

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Southeastern University of the Health Sciences, Inc. v. Keith M. Sharick

CHIEF JUSTICE: NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS SOUTHEASTERN UNIVERSITY VERSUS SHARICK.

MAY IT PLEASE THE COURT. I AM JOHN BERANEK. I AM HERE WITH TRIAL COUNSEL, AND THIS IS AN ABUSE OF PROCEEDING FROM THE COURT OF APPEAL.

WOULD YOU GO BACK TO YOUR JURISDICTION?

YES, SIR.

THAT IS WE HAVEN'T HAD A UNIVERSITY REFUSAL TO GRANT A DEGREE OR EXPULSION CASE, HAVE WE, BEFORE? OR IN THE DISTRICT COURTS OF APPEAL? IN OTHER WORDS, SO, WHERE IS THE CONFLICT HERE? THAT SERVES AS A BASIS FOR OUR JURISDICTION?

THE CONFLICT RELATES TO THE GENERAL LINE OF CASES AND THE SPECIFIC LINE OF CASES, THAT DEAL WITH THE CERTAINTY OF FUTURE EARNINGS AS DAMAGES IN IMPLIED CONTRACT SITUATIONS. AND ALBEIT NOT A UNIVERSITY EXPULSION.

IS THAT ENOUGH TO, REALLY, GIVE US CONFLICT JURISDICTION? AREN'T WE TALKING, REALLY, ABOUT A VERY BROAD PRINCIPLE THAT HAS DIFFERENT APPLICATION, DEPENDING ON THE FACTUAL SETTINGS?

INDEED IT IS A BROAD PRINCIPLE. OF COURSE, THE CERTAINTY OF FUTURE DAMAGES IN AN IMPLIED CONTRACT SITUATION, AND I KEEP PUTTIN IN, THAT WE ARE DEALING WITH AN IMPLIED CONTRACT HERE.

BUT WHY WOULDN'T THE ISSUE WITH REGARD TO THE SPECIFICITY OR THE CERTAINTYDA, BE E THAT IS DECIDED AT THE TIME THAT THE EVIDENCE, WHATEVER IT IS, IS PRESENTED. IT MAY WELL BE THAT YOU PREVAIL AT THE TRIAL LEVEL. WHY ARE WE DECIDING AS A MATTER OF LAW? WHY WOULD NOT THE CONTRACT PRINCIPLES APPLY, JUST AS JUSTICE ANSTEAD SAID, IN THE UNIVERSITY SITUATION, AND IT JUST MAY BE THAT, ONCE YOU GET TO THE TRIAL LEVEL THAT, IT MAY BE THAT THAT OBSTACLE MAY NOT BE OVERCOME, BUT WHY SHOULD IT BE DECIDED HERE?

THE DISSENT FOR THIS CASE WENT SORT OF EN BANC FOR THE THIRD SITUATION. THE JURY WOULD HAVE TO GET TO A DECIDING POINT TO DECIDE FUTURE DAMAGES FOR LOST EARNINGS OR LOST EARNINGS CAPACITY.

HOW DO WE KNOW IT NOW? THAT IS MY DIFFICULT I WITH THE DISSENTING -- THAT IS MY DIFFICULTY WITH THE DISSENTING VIEW. HOW DO WE KNOW IT NOW?

JUSTICE LOOSE, I WILL GET BACK TO YOUR -- JUSTICE LEWIS, ILL GO AROUND YOUR QUESTION AND GET BACK TO IT. WHAT IS AMAZING IS THERE HAS NEVER BEEN A TRIAL OF ANY OF THESE ISSUES. I WILL SAY IT AGAIN. THERE HAS NEVER BEEN A TRIAL ON ANY OF THESE ISSUES. AS I HAVE POINTED OUT REPEATEDLY IN THE BRIEF, BEFORE THE TRIAL EVEN BEGAN, THE TRIAL JUDGE RULED THAT THE ONLY ISSUE WAS GOING TO BE WHETHER THIS GUY GOT HIS TUITION BACK, AND THE JURY VERDICT, WHICH, OF COURSE, IS IN THE RECORD, HAS TWO QUESTIONS. WAS

THE DECISION OF SOUTHEAST UNIVERSITY TO DISMISS THE PLAINTIFF, ARBITRARY AND CAP RISH US? IF THE -- AND CAP RISH -- AND CAPRICIOUS? IF THE ANSWER IS YES, THEN WHAT IS THE TOTAL AMOUNT OF DAMAGES SHARED BY KEITH IS SHARICK. YOU ONLY AWARD FOR TUITION MA. >THAT BECAUSE THE TRIAL JUDGE --

EXACTLY, JUSTICE PARIENTE. THIS IS NOT A SITUATION WHERE YOU HAD A COMPLETE TRIAL, WHERE ALL THE EVIDENCE CAME N.

I HATE TO GO BACK TO THE JURISDICTION ISSUE, BUT WHAT I AM UNDERSTANDING IS, YOU WANT US TO ACCEPT JURISDICTION, AND IT MAY BE THAT THE THIRD DISTRICT, YOU ARE TALKING ABOUT THE FACT THAT THEY SORT OF, THAT YOU SHOULD HAVE THE WHOLE TRIAL AGAIN, IF YOU ARE GOING TO HAVE TO, YOU KNOW, DEFEND AGAINST DAMAGES, BUT THE BROAD PROPOSITION WHICH IS THAT, IN ANY SITUATION WHERE YOU ARE SUING A UNIVERSITY, WOULD A, BASED ON AN IMPLIED CONTRACT THEORY, WOULD A PLAINTIFF EVER HAVE THE RIGHT TO ATTEMPT TO ESTABLISH DAMAGES FOR LOSSES SUSTAINED BEYOND THE TUITION? ISN'T THAT, REALLY, THE BROAD ISSUE THAT WE ARE BEING ASKED TO CONSIDER AND WHY WE WOULD TAKE JURISDICTION? I MEAN, BECAUSE WHAT I AM UNDERSTANDING IS YOU ARE SAYING THIS WOULD BE A BLACK LETTER RULE THAT ABSOLUTELY NEVER EVER, NO MATTER WHAT THE FACTUAL CIRCUMSTANCE, THAT SOMEONE SHOULD BE ABLE TO ESTABLISH THAT THERE IS HARM IN THE FORM OF SOME FINANCIAL HARM BEYOND THE TUITION, THAT THEY PAID.

JUSTICE PARIENTE, OF COURSE WE HAVE AN ALTERNATIVE POSITION. OUR INITIAL POSITION IS THAT THE DISSENT WAS RIGHT. THESE DAMAGES ARE TOO SPECULATIVE, AND CANNOT BE RECOVERED.

ALWAYS. IN ANY CASE, WHERE SOMEONE IS SUING --

ALWAYS IN ANY CASE.

WHETHER IT IS A MEDICAL SCHOOL, LAW SCHOOL, UNIVERSITY, ALWAYS GOING TO BE --

RIGHT. AND IN THAT WE HAVE THE ARGUMENTS REGARDING THE RULE OF RESTRAINT THAT IS APPLIED TO UNIVERSITIES AND THE FACT THAT WE ARE DEALING WITH, AT MOST, AN IMPLIED CONTRACT HERE.

THIS DOES SEEM, TO ME, TO BE A CASE OF FIRST IMPRESSION, AND I GUESS FOR THIS COURT TO CONSIDER, AND SO WE NOW GET BACK DEE JURISDICTION?

THE JURISDICTIONAL ARGUMENTS THAT WERE PRESENTED TO THIS COURT, WHICH THE COURT ACCEPTED WITH DISSENT, DOUGLAS FERTILIZERS, WHICH IS THE CASE IN THE STATE OF FLORIDA THAT IS MOST OFTEN CITED AND USED FOR CERTAINTY OF DAMAGES AND IMPLIED CONTRACT SITUATIONS, AND, OF COURSE, WE GET TO THE VERY OLD BUT DIRECTLY APPLICABLE CASE, WHICH DOUGLAS FERTILIZER CITES, OF BROCK V GAIL, WHERE A DENTES -- BROCK V GALE, WHERE A DENTIST LOST HIS DENTAL INSTRUMENTS AND SAID PAY ME THE EARNINGS THAT I WOULD HAVE HAD, HAD I HAD MY INSTRUMENTS, AND I DIDN'T HAVE THEM, SO I COULDN'T WORK. THIS COURT, WAY BACK IN 1874, SAID THAT IS TOO REMOTE. YOU CAN'T GET -- EXCUSE ME.

CHIEF JUSTICE: LET THERE BE SOUND. GO AHEAD.

THERE IS A BIG DIFFERENCE BETWEEN HAVING YOUR INSTRUMENTS AND HAVING THE LICENSE OR THE EDUCATIONAL QUALIFICATION TO ACTUALLY PRACTICE IN A LEARNED FIELD, IS THERE NOT?

ABSOLUTELY, BUT THERE IS CERTAINLY, ALSO, A GREAT DEAL OF SIMILARITY BETWEEN A DOCTOR AND A DENTIST, AND IF YOU CAN'T GET FUTURE EARNINGS AS A DOCTOR, YOU OR IF YOU

CAN'T GET FUTURE EARNINGS AS A DENTIST, YOU SHOULDN'T GET THEM AS AN ARE DOCTOR, AND WE DON'T SUGGEST THAT --

YOU ARE SAYING FUTURE EARNINGS. BASED ON A LOSS OF INSTRUMENTS. OKAY. AS OPPOSED TO FUTURE EARNINGS, BASED ON TAKING AWAY YOUR LICENSE OR OTHER REQUIREMENT TO PRACTICE DENTISTRY OR MEDICINE. LET ME, SINCE WE ARE INTO, IN A SENSE, YOU ARE ADVOCATING A STRICT RULE HERE, OF NO DAMAGES FOR FUTURE LOSS OF EARNINGS. WHAT DO WE DO IN A SITUATION WHERE LET'S SAY, HYPOTHETICALLY, YOU HAVE AN EVEN MORE EGREGIOUS CIRCUMSTANCE, WHERE THE FACULTY MEMBER OR THE PRESIDENT OF THE UNIVERSITY HAS IT IN FOR THE PARTICULAR PERSON AND SAYS I DON'T CARE HOW BRILLIANT THIS PERSON IS OR WHATEVER THIS PERSON INSULTED MY DAUGHTER OR SOMETHING, AND THAT PERSON IS GOING TO PAY. AND TOLD THE STORY TO THE BOARD OF TRUSTEES, WHEN THE NAMES CAME UP FOR APPROVAL. THEY ALL AGREED HE IS OUT OF HERE. AND HE SHOULD NEVER BE A PHYSICIAN. AND THAT ACTUALLY, THEN, OCCURS. WHAT WOULD BE THE LEGAL RELIEF THAT THAT PERSON, WHO, NOW, FEELS THAT THEIR LIFE HAS BEEN RUINED, AS FAR AS THEIR DREAM OF BECOMING A DOCTOR, WHAT WOULD BE THE RELIEF THAT PERSON WOULD BE ENTITLED TO?

JUSTICE ANSTEAD, I SUGGEST THAT THE RELIEF WOULD BE A TORT SUIT, AND THAT IS VERY CLOSE TO WHAT THE THIRD DISTRICT COURT OF APPEAL HAS RULED HERE. THEY HAVE IMPOSEED TORT DAMAGES. IF THOSE WERE THE FACTS, IT WOULD BE A TORT CASE.

IS THAT BECAUSE THERE IS A INTENTIONAL ACT? IS --

YES, SIR. OF COURSE.

HAVEN'T WE HAD VIRTUALLY ALLEGATIONS HERE AND THEN DON'T WE ACTUALLY HAVE THAT BOLSTERED BY, APPARENTLY, A JURY FINDING THAT THERE WAS A COMPLETELY ARBITRARY ACT HERE. IS THAT --

THE JURY FOUND THAT THERE WAS AN ARBITRARY AND CAP RISH US ACT BUT THEY FOUND THAT, AND I HAVE TO GET TO THIS. THE OTHER REMEDY, THE OTHER, YOU SAY, WHAT REMEDY WOULD THERE BE, THE FIRST PAGE YOU HAVE TO LOOK AT, IN DETERMINING WHAT REMEDY THERE IS, IS WHAT IS THE CONTRACT? WHAT IS THE CONTRACT? AND WHAT WERE THE REMEDIES THAT THE PARTIES TO THAT CONTRACT ENVISIONED? WHAT DID THEY AGREE ON OR IMPLY IMPLIEDLY AGREE ON, WHEN THEY ENTERED INTO THIS CONTRACT?

WHAT WAS THE CONTRACT.

JUSTICE SHAW, WE HAVE NO IDEA. THE JURY DIDN'T TRY THAT. I KEEP SAYING, PLEASE LOOK AT THE VERDICT FORM. THE JURY DID NOT MAKE ANY DETERMINATION AND WASN'T ASKED TO MAKE ANY DETERMINATION, OF WHAT THE TERMS OF THIS CONTRACT WERE.

WERE ANY -- WERE THERE ANY QUESTIONS SUGGESTED THAT YOU WANTED SUGGESTED TO THE JURY ON THAT ISSUE, THAT THE TRIAL JUDGE REFUSED TO GIVE?

ABSOLUTELY. THEY TRIED TO TRY THIS CASE AS A TORT CASE. THE JUDGE WOULDN'T LET THE EVIDENCE IN. THE THIRD DISTRICT RELIED UPON THE PROFFERED EVIDENCE. THE PSYCHIATRIST OR THE ECONOMIST, AND ALL OF THAT EVIDENCE WAS PROFFERED. WE HAVEN'T HAVE TO RESPOND TO THEIR PROFFERED EVIDENCE. THESE ISSUES WEREN'T, WERE NOT TRIED. WE DON'T KNOW WHAT THE TERMS OF THIS CONTRACT WERE. AND BEFORE WE GET ANYWHERE, WE HAVE TO HAVE A TRIAL ON WHAT THE TERMS OF THE CONTRACT WERE.

WELL, LET ME ASK YOU THIS. WHAT HAPPENS, IF THIS COURT ALLOWED THIS TO STAND? WHAT HAPPENS NEXT, AND WHAT, IT WOULD GO BACK TO THE TRIAL COURT CORRECT?

CORRECT.

THERE WOULD BE A TRIAL. AND THEY WOULD PUT ON WHATEVER EVIDENCE THEY PUT ON, AS TO LOSE OF EARNINGS, AND I TAKE IT THAT THERE WOULD BE SOME CAUSATION ARGUED AT THAT POINT, AND THEN THE CASE, IF THE FINAL JUDGMENT WAS ENTERED FOR THE DEFENDANT, THEN THAT WOULD BE THE END OF IT. IF THE FINAL JUDGMENT WAS ENTERED FOR THE PLAINTIFF, THEN THERE COULD BE AN APPEAL OF THAT ISSUE OR THE ISSUE OF CAUSATION, COULD THERE NOT?

JUSTICE WELLS, I WISH IT WERE SO. ABSOLUTELY. AND WE SAY WE ARE ENTITLED TO GO BACK TONIGHT TRY THIS THING OR SHOULD BE -- TO GO BACK AND TRY THIS THING OR SHOULD BE ENTITLED TO TRY IT ON CAUSATION.

NOW YOU ARE GOING INTO YOUR SECOND ISSUE, WHICH IS THAT THE POSTURE IS BAD, BUT WHEN YOU SAID, EITHER IN ANSWER TO JUSTICE SHAW OR JUSTICE ANSTEAD, THIS THAT THE CONTRACT, WE DON'T KNOW WHAT THE CONTRACT SAYS, WE ARE REALLY GOING TO THIS HADLEY V BAXENDALE, WHICH IS THESE ARE DAMAGES REASONABLY WITHIN THE CONTEMPLATION OF THE PARTIES. THAT IS SEPARATE AND APART FROM WHETHER DAMAGES IN THE FORM OF LOSS EARNINGS IN A CONTRACT ACTION, ARE SO SPECULATIVE AS A MATTER OF LAW, AS NEVER TO BE ALLOWED. AND STILL COMING BACK TO, SINCE IF WE ARE TAKING THE CASE ON THE ISSUE THAT, ARE THEY ALWAYS GOING TO BE TOO SPECULATIVE, OR IS IT A MATTER OF PROOF, I AM NOT SURE I UNDERSTAND HOW YOUR COMMENT THAT WE DON'T KNOW WHAT THE CONTRACT SAID, REALLY, RESPONDS TO WHETHER THE ISSUE OF WHETHER THE DAMAGES ARE ALWAYS GOING TO BE TOO SPECULATIVE, ASSUMING THAT THEY PROVE THAT THIS IS WITHIN THE CONTEMPLATION OF THE PARTIES. THAT IS THAT PEOPLE WILL GO TO AN OSTEOPATHIC SCHOOL, AND YOU ARE GOING TO GET A DEGREE, IF YOU COMPLETE ALL THE REQUIREMENTS.

AND THE, JUSTICE PARIENTE, I RECOGNIZE THAT YOU MAY BE ONE OF THE PEOPLE WHO BELIEVE THERE IS NO JURISDICTION HERE, BECAUSE THERE IS NO CONFLICT. HOWEVER, EVEN IF WE LOSE ON THE FIRST ISSUE, THAT IS THE ISSUE OF WHETHER OR NOT THERE SHOULD NEVER, EVER, EVER BE ANY OTHER DAMAGES, OTHER THAN TUITION. EVEN IF WE LOSE ON THAT, THERE IS STILL CONFLICT, AND BECAUSE THE RUMOR CASE AND THE NUMEROUS -- THE RUMOR CASE AND THE NUMEROUS CASES THAT FOLLOW IT HOLD THAT, YOU CAN'T IMPOSE TERMS ON AN IMPLIED CONTRACT THAT THE PARTIES WOULD NOT HAVE AGREED UPON, HAD THEY EXPRESSLY CONTRACTED. WE HAVE ALUDED CONFLICT, BASED UAT RULE, AND HERE THE THIRD DISTRICT SAID --

IT THERE AN IMPLIED CONTRACT THAT, IF YOU DO XXX AND X, SATISFACTORILY, YOU WILL GRADUATE. COULDN'T WE ASSUME THAT THAT IS THE, IF YOU COMPLETE CERTAIN COURSE REQUIREMENTS SATISFACTORILY, YOU WILL GRADUATE. ISN'T IT SAFE TO ASSUME THAT THAT --

CERTAINLY THAT IS WHAT THE UNIVERSITY HOPES AND WHAT THE STUDENT HOPES. WE HAVE CITED, WE HAVE CITED CASE LAW FROM ALL OVER THE COUNTRY, AND THERE ARE DIFFERING VIEWS, BUT WE HAVE CITED THE CASE LAW, SAYING THAT THAT IS REALLY NO MORE THAN AN UNENFORCEABLE EXPECTATION. BUT ONCE AGAIN, JUSTICE SHAW, YOU GO BACK TO WHAT WAS THE CONTRACT BETWEEN THESE PARTIES? WE DON'T KNOW, BECAUSE THAT WASN'T TRIED. THE ONLY THING YOU CAN TAKE FROM THIS VERDICT IS THAT THERE WAS AN IMPLIED CONTRACT THAT THEY WOULD REFUND THE TUITION, IF THEY UNREASONABLY DISMISSED HIM.

CHIEF JUSTICE: YOU ARE INTO YOUR REBUTTAL.

THANK YOU, SIR.

MAY IT PLEASE THE COURT. MY NAME IS RICHARDTT. I M HERE ALONG WITH TRIAL COUNSEL DONALD COMP KIN. I REPRESENT -- DONALD TOMPKIN. I REPRESENT KEITH SHARICK.

ISN'T THIS A BREACH OF CONTRACT ACTION, IS THAT CORRECT?

BREACH OF AN IMPLIED IN-FACT CONTRACT.

WHAT DIFFERENCE DOES IT MAKE, IN A BREACH OF CONTRACT ACTION, WHETHER IT, THE DECISION IS ARBITRARY, CAP RISH US OR LACKING IN ANY RATIONAL OR DISCERNABLE -- CAPRICIOUS OR LACKING IN ANY RATIONAL OR DISCERNABLE MANNER?

BEFORE YOU CAN PROVE A BREACH OF CONTRACT, YOU HAVE GOT TO PROVE ALMOST A TORTIOUS ACT. YOU HAVE GOT TO PROVE THAT THERE WAS NO FACT AT ALL, UNDER WHICH THE UNIVERSITY COULD HAVE TAKEN THE ACTION THAT THEY TOOK.

FIRST YOU HAVE TO PROVE THAT THERE IS A CONTRACT, RIGHT?

RIGHT.

OKAY.

AND BY THE WAY, IF I COULD --

YOU HAVE TO PROVE THE TERMS OF THE CONTRACT.

CORRECT.

WELL, IF YOU PROVE THE CONTRACT, I AM JUST PUS -- I AM JUST PUZZLED BY THIS LANGUAGE IN THIS VERDICT FORM, BECAUSE THERE SEEMS, TO ME, TO BE THIS SEPARATION UNDER FLORIDA LAW, BETWEEN TORT AND CONTRACT, AND THAT WE HAVE GONE SO FAR AS TO SAY THAT A CAPRICIOUS BREACH OF CONTRACT IS, UNLESS IT HAS SOME SEPARATE BASIS FOR PUNITIVE, DOESN'T MAKE ANY DIFFERENCE. I MEAN, IT IS WHETHER YOU BREACHED THE CONTRACTOR NOT. THAT WOULD BE ACTIONABLE.

WE ASKED FOR CONTRACT JURY INSTRUCTIONS. WE DIDN'T GET THEM. AND I WOULD, ALSO, LIKE TO SAY THAT WE, THIS CASE WAS, IF YOU LOOK AT THE RECORD IN THIS CASE, AND YOU CAN ACTUALLY JUST LOOK TO MY APPENDIX HERE THAT WAS SUPPLEMENTING THE RECORD, HAT INTO EVIDENCE, WH OFE RENT HANDBOOKS, STUDENT GUIDE BOOKS, AND UNDER THE MILITANA CASE AND THE ROBINSON CASE, IT SAYS YOU HAVE GOT TO PROVE THE IMPROVED CONTRACT, BASED UPON THE HANDBOOKS AND THE STUDENT GUIDE BOOKS AND THE OTHER MATERIAL THAT WAS PROVIDED TO THE STUDENT AT THE TIME OF ENROLLMENT.

LET ME ASK ONE FOLLOW-UP QUESTION. THAT IS WHAT IS YOUR THEORY AS TO WHAT HAPPENS NEXT HERE? WHAT ARE THE ISSUEST ARE TO BE TRIED BEFORE A JURY, WHEN THIS CASE GOES BACK TO THE TRIAL COURT?

I THINK IT GOES BACK TO THE, IT GOES BACK TO THE JURY, AND THEY ARE GOING TO HAVE TO TRY OFF SOME OF THESE PRECONDITIONS, THE ISSUE OF, YOU KNOW, WHETHER HE WERE TO PASS PART TWO OF THE MEDICAL EXAM, WHETHER HE WOULD -- ACTUALLY MY FEELING IS THAT WE SHOULD GET A CONCLUSIVE PRESUMPTION ON THAT, AND I THINK THAT IS WHAT WE CAN ARGUE.

BUT YOU ARE, WHAT I UNDERSTAND YOU JUST TO SAY IS THAT THERE WOULD HAVE TO BE SOME PROOF THAT HE WOULD HAVE PASSED THE EXAM, TO BE, TO BE GRANTED THE OSTEOPATHIC LICENSE.

RIGHT. RIGHT.

WOULD IT, IT WOULD BE SORT OF ANALOGOUS TO A SITUATION WHERE SOMEONE GOES TO AN

ACCOUNTING SCHOOL, TO GET, HOPEFUL TO BE A CPA, AND THEY WERE DISMISSED FROM THE SCHOOL, THEN, UNDER YOUR THEORY, THEY WOULD BE ABLE TO GET A LOSS OF EARNING AS A CPA.

RIGHT.

BUT THEY WOULD HAVE TO PROVE THAT THEY WOULD HAVE PASSED THE CPA.

YEAH. I THINK IT IS AN ISSUE. I THINK IT IS WHETHER OR NOT WE SHOULD GET A PRESUMPTION ON IT, BECAUSE THE UNIVERSITY, BY THEIR OWN WRONGFUL ACT, PREVENTED HIM FROM TAKING THAT TEST WHEN HE SHOULD HAVE TAKEN IT.

HOW DO YOU GET AROUND THE SPECULATIVE NATURE OF THAT ISSUE?

THE WAY THAT I LOOK AT THE REASONABLE CERTAINTY OF DAMAGES IS I LOOK AT IT THE WAY A PRUDENT PERSON WOULD LOOK AT IT. I ASK MYSELF THE QUESTION OR ASK THE QUESTION A PRUDENT PERSON, KNOWING DOCTORS AND KNOWING CHILDREN WHO HAVE GONE THROUGH MEDICAL SCHOOL AND ALL THESE THINGS, WOULDN'T THAT PERSON AGREE THAT, IF A MEDICAL STUDENT GOT A MEDICAL DEGREE, THAT HE WOULD HAVE A MEDICAL CAREER.

CAN YOU MAKE THAT ASSUMPTION FOR SOMEONE GRADUATING FROM LAW SCHOOL AND THEN PASSING THE BAR?

I THINK IT IS A LITTLE BIT DIFFERENT THERE, ONLY, NOT THAT THEY COULDN'T HAVE A MEDICAL, LEGAL CAREER, BUT I THINK THE STATISTICS WOULD BE DIFFERENT AS TO HOW MANY OF THEM DO HAVE A LEGAL CAREER. IN OTHER WORDS, CHOOSE LAW, PER SE.

BUT HOW DO YOU DISTINGUISH THIS CASE, THEN, FROM THAT LINE OF CASES THAT SAY THAT THOSE DAMAGES OR THOSE TYPES OF DAMAGES ARE TOO SPECULATIVE TO, FOR A COURT TO DEAL WITH?

WELL, IT DEPENDS ON, THERE ARE TWO CASES THAT, REALLY, SAID THEY WERE TOO SPECULATIVE OR THAT HENRY CASE WITH THE DRAG LINE, AND BECAUSE THE DRAG LINE WASN'T OPERABLE, THEN IT RAINED, AND THE PASTURE FLOODED OUT AND THE COWS HAD LESS AREA TO EAT, AND THEY GOT SICK AND THEY LOST WEIGHT AND THEY WERE SOLD FOR LESS MONEY. I THINK THAT THAT IS COMPLETELY DISTINGUISHABLE FROM A SITUATION HERE, WHERE ALL OF THE ACCOMPLISHMENT OF THE PRECONDITIONS ARE WITHIN THE CONTROL OF THE MEDICAL STUDENT, AND THE ONLY REASON HE DIDN'T PASS THEM WAS BECAUSE HE WAS PREVENTED FROM PASSING THEM, BY THE WRONGDOING OF THE CONTRACT BREACHER, AND THE OTHER CASE, I THINK THAT IT IS THE DOUGLAS FERTILIZERS CASE. NOW, IN THAT CASE, AGAIN, WE ARE TALKING ABOUT A COMMODITY, AND THAT THE REASON THAT THAT COMMODITY WASN'T ABLE TO BE SOLD, WASN'T BECAUSE OF -- THAT ONLY EDIT WASN'T ABLE TO BE SOLD -- THAT THAT COMMODITY WASN'T ABLE TO BE SOLD WAS BECAUSE NOT THE HIGHER-QUALITY SOD THAT THE CUT TOMER WAS BUYING THAT WERE MADE BY DOUGLAS. SO THAT WAS THE INTERVENING FACTOR UNDER CONTROL.

ASSUMING THAT YOU ARE ENTITLED TO RELIEVE, WHY WOULDN'T SPECIFIC PERFORMANCE BE A MORE EQUITABLE REMEDY AND A MORE FITTING REMEDY, IN A CASE LIKE THIS, THAT CERTAINLY DOES VOLVO-.

YOU MEAN HIM GOING BACK INTO THE UNIVERSITY?

WELL, NOT, SPECIFIC PERFORMANCE, IN TERMS OF WHATEVER THE ENTITLEMENT WOULD BE. THAT IS THAT, IF HE ALREADY HAD COMPLETED WHATEVER THE REQUIRED COURSE WORK OR OTHER REQUIREMENTS WERE, AND HE WAS BEING WRONGFULLY DENIED A DEGREE DEGREE.

RIGHT. JUST TO GIVE HIM THE DEGREE.

EITHER SPECIFIC PERFORMANCE REINSTATEMENT OR SPECIFIC PERFORMANCE IN MANDATING THAT THE UNIVERSITY AWARD HIM --

WELL, THERE IS TWO PROBLEMS WITH THAT. ONE IS THAT THE CASE LAW SAYS YOU CAN'T MANDATE A UNIVERSITY TO GIVE A DEGREE. THAT WAS THE MILATANA CASE AND THE ROBINSON CASE.

BUT NOW AREN'T WE TALKING ABOUT, IF YOU ACCEPT A PROPOSITION LIKE THAT, AREN'T YOU IN ESSENCE ACCEPTING A PROPOSITION THAT YOU ARE NOT ENTITLED TO DAMAGES EITHER. THAT IS BECAUSE THAT REALLY IS THE UNDERLYING PREMISE.

NO. WE ARE ENTITLED TO DAMAGES, AND IF WE COULD GET A DEGREE, IF THEY WOULD GIVE US THE DEGREE WITHOUT HAVING TO BE REINSTATED, YES, BUT REINSTATEMENT IS NOT A VIABLE ALTERNATIVE HERE. AND --

AND WHY ISN'T IT A VIABLE ALTERNATIVE?

WELL, IF, THERE ARE SOME TAPES THAT I, ARE ALSO BEFORE THE COURT. I HOPE YOU LISTEN TO, IF YOU HAVE A CHANCE, AND IT TELLS YOU HOW HE WAS PULLED OUT OF TAKING CARE OF A PATIENT, TOLD TO DRIVE BACK TO THE SCHOOL.

THESE TAPES WERE OFFERED IN EVIDENCE AT THE TRIAL BEFORE THE JURY?

YES. YES. THEY WERE IN EVIDENCE AT THE TRIAL, AND THEN HOW HE WAS TOLD THAT HE WAS GOING TO PROBABLYE , AND THEN HE HAD A HEARING WITH THE DEAN, WHO ACCUSED HIM OF WRITING INAPPROPRIATE LETTERS AND HAVING HIS MOTHER CALL THE SCHOOL, AND THEN WITHIN A FEW MORE DAYS, AND AN INTERVIEW WITH THE, DR. MEL NICK, THE HEAD OF THE SCHOOL, WHICH IS MORE LIKE A STORM TROOPER INTERVIEW, WITH THE MAN SCREAMING AND YELLING AT HIM AND BE LITTLING HIM, IT IS ALL ON THE TAPE.

REFRESH OUR MEMORY. WHERE WAS YOUR, IN TERMS OF COMPLETING HIS DEGREE REQUIREMENTS, AT THE TIME OF HIS DISCHARGE?

HE WAS FINISHED WITH, I THINK HE HAD SIX MORE WEEKS TO GO OF A RURAL ROTATION. HE HAD COMPLETED EVERYTHING ELSE. HE WAS PULLED OUT OF THAT, AT A POINT IN TIME, AND JUST BROUGHT BACK TO THE SCHOOL. BUT, I MEAN --

THERE WAS PROOF, I ASSUME, SUBMITTED BELOW, THAT HE HAD SATISFACTORY WORK TOWARDS THAT EX-TERN SHIP OR INTERNSHIP RESIDENCY.

YES, THAT WAS --

AND THAT THAT WOULD HAVE BEEN SUCCESSFULLY COMPLETED, ABSENT THE ARBITRARY ACTIONS OF THE UNIVERSITY?

THAT IS HOW WE PROVED THE CASE. WE PROVED THE CASE BY SHOWING THAT THE REASONS WHY THEY HAD H SAID WHY HE WASN'T GOING TO PASS THAT COURSE WERE TRUMPED UP, AND WE PROVED, THROUGH, ACTUALLY, ANOTHER REVIEWING DOCTOR UP THERE, THAT HE THOUGHT THAT HE DID A VERY GOOD JOB, BUT THAT IS HOW WE GET DOWN THAT THERE WAS NO PLAUSIBLE REASON FOR HIM GRADUATING, BUT ON THE ISSUE OF REINSTATEMENT, WHEN HE WAS THROWN OUT OF THE SCHOOL, NOT ONLY WAS HE ESCORTED OUT BY THE POLICE, BUT YOU HEAR ON THE TAPE DR. MEL NICK SAYING IF HE EVER TRIES TO COME ON THIS SCHOOL AGAIN, I WANT THE POLICE TO THROW HIM OUT. HE WAS DEVASTATED. HE WENT, FROM A MATTER OF A

WEEK OR SO, FROM BEING HIS LAST SEMESTER OF MEDICAL L TO HAVING THE UNIVERSITY GUARDING AGAINST HIM COMING ON TO THE PROPERTY. MR. CHIEF JUSTICE

JUSTICE PARIENTE HAD A QUESTION.

I AM SORRY.

YOU ADDRESSED THE ISSUE WITH HOW WE WOULD APPROACH CULATIVE NATURE, BUT GOING TO MR. BERANEK'S QUESTION ON THE SECOND ISSUE, WHICH HAT YOU VE TO BE ABLE TO ESTABLISH NOT ONLY THAT THERE WAS ARBITRARY ACTION BUT WHAT THE TERMS OF THIS CONTRACT WERE, WAS THAT ESTABLISHED AT THE TRIAL COURT LEVEL, AND IF SO, IF IT WERE, COULD YOU EXPLAIN HOW YOU DIFFER FROM. MR. BERANEK? IF IT WASN'T, THEN SHOULDN'T THE ANY REMAND BE TO ALLOW JUST A NEW TRIAL, WITH THE PROPER JURY INSTRUCTIONS?

WELL, WE DID TRY IT ON E CONTRACT. THAT WAS OUR ONLY COUNT THAT WE HAD LEFT TO TRY IT ON.

BUT WASN'T THE ONLY ISSUE OF THE JURY WAS TO DECIDE WHETHER THE DISMISSAL WAS ARBITRARY AND CAP RISH US?

THAT WAS THE VERDICT FORM. THAT WASN'T OUR VERDICT FORM. THAT WAS THE COURT'S VERDICT FORM. AND --

BUT BASICALLY THAT IS BECAUSE YOUR CONTRACT ACTION OR YOU ARE ASKING FOR ADDITIONAL DAMAGES, WERE RULED OUT, BUT IF THE THIRD DISTRICT IS SAYING THAT THE DAMAGES COULD BE MORE EXPANSIVE, THEN PRESUMABLY THE JUDGE WOULD HAVE ALLOWED ADDITIONAL INSTRUCTIONS THAT WOULD HAVE REQUIRED YOU TO ESTABLISH WHAT THE TERMS OF THE CONTRACT WERE. IN OTHER WORDS I DON'T SEE HOW YOU CAN HAVE IT BOTH WAYS IN A CONTRACT ACTION.

WELL, I MEAN, ALL I CAN SAY IS THAT WE TRIED THE CONTRACT ACTION. WE TRIED EVERY PART OF THE HANDBOOKS AND THE UNIVERSITY REQUIREMENTS THAT WE WERE SUPPOSED TO TRY, AND THEN, BECAUSE OF THE FACT THAT WE WEREN'T GOING TO GET THE FUTURE DAMAGES, I PRESUME AND I HAVE TO TELL THROUGH THAT MY MEMORY IS NOT GREAT, THIS WAS TRIED IN '98 THAT --

WHAT BREACH OF CONTRACT INSTRUCTIONS WAS THE JURY GIVEN?

WHETHER OR NOT THAT THE UNIVERSITY HAD DISMISSED HIM WITHOUT ANY ARBITRARILY, CAPRICIOUSLY, AND WITHOUT ANY DISCERNABLESIS IN FACT.

THAT IS THE REASON I WANT TO CK KYOU WT, WHEN THIS CASE GOES BACK FOR A NEW TRIAL, IS THE ISSUE OF CAUSATION BETWEEN THE BREACH THE CONTRACT AND ANY FUTURE DAMAGES, IS THAT OPEN? IS THAT GOING TO BE RETRIED? IS THAT GOING TO BE TRIED?

WELL, THE FUTURE DAMAGES ARE GOING TO BE RETRIED BUT NOT THE BREACH OF -- THEY NEVER APPEALED THE BREACH OF THE CONTRACT ACTION.

THE REASON THAT IT APPEARS TO BE SOMEWHAT OF A CHICKEN AND EGG SITUATION IS, IN IF THIS IS A CONTRACT ACTION, AND WE ARE TALKING ABOUT GENERAL DAMAGES, THEN THERE HAS TO BE SOME DETERMINATION OF WHAT FLOWS FROM THE BREACH OF CONTRACT, AND SO I AM SOMEWHAT AT A LOSS AS TO HOW A JURY IS GOING TO MAKE THAT DETERMINATION, WITHOUT GOING BACK INTO THIS WHOLE CONCEPT OF WHAT WAS WITHIN THE CONTEMPLATION OF THE PARTIES.

THE JURY IS JUST GOING TO BE INSTRUCTED THAT THERE HAS BEEN A BREACH OF CONTRACT, AND THAT THIS MEASURE OF DAMAGES IS FOR THEIR CONSIDERATION.

WHAT INSTRUCTIONS WILL THEY BE GIVEN, WITH REFERENCE TO THE BREACH OF CONTRACT DAMAGES THAT FLOW FROM THE BREACH? WHAT, IN OTHER WORDS WHAT INSTRUCTIONS WILL THEY BE GIVEN, LIKE IN A PERSONAL INJURY CASE, WE ALL KNOW THE JURY IS GIVEN VERY SPECIFIC INSTRUCTIONS AS TO THE ELEMENTS OF DAMAGES. WHAT INSTRUCTIONS --

HE IS ENTITLED TO HIS WAGE LOSS, HIS LOSS OF FUTURE WAGE-EARNING CAPACITY. THAT WAS ALL THAT WAS LEFT.

I SEE, SO THE JURY HERE WOULD BE SPECIFICALLY INSTRUCTED THAT HE IS ENTITLED TO --

NO. NO. THAT THAT WOULD BE THEIR DETERMINATION AS TO WHETHER HE IS ENTITLED TO THAT OR NOT.

WHAT CONSIDERATIONS WOULD THEY BASE THAT ON? IN WORDS WHAT WOULD THEY BE TOLD TO USE AS A GUIDELINE TO WHETHER HE IS ENTITLED--

THERE WOULD BE EXPERT TESTIMONY. THERE WOULD BE STATISTICAL --

I AM TALKING ABOUT THE INSTRUCTIONS, NOW, I AM NOT TALKING ABOUT THE EVIDENCE. I AM TALKING ABOUT WHAT WOULD THEY BE TOLD IN THE INSTRUCTIONS?

AT THE END OF THIS TRIAL, ABOUT DAMAGES, THAT IF THEY FOUND, BY A PREPONDERANCE OF THE EVIDENCE, THAT HE HAD LOST, THAT HE HAD A FUTURE LOSS OF DAMAGES, THAT IT IS UP TO THEM TO DETERMINE, AND I AM JUST, YOU KNOW, THAT IT IS UP TO THEM TO DETERMINE WHAT THAT LOSS IS, BECAUSE THAT IS NOT THE ONLY THING THEY WOULD BE INSTRUCTED. THEY WOULD BE INSTRUCTED ON WHETHER HE HAD PASSED HIS PART TWO OF HIS MED BOARDS AND WOULD HE HAVE PASSED HIS INTERNSHIP AND WOULD HE HAVE BEEN LICENSED, AND THOSE WOULD ALL BE, YOU KNOW THERE WOULD BE A JURY, A VERDICT FORM ON THAT AND INSTRUCTIONS ON THAT.

BECAUSE HOW -- BUT HOW, I GUESS THE THIRD DISTRICT, I AM WORRIED ABOUT THE SPECULATION QUESTION, BUT THE THIRD DISTRICT SEEMS TO SAY, AS A MATTER OF LAW THAT THIS CONTRACT IMPLIED THAT THERE WOULD BE THE ABILITY TO BECOME A PHYSICIAN, PRACTICING IN THE FIELD OF MEDICINE, AND WHAT MR. BERANEK IS SAYING, THAT THAT ISSUE IS NOT SOMETHING THAT IS JUST A MATTER OF LAW. THAT IS A MATTER OF FACT, THAT THAT JURY, THAT THERE WERE NEVER ANY, BECAUSE OF THE POSTURE OF THE CASE, AND THAT IS THAT DAMAGES WERE RULED OUT FROM THE BEGINNING, THAT ISSUE AS TO WHETHER WHAT DAMAGES WERE IN THE CONTEMPLATION OF THE PARTIES, WAS NEVER TRIED, AND THAT THAT, AT THE VERY LEAST, SHOULD BE SOMETHING THAT THE JURY SHOULD, THAT THEY SHOULD HAVE A RIGHT TO HAVE THE JURY DETERMINE THAT ISSUE AS WELL. DO YOU, ARE YOU SAYING THAT, IN THE FUTURE, THAT IF WE HAD ANOTHER CASE COME ALONG, ALL THE PLAINTIFF WOULD HAVE TO PROVE IS ARBITRARY DISMISSAL, AND THE ISSUE AS TO WHETHER OR NOT -- AS TO WHETHER IT WAS WITHIN THE CONTEMPLATION OF THE PARTIES WOULD BE A MATTER OF LAW?

YOU WOULD HAVE TO PROVE CAUSATION. YOU WOULD HAVE TO PROVE CAUSE INDICATION.

WHAT -- TO PROVE CAUSATION.

WHAT ARE YOU TALKING ABOUT? ARE YOU TALKING ABOUT THE PARTIES?

NO. I AM TALKING ABOUT AS TO THE BREACH, WHETHER OR NOT HE WOULD BE ENTITLED TO THE LOST WAGE-EARNING CAPACITY.

THERE ARE TWO REASONS THAT THAT WOULD NOT, ONE IS THAT IT IS TOO SPECULATIVE, AND WE HAVE BEEN TALKING ABOUT THAT, BUT THE OTHER ONE IS THAT, WHETHER THIS CONTRACT BETWEEN THE UNIVERSITY AND MR. SHARICK, CONTEMPLATED THIS TYPE OF DAMAGE. IS THAT SOMETHING THE JURY GETS TO DETERMINE, OR IS THAT A MATTER OF LAW?

WELL, DOES THAT MEAN THE JURY GOES BACK AND DETERMINES WHETHER OR NOT THERE HAS BEEN AN ARBITRARY BREACH, AND THE WHOLE CASE GETS TRIED AGAIN, OR, DO THEY JUST TRY THE QUESTION OF THE CONTRACT?

I AM ASKING YOU THE QUESTION, AS TO DIDN'T THE THIRD DISTRICT JUMP AHEAD AND MAKE A DECISION AS TO WHAT THE CONTRACT PROVIDED CONCERNING THIS TYPE OF DAMAGES?

WELL, I THINK THAT THE JURY COULD BE, COULD MAKE THE DETERMINATION, BASED UPON WHAT THE IMPLIED, IN-FACT CONTRACT STOOD FOR, BUT THEY SHOULDN'T HAVE TO DETERMINE THE BREACH ISSUE AGAIN, SO I WOULD EXCEED -- -- I WOULD CONCEDE --

SO YOUR DETERMINATION THAT --

YES, I WOULD CONCEDE TO THAT, THAT THAT WOULD BE THE LOGICAL WAY TO DO IT. ANY OTHER QUESTIONS?

CHIEF JUSTICE: THANK YOU, MR. BARNETT. MR. BERANEK?

JUSTICE ANSTEAD, YOU MENTIONED SPECIFIC PERFORMANCE AND THE PLAINTIFF INITIALLY HAD A COUNT FOR SPECIFIC PERFORMANCE. THAT IS REINSTATEMENT, WHEN HE FILED THE SUIT. HE ASKED TO BE REINSTATED. THE JUDGE THREW THAT OUT EARLY ON, BEFORE WE HAVE GOT TO TRIAL, O OBVIOUSLY THAT ISSUE WAST TRIED.

DID HE THROW THAT OUT ON YOUR ?

YES. YES. ABSOLUTELY. YES. YES.

WHAT WAS THE ARGUMENT ABOUT THAT?

E, TO BE FRANK, I DON'T KNOW WHAT ARGUMENTS WERE MADE THERE, TO BE FRANK. I DO KNOW THAT THERE HIS CASE LAW ON BOTH SIDES OF THAT ISSUE, AS TO WHETHER REINSTATEMENT IS A POSSIBILITY. I, WE MOVED TO DISMISS IT. OBVIOUSLY WE ARGUED THAT HE WASN'T ENTITLED TO REINSTATEMENT.

BUT THE JUDGE LEFT, I MEAN, THE POSTURE OF THIS CASE IS VERY AT LEAST IN MY MIND, IS IN SOMEWHAT OF A CONFUSED STATE, BECAUSE WHAT I UNDERSTAND HAPPENS, HAPPENED BELOW, WAS THAT THE JUDGE LEFT IN A BREACH OF CONTRACT COUNT, CORRECT?

CORRECT.

WENT TO JURY VERDICT ON ARBITRARY, CAPRICIOUS.

AND TUITION.

AND THE TUITION. THEN, AND THE UNIVERSITY DID NOT APPEAL THOSE, THAT DETERMINATION WHICH WAS BASED UPON THE COUNT OF BREACH OF CONTRACT, CORRECT?

CORRECT.

THEN THE UNIVERSITY, IN FACT, CAME IN AND PAID THE JUDGMENT.

ABSOLUTELY. PAID THE \$81,000. HE TOOK THE 81,000 AND STILL APPEALED SOMEHOW.

BUT THEN THEY WENT TO THE DISTRICT COURT, ON THIS ISSUE OF LOSS OF INCOME. THAT IS WHERE WE STAND.

AND THE, JUSTICE ANSTEAD, BACK TO YOUR QUESTION, AND JUST JUSTTED -- AND JUSTICE WELLS, YOUR QUESTION, BEFORE THE TRIAL, WHEN THE MOTION FOR DIRECTED VERDICT -- WHEN THE MOTIONS FOR DIRECTED VERDICT WERE MADE, THE JUDGE RULED, ONE, YOU CAN'T GET FUTURE EARNINGS OR EARNING CAPACITY OR PROFITS, AND, TWO, YOU CAN'T GET REINSTATEMENT AND, , BEFORE TRIAL, YOU CAN ONLY GET TUITION. NOW, I MEAN, IT S PRETTY OBVIOUS THAT IF WE HAD KNOWN WE MIGHT HAVE TO PAY THIS GUY FOR THE REST OF HIS LIFE AS A DOCTOR WE MIGHT WE WILL HAVE CONSIDERED REINSTATEMENT.

BUT ISN'T THE SPECIFIC PERFORMANCE, HAS SOME EQUITABLE BASIS, THAT THE ONLY TIME YOU CAN HAVE A SPECIFIC PERFORMANCE IS IF THERE IS NO OTHER ADEQUATE REMEDY AT LAW, THAN IS WHEN IT IS USED, IN THOSE KINDS OF CIRCUMSTANCES, AND HERE APPARENTLY THERE IS A DAMAGE, HAS NOT THAT IS WHAT YOU HAVE ARGUED.

WE HAVE ARGUED BEFORE THIS COURT THAT REINSTATEMENT SHOULD BE CONSIDERED, ABSOLUTELY. FIVE OF THE JUSTICES ON THE THIRD DISTRICT COURT OF APPEAL, FIVE OF THEM SAID --

HOW CAN YOU DO THAT NOW, THOUGH? ONCE YOU, AT YOUR URGING, THAT WAS DISMISSED, HOW DO YOU DO THAT?

OF COURSE. I CAN DO THAT ONLY BECAUSE THIS CASE IS IN A VERY, VERY STRANGE POSTURE. ISSUES HAVE BEEN RULED UPON THAT WERE NEVER TRIED. A NEW TRIAL ON DAMAGES ONLY, NOT ON LIABILITY BUT A NEW TRIAL ON DAMAGES ONLY, HAS BEEN GRANTED, AND I SAY THAT THIS COURT CERTAINLY CAN SAY SAY, IF YOU ARE GOING TO SEND IT BACK, IT GOES BACK ON ALL ISSUES.

CERTAINLY CAN SAY THAT, BUT YOU DO AGREE THAT THE JURY HAS FOUND WHATEVER THE STANDARD IS, IT HAS BEEN MET FOR A BREACH.

FOR A --

THAT IS WHAT A JURY FOUND.

YES. I MEAN, THIS JURY FOUND, BUT ONLY IN THE CONTEXT OF TUITION REIMBURSEMENT.

WELL, THAT IS THE REMEDY. THAT IS NOT THE QUESTION OF THE BREACH.

EXACTLY. AND THE REMEDY IS WHAT WASN'T TRIED BY A JURY AND WHAT NEEDS TO BE TRIED.

WELL, BUT, IF, THAT IS THE REASON I KEEP COMING BACK TO THE FACT THAT, IF THE CASE GOES BACK TO A JURY, MAYBE, I AM HAVING A HARD TIME WITH MR. BARNETT'S ARGUMENT THAT YOU CAN PROVE, SOMEHOW, THAT THE, THIS FELLOW WOULD HAVE PASSED THE OSTEOPATHC EXAM, BUT REGARDLESS ALL OF THAT IS GOING TO BE IN THE RECORD. THEN IT COMES BACK WITH A FULL RECORD, IN A FINAL JUDGMENT FORM DOES IT NOT?

WELL, IT MIGHT WELL BE APPEALED AGAIN.

OR THEY GET A DEFENSE VERDICT VERDICT.

JUSTICE WELLS, I MEAN, I HOPE THAT THAT IS A POSSIBILITY, BUT THE THIRD DISTRICT OPINION,

REALLY, HOLDS, I THINK, THAT THIS GUY IS ENTITLED TO DAMAGES FOR FUTURE LOSS OF INCOME, AND I MEAN, THEY EVEN GO TO THE EXTENT OF DISCUSSING WHAT WILL HAPPEN, IF HE CAN'T PROVE MITIGATION OF DAMAGES TO A CERTAIN DEGREE.

CHIEF JUSTICE: THANK YOU. I THINK YOUR TIME IS UP, MR. BERANEK. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE ON THIS CASE.