSICAL CONDITION. SHE WAS DEPENDING UPON THEM TO TAKE CARE OF HER, AND AS A RESULT OF THIS FIDUCIARY RELATIONSHIP, DID NOT HAVE THE KNOWLEDGE THAT THEY WERE STEALING FROM HER, UNTIL 1995.

HOW DO WE KNOW THAT SHE DIDN'T, AT THE TIME CONSENT AND AGREE TO EVERYTHING THAT THESE PEOPLE DID?

WELL, SHE --

AND WHAT WOULD KEEP HER, IF SHE HAD ANY DOUBTSHAT THEY WERE DOING, OR ANY CONCERNS SHE CERTAINLY COULD CONTACT, YOU ARE NOT TALKING ABOUT A MENTAL DISABILITY THAT WOULD KEEP HER FROM GETTING IN CONTACT WITH OTHER FRIENDS OR LAWYERS OR ACCOUNTANTS OR WHATEVER SHE FELT THAT SHE WOULD NEED TO EASE HER FEARS?

WELL, FIRST OF ALL, NUMBER ONE, WHEN YOU ARE SAYING THAT HOW DO WE KNOW WHETHER SHE AGREED OR DIDN'T AGREE? WE DO HAVE, ON RECORD, HER AFFIDAVIT, WHICH, HER AFFIDAVIT, ITSELF, AFFIRMS UNDER OATH, THE ALLEGATIONS IN THE AMENDED COMPLAINT, AND IN THAT, THOSE ALLEGATIONS, STATE THAT SHE DID NOT AUTHORIZE DAVIS TO EXERCISE THE POWER OF ATTORNEY TO REDEEM THE U.S. SAVINGS BONDS. SHE DID NOT, SHE CONFIRMED THAT DAVIS WAS USING THE FUNDS FOR HER OWN USE. SHE, AND THIS WAS EVEN CONFIRMED BY DAVIS IN HER DEPOSITION, AND IT CONTRADICTS DAVIS'S AFFIDAVIT THAT IT WAS DONE WITH HER KNOWLEDGE AND CONSENT. I MEAN, IF YOU LOOK AT THE FACTS THAT ARE DID ICORD, SHE DID DIDN'T CONST, AND -- SHE DIDN'T CONSENT TO IT, AND HER SAYING, BEING ED AND ALL, SHE WAS IN HE POSTUREF BEING TAKEN CARE F R SISTER.

WU AGREE THAT THAT, THAT THE REASON THAT THIS TIOT YOU AREG FROM YOT OF VIEW HAS TO BEAWN BETWEEN THE ACCRUAL AND TOLLING, IS BECE, UNDER 95.051-2, THAT IT COULD NOT BE TOLD?

EXCUSE ME.

IT COULD NOT BE TOLLED. I MEAN, THE STATUTE SPECIFICALLY SAYS THAT NO DISABILITY OR OTHER REASON SHALL TOLL THE RUNNING OF THE STATUTE OF LIMITATIONS.

RIGHT. IT IS NOT TOLLED.

SO IT CAN -- CANNOT BE TOLLED BECAUSE OF THE RUNNING OF THE STATUTE.

WE ARE NOT TOLLING IT.

YOUR STATUTE IS NOT PLEADED IN FRAUD, CORRECT?

WE DISAGREE WITH THEM THAT WE DID PLEAD IT IN FRAUD, AND IF YOU LOOK ATE THE SECOND AMENDED -- IF YOU LOOK AT THE SECOND AMENDED COMPLAINT, WHICH IS THE ACTION, THE

COMPLAINT, ITSELF, THAT SAYS FRAUD AND BREACH OF FIDUCIARY DUTY AGAINST DAVID, AND FRAUD AND BREACH OF FIDUCIARY DUTY AGAINST KISH AND THEN COMPARE IT WITH THE ALLEGATIONS OF THE FIFTH AMENDED COMPLAINT, WHICH IS THE LAST COMPLAINT WE ARE TRAVELING ON, THEY ARE VIRTUALLY IDENTICAL.

THE DISTRICT COURT, WHAT I AM GOING ON IS THAT THE DISTRICT COURT SAID THAT THE COUNTS INCLUDED BREACH OF FIDUCIARY DUTY, CIVIL THEFT, CONSPIRACY, CONVERSION, AND UNJUST ENRICHMENT.

THAT IS BECAUSE IF YOU JUST LOOKED AT THE OVERALL TITLES OF THE HEADING, I THINK YOU COULD KIND OF --

FROM THE STANDPOINT OF THE RULE OF LAW, THAT COMES OUT OF THIS, THAT, WHAT THE DISTRICT COURT DETERMINED WAS THAT HERNDON VERSUS GRAHAM AND WHAT YOU ARE ASSERTING IS THAT, UNDER HERNDON VERSUS GRAHAM, THAT A CAUSE OF ACTION FOR NONE OF THOSE ACCRUED BY REASON OF THIS DOCTRINE OF DELAYED DISCOVERY. IS THAT CORRECT? NONE OF THESE CAUSES, BREACH OF --

SURE. SURE. THAT IS THE ESSENCE, THAT IT DID OCCUR BECAUSE -- IT WAS DELAYED DISCOVERY. THAT IS THE BASIS, AND THAT IS WHAT WE PLED IN OUR FIFTH AMENDED --

DELAYED DISCOVERY, IN RESPECT TO EACH OF THOSE CAUSES OF ACTION, WOULD KEEP THE CAUSE OF ACTION FROM ACCRUING. THAT IS YOUR --.

THAT IS WHAT WE HAD MAINTAINED, THAT THOSE ACTIONS --

THAT IS WHAT THE DISTRICT COURT HELD.

THAT IS WHAT THE DISTRICT COURT HELD, BUT YOU CAN HOLD A COURT, YOU KNOW, YOU CAN AFFIRM A DECISION ON ANY BASIS THAT WOULD LEGISLATEMIZE OR AFFIRM THE DECISION OF THE COURT, AND I THINK THAT, IF YOU LOOKED AT THE FRAUD SITUATION, THAT YOU WERE MENTIONING, YOU CAN COMPARE IT TO THE AMBROSE CASE.

WOULD YOU TAKE THAT, AND I AM HAVING SOME DIFFICULTY, BECAUSE WE ARE SORT OF JUMPING AROUND FROM ONE CONCEPT TO ANOTHER, AND COULD YOU JUST GIVE US, IN TERMS OF ILLUSTRATING WHAT YOUR THEORY IS, A SIMPLE EXAMPLE, AND LET'S GO BACK TO SAY THAT THERE HAD BEEN A TRANSACTION IN 1990, AND THE CLAIM WAS THAT THERE IS A POWER OF ATTORNEY, AND THAT SHE WENT WITH THEM TO A BANK AND WITHDREW --

WE ARE CLAIMING SHE DIDN'T.

BUT I AM JUST SAYING, THEN, AND SO A SUM OF MONEY WAS WITHDRAWN AND GIVEN TO THE PARTIES THAT ARE BEING SUED NOW, AND THAT ORDINARILY THE LIMITATIONS PERIOD WOULD HAVE RUN ON THAT TRANSACTION, YOU KNOW, FOUR YEARS AFTER THE TRANSACTION.

UM-HUM.

AND YOUR THEORY IS THAT, ALTHOUGH THAT TRANSACTION TOOK PLACE IN '90 OR '91, THAT THE LIMITATIONS PERIOD DIDN'T EVEN ACCRUE PAW OF, AND I WANT YOU TO FILL IN -- BECAUSE OF, AND I WANT YOU TO FILL IN THE BLANK FOR ME, BECAUSE OF WHAT LEGAL THEREY?

TWO THINGS. THE FIRST IS ABOUT ACCRUEING. IT DIDN'T ACCRUE BECAUSE OF THE DELAYED-DISCOVERY DOCTRINE THAT, SHE DID NOT HAVE, THAT SHE DID NOT DISCOVER NOR DID SHE HAVE, WOULD SHELF REASONABLY DISCOVERED THAT -- NOR WOULD SHE HAVE REASONABLY DISCOVERED THAT THEY HAD BEEN STEALING HER MONEY UNTIL 1995. THAT IS THE FIRST BASIS.

LET'S STOP WITH THAT FOR JUST A MINUTE, SO THAT WE FLUSH THAT OUT AND UNDERSTAND WHAT IS BEING ASSERTED THERE. SO YOU ARE SAYING THERE, THAT SHE IS SAYING THAT THEY TOOK THE MONEY AND, IN ESSENCE,THEY STOLE MONEY FROM HER.

CORRECT.

OKAY.

AND THAT SHE DIDN'T DISCOVER THAT THEY TOOK THE MONEY FROM HER.

RIGHT.

UNTIL YEARS LATER.

BECAUSE SHE WAS UNAWARE THAT, YOU SEE, WHAT THEY HAD TOLD HER, AND LET ME SEE WHERE IT IS IN THE RECORD, THEY HAD TOLD HER, I THINK IT, AND ACTUALLY SHE EVEN PLED THIS IN THE COMPLAINT, THAT THERE WASN'T MUCH MONEY THE ESTATE, THAT SHE DIDN'T HAVE MUCH MONEY. THIS IS WHAT THEY HAD TOLD HER, AND IT WAS CONFIRMED BY SCHUSTER THAT THERE WAS ONLY $41,000.

I AM STILL TRYING TO --.

SHE HAD NO UNDERSTANDING. ANOTHER THEREY IS A LARCENY ONE. THAT IS THAT THEY STOLE THIS MONEY FROM HER. IT IS LARCENY. IS THAT --

I GUESS YOU COULD USE THAT AS AN ANOTHER CAUSE OF ACTION, YES, BUT THEY WERE LOOKING AT IT AS A BREACH OF FIDUCIARY DUTY. THEY, ALSO, WHAT SHE, THAT SHE PREACHED IT, AND THAT OTHER CAUSES OF ACTION -- THAT SHE BREACHED IT AND OTHER CAUSES OF ACTION THAT WERE ENUMERATED IN THE COMPLAINT. TWO THINGS THAT I WANT TO BRING UP THAT I KEEP GETTING SIDE STEPPED ON, NUMBER ONE BESIDES THE ACCRUAL, WE HAVE A POWER OF ATTORNEY, AND I THINK THAT THAT IS AN IMPORTANT DISTINCTION HERE AND I THINK THAT THAT IS BEING LOST IN HERE, BECAUSE WHEN YOU HAVE A POWER OF ATTORNEY, THERE IS NO DUTY FOR A PRINCIPAL TO MAKE IN INQUIRY ABOUT HER AGENT, THAT THE AGENT IS -- TO MAKE INQUIRY ABOUT HER AGENT. IN STATE BOARD OF DENTISTRY AND IN COCH VERSUS KOC -- IN KOCH VERSUS KOCH, THE INSTRUCTIONS TO THE ATTORNEY --

YOU ARE SAYING THAT, BECAUSE IT IS A POWER OF ATTORNEY --

NO, BECAUSE IN MY BRIEF, IN FACT, I TALKED ABOUT POWER OF ATTORNEY AS AN AGENCY RELATIONSHIP, AND THE CASES THAT I CITED SHOWS THAT IT, THE POWER OF ATTORNEY ENDS, ONE, WHEN THE AGENCY IS TERMINATED, TWO, WHEN THERE IS AN ACCOUNTING THAT IS REQUESTED, OR, THREE, WHEN THERE IS KNOWLEDGE, AND THE CASES THAT I CITED IN THE SECTION OF THE BRIEF THAT HAD TO DO WITH POWER OF ATTORNEY, SAID ALL OF THOSE, THOSE ARE THREE DIFFERENT ELEMENTS.

I AM TRYING, WHAT IS THE DIFFERENCE BETWEEN YOUR CLAIM THAT THEY JUST ILLEGALLY STOLE THE MONEY FROM HER AND THE FACT THAT THERE WAS A POWER OF ATTORNEY INVOLVED?

BECAUSE IF THERE IS, YOU HAVE TO, IF I, IT DEPENDS UPON THE RELATIONSHIP AND THE TRANSACTION INVOLVED, LIKE IF I HAVE A CONTRACT AND YOU SUE MONEY, YOU STEAL MONEY FROM ME, OR A VARIOUS TYPE OF, IT IS A DIFFERENT TYPE OF RELATIONSHIP. IT IS A SPECIFIC DOCUMENT THAT WAS GIVEN TO HER NIECE, IN WHICH THE PURPOSE OF THE DOCUMENT WAS FOR HER TO TAKE CARE OF HER. I MEAN, IT IS A TOTALLY DIFFERENT TYPE OF SITUATION THAN JUST SOMEBODY COMING IN AND STEALING YOUR MONEY.

HOW DID THAT IMPACT A DELAYED ACCRUAL OF A CAUSE OF ACTION?

OKAY. IT IMPACTS ON IT BECAUSE, IN THIS SITUATION, WITH A POWER OF ATTORNEY, SHE HAD INITIALLY NO REASON, SHE HAD GIVEN THE RELATIVE THE ABILITY O, WHAT SHE THOUGHT WAS TO MANAGE HER MONEY, TO MANAGE HER FINANCES, IN ORDER TO TAKE CARE R, AND WHAT SHE DIDN'T INTEND TO DO AND WHICH THE POWER OF ATTORNEY SPECIFICALLY STATED THAT IT WAS FOR HER AND FOR HER STANDING, O USE FOR MY USE AND BENEFIT. WHAT THE POWFTTORNEY DIDN'TE THE PERMISSION TO DO WAS TO STEAL THE MONEY, AND I THINK THAT IS A BIG DISTINCTION.

THE POWER OF ATTORNEY, THEN, TOLLS THE RUNNING OF THE STATUTE. IS THAT WHAT YOU ARE SAY SOMETHING.

UNDER A POWER OF ATTORNEY, THE, WE ARE SAYING THAT --

TOLLS THE ACCRUAL OF THE RUNNING.

THE ACCRUAL DOESN'T START RUNNING UNTIL ONE OF THREE POINTS IN THE POWER OF ATTORNEY, EITHER WHEN THE AGENCY IS TERMINATED, WHICH WAS DONE IN OUR CASE IN 1995. WHEN THERE IS AN ACCOUNTING REQUESTED FOR, WHICH IN OUR CASE IS WHEN IT HAPPENED IN 1995, OR WHEN THERE IS KNOWLEDGE. I MEAN, YOU COULD TAKE A LOOK AT THE POWER OF ATTORNEY AS COMPARING IT TO TRUST CASES. OKAY. AND IN TRUST CASES, IT IS AVEY SPECIFIC TIME FRAIL THAT RUNS WHEN SOMEBODY GETS AN ACCOUNTING WHY HAVE KNOWLEDGE. IT IS STILL A TRUST-TYPE SITUATION, AND THAT IS, I THINK, THAT OUR BEST ANALOGY, OF COURSE THERE IS STATUTES UNDER THAT. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. YOUR TIME IS UP.

THANK YOU. MR. CHIEF JUSTICE

REBUTTAL.

THANK YOU, YOUR HONORS. THE LEGAL ISSUE IS WHETHER OR NOT THE DELAYED DISCOVERY DOCTRINE APPLIES TO THESE CAUSE ON, AND I TOUR ORS THAT IT DOENOT, BASD UPON THIS COURTS REASG AND ANALYSIS IN FEDERAL COURT AND BASED UPON WAGNER AND WHAT THE ISLATURE PRONOUNCED WAS ITS DECISION ON PUBLIC POLICY WITH THE 1974 AMENDMENTS, WHEN IT DEFINED ACCRUAL, DEFINEDT USES OF ACTION DISCOVERY RUE APPLY TO, NUMBER ONE. AS THIS COURT RECOGNIZED, IN MOSTSTANCES, IN PARTICULARLY THE WAGNER CASE, IN MOST INSTANCES IN WHICH THE DISCOVERY RULE DOES APPLY THERE, IS A CORRESPONDING STATUTE OF REPOSE OR CAP, UPON WHICH SOMEONE THEN KNOWS THAT NO HATER WHAT, THERE IS -- NO MATTER WHAT, THERE IS 'TIL AN OUTSIDE DATE, AND IF THIS COURT -- THERE IS STILL AN OUTSIDE DATE, AND IF THIS COURT REFUSED TO ACCEPT THE DEFINITION AMONG WAGNER, BECAUSE IN OTHER SITUATIONS THERE IS NO STATUTE OF REPOSE, THAT SAME SITUATION IS APPLICABLE HERE, NUMBER ONE.

ISN'T THERE A DIFFERENCE THAT COUNSEL HAS MADE REFERENCE TO THAT, IF YOU TAKE MONEY A RELATIONSHIP OTHER THAN THE POWER OF ATTORNEY RELATIONSHIP, YOU MAY HAVE A DIFFERENT SET OF RULES THAT REPLY -- THAT APPLY. WHAT IS YOUR RESPONSE TO THE POWER OF ATTORNEY?

JUDGE, I DON'T THINK IT MAKES A DIFFERENCE. IF IT DID, THE LEGISLATURE WOULD HAVE SO ANNOUNCED. THEY MAKE THE POWER OF ATTORNEY RUD WHEN IT APPLIES AND WHEN IT SHOULDN'T, AND THEY CHOSE NOT TO APPLY IT TO THAT SITUATION. AT THE TIME, IN FACT, THERE WAS A 2000 AMENDMENT TO THE STATUTE, SECTION 737.307 THAT ADDRESSES THIS VERY

ISSUE BUT THAT STATUTE IS NOT APPLICABLE TO A CAUSE OF ACTION THAT AROSE BACK IN 1990, SO IN ANSWER TO YOUR QUESTION, YOUR HONOR, IT WAS NOT APPLICABLE AT THE TIME THAT THE LEGISLATURE DID SO CHOOSE. IT IS NOW SO APPLICABLE, BUT THE STATUTE IS NOT --

RETROACTIVELY.

EXACTLY, YOUR HONOR, AND ONE OF YOU ASKED A QUESTION ABOUT WHEN DID THE CAUSE OF ACTION ACCRUE? THE STATUTE IS CLEAR. 95.031 SUBSECTION 1 SAYS WHEN THE LAST ELEMENT OCCURS. IT DOESN'T SAY WHEN THE LAST ELEMENT IS DISCOVERED OR WHEN THE LAST ELEMENT SD HAVE BEEN DISCOVERED. NOTWITHSTANDING ALL OF THAT, YOUR HONORS, EVEN IF YOU WERE TO ASSUME, AND OBVIOUSLY WE VIGOROUSLY CONTEST THE EGREGIOUS ALLEGATION THAT IS THE PLAINTIFFS HAVE ASSERTED, BUT FOR PURPOSES OF STATUTORY ANALYSIS, YOU CAN ASSUME THAT THE ARE TRUE. THE ISSUE THEN BECOMES WHEN DID HE KNOWR WHNHOUD SHELF KNOWN, AND THE UNCERTED RECORD EVIDENCE BY AFFIDAVIT AND DEPOSITION, IS THAT MISS MONAHAN KNEW AT THE TIME THAT THE TRANSACTIONS OCCURRED AND THAT AT THE ABSOLUTE OUTSIDE, SHE KNEW WHEN SHE WAS OUTTED ON O -- OUGHTTED IN 1993. MISS SADLER -- WHEN SHE WAS AUDITED IN 1993. MISS SADLER SAID THAT THEY LEARNED IT AS PART OF THE AUDIT, BECAUSE MISS MONAHAN'S SOCIAL SECURITY NUMBER WAS ON THOSE ACCOUNTS. IT CONTRAVENES ANY ALLEGATION OF CONCEALMENT, BUT NUMBER TWO, IT IN FACT SHOWS ACTUAL KNOWLEDGE. IF YOUR HONORS DON'T HAVE ANY FURTHER QUESTIONS, I RESPECTFULLY SUBMIT THAT THE DELAYED DISCOVERY DOCTRINE DOES NOT APPLY TO ANY OF THESE CAUSES OF ACTIONS AND SAUM AREA JUDGMENT SHOULD BE AFFIRMED. ALTERNATIVELY, IF YOU DETERMINE THAT THE DELAYED DISCOVERY RULE DOES APPLY, THE UNCONTROVERTED RECORD EVIDENCE IN THIS CASE NEVERTHELESS SHOWS THAT THE STATUTE HAD RUN AT THE TIME THEY FILED THEIR CAUSE OF ACTION. THANK YOU. MR. CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL BE IN RECESS.