John C. Rowell v. Julianne M. Holt

JUSTICE SHAW IS RECUSEED IN OUR LAST CASE FOR THE MORNING. THANK YOU, JUSTICE SHAW. THE FINAL CASE IS WOODHAM VERSUS BLUE CROSS/BLUE SHIELD.

MAY IT PLEASE THE COURT. MR. CHIEF JUSTICE. I AM GARY PRINTY. JOINED BY CO-COUNSEL LISA FLETCHER-KEMP. WE ARE HERE, TODAY, ON A, REPRESENTING CORE. THIS CASE ARISES OUT OF THE THIRD DISTRICT COURT OF APPEAL. WE ARE HERE ON A CERTIFIED QUESTION AND CONFLICT.

COULD YOU JUST, JUST SO I MAKE SURE, I THINK I UNDERSTAND, THE CERTIFIED CONFLICT WITH CISCO, IS THAT THEY, BOTH, HAVE THE NOTICES THAT WERE RECEIVED WERE, SAID UNABLE TO CONCLUDE, AND CISCO HAS SAID THAT, UNABLE CONCLUDE, CANNOT BE CONSTRUED TO BE A FINDING OF NO REASONABLE CAUSE.

YES, YOUR HONOR.

THE ACTUAL TEXT OF THE THIRD DISTRICT'S DECISION SEEMS TO PRESUME WITHOUT DISCUSSION, THAT UNABLE TO CONCLUDE, MEANT NO CAUSE. THERE IS NO DISCUSSION OF IT, BUT WE KNOW, THROUGH PART OF THE OPINION, THAT IT WAS THE IMPACT LANGUAGE AS INSIST CO.

YES -- WAS THE EXACT LANGUAGES.

YES, YOUR HONOR. YOU ARE- AS INSCO.S, YOUR HONORERDTTF PL RULED -- COURT OFL THAT THETRIALEIN THE FORM LETTER THATY ID, C C-103, WAS TANTAMOUNT THETAME THING AS RECEIVING A STATEMENT FROM THE FLORIDA N HUMANS THAT WE HAVE DETERMINED THERE IS NO REASONABLE CAUSETA VIOLATION OF LAW OCCURRED.

AND THEN THE THIRD DISTRICT WEON WHN UNTIMELY R NO-CAUSE LETTER, WOULDLESTRICT ACCESS TO THE COURTS, THROUGH REQUIREMENT THAT YOUE TO FILE.

RIGHT.

AND SO CREATING THIS KIND OF BIZARRE SITUATION THAT, IF YOU FILED AFTER THE EXPIRATION OF THE TIME, BUT BEFORE YOU GOT THE LETTER, YOU WOULD BE OKAY, BUT IF YOU GET IT AFTERWARDS, THAT YOU WOULD HAVE TO GO BACK TO YOUR ADMINISTRATIVE --YES. THAT WAS AN ARGUMENT THAT THEY DIDN'T EVEN HAVE TO ADDRESS. IT WASN'T REALLY --

I GUESS BECAUSE THE CERTIFIED QUESTION, INSIST CO, THEY-KNOW CISCO, THEY AC -- IN CISCO, THEY ACKNOWLEDGE THAT IT WAS UNTIMELY BUT THEY DON'T HAVE TO REACH THE UNTIMELINESS, SO I GUESS,ESCO IN , WHETHER WE START WITH AND JUST DEAL ONLY WITH THE "UNABLE TO CONCLUDE" ISSUE, OR WE DEAL WITH BOTH "UNABLE TO CONCLUDE" AND THE TIMELINESS ISSUE.

TIMELINESS IS NOT AN ISSUE HERE.

I THOUGHT THE WHOLE THIRD DISTRICT OPINION, I THOUGHT THAT IS ALL THEY DISCUSSED WAS TIMELINESS.

NO. THEY FOUND THAT THE LANGUAGE IS THE SAME AS A FINDING OF NO CAUSE.

THEY ASSUME IT. THEY, THE WHOLE OPINION DISCUSSES TIMELY THAT, IT WAS, THAT UNDER, THAT IT DOESN'T MATTER IF IT WAS RECEIVED AFTER THE 180 DAYS.

RIGHT. WELL, I SEE WHY YOU ARE SAYING. NOW,, YOU ARE TALKING ABOUT BASICALLY WITH, CAN THE ACTION OF THE EEOC, WITHDRAW THE STATUTORYLY-CREATED PRESUMPTION OF REASONABLE CAUSE, CREATED BY THE PASSAGE OF 180 DAYS? CAN THEY BE WITHDRAWN, WHEN THE EEOC OR ANYBODY, THE OTHER AGENCY, THE FCHR, EVENTUALLY GETS AROUND TO FINDING NO --

BUT YOU WOULD HAVE --

YOU WOULD HAVE TWO DIFFERENT QUESTIONS. YOU COULD HAVE A QUESTION ON WHETHER THE FLORIDA COMMISSION ON HUMAN RELATIONS, SAY THE EEOC IS NOT EVEN INVOLVED WITH THIS. THE FLORIDA COMMISSION ON HUMAN RELYINGS GETS A CHARGE. 180 DAYS PASSED, AND THERE IS A LITTLE RACE TO THE COURTHOUSE, AS TO IN THE MAIL THAT IS COMING 190 DAYS, SAYING WE HAVE DETERMINED THERE IS NO CAUSE, AND I AM RUNNING DOWN TO THE COURTHOUSE WITH MY CIVIL COMPLAINT, TO FILE MY CHARGE, BECAUSE I HAVE A FINDING OF REASONABLE CAUSE CREATED BY THE STATUTE, AND THE DEFENDANT SAYING, WELL, YOU DIDN'T GET TO THE COURT, UNTIL JULY 22, AND THE COMMISSION ISSD THEIR FINDING OF NO CAUSE ON JULY 21. AND YOU WOULD HAVE, WELL, I DIDN'T GET IT UNTIL JULY 22, WHEN I CAME BACK FROM THE COURTHOUSE,DY AF DISCRIMINATION. THEN YOU WOULD HAVE AN ISSUE, I MEAN MY CIVIL COMPLAINT. THEN YOU WOULD HAVE THAT ISSUE OF CAN THE ACTIVITY OF THE ADMINISTRATIVE AGENCY REVIEWING THE CHARGE INTERVENE AFTER THE 180 DAYS, AND CREATE, BASICALLY, WITHDRAW THAT STATUTORY PRESUMPTION OF REASONABLE CAUSE, AND THE ANSWER TO THAT IS, NO, THEY CAN'T. THAT MAKES NO SENSE AT ALL, BECAUSE THE WHOLE POINT OF THE 180-DAY RULE IS THE AGENCY, THE STATE AGENCY, SINCE THAT 180-DAY RULE IS IN THE STATE STATUTE, THE STATE AGENCY IS GIVEN 180 DAYS TO RESOLVE YOUR CASE. NOW, THE FACT OF THE MATTER IS MOST OF THE TIME THEY CAN'T, BUT THERE ARE CASES WHERE YOU CLEARLY COULD. FOR INSTANCE, IF I AM FIRED FROM MY JOB --

WE ARE JUST DEALING WITH THIS STATUTORY CONSTRUCTION ISSUE. THAT IS ALL WELL ARE DEALING WITH, IS WHAT DID THE LEGISLATURE, WHEN THEY WERE INTENDING TO LIMIT SOMEONE'S RIGHT TO ONLY FILE AN ADMINISTRATIVE REMEDY, DID THEY INTEND TO INCLUDE MORE, BROAD FINDINGS, OTHER THAN NO REASON REASONABLE CAUSE, AND DID THEY INTEND TO ALLOW SOMEONE TO FILE, AS LONG AS 180 DAYS EXPIRED? THOSE ARE THE TWO ISSUES THAT WE ARE, REALLY, DEALING WITH.

BUT YOU REALLY HAVE TO LOOK AT WHAT HAS BEEN TRIPPING UP THE COURT SYSTEM. THE LANGUAGE IN THAT EEOC THING. BECAUSE ALL YOU DO, WHEN YOU WANT TO FILE A CHARGE OF DISCRIMINATION IN FEDERAL COURT, YOU SEND A LETTER OFF TO THE EEOC AND SAY GIVE ME A RIGHT TO SUE. THAT IS ALL YOU HAVE GOT TO DO IS SAY I REPRESENT SO-AND-SO. WE FILED A CHARGE. HERE IS HIS NUMBER. IN FACT, IN THIS CASE ON JULY 16 1999, MISS FLETCHER, AS ATTORNEY FOR CORDETTE WOODHAM, SENT THAT LETTER IN. SIX DAYS LATER, SHET THE RIGHT-TO-SUE LETTER, WHICH SAID YOU KNOW, WE WERE UNABLE TO CONCLUDE. IT HAD ANOTHER BOX IN THERE, THAT SAID THAT THEY COULD HAVE CHECKED, BECAUSE IT IS JUST A FORM. THEY HAD A BOX THAT THEY COULD HAVE CHECKED, THAT SAYS THE FACTS YOU ALLEGE FAIL TO STATE A CLAIM. WHICH WOULD BE A LITTLE MORE POWERFUL FOR A FINDING OF NO CAUSE, BUT THEY PICKED THIS LANGUAGE THAT DOESN'T, WE ARE UNABLE TO DO SOMETHING. HOW CAN YOU SAY THAT WE ARE UNABLE TO DO SOMETHING, BECOMES A FINDING THAT, IN FACT, WE WERE ABLE TO DO SOMETHING. WE DID DO SOMETHING. WE FOUND THERE WAS NO CAUSE. THE SECOND THING, REGARDLESS OF WHAT THIS LANGUAGE SAYS IN THIS EEOC LETTER, THERE IS NOTHING IN THAT LETTER, AS THIS COURT SAID IN JOSHUA, THAT THAT IS AN ADMINISTRATIVE AGENCY. IF THEY ARE GOING TO DENY MS. WOODHAM HER OPPORTUNITY TO EXERCISE HER RIGHTS UNDER THAT STATUTE, THIS COURT HAS HELD, IN JOSHUA, THAT SHE HAS TO BE TOLD. A POINT OF ENTRY. THIS

LETTER, FROM THE EEOC SHOULD HAVE, MUST HAVE, UNDER JOSHUA, IF IT IS GOING TO STRIP HER OF HER STATE RIGHTS, HAVE SAID WE ARE UNABLE TO CONCLUDE, AND THAT MEANS YOU CAN'T GO TO STATE COURT. YOU HAVE TO GO TO THE DIVISION OF ADMINISTRATIVE HEARINGS, AND YOU HAVE 35 DAYS TO DO IT, AND IF YOU HAVEN'T DONE THAT, YOU HAVE DENIED HER THE POINT OF ENTRY INTO THE ADMINISTRATIVE PROCEEDINGS THAT THE FLORIDA STATUTE OTHER SYSTEM GAVE HER, AS A MATTER OF RIGHT.

IN THE THIRD DISTRICT?

EXCUSE ME.

WAS THAT AN ARGUMENT MADE IN THE THIRD DISTRICT?

YES. THEY WERE JUST TOTALLY CAUGHT UP IN THE ISSUE OF CAN THE RECEIPT OF A NO-CAUSE, ASY HAD A NO-CAUSE DETERMINATION, RETROACTIVELY TAKE AWAY THE --

THE QUESTION BECOMES WHETHER OR NOT, IF YOU,E -UT THE 180 DAYS PASS OR YOU DO NOTHING, AND THEN YOU AFFIRMATIVELY SEEK SOME KIND OF ANSWER, AND IF YOU GET AN ANSWER THAT IS NOT FAVORABLE TO YOU, AND, DO YOU THEN GO TO COURT, BECAUSE THE 180 DAYS PASSED?

THIS IS, SEE, THIS IS THE CONFUSION AROUND THESE EEOC LETTERS. THIS EEOC LETTER IS NOTHING MORE THAN AN ORDER FROM THE EEOC, BASICALLY, AS IF YOU WERE IN A CIVIL LAWSUIT, AND YOU FILED A VOLUNTARY DISMISSAL WITHOUT PREJUDICE. I WANT TO DISMISS MY LAWSUIT TODAY. SO YOU WRITE A LETTER. YOU SEND A MOTION TO DISMISS WITHOUT PREJUDICE TO THE COURT, AND YOUR LAWSUIT IS GONE. ALL THIS DOES, WHEN YOU DO A REQUEST TO RIGHT-TO-SUE LETTER, YOU ARE SAYING STOP WORKING ON MY CASE.

AS I UNDERSTAND, THAT IS THE TICKET TO THE FEDERAL COURTHOUSE.

RIGHT. YOU MUST HAVE THAT.

SO BY ASKING FOR THAT, EVEN BE LATELY, IF WE FOLLOW THE THIRD DISTRICT, YOU WOULD BE, BY GETTING INTO THE FEDERAL COURTHOUSE, YOU WOULD BE EXCLUDING YOURSELF FROM THE STATE COURTHOUSE.

RIGHT. JUDGE MA'AM RIS IS THE ONLY PERSON IN ALL OF -- JUDGE RAMIREZ, IN ALL OF THESE CASES, IS THE ONLY PERSON, WHEN WE POINTED OUT THAT IT MAKES NO SENSE AT ALL, SOMEONE ASKING FOR A RIGHT TO SUE, WHICH GIVES YOU THE RIGHT TO SUE IN FEDERAL COURT, AND AS THIS LETTER SAID STATE OR FEDERAL COURT, BECAUSE THERE IS CONCURRENT JURISDICTION. YOU COULD BRING A TITLE VII IN CIRCUIT COURT, CUTS OFF A RIGHT TO SUE IN STATE COURT. THAT WAS NOT THE INTENT. THE INTENT WAS --

SO YOUR ARGUMENT, REALLY, EVEN IF THAT LETTER HAD SAID THAT WE FOUND NO PROBABLE CAUSE, INSTEAD OF THE VAGUE LANGUAGE OF WE CAN'TONCLUDE WHETHER YOU DID OR YOU DIDN'T, BECAUSE IT WAS AFTER 180 DAYS, YOU WOULD STILL HAVE THE, YOUR ARGUMENT IS THAT YOU WOULD STILL HAVE THETION U THISAE, THAT THERE IS, IN FACT, REASONABLE CAUSE, AND YOU COULD TAKE EITHER THE ADMINISTRATIVE ROUTE UNDER THE STATUTE, OR THE FILING SUIT.

YES. FOR AS LONG, FOUR YEARS HAVE RUN BECAUSE THERE IS A STATUTE OF LIMITATIONS. I CAN'T WAIT AROUND FOREVER. SEE, THE EEOC, I COULD WAIT FIVE YEARS.

THE 180 DAYS, ONCE YOU HIT THAT, YOU ARE HOME FREE.

I HAVE A RIGHT TO SUE, CREATED BY THE STATUTE, THAT THERE IS NO EXPLANATION OF HOW YOU TAKE THAT AWAY. THERE IS NOTHING IN THERE THAT SAYS IT CAN BE WITHDRAWN, BECAUSE IT IS TO ENCOURAGE THE FLORIDA COMMISSION ON HUMAN RELATIONS TO GET THE JOB DONE.

WHAT ABOUT IF YOU ARE THE ONE WHO, AFTER THE 180 DAYS HAVE RUN REQUESTS, ASSUMING THAT AFTER THE 180 DAYS HAVE RUN, YOU ACTUALLY AFFIRMATIVELY REQUEST SOMETHING FROM THE EEOC, AND IF YOU GET BACK, THAT YOU DON'T, THERE WAS NO PROBABLE CAUSE. WHAT ABOUT THAT SITUATION?

THAT WOULD BE A DIFFERENT CASE. YOU ASSUME I WRITE THEM A LETTER AND SAY YOU GUYS ARE TAKING A LONG TIME. I WANT MY DETERMINATION NATION OF CAUSE OR NOT CAUSE, INSTEAD OF REQUESTING A RIGHT TO SUE.

WELL, ON THE RIGHT-TO-SUE LETTER, CAN THEY, IF YOU ASK FOR A RIGHT TO SUE, CAN THEY, THEN, SEND BACK TO YOU SOMETHING THAT SAYS NO REASONABLE CAUSE IS FOUND?

NO. BECAUSE IT IS A FORM. IT IS A FORM THAT IS PRINTED UP AND HAS LITTLE BOXES THAT THEY CHECK ONE OF THE THINGS.

THEY CAN'T CHANGE THE FORM.

THEY CHECK VARIOUS THINGS LIKE, WELL, I SAID, THERE IS BOX NUMBER ONE THAT SAYS THE FACTS YOU ALLEGE FAIL TO STATE A CLAIM. TWO, THEBER PEOE IS LESS THAN THE NUMBER OF EMPLOYEES.

YOU ARE SAYING THAT THAT IS LESS THAN SAYING NO REASONABLE CAUSE. SO IF THEY CHECK THAT ONE, THEN WHAT?

IT SAYS YOUR CHARGE IS DISMISSED FOR THE FOLLOWING REASON. SEE, YOU ASK. WHAT YOU ARE DOING WHEN YOU ARE REQUESTING A RIGHT TO SUE, YOU ARE SAYING DISMISS MY CASE. YOU ARE NOT SAYING MAKE A RULING ON MY CASE. IT WOULD BE JUST LIKE IF I FILE A VOLUNTARY DISMISSAL IN CIRCUIT COURT AND THE JUDGE SAYS BY GOD, I AM GOING TO GRANT SUMMARY JUDGMENT AGAINST YOU, BECAUSE I DON'T LIKE YOUR CASE, AND YOU SAY, HEY, I ASKED FOR A VOLUNTARY DISMISSAL WITHOUT PREJUDICE AND I PREPARED AN ORDER AND SENT IT TO YOU, AND I DIDN'T WANT A SUMMARY JUDGMENT SAYING THAT YOU ARE DISMISSING MY CASE AND YOU ARE FINDING THIS --

I WANT TO BE CLEAR THAT NO MATTER WHAT YOU DO AFTER THE 180 DAYS, YOU STILL HAVE ALL OF YOUR RIGHTS, UNDER FLORIDA'S STATUTORY SCHEME.

YES.

BUT IN THIS CASE, THE CONFLICT WITH CISCO IS REALLY ON THE UNABLE TO CONCLUDE LANGUAGE, AND WHETHER THAT CONSTITUTES REASONABLE CAUSE.

YES.

THE TRIAL JUDGE RESERVED RULING ON TWO OTHER ISSUES THAT HAD TO DO WITH DUAL FILING, AND THE THIRD DISTRICT, WITHOUT DISCUSSING IT, SEEMS TO HAVE MADE A DECISION THAT THERE WAS DUAL FILING. DO YOU KNOW WHAT I AM REFERRING TO?

YES.

THE ORDER ON SUMMARY JUDGMENT. WHERE IT SAYS --

THE JUDGE SPECIFICALLY SAID I AM NOT GOING TO ADDRESS ONE AND TWO. I AM GOING RIGHT TO THREE.

BUT THIS IS WHAT I WOULD DO, IF I DID ADDRESS ONE AND TWO. WHAT IS YOUR POSITION? WAS THAT ARGUED IN THE THIRD DISTRICT, THAT IS THE RESERVED GROUNDS?

YES.

AND THOSE ARE LEGAL POINTS, AND IT APPEARS FROM THE OPINION, THAT THE THIRD DCA TOOK, AND IN REVIEWING AN ORDER GRANTING SUMMARY JUDGMENT, REVIEWING IT DE NOVO, SAID THERE IS NO DISPUTE. IT WAS DUAL-FILED, AND THEREFORE THAT IS NOT AT ISSUE HERE, WHETHER IT WAS DUAL-FILED OR NOT.

WHERE DO YOU GET THE, I AM SAYING THAT JOSHUA DEALT WITH SOMETHING PARALLEL, BUT IF WE ARE DOING THIS AS, I THINK THAT I WOULD PREFER TO DO UNDER A STRICT STATUTORY CONSTRICTION INSTRUCTION, WHICH -- CONSTRUCTION, WHICH IS WHAT THE LEGISLATURE BEND INTENDED TO DO WHEN THEY FOUND FOR THE RIGHTS, IS IT DOESN'T GIVE A DESCRIPTION OF THE ALTERNATIVES TO THE RIGHT TO GO TO COURT?

IT WAS IN THE JOSHUA CASE THAT THERE IS A DUE PROCESS CONCERN THAT, UNDER ADMINISTRATIVE LAW IN THE STATE OF FLORIDA, WHENEVER YOU SEEK TO TAKE AWAY A RIGHT THROUGH AN ADMINISTRATIVE FORUM, YOU HAVE TO GIVE A POINT OF ENTRY. I DON'T CARE IF THEY ARE TAKING AWAY YOUR BARBER'S LICENSE. YOU GET A NOTICE FROM THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION THAT SAYS WE ARE TAKING AWAY YOUR BARBER'S LICENSE. YOU HAVE GOT 21 DAYS TO DO SOMETHING ABOUT IT. YOU CAN REQUEST A HEARING OR REQUEST DIRECTLY TO THE DISTRICT COURT OF APPEAL, BUT YOU GET THAT RIGHT. HERE THEY DIDN'T SAY. THAT AND THIS, THE COMMISSION, NOW, AT 180 DAYS, OR ACTUALLY ABOUT 160 DAYS, SENDS YOU OUT A LETTER, SAYING, AND CITES TO THE JOSHUA CASE AND SAYS YOU HAVE GOT FOUR THINGS YOU CAN DO. YOU CAN TELL US TO STOP AND I WANT TO FORGET I EVER DID THIS CASE. YOU CAN WAIT 180 DAYS AND BRING A CIVIL LAWSUIT. YOU CAN BRING, BOX THREE, YOU CAN BRING IN AN ADMINISTRATIVE CASE -- OR FOUR, YOU CAN TELL US TO KEEP ON GOING, AND WE WILL TRY TO RESOLVE YOUR CASE HERE.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME. THANK YOU VERY MUCH.

THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT. MY NAME IS PATRICK COLEMAN. I AM AN ATTORNEY ON BEHALF OF BLUE CROSS & BLUE SHIELD OF FLA: IF I COULD BRING THERE COURT A MESSAGE ON FUEROS WK THE COURT TO ACKNOWLEDGE THE EXCELLENT JOB THE FLORIDA LEGISLATURE HAS TRIED TO DO AND IMPROVING UPON THE TITLE VII CIVIL RIGHTS ACT. IT IS MODELED SOMEWHAT AFTER TITLE VII. IN THE CIVIL RIGHTS ACT, THERE IS A DIFFERENT PROCEDURE. YOU INVESTIGATE A CHARGE. IF, BASED ON INVESTIGATION THERE IS REASONABLE CAUSE TO BELIEVE, THEN THE CHARGING PARTY HAS THE RIGHT, EITHER TO GO TO COURT OR TO GO BEFORE AN ADMINISTRATIVE LAW JUDGE. ON THE OTHER HAND, UNDER SECTION 7, IF AN INVESTIGATION IS INCLUDED AND THERE IS NOT REASONABLE CAUSE, NOT NO REASONABLE CAUSE, BUT THERE IS NOT REASONABLE CAUSE TO BELIEVE THE STATUTE HAS BEEN VIOLATED, YOU CAN'T GO TO COURT. YOUR ONLY OPTION, THEN, IS TO GO BEFORE AN ADMINISTRATIVE LAW JUDGE AND CONVINCE THE ADMINISTRATIVE LAW JUDGE YOU HAVE A CASE.

AND THAT IS WITHIN THE STATUTORY PARAMETERS OF 18 ON DAYS.

WELL, IT DOESN'T ALWAYS HAPPEN WITHIN 180 DAYS, HONESTLY YOUR HONOR. IDEALLY IT WOULD.

RIGHT.

NOW WE GET TO SECTION 8.

DOESN'T THE STATUTE, SECTION 3, SPECIFICALLY, AND I THINK THIS IS KEY, PRESUME NOT ONLY -- ASSUMES AN INVESTIGATION BUT IT SAYS THAT, WITHIN 180 DAYS, THE COMMISSION SHALL DETERMINE. WHAT -- THERE FOR IT IS NOT JUST A GUIDELINE, THE 18 ON DAYS, OR IDEAL. IT IS A SPECIFIC STATUTORY MANDATE, UPON WHICH THE REST OF THE STATUTORY SCHEME RELIES, DOESN'T IT?

NOT REALLY. NOT REALLY, YOUR HONOR. I THINK THE FLORIDA LEGISLATURE IS VERY REALISTIC IN PASSING THE STATUTE, AND UNDERSTANDING THAT, IN A LOT OF CASES, IT DOESN'T HAPPEN WITHIN 180 DAYS. THAT IS GOOD WE HAVE SECTION 8. SECTION 8 SAYS, IF 180 DAYS PASSES AND YOU DON'T HAVE A DETERMINATION, YOU MAY PROCEED AS IF YOU HAD A REASONABLE CAUSE DETERMINATION, OR YOU MAY WAIT, AND AS JUSTICE QUINCE POINTED OUT IN JOSHUA, THE LEGISLATIVE INTENT SEEMS TO BE THATE WAI8D NOT PRESS SOMEONE TO COURT. THAT IS WHY JOSHUA PROVIDED A FOUR-YEAR STATUTE OF LIMITATIONS LIMITATIONS. IT IS REALLY PREFERABLE TO WAIT FOR THE ADMINISTRATIVE PROS TOES RUN ITS COURSE, SO THERE IS, REALLY, A RECOGNITION THAT THE CASE MAY TAKE LONGER THAN 180 DAYS. AFTER 180 DAYS, YOU HAVE THE RIGHT TO FILE. IF YOU WANT TO WAIT ON THE ADMINISTRATIVE PROCESS, YOU WAIT ON THE ADMINISTRATIVE PROCESS. NOW, THE WAY THIS DIFFERS FROM THE FEDERAL SYSTEM, IN FEDERAL COURT, EVERYBODY GOES. YOU FIND A REASONABLE CAUSE. YOU FIND NO REASONABLE CAUSE. THE SAME FORM ISSUES. 90-DAY RIGHT TO SUE. EVERYBODY GOES TO FEDERAL COURT, AND THE COURTS HAVE TO WINNOW OUT THE GOOD CASES FROM THE BAD CASES.

THERE IS ONE PREREQUISITE, THAN IS WHAT JUDGE RAMIREZ WAS REFERRING TO IN HIS DISSENT IN THE CASE, A SORT OF CATCH-22. IF YOU WANT TO PRESERVE BOTH, YOU ARE IN A CATCH-22, BECAUSE YOU NEED THAT LITTLE TICKET, WHICH IS THE RIGHT-TO-SUE LETTER FOR THE EEOC CASE, AND SO YOU CAN'T, YOU DON'T HAVE THE LUXURY YOU KNOW, YOU NEED THAT TO GET INTO FEDERAL COURT OR TO FILE A TITLE VII CLAIM IN STATE COURT, SO IF YOU REQUEST THAT, AND THEY HAVEN'T DONE ANYMORE INVESTIGATION, AND THEY GIVE YOU THIS WE DON'T KNOW, WE DIDN'T INVESTIGATE, BUT HERE IS YOUR RIGHT TO SUE, UNDER BLUE CROSS'S INTERPRETATION OF THE FLORIDA STATUTE, THAT WOULD BE EQUIVALENT TO DENYING YOU THE RIGHT TO GET INTO STATE COURT ON THE STATE COURT THING.

NOT AT ALL, YOUR HONOR.

THAT IS BLUE CROSS'S POSITION.

NEW YORK CITY YOUR HONOR. AS COUNSEL POINTED OUT, THESE FEDERAL TICKETS ARE THERE THEIR FOR THE ASKING. YOU CAN ACTUALLY FILE A CHARGE AND WALKOUT WITH THE RIGHT TO SUE IN THE SAME DAY, IF YOU WANT IT. YOU CHOOSE THE TIMING OF WHEN YOU WANT TO GO TO COURT, BY ASKING FOR YOUR RIGHT TO SUE, AND THERE IS, I WOULD REFER THE COURT TO YOUR RECORD AT PAGE 30, ANOTHER OPTION. THEY CAN GIVE YOU ADMINISTRATIVE CLOSURE, AND THEY DO. THAT.

IN THISEHAM WENT IN AND GOT PAST THE 108 DAYS, AND THEY REALLY WANTED TO FILE A LAWSUIT AND NOT BE -- 18 ON DAYS AND THEY REALLY WANT -- SHE REALLY WANTED TO FILE A LAWSUIT AND NOT BE IN THE ADMINISTRATIVE PROCESS, AND SHE GOES TO STATE COURT AND FILES A STATE COURT CLAIM, AND WHILE SHE IS IN THERE SHE SAYS I NOW WANT TO AMEND AND ADD A TITLE VII CLAIM, SO AFTER SHE GOES AND ASKS FOR HER RIGHT TO SUE, SHE GETS AN UNABLE TO CONCLUDE. THAT GETS HER, NOW, HER TITLE VII CLAIM. DOES SHE GETS, NOW, KNOCKED OUT OF HER STATE COURT CLAIM, BECAUSE SHE GOT AN UNABLE TO CONCLUDE --

UNDERSTAND THOSE FACTS AS I HEARD THEM, SHE IS ALREADY IN STATE COURT. SHE HAS ALREADY FILED IN STATE COURT. SHE HAS EXERCISED HER RIGHT TO PROCEED, AS IF SHE HAD A REASONABLE CAUSE FINDING, TO FILE A LAWSUIT.

WHAT WE HAVE GOT TO DECIDE HERE IS IT WAS THE REQUEST FOR THE RIGHT-TO-SUE LETTER, SHAW -- SOMEHOW, THAT THEN SHOWED THAT SHE REALLY WAS WANTING TO PURSUE HER ADMINISTRATIVE REMEDIES. IS THAT IN THIS CASE?

YOUR HONOR, THIS IS SUCH AN ABERRATIONAL FACT PAERNT, THIS CASE IS GOING TO HAVE VERY LITTLE PRESIDENTIAL VALUE. WHAT HAPPENED IN THIS CASE --

IT IS NOT IN CONFLICT WITH CISCO?

IT IS IN CONFLICT WITH CISCO, BECAUSE THE CISCO COURT WENT TO GREAT LENGTHS TO MISREAD THIS DOCUMENT. THIS DOCUMENT ACTUALLY SAYS THE EEOC IS CLOSING ITS FILES FOR THE FOLLOWING REASON. THE E. OC ISSUES THE FOLLOWING DETERMINATION. IT IS A DETERMINATION, BASED ON ITS INVESTIGATION. IT DID INVESTIGATE. WE ARE UNABLE TO CONCLUDE THERE IS A VIOLATION OF THE STATUTE. NOW, COURTS HAVE STRUGGLED, THAT IS DIFFERENT THAN NO REASONABLE CAUSE. IT IS DIFFERENT WORDS. IF YOU LOOK ON PAGE 26 OF OUR BRIEF, IN FACT, IN THE AMICUS BRIEF, IT WENT TO GREAT LENGTH TO TELL YOU THE EEOC CHANGED THAT. THEY CHANGED FROM NO REASONABLE CAUSE, BECAUSE THE OLD NO REASON REASONABLE CAUSE LETTER STATED SPECIFICALLY WHY THE CHARGING PARTIESDN'TDEOC AST OUR RESOURCES, NOW, IF YOU ARE GOING TO TELL A RESPONDENT --

BUT DOESN'T THAT MAKE THIS LANGUAGE THAT THEY HAVE CHANGED IT TO, AMBIGUOUS, AND IF IT IS AMBIGUOUS, SHOULDN'T WE CONSTRUE IT IN FAVOR OF ACCESS TO THE COURTS? I MEAN, BECAUSE THAT IS THE WHOLE POINT OF OUR FLORIDA STATUTE. I MEAN, THEY WANT TO HAVE ACCESS TO THE COURTS IN THESE SITUATIONS.

JUSTICE QUINCE, THAT GOES TO A WHOLE DIFFERENT ISSUE, AND I WILL MOVE TO THAT ISSUE, IF YOU LIKE. IN THIS CASE, THIS CASE INVOLVES A CHARGE FILED WITH THE EEOC. THIS CASE HAS NOTHING TO DO WITH THE FLORIDA CIVIL RIGHTS ACT. WHAT THIS PLAINTIFF ACTUALLY DID SHE FILED A CHARGE WITH THE EEOC IN MIAMI, WITH NO INDICATION SHE WANTED TO FILE WITH THE FLORIDA COMMISSION. YOU CAN SEE THIS FROM RECORD, PAGES 15 AND 16. IT WAS AN EEOC CHARGE.

NOW YOU ARE REFERRING TO THE FIRST TWO ISSUES IN WHICH THE TRIAL COURT RESERVED RULING.

RESERVED RULING. ABSOLUTELY.

AND THAT WAS ARGUED --

THAT WAS NOT ARGUED BEFORE THE THIRD DCA. THERE IS ONLY ONE ISSUE BEFORE THE THIRD DCA, AND THAT WAS THE TIMELINESS AFTER 18 ON DAYS. AS WE POINTED OUT, I BELIEVE --

WAS IT AN ALTERNATIVE GROUND FOR AFFIRMING THE SUMMARY JUDGMENT?

THE WHOLE 161 FORM IS NOT AN ISSUE. IT WAS CONCEDED, BEFORE THE THIRD DISTRICT COURT OF APPEAL, THAT THIS WAS A NO-CAUSE ISSUED BY THE EEOC AND IT WAS A NO-CAUSE FOR THE PURPOSE OF THE HCHR.

WHAT WAS BEFORE THE THIRD DISTRICT THEN?

THE ONLY ISSUE BEFORE THE THIRD DISTRICT WAS A NO-CAUSE THAT ISSUES AFTER 180 DAYS.

WAS THE PRESUMPTION OF REASONABLE CAUSE A REBUTTABLE PRESUMPTION? THE LANGUAGE OF THE 161 FORM IS NOT RAISED UNTIL A MOTION FOR REHEARING WAS FILED, AFTER THE BRIEF AND THE REPLY BRIEF WERE FILED. WE POINT THIS OUT IN A FOOTNOTE THREE OF OUR BRIEF.

SO YOU ARE SAYING WE DON'T HAVE JURISDICTION OVER THIS CASE?

YOU DON'T HAVE JURISDICTION OVER THIS CASE BUT FOR A WHOLE OTHER REASON, YOUR HONOR. I GO BACK TO THE ORIGINAL CHARGE THAT WAS FILED H THERE IS NO DESIGNATION, NO REQUEST THAT IT BE FILED WITH THE FLORIDA COMMISSION. THE ACTUAL CHARGE FILED WAS FILED WITH THE EEOC. NO REQUEST TO BE FILED WITH THE FLORIDA COMMISSION. BUT IT HAD AN EIGHT-PAGE NARRATIVE OF FACTS, SO THE EEOC E CN GET THIS DOWN TO ONE PAGE. THE EEOC SENT A REVISED CHARGE BACK FOR THE CHARGING PARTNER TO SIGN, BUT ON ITS OWN, THE EEOC PUT, BY THE WAY, "COE FILE WITH THE FLORIDA COMMISSION. IT WENT BACK TO THE CHARGING PARTY, CHARGING PARTY SIGNED IT. IT GOT BACK TO THE EEOC ON MARCH 3, 1999. BY THE TIME THE CHARGE WITH THE DESIGNATION REACHED THE EEOC, IT WAS TIME-BARRED UNDER STATE LAW, BECAUSE IT WAS MORE THAN 365 DAYS. NOW, THIS EXPLAINS WHY YOU HAVE, IN THE RECORD, AN AFFIDAVIT FROM THE MIAMI EEOC, SAYING NORMALLY, WE FORWARD THESE TO THE FLORIDA COMMISSION, BUT THERE IS NO RECORD WE DID IN THIS CASE. BY THE SAME TOKEN, THERE IS AN AFFIDAVIT FROM THE FLORIDA COMMISSION, SAYING WE LOOKED IN OUR FILES FORM WE CAN'T FIND ANYTHING ABOUT THE WOODHAM CASE. WE NEVER RECEIVED THAT CHARGE. NOW, IF YOU GO BACK TO SECTION I OF THE STATUTE, IT SAYS ANY PERSON AGGRIEVED BY A VIOLATION MAY FILE A COMPLAINT WITH THE COMMISSION, WITHIN 365 DAYS FORM THE PROCEDURAL REGULATIONS OF THE FCHR SAY FILING MEANS RECEIPT BY THE CLERK. NOW, IF YOU WANT TO PROCEED UNDER STATE LAW, YOU CAN MAIL IT TO THE CLERK OR YOU CAN RELY ON SOMEBODY ELSE TO FILE IT, BUT IN THIS CASE, NOTHING REACHED THE CLERK, AND SO --

IF THE THIRD DISTRICT DIDN'T DECIDE THIS ISSUE, WHAT, WHAT WAS FOOTNOTE ONE ABOUT, IN THE WOODHAM DECISION? FOR PURPOSES OF THE DISCUSSION, WE HOLD, AS THE TRIAL COURT DID, THAT A NO-CAUSE DETERMINATION ISSUED BY THE EEOC OPERATES AS A NO-CAUSE FINDING BY THE FCHR. WHAT WAS THAT, WHAT IS THAT FINDING?

THEY AGREE, BECAUSE THAT POINT WAS CONCEDED THAT A NO-CAUSE ISSUED BY THE EEOC IS A NO-CAUSE ISSUED BY THE FCHR, AND THEY FOUND THAT THIS WAS A NO-CAUSE, UNLESS YOU ARE REFERRING, THEY, ALSO, REFERRED TO DUAL FILIN.L FILING COMMENT, I HAVE NO IDEA. I HONESTLY HAVE NO IDEA HOW THE THIRD DCA REACHED THAT CONCLUSION, BECAUSE THE TRIAL COURT TOOK NO EVIDENCE ON IT AND SPECIFICALLY RESERVED RUL ITENSRD YOU HAVE ENOUGH TO SHOW THAT THE EEOC NEVER RECEIVED IT. THEY NEVER TRANSMITTED, RATHER, AND THE FCHR NEVER RECEIVED IT, AND THAT GOES TO YOUR CONCERN, JUSTICE QUINCE. HOW CAN YOU GIVE NOTICE? WELL, THE EEOC GIVES NOTICE OF YOUR RIGHTS UNDER FEDERAL LAW, WHICH THEY DID ON THE 161 FORM. WHAT SHOULD HAVE HAPPENED, IF THIS HAD BEEN PROPERLY FILED WITH THE FLORIDA COMMISSION, THE FLORIDA COMMISSION WOULD HAVE GIVEN NOTICE OF RIGHTS UNDER STATE LAW. BUT IT WOULD BE VERY DIFFICULT FOR THIS COURT TO FIND FAULT WITH THE FLORIDA COMMISSION THAT THEY NEVER GAVE NOTICE, WHEN THEY NEVER RECEIVED THE CHARGE. AND THERE IS NOTHING THIS RECORD THAT THE FLORIDA COMMISSION EVER RECEIVED THE CHARGE IN THIS CASE SO HOW IS THIS A GOOD CASE FOR YOU TO GIVE INSTRUCTION ON LOWER COURTS, AS TO HOW TO PROCEED WITH ADMINISTRATIVE EXHAUSTION OF THE FLORIDA CIVIL RIGHTS ACT? IT JUST ISN'T.

SO, AGAIN, I THINK I WAS ASKING YOU, IS THIS IN DIRECT CONFLICT WITH CISCO? IN OTHER WORDS, IN CISCO, WAS THE DETERMINATION OF UNABLE TO CONCLUDE, DID THAT COME FROM THE EEOC OR THE FLORIDA COMMISSION?

THE EEOC, YOUR HONOR. THEY READ THIS LANGUAGE. THE EEOC ISSUES THE FOLLOWING

DETERMINATION. BASED ON INVESTIGATION, WE ARE UNABLE TO CONCLUDE THERE IS A VIOLATION OF THE STATUTE. THE SECOND DCA READ, INTO SECTION 7, A REQUIREMENT THAT THEY STATE WITH SPECIFICITY, WHY THERE IS NO REASONABLE CAUSE. THAT IS NOT IN THE STATUTE. THE STATUTE SAYS, AFTER THE INVESTIGATION, WHATEVER AGENCY DOES IT, WHETHER IT IS THE FCHR OR THE EEOC, PURSUANT FOR A WORK-SHARING AGREEMENT, ONCE -- PURSUANT TO A WORK-SHARING AGREEMENT, ONCE THAT INVESTIGATION IS CONCLUDED, IF THERE IS NOT REASONABLE CAUSE, YOU CAN GO TO COURT. YOU CAN GO TO AN ADMINISTRATIVE LAW JUDGE AND TRY TO CONVINCE AN ADMINISTRATIVE LAW JUDGE, OTHERWISE CASES THAT HAVE MISSOURI MERIT ARE GOING TO WIND UP IN THE COURT SYSTEM, AND RESPECTFULLY IF THE COURT ALLOWS THAT, YOU ARE DEFEATG THE CLEAR INTENT OF IDAE, HO DO THAT. THIS IS A HARD CASE TO FIND FAULT WITH THE FLORIDA COMMISSION, BECAUSE THE RECORD IS VERY CLEAR THAT THEY NEVER GOT THE CHARGE IN THIS CASE. AND IF YOU READ THE WHITE CASE AND THE FOURTH DCA, YOU READ THE CISCO CASE IN THE SECOND DCA, THEY ARE READING THING INS A SECTION THAT IS NOT THERE. WHAT THEY ARE SAYING IS, UNDER SECTION 4, IF THERE IS REASONABLE CAUSE, YOU CAN PROCEED PROED INTO COURT. UNDER SECTION 7, IF THERE IS NO REASONABLE CAUSE, YOU MUST PURSUE YOUR ADMINISTRATIVE APPEALS. WELL, THIS THING, WE DON'T KNOW WHAT IT IS, SO WE ARE GOING TO SAY NOTHING HAPPENED, AND IF NOTHING HAPPENS, YOU CAN PROCEED UNDER SECTION 8, WITH THE JOSHUA FOUR-YEAR STATUTE OF LIMITATIONS BUT THAT IS JUST NOT TRUE TO SAY THAT NOTHING HAPPENED. THE EEOC SAID WE INVESTIGATED THE CASE. WE MADE A DETERMINATION. WE CAN'T CONCLUDE THERE IS A VIOLATION OF THE STATUTES. NOW, WE COULD STRUGGLE OVER THE DIFFERENCE BETWEEN NO REASONABLE CAUSE TO BELIEVE AND BASED ON OUR INVESTIGATION WE ARE UNABLE TO CONCLUDE THAT THERE IS A VIOLATION. IF ANYTHING, UNABLE TO CONCLUDE IS STRONGER, BECAUSE NO REASONABLE CAUSE, IMPLIES THERE MUST BE MIGHT BE SOME CAUSE TO BELIEVE, BUT NO REASONABLE CAUSE. HERE WE ARE SAYING WE HAVE INVESTIGATED, AND WE ARE UNABLE TO CONCLUDE. NOW, IN THIS CASE, IT IS A LITTLE CONFUSING, BECAUSE HERE YOU HAVE A PLAINTIFF WHO FILED AN EEOC CHARGE, PRESUMABLY WANTING TO GO TO FEDERAL COURT, WITH NO DESIGNATION OF THE FLORIDA COMMISSION. WE FLASH FORWARD. WE FILE THE AMENDED CHARGE, AT THE REQUEST OF THE EEOC, BECAUSE THE FIRST ONE IS TOO LONG. THE 18 ON DAYS GOES BY. THERE IS THE RIGHT TO PURSUE YOUR STATE COURT REMEDY IF YOU WANT TO, BUT SHE DOESN'T. INSTEAD, SHE ASKS THE FEDERAL COURT FOR HER RIGHT TO SUE. NOW, THE FEDERAL COURT HAS DONE THEIR INVESTIGATION. THEY COULD HAVE JUST GIVEN ADMINISTRATIVE CLOSURE AND NOT COME TO ANY CONCLUSION, BUT IN FAIRNESS, BOTH PARTIES HAD SUBMITTED EVIDENCE, SO THEY SAID ALL RIGHT, WE ARE ABOUT READY TO DECIDE ANYWAY. WE ARE YOU THIS "UNABLE TONCLU.T, SHE STILL HAS THE RIGHT TO GO INTO FEDERAL COURT. AFTER THIS, YOU HAVE 90 DAYS TO GO AND FILE IN FEDERAL COURT, BUT SHE WAIVED HER FEDERAL RIGHTS AND INSTEAD WENT INTO STATE COURT ON ONLY STATE COURT CLAIMS, BUT WHEN YOU HAVE A DETERMINATION, AND THE DETERMINATION IS THERE IS NO, THAT YOU ARE UNABLE TO CONCLUDE THERE IS A VIOLATION, AT THAT POINT, UNDER THE FLORIDA STATUTE YOU -- YOUR ONLY REMEDY IS TO GO BEFORE AN ADD RAIN MILNE STRAIGHT I HAVE -- BEFORE AN ADMINISTRATIVE LAW JUDGE. YOUR ONLY REMEDY IS TO CONVINCE SOMEBODY THIS HAS MERIT.

HOW WOULD SHE HAVE KNOWN THAT?

THEY WOULD HAVE TOLD HER, IF SHE WOULD HAVE FILED WITH THE FLORIDA COMMISSION. THE FLORIDA COMMISSION HAS A DUAL FORM. WHEN THIS IS FILED, AND BY THE WAY THIS IS AT FOOTNOTE 3, IT SAYS THAT THE INDIVIDUAL INVOLVED WENT TO H -- FCHR, AND THE FCHR GIVES A FORM THAT SAYS, WITH WHEN YOU GET YOUR DETERMINATION, YOU WILL HAVE 35 DAYS TO REVIEW THAT BEFORE AN ADMINISTRATIVE LAW JUDGE. BUT IN THE CISCO CASE, FOOTNOTE THREE, IT SAYS YOU KNOW WHAT? THAT SAYS WHEN YOU RECEIVE A DETERMINATION, AND IT ISN'T A DETERMINATION, BUT IT SAYS IT IS A DETERMINATION.

LET'S GO BACK. THE THIRD DISTRICT STATEMENT WAS BEFORE BRINGING THE LAWSUIT WOULD

HAVE FILED A DISCRIMINATION CHARGE WITH THE EEOC, THIS ACTION OPERATES AS A DUAL FILING, PURSUANT TO THIS WORK SHARE AGREEMENT, AND THEN THERE WAS AN AFFIDAVIT IN THE RECORD, IN THE LOWER COURT IN THE THIRD DISTRICT, SIGNED BY SOMEONE FROM THE EEOC, SAYING THAT THE CHARGE WAS CHECKED OFF FOR DUAL FILING, AND THAT SHE FILED AN AMENDED CHARGE, AND THE AMENDED CHARGE ESTABLISHES THAT SHE CHECKED THE BOX FOR DUAL FILING. SO EITHER THAT IS SOMETHING THE THIRD DISTRICT HAS ALREADY DETERMINED, OR IT NEEDS, IT IS CERTAINLY NOT SUBJECT, IF THAT IS THE ISSUE, THAT IS WHETHER THERE WAS PROPER DUAL FILING, IT WOULD NEED TO BE FACTUAL. IT CERTAINLY WOULDN'T BE SUBJECT TO A SUMMARY JUDGMENTAINST HER, WITTHAT N D IT?

LET ME PIECE APART YOUR QUESTION, YOUR HONOR. FIRST OF ALL, YOU HAVE DE NOVO REVIEW, SO EVERYTHING YOU NEED, YOU HAVE IN THE RECORD, TO SHOW THAT THE THE THIRD DCA WAS WRONG. I DON'T KNOW HOW THEY CAME TO THAT CONCLUSION, BECAUSE NONE OF THIS WAS DEALT WITH IN THE BRIEF BEFORE THEY FILED WITH THE DCA, AND NONE DEALT WITH IN THE ARGUMENT. BECAUSE OF THE DUAL FILING, MOST OF THESE CASES WIND UP IN FEDERAL COURT F THEY FILE IN BOTH STATUTES, THEY WIND UP BEING IN FEDERAL COURT, AND JUDGE SCHOVITZ HAS DEALT WITH THIS. WHEN WE BRIEFED, WE BRIEFED ALL OF THIS DUAL FILING, AND THE LAW SEEMS TO HAVE DEVELOPED THAT, WHEN YOU FILE YOUR CHARGE, IF YOU WANT IT DUAL-FILED, YOU MUST INDICATE ON THE CHARGE. AND I WOULD REFER THE COURT TO THE 1998 WORKS SHARING AGREEMENT WHICH GOVERNS THIS -- WORK SHARING AGREEMENT WHICH GOVERNS THIS CHARGE. IT SAYS EEOC INVESTIGATING THIS CHARGE ON THE FPB As BEHALF. YOU WANT THE FAIR EMPLOYMENT PRACTICES AGENCY INVOLVED, IN THIS CASE THE HC -- THE FCHR. YOU HAVE THE RIGHT TO PROCEED UNDER STATE LAW WITH THE FLORIDA COMMISSION. YOU HAVE THE RIGHT TO PROCEED UNDER FEDERAL LAW, BEFORE THE EEOC, OR YOU CAN DO BOTH, BUT IF YOU WANT TO DO BOTH, YOU HAVE TO INDICATE THIS, AND THE RECORD IS VERY CLEAR, AND I REFER YOU TO PAGES 27 AND 28 OF THE RECORD THAT, THAT AMENDED CHARGE WITH THE DESIGNATION, WAS NOT FILED UNTIL MARCH 3,, AND BY THE TIME THAT DESIGNATION REACHED THE EEOC, IT WAS TIME-BARRED. THAT REMINDS ME. SOMETHING COUNSEL SAID IN HIS PART OF THE ARGUMENT, THE BOX ONE, THE FS ALLEGED IN THE CHARGE FAILED TO STATE A CLAIM. YOU CHECK THAT BOX. WHEN YOU GET THE CHARGE IN THE MAIL AND YOU READ IT AND YOU SAY THIS DOESN'T EVEN STATE A CLAIM. SOMEONE SAYS I WASEATD. MY BOSS YELLED AT ME, SO YOU FILE AN EEOC CHARGE, AND THE EEOC GETS IT AND THEY SAY IT DOESN'T REALLY STATE A CLAIM UNDER THE STATUTE, SO WE WILL CHECK THAT BOX AND SEND IT BACK AND SAY JUST ALLEGATIONS ON THE FACE OF THE CHARGE DON'T STATE A CLAIM, SO THAT, REALLY, HAS NOTHING DO -- NOTHING TO DO WITH THIS CASE WHERE THERE WAS AN INVESTIGATION, WHERE THERE WAS A DETERMINATION N THIS CASE, THERE WAS NO INDICATION, UNTIL MARCH 3 1999, TO PROCEED UNDER STATE LAW UNDER UNDER FEDERAL LAW, UNDER HUMAN RELATIONS. AND I DON'T KNOW THIS, BUT I SUSPECT THAT THE REASON IT ISN'T IN THE RECORD AND IT WAS NEVER FORWARDED TO THE FCHR, IS THAT WHEN IT WAS ALREADY RECEIVED IN MAY OF 1999, IT WAS ALREADY TIME-BARRED UNDER STATE LAW, BUT IN ANY EVENT YOU HAVE THE AFFIDAVIT FROM THE FLORIDA COMMISSION THAT THEY NEVER RECEIVED IT, SO THEY NEVER GAVE NOTICE.

AS WE LOOK AT THE DECISION COMING FROM THE THIRD DISTRICT, CAN WE START ANALYZING THE ARGUMENT YOU MADE IN YOUR BRIEF AND THE ARGUMENT YOU ARE MAKING THIS MORNING. I AM TROUBLED. IT SEEMS AS THOUGH, REALLY, THE THIRD DISTRICT SO SUMMARILY DEALT WITH THIS, THE ENTIRE SUBJECT OF THIS CASE, THAT IT IS ALMOST MISLEADING ON ITS FACE. THAT SEEMS TO BE YOUR, THE UNDERLYING SUGGESTION HERE, THAT THAT IS WHAT WE ARE REALLY DEALING WITH.

YOUR HONOR, IT IS VERY CLEAR. IF YOU READ THE BRIEF SUBMITTED TO THE THIRD DISTRICT COURT OF APPEAL, NONE OF THIS WAS DEALT WITH. NONE OF THIS WAS DEALT WITH, UNTIL A PETITION FOR REHEARING WAS FILED, WHERE THE 161 FORM IS CHALLENGED FOR THE FIRST TIME. I WAS, FRANKLY, SHOCKED, WHEN I SAW THE CERTIFIED QUESTION. AND LATER WE HAD CISCO AND SO THEN YOU HAD A CONFLICT BETWEEN THE TWO DCA'S. BY THE WAY, ON THE ISSUE OF

THE 180 DAYS, THERE IS NO CONFLICT BETWEEN CIRCUITS. BOTH BOCK AND WOODHAM AGREE THAT THIS PRESUMPTION OF REASONABLE CAUSE IS A REBUTTABLE PRESUMPTION, AND ONCE THAT DETERMINATION OF NO-CAUSE ISSUES YOU HAVE LOST YOUR RIGHT TO GO TO COURT.

CHIEF JUSTICE: THA, COUNSEL.

THANK YOU VERY MUH.

CHIEF JUSTICE: REBUTTAL?

YES, YOUR HONOR. WE HAVE AN INTERESTING DEVELOPMENT HERE. IT SEEMS THAT BLUE CROSS/BLUE SHIELD, WHO TOLD MS. WOODHAM AND TOLD THE TRIAL JUDGE IN THIS CASE HER RELIEF WAS TO GO TO ADMINISTRATIVE FORUM, NOW STANDS HERE AND TELLS THIS COURT SHE COULDN'T EVEN GO TO THE ADMINISTRATIVE FORUM, BECAUSE UNLIKE THE FINDING OF THE THIRD DISTRICT COURT OF APPEAL, BASED ON THE RECORD, THAT AN AMENDED CHARGE OF DISCRIMINATION THIS TO BE DUAL-FILED UNDER THE WORK SHARE AGREEMENT, WAS, IN FACT, FILEDDT RELATES BACK TO THE DATE OF THE ORIGINAL CHARGE, WHICH HE DIDN'T SEEM TO WANT TO TELL YOU REQUEST -- TO TELL YOU THAT, SHE DOESN'T EVEN HAVATE LAW CLAIM, ACCORDING TO HIS ARGUMENT. THE WHOLE THING WAS LATE. SHE NEVER EVEN FILED IT, S YOU DON'T GO TO ADMINISTRATIVE COURT. GO TO FEDERAL COURT.

ISN'T THAT, THOUGH, WHAT THE BASIS OF THE TRIAL JUDGE'S ALTERNATIVE RULING WAS EXACTLY THAT?

. THAT RULING CAME OUT JUNE OF 2000.

T OF NOWHERE.

JUNE OF 2000. BEFORE THE JOSHUA CASE, WHICH CAME OUT IN AUGUST OF 2000, THAT JUDGE DIDN'T HAVE BENEFIT OF THAT. HE DIDN'T KNOW ANYTHING ABOUT IT. HE APPARENTLY DIDN'TY ANY ATTENTION TO THE FACT, WHAT IT MEANS TO BE DUAL-FILED UNDER A WORK-SHARING AGREEMENT. EVERY CHARGE YOU FILE IN THE FLORIDA CONUMAN RELATIONS ILYFILED E EEOC AND VICE VERSA.HERE ARE VEY GOOD REASONS WHY YOUT WANT BOTH.AN AGE DISCRIMINATION CASE UNDER THE FLORIDA STATUTE, YOU DON'T GET, YOU GET COMPENS TORT DAMAGES, AND UNDER THE -- COMPENSATORY DAMAGES, AND UNDER THE ADHD, YOU DON'T. SO YOU WANT BOTH. THE FLORIDA STATUTE REQUIRES YOU TO WAIT 18 ON DAYS AND UNDER THE FEDERAL STATUTE -- TO WAIT 180 DAYS, AND UNDER THE FEDERAL STATUTE, YOU CAN FILE WITHIN 60 DAYS, SO 120 DAYS LATER, YOU GET TO PULL IN THE STATE CLAIM ACTION ATRY DAMAGES.

LET'S ASSUME WE DHISCOD DISAGREED WITH THE THIRD ON THAT ISSUE, WOULDN'T THE BETTER POLICY FOR THIS COURT IS, RATHER THAN TRY TO FIGURE OUT WHAT THE THIRD DISTRICT DID DECIDE OR DIDN'T DECIDE ON THESE OTHER BASITE THIRD DISTRICT OR THE TRIAL COURT REEXAMINE THIS ARGUMENT, BECAUSE FRANKLY THIS QUESTION OF WHETHER IT IS A 1998 WORK SHARE AGREEMENT, THE 1999 WORK SHARE AGREEMENT, REALLY, THIS COURT ISN'T IN A POSITION TO BE LOOKING AT THAT FOR THE FIRST TIME.

YOU KNOW, BUT YOU DON'T HAVE EK SHARE AGREEMENT. ALL YOU HAVE TO LOOK AT IS, IS IT A TRUE FACT THAT AN AMENDED CHARGE AT THE EEOC RELATES BACK TO THE DATE OF FILING? THAT IS A MATTER OF LAW, AND THE ANSWER TO THAT IS YES. YOU CAN AMEND YOUR CHARGE, AND IT RELATES BACK TO THE DAY YOU FILED IT. THAT WOULD BE TRUE UNDR FLORIDA LAW. YOU FILE A CIVIL COMPLAINT. YOU CAN AEPD IT AND IT RELATES BACK TO -- YOU CAN AMEND IT, AND IT RELATES BACK TO THE DATE YOU FILED. YOU CAN DO THAT AT THE FLORIDA COMMISSION, AND IT RELATES BACKO THE DATE YOU FILED. SO MARCH 3, THIS CASE BECAME A STATE LAW CASE FOR SURE. MARCH 3, 1999. THERE IS NO DISPUTE ABOUT IT. WHETHER THE FCHR

RECORDS SAY THEY GOT IT OR NOT, IT DOESN'T MATTER, BECAUSE ON MARCH 3, A DUAL-FILED CHARGE, MARCH 3, 1999 A DUAL-FILED CHARGE WAS FILED, THAT RELATED BACK TO 1998. SHE HAD, MS. WOODHAM HAD, FROM 11-12-97, TO 11-12-98, TO GET THAT CHARGE INTO THE STATE. SHE HAD 300 DAYS, BECAUSE WE ARE A DUAL-FILING STATE. WE, SHE HAD 300 DAYS FROM NOVEMBER, TO GET IT INTO THE EEOC. SHE FILED IT IN JUNE OF '98. SHE WAS TIMELY ON BOTH COUNTS.

CHIEF JUSTICE: THANK YOU, COUNSEL. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.