Joseph Cephas v. Mark J. Letzter, M.D.

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS CEPHAS VERSUS LETZTER.

EXPLAIN TO ME WHAT IS THE LANGUAGE IN STEWART VERSUS HERTZ THAT SAYS THIS CASE CONCERNS THE RIGHT OF A DEFENDANT WHO IS A NEGLIGENT TORTFEASOR IN A THIRD PARTY ACCIDENT THAT IS THE BRINGING BY THE PLAINTIFF FOR ALLEGED MALPRACTICE WHICH AGGRAVATED THE INJURIES OF THE PLAINTIFF. IT SEEMS TO ME THAT THAT IS WHAT THE ISSUE WAS IN THAT CASE, WHETHER OR NOT PROCEDURALLY, THE PERSON WHO IS SUED BY THE PLAINTIFF, CAN ACTUALLY, THEN, BRING IN SOME OTHER TORTFEASOR FOR INDEMNIFICATION, AND SO IS THAT, REALLY, THE ISSUE WE HAVE HERE, SINCE WE HAVE TWO PEOPLE WHO ARE ACTUALLY SUED BY THE PLAINTIFF?

YES, YOUR HONOR. BECAUSE THE STEWART DOCTRINE, THEN, EVOLVED OUT OF THAT RUBRIC. THE INITIAL HOLDING WAS THAT THE DEFENDANT, BECAUSE IT WAS NOT A JOINT TORTFEASOR SITUATION, AND BECAUSE HE WAS AT FAULT, HAD NO ACTION FOR CONTRIBUTION OR INDEMNIFICATION AGAINST A SUBSEQUENT WRONGDOER, AND THAT WAS THE STRICT HOLDING OF STEWART VERSUS HURTS -- HERTZ, BECAUSE HE WAS A WRONGDOER, AND HE COULDN'T DO. THAT THERE WAS A SUBSEQUENT DECISION BY THIS COURT, IN A CASE CALLED UNDERWRITERS OF LLOYDS VERSUS FLORIDA, UNDERWRITERS AT LLOYDS, A FLORIDA DECISION IN 1980, WHICH SAID THAT IS TRUE. BUT THE INITIAL WRONGDOER CAN BE SUBGAITED TO THE PLAINTIFF'S -- SUBARE GAITED TO THE PLAINTIFF'S RIGHT OF -- SUBROW GAITED TO THE PLAINTIFF'S ACTION IN THE RIGHT OF WRONGDOER. THIS IS IN LLOYDS. THE PLAINTIFF HAS AN ACTION AGAINST THE INITIAL WRONGDOER IN THIS ACTION, BUT THE PLAINTIFF, ALSO, HAS AN ACTION AGAINST THE SECOND TREATING PHYICS, TOO, EVEN THOUGH IS HE A SUCCESSIVE TORTFEASOR AND NOT A JOINT TORTFEASOR, THE PLAINTIFF DOESN'T HAVE TO MAKE A CHOICE, AND EVEN THOUGH THAT SECOND TORTFEASOR, AS WE HELD IN STWART VERSUS HERTZ, LIABLE FOR THE FULL AMOUNT, ND EVEN THOUGH THE FIRST WRONGDOER CAN'T SUE FOR CONTRIBUTION OR INDEMNIFICATION, BECAUSE WE DON'T HAVE A JOINT TORTFEASOR SITUATION HERE, WE ARE GOING TO HOLD, IN UNDERWRITERS AT LLOYDS, THE SECOND WRONGDOER. THEPLAINTFF AN'T COLLECT TWICE BU HE CAN SU TICE, AND WE ARE GOING TO HOLD THAT THE INITIAL WRONGDOER SUBGAIT TO DO THAT RIGHT OF ACTION, AND IF -- SUBROW GAITED TO THAT RIGHT OF ACTION, AND IF THE SECOND TORTFEASOR PAID, HE CAN ZB ROW GAIT TO THAT WRONG -- HE CAN SUBROW GAIT TO THAT WRONGDOER.

TIME WENT BY AND THE LEGISLATURE, AND WE HAVE GOT THIS DOCTRINE HAVING TO DO WITH THE APPORTIONMENT OF DAMAGE.

YES, SIR.

AND THIS COURT HAS DEALT WITH THAT, IN FABRE AND, ALSO, DEALT WITH IT IN, RECENTLY, IN GROSS VERSUS LIONS, AND -- LYONS, AND, REALLY, IT SEEMS TO ME THAT JUDGE KLEIN DOES HAVE A POINT. HOW DOES STEWART V HERTZn%i FITMY REASONABLY WITHIN THIS DEVELOPMENT OF THE LAW OF THE CONCEPT OF APPORTIONMENT OF DAMAGE? WHERE YOU ARE ONLY INTENDED TO BE RESPONSIBLE FOR THE DAMAGE THAT YOU CAUSE, AS A TORTFEASOR?

WELL, I BELIEVE, YOUR HONOR, THAT GROSS VERSUS LYONS AND YOUR RECENT DECISION IN NOVEMBER IN DEMARIO HAS, NOW, ANSWERED THAT QUESTION. IN GROSS VERSUS LYONS, WE DID NOT HAVE A JOINT TORTFEASOR SITUATION. IT WAS IMPOSSIBLE. WE HAD TWO AUTOMOBILE ACCIDENTS THAT WERE THREE MONTHS APART FROM EACH OTHER. THERE WAS NO WAY YOU HAD JOINT TORTFEASORS HERE. YOU HAD AN INDIVIDUAL AND INDIVISIBLE INJURY THAT WAS CREATED A AS A RESULT,-OPEN CREATED AS A RESULT, AND THIS COURT SAID CLEARLY IN GROSS VERSUS LYONS THAT IF YOU SUE THE ORIGINAL TORTFEASOR AND HE IS RESPONSIBLE FOR THE INJURY AND HE CAN'T SEGREGATE, BECAUSE OF WHATEVER, IS HE RESPONSIBLE, NOTWITHSTANDING 768.813, THAT THIS STATUTE WAS DESIGNED ONLY TO APPORTION LIABILITY IN A JOINT TORTFEASOR SITUATION. REMEMBER THAT IS WHAT FABRE SAID. FABRE SAID WE READ THIS STATUTE TO REQUIRE AN APPORTIONMENT AMONG THOSE RESPONSIBLE FOR THE ACCIDENT. NOT FOR THE INJURY. FOR THE ACCIDENT. AND THAT IS WHAT GROSS SAID. GROSS SAID WE REQUIRE AN APPORTIONMENT, ONLY IN JOINT TORTFEASOR SITUATIONS, SO WHEN THOSE TWO SUCCESSIVE TORTFEASORS WERE RESPONSIBLE, EITHER ONE OF THEM WAS RESPONSIBLE FOR THE WHOLE, AND THAT IS WHAT HAPPENED IN DEMARIO. IN DEMARIO, WE HAD A CRASHWORTHINESS CASE, IN WHICH THE GRAVAVEMENT OF THE CLAIM AGAINST THE MANUFACTURER WAS THAT HE CREATED A VEHICLE WHICH WAS NOT CRASHWORTHY. THIS COURT, CHIEF JUSTICE WELLS, HAD TO LOOK AT THE IMPACT OF 768.813 ON THAT SITUATION. NOW, IF YOU READ THIS STATUTE, COMPREHENSIVELY, REQUIRING AN APPORTIONMENT, THIS COURT COULD NOT HAVE DECIDED DEMARIO OR GROSS, THE WAY IT DID. THERE WOULD HAVE HAD TO BE AN APPORTIONMENT, BUT THIS COURT SAID, NO, THIS STATUTE, AS WE SAID IN FABRE, ONLY REQUIRES A SHARING OF RESPONSIBILITY AMONG THOSE WHO CAUSED THE ACCIDENT, NOT THE INJURY, BECAUSE THAT IS WHAT THE STATUTE SAYS, AND THAT MEANS JOINT TORTFEASORS, BUT IF WE HAVE SUCCESSIVE TORTFEASORS, AS WE HAVE IN GROSS, IF WE HAVE SUCCESSIVE TORTFEASORS, AS WE HAD IN DEMARIO, IN WHICH WE HAVE AN ACCIDENT AND THEN WE HAVE A CRASHWORTHINESS PROBLEM, WE DON'T APPORTION.

WHAT IS YOUR DEFINITION OF A JOINT TORTFEASOR?

A JOINT TORTFEASOR IS NOT MERELY, AND WE EMPHASIZE THIS AS CLEARLY AS WE CAN IN THE BRIEF, EBBS TENS I FEEL REVIEWING THE ENTIRE HISTORY OF THIS CONCEPT, YOUR HONOR, A JOINT TORTFEASOR NOT ONLY IS SOMEBODY WHO CONTRIBUTES TO AN INDIVISIBLE INJURY. THAT HAPPENED IN GROSS. AND THAT WAS THREE MONTHS APART. THAT WAS SUCCESSIVE. THAT HAPPENED IN DEMARIO. YOU COULDN'T SEPARATE IT. IT IS NOT JUST AN INDIVISIBLE INJURY. IT IS AN INDIVISIBLE INJURY WHICH IS CAUSED BY ACTIONS WHICH OCCUR IN CONCERT. THEY OCCUR IN TEMPORAL AND SPATIAL CONCERT.

WHY ISN'T THIS CASE ONE THAT THE JURY COULD PROPERLY FIND, UNDER THAT DEFINITION, THAT THESE TWO DOCTORS WERE JOINT TORTFEASORS, BECAUSE YOU HAVE GOT THE ORIGINAL DOCTOR'S NEGLIGENCE, UNDER YOUR OWN THEORY OF THE CASE, CONTINUING ON, AND EVEN SUBSEQUENT TO THE ORIGINAL, THE FOUR FOOT AMPUTATION CONTINUING ON, AND ISN'T THE, SORT OF TAKING THIS BACK TO A MORE NARROW FOCUS, REGARDLESS OF WHAT 768 DOES TO STEWART VERSUS HERTZ, WHY ISN'T BARRIOS, WHH DEALS WITH WHAT I SEE AS SOMEWHAT OF A SIMILAR SITUATION, WHY ISN'T THIS CASE CLOSER TO BARRIOS? WHICH IS THAT YOU DON'T REALLY HAVE SOMETHING AS DEFINED AS ONE INDEPENDENT TORTFEASOR AND THEN, YOU KNOW, WHO IS CAUSE -- WHO HAS CAUSED AN INJURY, AND THEN SOMEONE SEEKS TREATMENT. YOU HAVE ONGOING TREATMENT IN THIS CASE.

WELL, WITH ALL RESPECT, YOUR HONOR, I DISAGREE ON THE FACTS, AND I BELIEVE THE FACTS ARE UNCONTRADICTED ON THIS.

BUT YOU DO AGREE THAT THE FACTS OF A CASE WITH TWO DOCTORS IN PARTICULAR CAN GIVE RISE AND, IN MANY CASES, DO GIVE RISE TO SOMETHING NOT AS NEAT AS A STEWART VERSUS HERTZ SITUATION.

YES, I DO.

I MEAN, THERE ARE MANY, MANY PERM YOUTATIONS OF MEDICAL MALPRACTICE CASES, WHERE YOU HAVE GOT VARIOUS DOCTORS WHO ARE FAILING TO DISCOVER CANCER, SO IT IS NOT ALWAYS THE FIRST DOCTOR THAT GETS THE WHOLE SHARE OF IT, AND SO --

YES, I DO, YOUR HONOR.

ALL RIGHT.

HOWEVER, I DO AGREE WITH THE CAVEAT THAT WE HAVE CITED THE OVERWHELMING MAJORITY OF CASES IN WHICH THE DEFINITION OF JOINT TORTFEASORS WAS A QUESTION OF LAW, AND NOT NECESSARILY UP TO THE JURY. BUT THE FACTS ARE USUALLY IN SEQUENCE. WHICH IS WHAT WE HAVE HERE.

YOU DON'T THINK BARRIOS WAS, IN THAT CASE, APPROPRIATE FOR THE JURY TO MAE THE DETERMINATION? I GUESS I AM --

YES. BUT --

YES, YOU AGREE THAT IT DOES STAND FOR THAT PROPOSITION?

BUT ONLY UNDER THE UNIQUE FACTS OF THAT CASE, IN WHICH THE JURY CAN FIND THAT THE DOCTORS, THAT THE WRONGDOERS ACTED IN CONCERT, SPATIALLY AND TEMPORALLY, BUT COMPARE WHAT WE HAE HERE. WE HAVE FOUR SPECIFIC ACTS OF NEGLIGENCE. IF THE JURY FINDS THEM NEGLIGENT WHICH IS A JURY QUESTION, UNCONTRADICTED TO TAKE PLACE, BEFORE ANYBODY EVER HEARD OF DR. CEPHAS. HE WAS NEVER EVEN AROUND. WE HAVE FOUR SEPARATE FAILURES TO DIAGNOSE THE GANGRENE WHICH CAUSED THIS PROBLEM, WHICH CAUSED THE AMPUTATION OF THE RIGHT FOREFOOT, BEFORE DR. CEPHAS DID ANYTHING WRONG. WE HAD ONE IN JANUARY OF '96, TWO EARLY FEBRUARY '96, FEBRUARY 20 OF '96, FEBRUARY 25 OF '96. CEPHAS COMES INTO THE PICTURE AT THAT POINT, HAS TO CONDUCT THE INITIAL AMPUTATION OF THE FOREFOOT. EVERYBODY SAYS THAT WAS PROPER. EVERYBODY SAYS THAT WAS CAUSED --

ARMAND. YOU SAID CEPHAS.

I AM SORRY. YOU ARE RIGHT. ARMAND COMES N EVERYBODY SAYS THAT WAS PROPER. EVERYBODY SAYS ARMAND HAD TO DO IT. EVERYBODY SAYS LETZTER CAUSED IT. IT WAS UNIQUELY CAUSED BY LET'S GETTER. IT WAS A -- LETZTER. IT WAS ANUNIQUE AND INDEPENDENT INJURY. JUST TO FOLLOW UP ON YOUR QUESTION, THE ONLY SUBSEQUENT ACT OF NEGLIGENCE ATTRIBUTED TO DR. LETZTER AFTER THAT, WAS THAT HE FAILED TO FOLLOW UP AND CORRECT HIS PRIOR INJURY. HE FAILED, IT WAS A CONTINUATION OF THE SAME ACT OF UNAPPRECIATION, WHICH HE HAD DONE BEFORE.

WELL, I GUESS MY PROBLEM IS THAT, MAYBE IT FOLLOWS A LITTLE BIT WHAT JUSTICE QUINCE IS SAYING, IS THAT STEWART VERSUS HERTZ, THERE IS CERTAINLY, FIRST THE POLICY REASON, WHICH IS YOU HAVE GOT ONE PERSONAL INJURY TORTFEASOR WHO HAS CAUSED INJURIES, AND THEN A PLAINTIFF IS, SEEKS MEDICAL TREATMENT, AND YOU ARE NOT GOING TO TAKE A SIMPLE PERSONAL INJURY CASE AND TURN IT INTO A COMPLICATED MEDICAL MALPRACTICE CASE.

TRUE.

BUT IT, ALSO, AS I READ STEWART, PRESUMES A INITIAL ACT OF TORTFEASOR. HERE YOU HAVE GOT DR. , A DOCTOR THAT HAS ESSENTIALLY FAILED TO TREAT APPROPRIATELY, SO IT IS A PASSIVE TORTFEASOR, AND THEN YOU HAVE GOT AN ACTIVE TORTFEASOR IN ARMAND, AND THEN YOU HAVE GOT, AGAIN, THIS DR. LETZTER COMING IN AFTER THE FACT, SO I DON'T, I GUESS I AM STILL HAVING TROUBLE TO SEEWHY THAT ISN'T, WHY THEY ARE NOT COMBINING TO CAUSE A SINGLE INJURY, AND WHY THE JURY COULDN'T HAVE FOUND THAT IN THIS CASE, WHERE THE PLAINTIFF SUED BOTH DOCTORS.

WELL, FIRST OF ALL, THE MERE FACT THAT THE JURY ASSIGNED FAULT TO BOTH DOCTORS DIDN'T MEAN THAT THAT IS WHAT THEY DID FIND.

I UNDERSTAND. THAT BUT I AM SAYING FROM THE FACTS, WHY THAT IS NOT A REASONABLE CONCLUSION.

IT IS NOT A REASONABLE CONCLUSION, BECAUSE THERE WAS A DISCREET INJURY, WHICH WAS THE AMPUTATION OF THE FOREFOOT, BEFORE ARMAND EVER GETS INTO THE PICTURE, SOLELY AS THE RESULT OF ACTIONS WHICH I DON'T THINK WERE MERE ACTS OF OMISSION. THEY WERE THE WRONG DIAGNOSIS AND THE WRONG AFFIRMATIVE TREATMENT. THIS MAN DID THE WRONG THINGS. AND TO CARVE OUT, FROM THE STEWART RATIONALE, ACTS OF MALPRACTICE FOLLOWED BY MALPRACTICE, WITH ALL RESPECT, YOUR HONOR, MAKES NO SENSE T MAKES NO SENSE, BECAUSE ALL IT IS GOING TO DO IS IN DUES THE PLAINTIFF NOTTO SUE THE FIRST DOCTOR IN THE FIRST PLACE, GIVING THE DEFENDANT THE CONTROL OVER THE LAWSUIT, AND MUCH MORE FUNDAMENTALLY, IT IS GOING TO CARVE OUT AN EXCEPTION FROM THE GENERAL RULE, WHICH IS THE FUNDAMENT OF STEWART VERSUS HERTZ, WHICH IS THAT, AS A MATTER OF LAW, THE WRONGDOER, WHOEVER HE IS, WHETHER HE IS A DRIVER OR A A CONSTRUCTION WORKER OR A DCTOR, THAT, IF HE COMMITS AN ACT OF WROGDOING, HE SHOULD FORESEE, AS MATTER OF LAW THAT SOME OTHER DOCTOR MAY MAKE IT WORSE, WHETHER HE IS A DOCTOR ESPECIALLY IF HE IS A THE DOCTOR. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME, MR. PERWIN.

-- R ANYBODY ELSE, AND THE RATIONALE OF MR. STEWART ADMITS NO EXCEPTION IN A MULTI-DOCTOR SITUATION. IT EITHER APPLIES ACROSS THE BOARD, AS THE PARTIES STIPULATED IN THIS CASE WHICH IS THE LAW OF THE CASE AND SHOULD BE THE LAW, AND I BELIEVE THIS COURT RECENTLY HELD IN NOVEMBER, OR IT SHOULDN'T APPLY AT ALL, AND WE BELIEVE, RESPECTFULLY, IT SHOULD APPLY AT ALL AND THAT THERE WAS A CLEAR DEMARCATION HERE AND NOT A JURY ISSUE ON THE QUESTION OF WHETHER THESE TWO DOCTORS WERE JOINT TORTFEASORS. I WILL SAVE THE REST OF MY TIME. MR. CHIEF JUSTICE

MS. STEIN.

MAY IT PLEASE THE COURT. DINAHSTEIN ON BEHALF OF THE RESPONDENT DR. MARK LETZTER. BEFORE I ADDRESS THE JURY, I WOULD LIKE TO ADDRESS THIS ALLEGED WAIVER OR CONCESSION ARGUMENT THAT MR. CEPHAS HAS RAISED. FIRST OF ALL, THIS WAS NEVER BROUGHT TO THE ATTENTION OF THE FOURTH DISTRICT. WE WOULD SUBMIT THAT MR. CEPHAS HAS WAIVED THIS WAIVER ARGUMENT AND THE PROPER PRESERVATION ISSUES ARE NOW THE LAW OF THE CASE. ADDITIONALLY, DR. LETZTER'S TRIAL COUNSEL NEVER CONCEDED THE VIABILITY OF STEWART VERSUS HERTZ. HE CONCEDED, AS HE HAD TO, THAT COURTS ARE STILL APPLYING IT, BECAUSE THAT IS CORRECT, AND HE ARGUED, AS HE WAS ENTITLED TO DO THA IN ANY EVENT, STEWART VERSUS HERTZ WOULD NOT APPLY TO THE FACTS OF THE CASE. THAT IS NOT A CONCESSION. WE HAVE ARGUED VERY ASSERT I FEEL TO THE FOURTH DISTRICT, THAT STEWART VERSUS HERTZ, HAS VERY LIMITED, IF ANY, APPLICATION, IN LIGHT OF THE 1986 TORT REFORM AND INSURANCE ACT. IN REGARD TO THE MERITS --

LET ME ASK YOU A QUESTION. YOU AGREE THAT THE STEWART VERSUS HERTZ IS NOT A JOINT TORTFEASOR CIRCUMSTANCE.

I WOULD AGREE WITH THAT, YOUR HONOR.

AND COULD YOU SHARE WITH ME, I HAVE BEEN TRYING TO THINK OF ANY POSSIBLE CIRCUMSTANCE WHERE THE DOCTRINE OF JOINT AND SEVERAL LIABILITY WOULD APPLY, OTHER THAN JOINT TORTFEASORS. IS THERE SUCH A CIRCUMSTANCE?

NOT -- JOINT AND SEVERAL LIABILITY. WELL, INTERESTINGLY IT DID APPLY HERE, BECAUSE THE COURTS ENTERED JUDGMENT JOINTLY AND SEVERALLY, DESPITE THE FACT THAT HE FOUND THAT THERE WAS NO JOINT TORTS. I THINK THAT MIGHT BE A BIT OF AN ABERRATION THAT SHOULDN'T HAVE HAPPENED, BUT I CAN'T THINK OF ANY SITUATION WHERE THE LAW IS CORRECTLY APPLIED AND THERE WOULD BE SUCH A SITUATION.

SO YOU AGREE WITH MY THOUGHT PROCESS, I BELIEVE, IF I UNDERSTAND YOU CORRECTLY THAT, THAT IS THE ONLY CIRCUMSTANCE WHERE THE DOCTRINE OF JOINT AND SEVERAL LIABILITY WOULD APPLY. IF IT IS CORRECT. IS A CIRCUMSTANCE OF JOINT TORTFEASORS AS WE HAVE KNOWN THAT HISTORICALLY UNDER COMMON LAW.

I BELIEVE WE ARE IN THE SAME POSITION.

OKAY. THEN HERE IS MY DIFFICULTY, AND PLEASE HELP ME WITH THIS, BECAUSE THE STATUTE 768.81, MAKES REFERENCES TO, IN CASES WHERE THIS SECTION APPLIES, THE COURT SHALL ENTER JUDGMENT AGAINST EACH PARTY LIABLE, ON THE BASIS OF SUCH PARTY'S PERCENTAGE OF FAULT AND NOT ON THE BASIS OF JOINT AND SEVERAL LIABILITY. SO MY QUESTION IS, IF IT IS MAKING REFERENCE TO NOT ON THE BASIS OF JOINT AND SEVERAL LIABILITY, WHAT OTHER CIRCUMSTANCES IS IT ADDRESSING, OTHER THAN A JOINT TORTFEASOR CIRCUMSTANCE?

STEWART VERSUS HERTZ IS AN EXCEPTION TO THE RULE.

STATUTE.

THAT'S CORRECT.

THE STATUTE, ITSELF.

THAT'S CORRECT. THAT'S CORRECT. AND THE FACT, I BELIEVE THAT THE FACT THAT THE LEGISLATURE DID NOT SPECIFICALLY MENTION "AND IN CASES INVOLVING A TORTFEASOR AND SUBSEQUENT MEDICAL NEGLIGENCE", DOES NOT RETRACT IN ITS INTENT, WHICH IT HAS MADE VERY CLEAR OF, IT TO ESTABLISH A FAULT-BASED SYSTEM OF LIABILITY. ADDITIONALLY, THE FACT THAT THE LEGISLATURE DID NOT SPECIFICALLY ADDRESS STEWART VERSUS HERTZ IN THE STATUTE DOES NOT MEAN THAT THIS COURT CAN'T FINE TUNE THE LAW, TOHAVE A UNIFIED SYSTEM OF TORT LIABILITY,WHE IT IS CLEAR HAT THE LEGISLATURE HAS ATTEMPTED TO ESTABLISH SUCH A SITUATION THAT DEEMS TORTFEASORS RESPONSIBLE ONLY FOR THEIR SHARE OF FAULTS, AND WHAT WE HAVE RIGHT NOW IS A DOCTRINE THAT IS IN EXTREME TENSION WITH THE REST OF THE SYSTEM. FOR INSTANCE, WE ALL AGREE THAT, IF TWO TORTS ARE DEEMED TO BE JOINT, THE APPORTINMENT STATUTE APPLIES, AND LIABILITY IS APPORTIONED, BASED ON FAULT. IF THE TWO TORTS ARE DEEMED TO BE SEPARATE AND DISTINCT, THEN THE JURY IS TO APPORTION DAMAGES IF AT ALL POSSIBLE, AS BEST IT CAN, AND, OF COURSE, THAT IS THIS COURT'S DECISION IN GROSS VERSUS LIONS. WHAT WE HAVE IS AN EX -- VERSUS LYONS. WHAT WE HAVE IS AN EXCEPTION, HOWEVER, WHEN WE HAVE AT LEAST ONE OF THE TORTFEASORS IS A MEDICAL PROVIDER, AND IN THAT SITUATION, WHAT MR. CEPHAS IS CONTENDING IS THAT WE SHOULD REVERT BACK TO A SYSTEM THAT WAS ESTABLISHED BEFORE THE 1986 TORT REFORM AND INSURANCE ACT, AND WHICH WOULD HOLD THE FIRST TORTFEASOR 100 PERCENT REPONSILE FOR THE DAMAGES INCURRED, REGARLESS OF WHETHER OR NOT E JURY CAN APPORTION FAULT AND REGARDLESS OF WHETHER OR NOT THE JURY CAN APPORTION DAMAGES.

YOU WOULD AGREE THAT, IF THE LEGISLATURE IS PRESUMED TO KNOW THAT STEWART V HERTZ IS OUT THERE, CORRECT?

CORRECT.

AND THE LEGISLATURE DIDN'T SPECIFICALLY DEAL WITH THAT, WITH STEWART V HERTZ IN ANY OF THIS LEGISLATION. ISN'T THAT CORRECT?

THAT IS CORRECT, YOUR HONOR.

AND ISN'T IT, ALSO, CORRECTw3 THAT, IF YOU FOCUS ON WHAT STEWART V HERTZ IS ATTEMPTING TO DO, THAT IT, REALLY, MAKES MORE SENSE TODAY THAN IT DID WHEN IT WAS ADOPTED, AND THAT IS YOU HAVE GOT AN AUTOMOBILE ACCIDENT CASE, AND THEN YOU HAVE GOT A SUBSEQUENT MEDICAL MALPRACTICE SITUATION, AND RATHER THAN HAVING THE PLAINTIFF WAIT AND HAVE TO GO THROUGH THE PRESUIT SCREENING AND ALL THE COMPLICATIONS THAT YOU JUST DON'T DEAL WITH THAT. ISN'T THAT WHAT STEWART V HERTZ, REALLY RESPECT STANDS FOR?

I AGREE THAT IT DID STAND FOR THAT IN THE SENSE OF A THIRD PARTY PLEADING CASE.

RIGHT.

THAT IS CORRECT. IF --

AND DOESN'T THAT MAKE SENSE TODAY? I MEAN OTHERWISE YOU GET ALL THESE AUTOMOBILE CASES, MESSED UP IN MEDICAL MALPRACTICE CASES.

I AGREE WITH THAT, THAT THE LOGIC OF STEWART VERSUS HERTZ NOT ALLOWING A TORTFEASOR TO TURN A SIMPLE NEGLIGENCE CASE INTO A PROTRACTED MEDICX' NEGLIGENCE CASE MAY, INDEED, SURVIVE THE STATUTE. HOWEVER, THE STATUTE ALLOWS FOR OR SHOULD ALLOW FOR THE INITIAL TORTFEASOR TO BRING IN EVIDENCE OF THE PHYSICIAN'S CONTRIBUTION TO THE DAMAGES AND THE LIABILITY AND THAT DOES NOT TURN A SIMPLE ACCIDENT CASE INTO A PROTRACTED MEDICAL NEGLIGENCE ACTION.

HOW IS THAT ANY DIFFERENT, REALLY, THAN THE UNDERLYING HOLDING OF STEWART VERSUS HERTZ? IN OTHER WORDS IF THAT IS JUST ANOTHER, YOU ARE OPENING UP ANOTHER DOOR TO DO THE SAME THING THAT STEWART AI THAT YOU CAN'T DO? ARE YOU NOT?

NOT NECESSARILY, YOUR HONOR, AND AS JUSTICE WELLS HAS POINTED OUT, WHEN YOU SUE A DOCTOR, YOU, THEN, HAVE THE PRESUIT. YOU, THEN, HAVE THE EXPENSE OF HAVING TO, THERE IS, ALSO, THE PUBLIC POLICY ISSUE OF FORCING SOMEONE TO SUE THEIR OWN DOCTOR.

WELL, WHAT IS THE PLAINTIFF TO SAY IN A SITUATION LIKE THAT, WHERE YOU ARE SAYING, WELL, NOW, THIS DOESN'T MEAN SUING THE DOCTOR. THIS JUST MEANS BRINGING IN EVIDENCE OF THE DOCTOR'S MALPRACTICE, AND IT IS NOT GOING TO -- YOU KNOW, THE PLAINTIFF IS STILL OLY GOING TO BE ABLE TO WALKOUT OF HERE WITH A PORTION OF HIS DAMAGES, IF WE ARE SUCCESSFUL IN SHOWING THAT THERE WAS MALPRACTICE. THIS IS JUST GOING TO BE AN EXERCISE THEN, AS OPPOSED TO THE SITUATION WHERE, IN THE ORDINARY JOINT TORTFEASOR SITUATION, THE PLAINTIFF DOES HAVE THE CAPABILITY AT ALL TIMES, AND THE DEFENDANT DOES, OF BRINGING IN ANOTHER JOINT TORTFEASOR INTO THE CASE. SO IT HAS SOME MEANING IN THAT CONTEXT. BUT I AM HAVING TROUBLE WITH YOU SAYING THAT THERE IS SOME DISTINCTION BETWEEN BEING ALLOWED TO PRESENT EVIDENCE, THEN, OF THE SUCCESSIVE DOCTOR'S MALPRACTICE, AS OPPOSED TO THE SITUATION IN STEWART VERSUS HERTZ, IF WE ARE TO ADHERE TO THE STEWART VERSUS HERTZ CONCEPT CONCEPT. THAT WE CAN SOMEHOW DO IT A DIFFERENT WAY, AND THAT THAT IS ALL RIGHT.

I WOULD, AGAIN, SUBMITTHAT THRE IS A BIG DIFFENCE BETWEN BRINGING A DOCTOR INTO THE CASE, FORCING THE PLAINTIFF TO LITIGATE AGAINST THE DOCTOR, SUDDENLY FORCING THE PLAINTIFF TO HAVE TO GO THROUGH PRESUIT, TO HAVE TO INCR THE EXPENSE OF A FULL MALRACTICETAL, AS PPOSED TO A FABRE DEFENDANT, IN WHICH CASE T BURDEN IS ON E DEFEDANT IN THE CASE, TOSHOW THAT MEDCAL NEGLIGENCE CONITETO THE INJURY.

WOULD YOU ADDRESS JUSTICE PAIENTE'S QUESTIONS TO YOUR COLLEAGUE? AND THAT IS HER QUESTIONS, REALLY, WERE ABOUT, WELL, WHAT ABOUT THIS SITUATION? OBVIOUSLY WE ARE ALL HAVING A DIFFICULTY, CONCEPTUALLY.

YES.

THAT IS THINGS SEEM FAIRLY SIMPLE, WHEN YOU TALK ABOUT AN OLD-FASHIONED AUTOMOBILE ACCIDENT, AND THAT THE BAD GUY IN THAT ACCIDENT, YOU KNOW, CAN'T LATER CLAIM, WELL, YOU KNOW, NOW YOU HAVE GOT BAD TREATMENT BY A DOCTOR, AND YOU CAN'T HOLD ME RESPONSIBLE FOR THAT, BUT, OF COURSE THE BAD GUY SAID ALL -- SAID ALL THAT INTO A MOTION, SO WE HAVE, YOU KNOW, WHAT FINALLY HAPPENED IN STEWART VERSUS HERTZ, SO CONCEPTUALLY, YOU KNOW, WE CAN SORT OF DIAGTHAT FAIRLY EASILY, BUT -- DIAGRAM THAT FAIRLY EASILY, BUT NOW WE HAVE GOT THIS THING ABOUT SOMEBODY HAS GOT AN ILLNESS, OBVIOUSLY, AND THEY GO TO A PHYSICIAN, AND THE PHYSICS IS TRYING TO TAKE CARE OF THAT ILL -- AND THE PHYSICIAN IS TRYING TO TAKE CARE OF THAT ILLNESS IN A CERTAIN WAY, THEN THE ILLNESS IS AGGRAVATED, AND THERE IS A SECOND PHYSICIAN, AND I GUESS CONCEPTUALLY HERE, I AM GETTING MUDDLED, BECAUSE IF WE HAD A SECOND PHYSICIAN THAT WAS IN THE SAME MEDICAL GROUP, IT WOULD APPEAR ONE WAY OR, YOU KNOW, AND SO JUST ALMOST THE CHANCE OF THE WAY THESE THINGS OCCUR SOMETIMES BUT CONCEPTUALLY, IT SEEMS FAR DIFERENT THAN THE EASY, SIMPLE EXAMPLE THAT WE HAD IN STEWART VERSUS HERTZ. I THINK JUSTICE PARIENTE'S QUESTIONS WERE ABOUT, WELL, IS THIS REALLY NOT A JOINT TORTFEASOR SITUATION? REALIZING THAT IS MORE OF A SOFTBALL QUESTION FOR YOU, BUT HOW ABOUT ADDRESSING THAT? AS FAR AS IS THIS JUST SIMPLY NOT THE SITUATION THAT WAS PRESENT IN STEWART VERSUS HERTZ? IN OTHER WORDS IS THIS SIMPLY NOT REALLY A SUCCESSIVE TORTFEASOR THING? IS IT A CONDITION, AN UNDERLYING CONDITION, NOW, THAT, REALLY, IS BEING TREATED AND MANAGED BY SUCCESSIVE DOCTORS, BUT, REALLY, ANY NEGLIGENCE THAT THEY PERFORM IS, REALLY, OPERATING MORE OR LESS AT THE SAME TIME TO CAUSE THESE PROBLEMS.

AND THAT IS ABSOLUTELY WHAT WE HAVE BEEN CONTENDING THROUGHOUT THE ENTIRE APPELLATE PROCESS. YOUR HONOR IS MUDDLED. JUSTICE PARIENTE IS HAVING PROBLEMS WITH IT CONCEPTUALLY, AND THE FOURTH DISTRICT MAJORITY WHICH APPLIED STEWART VERSUS HERTZ, AS WELL, SAID THAT THIS IS AWKWARD, PARTICULARLY PROBLEMATIC, SINCE THE PLAINTIFF HAS SUED EVERYONE IN THE SAME PROCEEDING, AND I ABSOLUTELY AGREE THAT, WHEN WE HAVE ALL MEDICAL PROVIDERS, THIS IS NO LONGER A CLASSIC STEWART VERSUS HERTZ SITUATION INVOLVING AN INITIAL INJURY AND SUBSEQUENT MEDICAL NEGLIGENCE. A PLAINTIFF VIRTUALLY ALWAYS PRESENTS HIM OR HERSELF TO A PHYSICIAN WITH AN EXISTING PROBLEM. IN THIS CASE, IT WAS AN ULCER CAUSED BY COMPLICATIONS FROM DIABETES. OF COURSE, THERE IS NO ARGUMENT THAT DR. LETZTER DID NOT CAUSE THIS ULCER. HE BEGAN TO TREAT IT. AND WHEN DR. ARMAND CAME INTO THE PICTURE, THIS WAS ALL A CONTINUING COURSE OF TREATMENT OF THE SAME CONDITION.

BUT THAT IS NOTgpf3f3f3f3f3TFUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUU THAT IT WAS CAUSED BY THE MISS DIAGNOSIS OR THE FAILURE TO DO THE RIGHT TREATMENT BY THE -- THE MISDIAGNOSIS OR THE RIGHT TREATMENT BY THE FIRST DOCTOR?

I STRONGLY DISAGREE WITH MY OPPONENT'S CHARACTERIZATION OF E REPORT. MR. CEPHAS HAS CONTENDED FROM THE PREE TRIAL, IN STIPULATIONS, THAT -- FROM PRETRIAL, IN STIPULATELATIONS, THAT DR. LETZTER'S INJURY TO HIM WAS THE BELOW-KNEE AMPUTATION. WHAT HE IS SAYING NOW, IN RETROSPECT, TO THIS COURT IS THERE WAS AN INITIAL INJURY FROM THE FOREFOOT AMPUTATION. WELL, THAT WAS NEVER THE CHARACTERIZATION OF DR. LETZTER LETZTER'S LIABILITY THAT HE CAUSED.

IT WAS THE LEG AMPUTATION BELOW THE KNEE.

ACTUALLY WHAT IT WAS WAS DR. ARMAND'S FAILURE TO PERFORM THE CORRECT BYPASS. THAT WAS THE POINT IN TIME WHERE EVEN MR. CEPHAS'S EXPERT TESTIFIED AT TRIAL THAT IT WAS THE FAILURE TO PERFORM THE CORRECT BYPASS, WHICH MADE THE BELOW-LEG AMPUTATION OR THE BELOW-KNEE AMPUTATION INEVITABLE INEVITABLE. THAT WAS WHAT CAUSED THE AMPUTATION. THERE WAS, IN FACT, THE TESTIMONY WAS UNDISPUTED, AND IN FACT IT WAS MR. CEPHAS'S CONTENTION THAT DR. LETZTER SHOULD HAVE BECOME INVOLVED IN DR. ARMAND'S CARE, BECAUSE HE COULD HAVE PREVENTED THE BELOW-KNEE AMPUTATION, SO THERE WAS NO EVIDENCE THAT THE FOREFOOT AMPUTATION WAS WHAT REQUIRED SUBSEQUENT CARE. THERE WAS NO EVIDENCE OF THAT. THE EVIDENCE WAS THAT IT WAS THE FAILURE TO PERFORM THE CORRECT BYPASS.

IS THERE EVIDENCE THAT THE BYPASS WOULD HAVE SAVED THE LITTLE TOE AND HAVE NOT RESULTED IN THE FOREFOOT AMPUTATION? OR IS THAT A SECONDARY PROBLEM? THE BYPASS TO GET THE BLOOD SUPPLY TO THE LOWER EXTREMITY?

THERE WAS EVIDENCE THAT THE PROPER BYPASS, IF PERFORMED TIMELY, WOULD HAVE REROUTED BLOOD TO THE FOOT D SAVE.

AND SAVED THE FOREFOOT AMPUTATION AS WELL?

THAT IS A LITTLE, POSSIBLY, I DON'T THINK THERE WAS DIRECT EVIDENCE OF THAT.

OKAY.

PERHAPS IT COULD BE INFERRED, BUT THE MAIN, AND THE BULK OF THE EVIDENCE AND WHAT THE TESTIMONY WAS DIRECTED TO, WAS WHETHER THIS PHYSICIAN COULD HAVE AND SHOULD HAVE SAVED THE LOWER LEG, AND, AGAIN, AS FAR AS --

SNCE -- SINCE THE JURY DIDN'T -- THEY GOT AN INSTRUCTION OF STEWART VERSUS HERTZ, WHICH ESSENTIALLY SAID YOU HAVE GOT TO FIND DR. LETZTER NEGLIGENT. HE IS RESPOSIBLE AS A MATTER OF LAW, FOR WHAT DR. ARMAND DID. I MEAN, THAT IS WHAT THE INSTRUCTION THAT THE JURY GOT SAID. IT TOLD THEM AS A MATTER OF LAW, TO DO IT. WHAT DID IT TELL THEM ABOUT WHAT THEY WERE SUPPOSED TO DO, BECAUSE I GUESS THE VERDICT FORM WAS A SPECIAL VERDICT FORMIN APRTIONING SOMETHING. DID IT TELL THEM THEY WERE APPORTIONING FAULT? THEY WERE AND ORTIONING DAMAGES? -- THEY WERE APPORTIONING DAMAGES? AND WHAT INSTRUCTIONS DID THE JURY RECEIVE ON HOW THEY WERE TO ALLOCATE BETWEEN ARMAND AND LETZTER INTHAT SITUATION?

THEY WERE GIVEN VERY LITTLE GUIDANCE, AS TO THE APPORTIONMENT. I DON'T RECALL EXACTLY HOW IT WAS WORDED TO THEM.

SO ONE OF THE ARGUMENTS THAT I GUESS HAS BEEN MADE IN THE FOURTH DISTRICT AND ME, HERE, THAT, THE JURDIDN'T RECEIVE PROPER INSTRUCTIONS, THAT IS, THERE WEREN'T ANY INSTRUCTIONS THE PLAINTIFF SUBMITTED THAT THE JUDGE NEGLECTED TO GIVE, THAT THE CONFUSION, IF ANY, SHOULD BE CHARGED BACK TO THE PLAINTIFF?

WE CONTENDED, JUST FOR BACKGROUND, SO YOU KNOW HOW WE ENDED UP HERE, WE CONTENDED, TO THE FOURTH DISTRICT, THAT THIS CAUSED CONFUSION TO THE JURY, AND WE SHOULD HAVE HAD A RETRIAL ON LIABILITY AT ORAL ARGUMENT AT THE FOURTH DISTRICT, WE ESSENTIALLY WAIVED OUR CLAIM FOR THAT, BECAUSE WE SAID THE JURY HAS PORTION FAULTS. THEY HAVE DONE IT, WHICH, IN A WAY THAT COULD BE DEEMED FAIRLY, AND THERE IS NO REASON TO RETRY THIS CASE. MR. CHIEF JUSTICE

YOUR TIME IS UP. THANK YOU, MS. STEIN.

THANK YOU, YOUR HONORS.

MR. PERWIN.

MAY IT PLEASE THE COURT WITH YOUR PERMISSION THREE QUICK POINTS. NUMBER ONE ON THE QUESTION OF WHAT DR. LETZTER CONCEDED BELOW. IN ADDITION TO ALL THE CITES I GAVE YOU FROM THE DISTRICT COURT DR. LETZTER CONTENDS THAT THE JURY SHOULD NOT HAVE EEN GIVEN THE STEWART VERSUS HERTZ INSTRUCTION, ARGUING THAT WHERE THE DEFENDANTS ARE JOINT TORTFEASORS, AND THAT AS A MATTER OF LAW HE AND DR. ARMAND ARE JOINT TORTFEASORS. IT WAS CONCEDED THROUGHOUT THAT, IF THEY WERE NOT JOINT TORTFEASORS, THIS STATUTE DID NOT APPLY TO THEM. ON JUSTICE PARIENTE'S POINT, FOLLOWED UP ON JUSTICE ANSTEAD, ON THE QUESTION OF WHETHER OR NOT THERE WAS OVERLAP JOINT TORTFEASORS VERSUS SUCCESSOR TORTFEASORS. NUMBER ONE, THE EVIDENCE WAS CON CONTRADICTED, ALTHOUGH, OF COURSE, WE WANTED TO HOLD DR. LETZTER RESPONSIBLE FOR THE ENTIRE ULTIMATE INJURY, WHICH WAS THE AMPUTATION ABOVE THE RIGHT KNEE. THE EVIDENCE WAS UNCONTRADICTED, ALWAYS, THAT HE WAS RESPONSIBLE FOR THE INITIAL DISTINCT INITIAL INJURY, WHICH HE, HE LON, CAUSED AND THAT WAS THE AMPUTATION OF THE RIGHT FOREFOOT. HE DID THAT. HE DID THAT ALONE. HIS OMISSIONS DID THAT BEFORE DR. CEPHAS WAS EVER IN THE PICTURE. DR. CEPHAS CAME IN, REALIZED WHAT HAD HAPPENED, PERFORMED THAT AMPUTATION. EVERYBODY SAID IT WAS NECESSARY. THE EVIDENCE WAS UNCONTRADICTED ON. THAT THE JURY HAD TO FIND IT WAS NEGLIGENCE THAT CAUSED IT, BUT IT WAS DR. LETZTER'S NEGLIGENCE AND DR. LETZTER'S NEGLIGENCE, ALONE, WHICH CAUSE ADD DISTINCT INJURY. THE ULTIMATE INJURY OCCURRED LATER. NOW THAT, IS FAR LESS IMPORTANT, AS I HAVE ARGUED. THE QUESTION OF WHETHER THE INJURY IS INDIVISIBLE OR NOT, THEN THE QUESTION OF WHETHER THE CONDUCT WAS SEPARATE, TEMPORALLY SEPARATE IN SPACE AND TIME, AND IN THE MERE FACT THAT THERE WAS SOME -- AND THE MERE FACT THAT THERE WAS SOME OVERLAP IN WHAT WERE ESSENTIALLY ACTS OF OMISSION AT THAT POINT, WHICH WAS DR. LETZTER'S FAILURE TO DISCOVER THAT HE HAD SCREWED UP, ESSENTIALLY, BEFOREHAND AND DONE SOMETHING WRONG AND SHOULD HAVE JUMPED IN AND SAID HEY, I MADE A MISTAKE. LET ME TELL THE NEW DOCTOR THAT I MADE A MISTAKE AND HE OUGHT TO DO SOMETHING, DOESN'T TAKE A LOOK AT THE JOINT TORTFEASORS. TAKE A LOOK AT ALBERTS VERSUS ADAMS, AT PAGE 11 FOOTNOTE 8 OF THE REPLY BRIEF, A SECOND DISTRICT CASE, WHICH SAYS EXACTLY THAT, THAT IF YOU HAVE GOT A SET OF ACTIONS AT ONE TIME AND ANOTHER SET OF ACTIONS AT ANOTHER TIME, THE MERE FACT THAT THERE IS A LITTLE TEMPORAL OVERLAP BETWEEN THEM DOESN'T MAKE THE TWO JOINT TORTFEASORS. TAKE A LOOK, TOO, AT THE CASES AT PAGE 28, FOOTNOTE 19 OF THE ORIGINAL BRIEF. CASE AFTER CASE AFTER CASE IN WHICH THIS COURT AND THE DISTRICT COURTS HELD THAT THE DEFINITION OF JOINT TORTFEASORS IS FOR THE COURT. IT IS NOT FOR THE JURY, WHEN, ALTHOUGH THE JURY DECIDES WHO IS NEGLIGENT, WHEN THE EVIDENCE OF WHAT HAPPENED IS UNCONTRADICTED, IT IS FOR THE COURT TO DECIDE WHETHER THEY ACTED IN TEMPORAL TIME AND SPACE IN CONJUNCTION OR DIDN'T.

LET ME GO BACK TO THE QUESTION OF THE VIABILITY OF STEWART VERSUS HERTZ, NOT IN LIGHT OF 768 BUT IN LIGHT OF WHEN YOU HAVE GOT MULTIPLE MALPRACTICE DEFENDANTS. IF AN ORDINARILY, A -- IF -- ORDINARILY A SUBSEQUENT TORTFEASOR OR THE QUESTION OF WHETHER THE SUBSEQUENT ACT WAS FORESEEABLE IS A QUESTION FOR THE JURY. STEWART VERSUS HERTZ CREATES A NARROW EXCEPTION, TO SAY THERE IS FORESEEABILITY AS A MATTER OF LAW, WHEN SOMETHING HAPPENS, AND THE SOMETHING IN STEWART VERSUS HERTZ WAS VERY SPECIFICALLY A PERSONAL INJURY PLAINTIFF WHO WAS, THEN, NOT NEGLIGENT AND SOUGT SUBSEQUENT TREATMENT. WHY SHOULDN'T, IN MALPRACTICE CASES AT THE VERY LEAST, THE JURY MAKE THE DECISION AS TO WHETHER THE SUBSEQUENT TORTFEASOR, WHETHER THE INTERVENING ACT WAS FORESEEABLE AS A MATTER OF LAW, AND THAT THAT BE THE RULE IN MALPRACTICE CASES?

MAY I RESPOND? MR. CHIEF JUSTICE

YOU MAY RESPOND BRIEFLY. ANOTHER ANSWER VERY SUCCINCTLY IS BECAUSE THERE IS NO LOGICAL REASON WHY IT SHOULDN'T BE. THE ARGUMENT IN EVERY OTHER CONTEXT IS THAT THE WRONGDOER, NO MATTER WHO HE IS, SHOULD FORESEE, AS A MATTER OF LAW, THAT IF HE HURTS SOMEBODY, CAUSING THE NECESSITY THAT A DOCTOR TREAT HIM, IT IS FORESEEABLE, AT A -- AS ATTER OF LAW, THAT THE DOCTOR WHO TREATS HIM MAY DO SOMETHING NEGLIGENTLY. IT IS NO LESS TRUE, WHEN THE PERSON WHO COMMITS THE INITIAL HURT IS, HIMSELF, A DOCTOR, THAT HE SHOULD FORESEE THAT HIS WRONGDOING WILL REQUIRE THE NECESSITY OF SUBSEQUENT MEDICAL TREATMENT, AND AS A MATTER OF LAW, IF IT IS FORESEEABLE WHEN IT IS A CAR DRIVER OR A MECHANIC OR ANYBODY ELSE, THAT IT IS GOING TO REQUIRE THAT ANOTHER DOCTOR TAKE A LOOK. IT IS LOGICALLY EQUALLY FORESEEABLE THAT THAT DOCTOR WILL BE NEGLIGENT, AS IT IS IN ANY OTHER CONTEXT, AND THAT, YOUR HONOR, IS THE ANSWER, AND WHY AN EXCEPTION SHOULD NOT BE CARVED OUT IN THAT CONTEXT. THANK YOU VERY MUCH. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. THANK YOU FOR YOUR ASSISTANCE. THE COURT WILL BE IN RECESS FOR 15 MINUTES.