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BellSouth Telecommunications, Inc. v. Linda Meeks

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.

CHIEF JUSTICE: GOOD MORNING EVERYONE. I APPRECIATE EVERYONE BEING READY TO GO IN THIS FIRST CASE. JUSTICE CANTERO IS RECUSED ON THIS FIRST CASE, BUT HE WILL REJOIN THE COURT ON THE OTHER CASES. WITH THAT, WE WILL PROCEED RIGHT TO BellSouth VERSUS MEEKS. YOU MAY PROCEED.

THANK YOU, JUSTICES OF THE SUPREME COURT. MY NAME IS JOHN HARGROVE, AND I REPRESENT BellSouth. WHILE I RECOGNIZE THAT THE ENTIRE CASE IS BEFORE THE COURT, I INTEND TO CONFINE MY ARGUMENT SOLELY TO THE CERTIFIED QUESTION. THE OTHER ISSUE RELATING TO DUTY IS SET FORTH IN MY BRIEF, AND I AM GOING TO STAND ON THAT ARGUMENT, UNLESS THERE ARE SPECIFIC QUESTIONS ABOUT IT. MY BASIC CONTENTION IS THAT FLORIDA STATUTE 768.21 SUB3 OF THE WRONGFUL-DEATH ACT, RELATING TO NONECONOMIC DAMAGES PAY ABLE TO A MINOR ARE RELATIVE TO THE PERIOD OF MINORITY WHERE THERE IS A SURVIVING SPOUSE. THE FULL DAMAGE STATUTE, SECTION 768.21, ALLOWS RECOVERY UNDER EIGHT SEPARATE CATEGORIES.

CAN I STOP YOU THERE. YOU ARE SAYING THERE WAS NO SURVIVING SPOUSE AND THERE WAS A MINOR POSITION FOR THE ADULT MILD CHILD AND FOR THE MINOR -- FOR THE ADULT CHILD, BUT FOR THE MINOR CHILD THERE WOULD BE NO LIMITATION?

THAT'S CORRECT, JUSTICE PARIENTE. BECAUSE OF THIS CASE, ONLY ONE PARTICULAR SESSION SECTION, SUBSECTION-3 IS RELEVANT HERE, AND THAT SAYS NONECONOMIC DAMAGES MAY BE AWARDED AS FOLLOWS, AND THIS IS REALLY A FOLLOW-UP TO YOUR QUESTION. MINOR CHILDREN OF THE DEEDENT AND -- OF THE DECEDENT AND ALL CHILDREN OF THE DECEDENT, AND THEN IT GOES INTO A LITANY OF NONECONOMIC DAMAGES. THIS IS TO BE READ IN CONNECTION WITH THE PREVIOUS SUBSECTION RELATING TO A SURVIVING SPOUSE, AND WHAT DOES THIS MEAN? IT MEANS, AGAIN, ADDRESSING YOUR QUESTION, THAT A CHILD IS ONLY TO BE COMPENSATED AS RESULT -- AS AN ADULT, WHEN BOTH PARENTS ARE DEAD. LET ME GIVE YOU A QUICK STATUS AND VERY, VERY QUICK BACKGROUND IN THIS CASE, BECAUSE OF THE FIFTH DISTRICT'S MANDATE, BECAUSE IT WAS NOT STAYED, THE CASE WAS ACTUALLY TRIED, AND A VERDICT WAS RETURNED IN FAVOR OF PLAINTIFFS, SO THE CASE IS ALREADY DISPATCHED TO THE JURY. THE JURY HAS COME BACK. LAST WEEK, I RECOGNIZED AFTER THIS CASE HAD BEEN ACCEPTED BY THE COURT ON THE CERTIFIED QUESTION, THE RECORD WAS INCOMPLETE, SO I SUBMITTED THE JURY VERDICT FORM AS A SUPPLEMENT TO THE RECORD IN THE SORT OF "FOR WHAT IT'S WORTH" CATEGORY, BUT IN ANY EVENT, THE CASE HAS BEEN TRIED. BY THE SAME TOKEN, THE TRIAL COURT HAS BEEN ALERTED TO THIS MATT EN-- TO THIS MATTER, SO NO JUDGMENT HAS BEEN ENTERED, PENDING THIS COURT'S RULING. THE DECEDENT WAS SURVIVED, AND HIS NAME IS HERBERT MEEKS AND HE WAS SURVIVED BY A SPOUSE AND TWO CHILDREN, KEVIN, THE SON AND ISSUE 24 YEARS OLD, AT THE OPERATIVE POINT IN TIME AND LAURA, AN ADULT DAUGHTER.

IN THIS CASE, WE ARE REALLY TALKING ABOUT WHETHER OR NOT THE DAMAGES TO THAT MINOR

CHILD SHOULD BE LIMITED, CORRECT?

THAT'S CORRECT, JUSTICE QUINCE.

NOW, IN SUBSECTION 1, OF THE STATUTE THAT WE ARE TALKING ABOUT, 768.21, IT SAYS, SPECIFICALLY, THAT THE DAMAGES FOR LOSS OF SUPPORT FOR SUCH A MINOR CHILD, IS SPECIFICALLY LIMIT TO DO THAT CHILD'S MINORITY, CORRECT?

SUBSECTION 1 TALKS ABOUT THE LOSS OF SUPPORT, THE SO-CALLED ECONOMIC DAMAGES. AND IT HAS SOME VERBIAGE IN IT RELATING TO, IN THE CASE AFTER HEALTHY MINOR, AND THE CASE OF A HEALTHY MINOR CHILDREN, THE PERIOD OF MINORITY MAY BE CONSIDERED.

AND SO, AND WITHOUT THAT KIND OF LANGUAGE, BUT THAT LANGUAGE IS NOT CONTAINED IN SUBSECTION 3, WHICH IS THE SECTION THAT WE ARE TALKING ABOUT, CORRECT?

THAT IS VERY TRUE, AND WHEN I WAS ANALYZING THE VERY POINT THAT YOU RAISED, I WAS THINKING IN TERMS OF HOW STATUTES HAVE TO BE HARMONIZED AND WE HAVE TO LOOK AT THEM IN PARI MATT EAR YEAH -- IN PARI MATT EAR MY, BUT -- MATERIA, BUT I ALSO LOOKED AT EXCLUSIO, WHERE ONE IS TAKEN IN EXCLUSION OF THE OTHER, AND AS DEFINES PARAGRAPH ONE, I DID NOT SEE THAT AS AN OPERATIVE SUBSECTION KEY TO UNDERSTANDING THREE, AND I THINK THAT GOES ALONG WITH THE QUESTION THAT YOU WERE POSITING.

I GUESS THE QUESTION I WAS POSITING IS, SINCE IT WAS SPECIFICALLY INDICATED IN SUBSECTION ONE, HOW DO WE CONSTRUE IT, STHANS KIND OF LANGUAGE, LIMITING THE DAMAGES, IS NOT IN SUBSECTION 3?

ARE YOU SAYING HOW DO WE CONSTRUE IT OR DO WE PAY ANY ATTENTION TO IT? I AM NOT SURE I AM UNDERSTANDING.

BOTH OF THOSE. SHOULDN'T THE FACT THAT IT IS NOT INCLUDED IN SUBSECTION 3, INDICATE TO US THAT THE LEGISLATURE DID NOT INTEND SUCH A LIMITATION IN SUBSECTION 3?

NO. NO. I DON'T THINK SO. AND I THINK THAT IT ENABLES ME TO KIND OF LAUNCH INTO THE TWO-PRONG ANALYSIS THAT I MADE, BASED ON LEGISLATIVE HISTORY AND BASED UPON PRIOR PRECEDENT OF THIS COURT, TO TRY TO FIGURE THIS OUT.

BEFORE YOU DO THAT, THOUGH, AND IN TERMS OF THAT QUESTION, LET'S ASSUME THAT WE INTERPRET THE PROVISIONS OF SUBSECTION 1 TO BE AN EXPRESS LIMITATION, THAT IS THAT, WITH REFERENCE TO ECONOMIC DAMAGES, THE DAMAGES ARE LIMITED TO A HEALTHY MINOR, TO THE PERIOD OF MINORITY. AND SO WOULDN'T THE QUESTION BE, THEN, SINCE THERE IS NO SUCH LIMITATION IN SUBSECTION 3, THE SECTION AT ISSUE, THEN WHY WOULDN'T WE CONSTRUE THAT AS THE LEGISLATURE'S INTENT THAT THEY KNOW HOW TO SAY IT WHEN THEY WANT TO LIMIT THOSE DAMAGES. THEY DIDN'T, THEY SAID IT IN SUBSECTION 1, AS I AM POSITING IN MY HYPOTHETICAL, BUT THEY DIDN'T SAY IT IN SUBSECTION 3. SO WHAT WOULD BE YOUR EXPLANATION, THEN, OF WHY THEY WOULD PUT SUCH A LIMITATION IN SUBSECTION 1, ASSUMING WE CONSTRUE IT TO BE A LIMITATION HIDDEN IN SUBSECTION 3?

CHIEF JUSTICE ANSTEAD. I THINK I HAVE AN ANSWER, AND LET ME JUST TRY THIS ON FOR SIZE, AND LET ME MAKE A QUICK REFERENCE TO A RECENT CONCURRING OPINION OF YOURS IN FLORIDA CON VERY WELL -- IN FLORIDA CONVALESCENT CENTERS THAT WAS TRIED AND DECIDED ALMOST THREE MONTHS AGO TO THE DAY. IN YOUR OPINION, YOU -- MONTHS AGO, TO THE DAY. IN YOUR OPINION, YOU LOOKED AT A PLAIN MEANING INTERPRETATION AFTER PARTICULAR STATUTE. YOU WERE ACTUALLY DEALING WITH THE WRONGFUL-DEATH ACT, AND YOU SAID THAT, WHEN A STATUTE ADMITS TO A PLAIN MEANING INTERPRETATION, WE DON'T REALLY GET INTO LEGISLATIVE INTENT, HOWEVER, WE CAN LOOK AT LEGISLATIVE INTENT, TO

PROVE WHETHER OR NOT OUR PLAIN MEANING ANALYSIS IS CORRECT. SO HAVING SAID THAT, AND ACCEPTING THAT AS THE WAY THIS COURT WOULD LIKELY GO IN ITS ANALYSIS OF THIS CASE, I LOOKED AT THE LEGISLATIVE HISTORY, AND I AM NOT DODGING YOUR QUESTION. I WANT TO ANSWER IT DIRECTLY. THE ANSWER TO YOUR QUESTION IS, IT STANDS ALONE AND IT IS A PLAIN MEANING, AND I THINK THAT I CAN BREAK IT DOWN, WHETHER IT IS BY PLAIN MEANING OR WHETHER IT IS BY THE OLD COMPOSITION BOOK THAT WE LOOK AT A SENTENCE STANDING BY ITSELF, TO SUGGEST THAT IT DOES HAVE DEFINITION AS TO THE LIMITATION ON RECOVERY FOR A MINOR, ONLY WITHIN THAT PERIOD OF MINORITY. NOW, AGAINST THAT DIRECT ANSWER, LET'S ME GET A LITTLE BIT BROADER AND GO THROUGH A COUPLE OF STEPS HERE, STARTING WITH THE BASIC CONCEPT AS ALL OF US, AS LAWYERS AND JUDGES HAVE DEALT WITH OVER THE YEARS, THIS WHOLE MESS IN THE WRONGFUL-DEATH ACT KIND OF STARTED BACK IN LORD CAMPBELL'S DAYS A GENT URI AND-A-HALF AGO -- A CENTURY AND A HALF AGO, AND ALL HAVE STRUGGLED WITH RECOVERY UNDER VARIOUS CATEGORIES, WHERE RECOVERY HAS BEEN ALLOWED, BUT THE COMMON REFRAIN THAT I SEE UNDER FLORIDA LAW, AS WELL AS MOST OTHER JURISDICTIONS, IS THAT THE WHOLE REASON WHY THIS ACT EXISTS IN THE FIRST PLACE, IS TO COMPENSATE THOSE WHO NEED IT THE MOST. AND WHAT WE HAVE DONE IN FLORIDA, IF YOU CAN ALMOST VISUALIZE THIS AS BEING SORT OF POOR STEPCHILD OF THE PROBATE CODE, IF YOU WILL, BECAUSE IT WAS VERY CLEAR, IN THE LEGISLATIVE HISTORY THAT I READ, AND I HAVE SUBMITTED THAT TO THE COURT AS SUPPLEMENTAL AUTHORITY, THAT THERE IS A VERY DEFINITE HIERARCHY OF BENEFICIARY CLASSES WHICH DETERMINES WHO MAY SUE, WHO MAY SHARE IN RECOVERY, AND WHAT LOSSES MAY BE COMPENSATED. THE PECKING ORDER IS IN A DECREASED LEVEL OF DEPENDENCY, STARTING WITH A SURVIVING SPOUSE, MINOR CHILDREN, OTHER DEPENDENTS, AND THE DECEDENT'S ESTATE. AS WE GO THROUGH CLASSES, ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, THIS ALL CAME OUT VERY LOUD AND CLEAR IN MY RESEARCH IN THE FLORIDA ARCHIVES, RELATING TO THE 1990 AMENDMENT. WHERE I FOUND MUCH DISCUSSION ABOUT BOTH THE EQUITIES AND THE INEQUITIES OF RECOVERY, YET, AGAIN, I SAY, THERE WAS ALWAYS THIS COMMON REFRAIN. WE LOOKED AT THE PENDENCY WITH THE LOAN EXCEPTION, THE LOAN EXCEPTION, THE ONE THAT REALLY KIND OF THREW ME, WAS PARENTS WHO LOSE A CHILD, WHETHER MINOR OR WHETHER ADULT, IN ALL SUCH CASES, PARENTS HAVE MENTAL PAIN AND SUFFERING CLAIM, REGARDLESS OF THE AGE OF THE CHILD, BUT THAT ONE ABERRANT PROVISION, THE LEGISLATURE, WHY, WHO REALLY CARES, IT IS IN ITS WISDOM TO MAKE THE DECISION THAT A PARENT IS GOING TO HAVE THE RIGHT TO RECOVER UNDER THE WRONGFUL-DEATH ACT, IF IT LOSES A CHILD OF ANY AGE. NOW, UNDER 768.21-1, THE TERM "SURVIVOR" IS BROADLY DEFINED, BUT NEVERTHELESS THE ECONOMIC DAMAGES MEASURE IS BY THE LEVEL OF DEPENDENCY. IT KEEPS COMING AROUND TO WHO IS DEPENDENT. CONSORTIUM RIGHTS THEN APPEAR IN FAVOR OF THE SURVIVING SPOUSE UNDER SUBSECTION 2, AND AS WE ALL KNOW, CONSORTIUM RIGHTS WERE SORT OF THE LAST THING TO CREEP INTO ANY WRONGFUL-DEATH ACTOR LEGISLATION, JUST BECAUSE IT WAS -- ACT OR LEGISLATION, JUST BECAUSE IT WAS A CREATURE THAT LITERALLY 200 YEARS OF JURIS-- OF JURISTS, LEGISLATORS AND LAWYERS, COULD NOT FIGURE OUT WHAT IT MENTOR WHY RECOVERY, EVEN UNDER COMMON LAW PRINCIPLES OR UNDER STATUTORY PRINCIPLES, SHOULD EVER EXIST. I FEEL A LITTLE PRESUMPTUOUS, THINKING THAT IN 20 MINUTES I AM GOING TO ANSWER QUESTIONS RELATING TO WHAT WE COULDN'T FIGURE OUT IN 200 YEARS, RELATING TO CONSORTIUM RIGHTS, BUT I THINK I HAVE GOT A HANDLE OF IT OR ON IT. CHILDREN CREEP IN UNDER SUBSECTION 3, AND SEVERAL THOUGHTS THEN EMERGE, BECAUSE OF THIS LEGISLATION THAT RELATES TO THE CHILD'S RIGHT TO RECOVERY. NOW, IN SOME OF THE LEGISLATIVE HISTORY I SUBMITTED TO YOU, SPECIFICALLY A 1971 REPORT TO THE FLORIDA LAW REVISION COMMISSION, RECOGNIZES, FIRST OF ALL, THAT ALL RIGHTS ARE FIXED AS OF THE DATE OF DEATH, SO THERE MUST BE SOME SIGNIFICANCE TO THAT.

DID YOU SAY THAT YOU ARE INTERPRETING SUBSECTION 4 AS SAYING THAT, IF THE CHILD IS A MINOR, WHEN THE CHILD DIES, THE PARENT MAY RECOVER FOR THE PAIN AND SUFFERING FOR THE ENTIRE JOINT LIFE EXPECTANCY, OR ARE YOU CLAIMING THERE IS A LIMITATION ON THAT AS WELL?

NO. I AM NOT CLAIM AGO LIMITATION.

SEE, I GUESS, AND AGAIN, I KNOW YOU WANT TO GO INTO THIS LEGISLATIVE HISTORY AND WE HAVE YOUR BRIEF, I JUST, IN READING THE PLAIN LANGUAGE OF 3 AND 4, I DON'T KNOW WHERE YOU COME UP WITH THE CONCEPT THAT IT WOULD BE LIMITED TO THE PERIOD OF MINORITY. I MEAN, UNLESS YOU ARE GOING TO SAY THAT IT IS THE SAME THING FOR 4, BECAUSE IT IS THE SAME EXACT LANGUAGE. EACH PARENT OF A DECEASED MINOR CHILD MAY ALSO RECOVER FOR PAIN AND SUFFERING FROM THE DATE OF INJURY. IT SAYS MINOR CHILDREN MAY ALSO RECOVER FOR THE LOSS OF PARENTAL COMPANIONSHIP, INSTRUCTION AND GUIDANCE FROM THE DATE OF INJURY. I JUST DON'T SEE WHERE, HOW WE WOULD READ IN LIMITATION LANGUAGE THAT DOESN'T EXIST.

RESPECTFULLY, JUSTICE PARIENTE, I DON'T THINK I AM READING INTO IT. AND LET ME JUST MAKE A COMMENT ON SUB4. IT SAYS THAT -- ON SUB-4. IT SAYS THAT EACH PARENT AFTER DECEASED CHILD MAY ALSO RECOVER FROM PAIN AND SUFFERING FROM THE DATE OF THE INJURY, AND EACH PARENT OF AN ADULT MAY ALSO RECOVER FOR MENTAL PAIN, AN ADULT CHILD MAY ALSO RECOVER FOR PAIN AND SUFFERING, IF THERE ARE NO OTHER SURVIVORS. WHAT I AM SAYING IS THAT, SOME OF THESE PROVISIONS ARE ABERRANT, AND THEY STAND ALONE. LET'S TAKE A LOOK AT THE PLAIN MEANING OF SUBSECTION 3. THE SIGNIFICANT POINT HERE IS THAT THE FIFTH DISTRICT'S CASE, WHICH IS UNDER REVIEW, CREATES THE START DATE FOR DAMAGES. I DON'T THINK THAT ANYBODY DISPUTES THAT, BECAUSE IT CLEARLY SAYS MINOR. BUT OBVIOUSLY, ACCORDING TO THE FIFTH DISTRICT, DOES NOT PROVIDE AN ENDING DATE. MY CONTENTION IS THAT THAT IS NOT TRUE. THE STATUTE, ITSELF, MAKES IT CLEAR THAT AN ADULT CHILD HAS NO RIGHT TO ECONOMIC DAMAGES, UNLESS THERE IS NO SURVIVING SPOUSE IE BOTH PARENTS MUST BE DEAD.

LET ME ASK YOU ANOTHER QUESTION. SPEAK TO THE LEGISLATIVE INTENT AS RECOGNIZED IN THE STATUTE, ITSELF. IT SAYS IT IS THE POLICY OF THE STATE TO SHIFT THE LOSSES RESULTING WHEN WRONGFUL-DEATH OCCURS, FROM THE SURVIVORS OF THE DECEDENT TO THE WRONG DOER, SECTION 168.26 ARE REMEDIAL AND SHALL BE LIBERALLY CONSTRUED. HOW DOES YOUR CONSTRUCTION COMPORT WITH THAT LEGISLATIVE INTENT FOR A LIBERAL CONSTRUCTION OF THE STATUTE?

JUSTICE BELL, THERE HAS BEEN THIS TENSION BETWEEN A STATUTE THAT IS PAST IN -- THAT IS PASSED IN DEROGATION OF THE COMMON LAW AND THEN ON THE OTHER HAND, IN THE PREAMBLE, THE LEGISLATURE, LIKE IN THE WRONGFUL-DEATH ACT, PUTS IN THIS REMEDIAL INNATE AND LIBERALLY CONSTRUED. I THINK WE SEE A HINT, IN CRUSE AND DEMPSY. THE REASONING, AND I DON'T WANT TO SAY THOSE CASES ARE ON ALL FOURS, BECAUSE THEY ARE NOT. I THINK THE REASONING BETWEEN WHAT I HAVE SEEN COME OUT OF THIS COURT AND A MORE PRACTICAL APPROACH TO IT, IS THAT WE MAY DECIDE THAT, IN TERMS OF LOOKING AT PLAIN MEANING OF 6 WORDS IN A STATUTE -- MEANING OF WORDS IN A STATUTE, WE ARE NOT TO GIVE IT A NARROW CONSTRUCTION FOR PURPOSES OF ACCOMPLISHING A LEGISLATIVE PURPOSE, BUT IF WE HAVE PLAIN MEANING, WE SHOULDN'T BE LCK LOOKING TO STRETCH THE -- WE SHOULDN'T BE LOOKING TO STRETCH THE CLASSES OR THE LEVEL OF RECOVERY THAT WAS INTENDED BY THE LEGISLATURE, GOING TO THE, ACTUALLY THE FIRST PART OF YOUR QUESTION, YOU WERE SAYING THAT THE LOSS SHOULD BE SHIFTED TO THE PERSON WHO IS RESPONSIBLE, IN THIS CASE FOR A WRONGFUL-DEATH. TAKE AN EXAMPLE OF THE MINOR CHILD WHO IS RECOGNIZED IN THE LEGISLATIVE HISTORY AS ONE OF THE DEPENDENTS WHO IS GOING TO GET THIS ALMOST AMORPHOUS RIGHT OF CONSORTIUM-TYPE DAMAGES, SOMETHING THAT WAS NEVER HEARD OF AT THE COMMON LAW OR IN COMMON LAW, BUT NOW WE HAVE GOT A LEGISLATURE THAT SAYS THEY RECOVER, AND THE LEGISLATURE PUTS QUALIFYING LANGUAGE ON IT, SAYING IF YOU ARE AN ADULT, THE ONLY WAY YOU HAVE STANDING TO GET THE FIRST DIME OF RECOVERY, IS IF BOTH PARENTS ARE DEAD. NOW, I DON'T SEE THAT AS BEING

INCONSISTENT WITH THE QUESTION YOU ASKED ME. BUT IF YOU TAKE THE LANGUAGE AND YOU FOCUS ON THE FACT THAT, IN ORDER FOR AN ADULT CHILD TO HAVE ANY RIGHT OF RECOVERY, IF WE ARE GOING TO FIX THE RIGHT AS OF THE DATE OF DEATH, TAKE A LOOK AT THE INEQUITY, THAT THIS WOULD CAUSE, AND IN THIS CASE, WITH A SURVIVING SPOUSE, AND A MINOR CHILD, FORTUITYLY, KEVIN MEEKS HERE, 24 YEARS, 364 DAYS OLD. HE IS GOING TO BE 25, DEFINED UNDER THIS STATUTE, AS A MINOR FOR ONE MORE DAY, AND HIS SISTER, LAWYER, A I BELIEVE WAS HER NAME, OVER THE AGE OF 25, AND I THINK -- LAURA, I BELIEVE WAS HER NAME, AND IS 25 AND ONE DAY. THEY ARE JUST TWO DAYS APART, BUT THIS IS MINOR RESTORATION.

CHIEF JUSTICE: I DON'T WANT TO INTERRUPT, BUT I KNOW YOU WANT TO SAVE SOME TIME FOR REBUTTAL.

I DO, YOUR HONOR, BUT LET ME CONCLUDE WITH JUSTICE BELL ON THIS POINT. THE POINT IS YOU WOULD CREATE A LIFETIME OF FORTUITY FOR KEVIN, UNDER THE FIFTH DISTRICT'S INTERPRETATION OF THIS PARTICULAR STATUTE, WHEREAS THE DAUGHTER WOULD GET NOTHING.

AS, DOESN'T SUBSECTION 4 DO EXACTLY THE SAME THING FOR PARENTS, BUT IN A MINOR CHILD OR AN ADULT CHILD THAT HAS SURVIVORS?

I SEE JUSTICE PARIENTE SHAKING HER HEAD, YES, SHE THINKS SO. I DON'T AGREE WITH THAT CONTENTION, AND MAYBE I CAN ANSWER A FEW OF THESE FURTHER ISSUES ON MY REBUTTAL. THANK YOU FOR YOUR TIME.

CHIEF JUSTICE: THANK YOU VERY MUCH.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS ROBERT AVOLIO, AND I HAVE THE PRIVILEGE OF REPRESENTING LINDA MEEKS IN AN INDIVIDUAL CAPACITY AND IN A CAPACITY AS A REPRESENTATIVE OF HER HUSBAND'S ESTATE.

WOULD YOU PICK UP ON THE NOTE THAT YOUR OPPONENT ENDED ON, AND THAT IS THAT HE POSTED THE HYPOTHETICAL THAT YOU HAVE GOT TWO CHILDREN, ONE OF THEM A MINOR BY DEFINITION OF THE STATUTE, AND ONE IS JUST A DAY OR A WEEK OR A MONTH OR A YEAR, AS IN THIS CASE JUST A COUPLE OF YEARS, I GUESS, OR A FEW YEARS, AND ONE OF THEM ENDS UP BEING ENTITLED TO RECOVER THE PAIN AND DAMAGES, I MEAN PAIN AND SUFFERING DAMAGES FOR THE REST OF THEIR LIVES, MEASURED BY THE LIFE EXPECTANCIES, AND THE OTHER DOESN'T GET ANY OF THAT. ISN'T THAT A RATHER IRRATIONAL SCHEME, TO CUT ONE CHILD OUT AND NOT ALLOW ANY RECOVERY, AND YET LET THE OTHER RECOVER, ALL DURING THE SAME TIME THAT THE OTHER CHILD IS SUFFERING THE SAME KINDS OF PAIN THAT THAT CHILD IS?

THE ANSWER IS NO. IT IS THE FOOT HOLT HOLED THAT PROVIDES BELL -- IT IS THE FOOTHOLD THAT PROVIDES BellSouth THE ABILITY TO MAKE THE ARGUMENT, AND THIS IS THE CONSTRUCTION ANALYSIS THAT WE ARE DEALING WITH, SO WE FIRST BEGIN BY UNDERSTANDING WORDS THAT THE LEGISLATURE HAS LAID OUT. THE LEGISLATURE CLEARLY AND WITHOUT CONTRADICTION, HAS IDENTIFIED MINOR CHILDREN, SEPARATE AND DISTINCT FROM ADULT CHILDREN, SO WE KNOW AS A BEGINNING, THERE ARE TWO CLASSES THAT WE WILL DEFINE IN HOWEVER WAY WE DEFINE, BUT THERE WILL ALWAYS BE TWO CLASSES. THEN THE QUESTION BECOMES, AND I THINK IT IS THE JUSTICE'S QUESTION, WHERE DO WE DRAW THE LINE, BECAUSE IN KEVIN MEEKS'S SITUATION, HE HAPPENS TO BE JUST 24, NOT DAYS FROM 25, BUT NEVERTHELESS, WHEREVER WE DRAW THE LINE, WE ARE GOING TO HAVE A PROBLEM. NOW, YOU KNOW FROM THE LEGISLATIVE HISTORY, THAT THE LINE WASN'T 25. THE LINE ACTUALLY STARTED EARLIER. IT MOVED TO 21 AND THEN IT MOVED TO 25. SO THE LEGISLATURE HAS BEEN EVOLVED -- INVOLVED IN RECOGNIZING YOUR QUESTION IN MOVING THE LINE TO AN APPROPRIATE DEMARCATION. ONCE WE AGREE THAT THE LEGISLATURE COULD DO THAT AND DID DO THAT, THERE IS NEVER A SATISFACTORY ANSWER TO YOUR QUESTION, BECAUSE THERE IS

ALWAYS AN INEQUITY. IF WE USE 21 AS THE AGE, THERE IS A 20-YEAR-OLD AND A 21 AND 22-YEAR-OLD. IF WE USE 17 AS THE AGE, THERE WILL AND 16-YEAR-OLD AND AN 18 YEAR-OLD, AND WHEN WE USE, TODAY, THE 25-YEAR-OLD, IN THIS CASE BY EXAMPLE, THERE IS A 24-YEAR-OLD, AND THERE HAPPENS TO BE A 28-YEAR-OLD.

I GUESS THE QUESTION, THEN, BECOMES, WOULDN'T IT SEEM MORE PLAUSIBLE THAT THE LEGISLATURE INTENDED FOR SOME REASON, NO MATTER WHY THEY CHOSE THE AGE OF 25 OR 24, TO BE THAT AGE OF MINORITY, THAT IF YOU CUT OFF THE MEASURE OF DAMAGES AT THAT AGE OF MINORITY, THAT YOU ARE THEN TREATING, EVEN THE MINOR CHILDREN, THE SAME AS THE ADULT CHILDREN, BECAUSE THEY COULD NOT GO BEYOND THE DAMAGES WOULD NOT GO BEYOND THAT AGE OF MINORITY?

SO AS I UNDERSTAND THE QUESTION, IT IS REALLY WHY SHOULD MINORS BE TREATED SOMEHOW DIFFERENTLY THAN ADULT CHILDREN?

RIGHT. WHY SHOULD THEY GO ON INTO THEIR MAJORITY, EVEN THOUGH A CHILD WHO HAS ALREADY REACHED THAT AGE WOULD GET NOTHING?

UNDERSTOOD AND THERE IS REALLY TWO ANSWERS. THE FIRST IS, WHEN YOU LOOK AT SUBSECTION 4, IT PROVIDES JUST THAT FOR A PARENT. A PARENT CAN RECOVER FOR A MINOR CHILD, FOR THAT EMOTIONAL LOSS FOR A LIFETIME. NOT AVAILABLE FOR ADULT CHILDREN WHEN THERE IS A SPOUSE, SO THAT IT ALREADY EXISTS CLEARLY IN THE STATUTE, ITSELF. THE NEXT QUESTION IS WHAT WOULD BE THE LOGIC? WHAT WOULD BE THE REASONING BEHIND THE LEGISLATURE EVEN CONSIDERING SUCH A THING, AND THE REASON WOULD BE OR IS THAT, WHEN A MINOR CHILD SUFFERS CERTAIN EMOTIONAL LOSS, AND REMEMBER THIS IS NOT PECUNIARY WE ARE SPEAKING ABOUT, BUT THE EMOTIONAL LOSS IS ACUTE AND DOESN'T GO AWAY, ONCE THE MINOR BECOMES A MAJOR, AN ADULT, WHETHER THAT LINE IS 17, 21 OR 25.

BUT ISN'T THE SAME THING TRUE FOR AN ADULT CHILD? I MEAN, BECAUSE I HAVE REACHED THE AGE OF 25, DOES NOT MAKE MY PAIN ANY LESS THAN SOMEONE WHO IS LESS THAN 25, DOES IT?

YOU ARE ABSOLUTELY CORRECT, AND THE QUESTION THEN BECOMES DID THE LEGISLATURE GIVE US ENOUGH TO WORK WITH IN DETERMINING THAT THAT IS WHAT THEY CHOSE TO DO, AND IF THAT IS CLEAR, THAT IS WHAT WE MUST SIMPLY INTERPRET AND ENFORCE REASONABLY, AND CLEARLY, THE LEGISLATURE CREATED TWO CATEGORIES, WITHOUT LIMITATION IN SOME PARAGRAPHS AS THERE HAS BEEN A ROBUST DISCUSSION ALREADY, WITH LIMITATION OR WITH THE SUGGESTION OF LIMITATIONS IN SECTION 1, WHEN YOU LOOK AT THE USE OF LIFE EXPECTANCIES, WHEN YOU USE AT THE PRESUMPTIONS OF PERIODS OF MINORITY. NONE OF THOSE WORDS EXIST HERE, AND I THINK IF WE GO THROUGH A DECISION TREE, THE FIRST DECISION OR THE ISSUE IS, IS THIS A COMMON LAW CLAIM OR A STATUTORY CLAIM, AND I THINK WE AGREE AT COMMON LAW, THIS DIDN'T EXIST, SO IN 1972, WHEN THE WRONGFUL-DEATH ACT IS PASSED, IT IS A CAUSE OF ACTION THAT IS NEW TO THE HORIZON. THE QUESTION THEN BECOMES, IF WE AGREE IT IS EXCLUSIVELY A STATUTORY ANALYSIS, WHERE DO WE BEGIN, AND WE BEGIN WITH, IS THERE A CLEAR LEGISLATIVE INTENT, BECAUSE IF THERE IS A CLEAR INTENT, INTERPRETATION AND THE DEFINITION OF MINORS IN A MICROCAUSM, ALL BECOME IRRELEVANT. NOW, THE RESPONDENT'S POSITION IN THIS CASE IS THE STATUTE IS CRYSTAL CLEAR. INTERESTINGLY IT IS THE SAME POSITION, INITIAL POSITION AS MY BROTHER TAKES, THAT THE STATUTE IS CLEAR, ALTHOUGH MY BROTHER BOTTOMS ON THE OTHER SIDE, THE REVERSE OF THIS ARGUMENT. THE FIFTH DCA TOOK A DIFFERENT POSITION. THE FIFTH DCA, FRANKLY, FOUND AMBIGUITY IN THE STATUTE AND THEN EMBARKED UPON A STATUTORY INTERPRETATION, WHICH I DON'T THINK EXISTS. LOOK AT THE LANGUAGE. THE OPERATIVE WORDS THAT EXIST FOR SPOUSES, CHILDREN AND PARENTS, BEGINS WITH A DAY FOR A PERIOD, AND WE ARE ALL STRUGGLING FOR WORDS. LET'S CHANGE, AND WE MIGHT ALL AGREE THAT IN THIS CONTEXT, IT IS THE SAME WORD, BEGINNING FROM THE DATE OF INJURY. NOW, THE PETITIONER'S ARGUMENT

IS THAT THAT MEANS IT SHOULD STOP, BECAUSE IT SAYS MINORITY. AND I THINK WE MIGHT AGREE THAT THAT IS A STRUGGLE WITH LOGIC, BECAUSE WHEN YOU SAY FROM THE BEGINNING OF THE INJURY, THERE IS A PRESUMPTION THAT THE PERIOD REALLY IN OUR MIND, DOESN'T END, AND IT GOES FOR LIFE, AND THAT MAKES PERFECT SENSE. NOW, THEN WHAT DO WE DO? WE HARMONIZE, IT BECAUSE EVEN IF THE PARTICULAR STATUTE IS CLEAR, TO LOOK FURTHER IN CLARITY WITHOUT INTERPRETING IT, WE STAY WITHIN THE FOUR CORNERS OF THE STATUTE. NOW, MY BROTHER WOULD HAVE YOU LOOK AT SUBSECTION 3 AND PLEASE DON'T LOOK ANY FURTHER, NOT THE CASE. WHEN YOU GO TO FOUR, WHEN YOU DETERMINE AND RECOGNIZE THAT PARENTS ARE GIVEN A SPECIAL CATEGORY OF DAMAGES FOR MINORS, WITHOUT LIMITATION, WHEN YOU LOOK AT SUBSECTION 2, WHERE IT SAYS A SURVIVING SPOUSE, HAS SPECIAL DAMAGES, WITH THE SAME LANGUAGE, FROM THE DATE OF INJURY, WE WOULD ALL AGREE THAT THERE IS ABSOLUTELY NO LIMIT ON THAT, SO THE QUESTION BECOMES WHAT, REALLY, DID THE LEGISLATURE ATTEMPT TO DO IN SUBSECTION 3, AND WHAT THE LEGISLATURE WANTED TO DO WAS SAY WHAT IS YOUR STATUS ON THE DATE THE CAUSE OF ACTION ACCRUES? NO CAUSE OF ACTION ACCRUES? NOW, THIS GENTLEMAN'S STATUS ON THE DATE CAUSE OF ACTION ACCRUES WAS HE WAS A MINOR. HE LOCKS INTO A CLAIM. HE LOCKS INTO A CERTAIN RIGHT. THE FACT THAT HE SLIDES BEYOND THAT AT SOME LATER DATE AND IS EMANCIPATED IS IRRELEVANT. IN THE SAME WAY, A SPOUSE ON THE DATE THAT THE CAUSE ACCRUES, MAY NOT BE TO A SPOUSE. FRANKLY, WE TRY IT TO A CONCLUSION, SO REALLY WHAT THE LEGISLATURE INTENDED WAS TO IDENTIFY CERTAIN CLASSES OF INDIVIDUALS ON THE DATE CAUSE OF ACTION AROSE, AND THAT FRANKLY MAKES PERFECT SENSE. WHEN YOU LOOK AT THE STATUTE AND ANALYZE IT IN THAT WAY, THERE IS NO INTERPRETATION. THE INTENT IS CLEAR, AND WE NEED GO FURTHER. BUT YOU DON'T HAVE TO. WE CAN LOOK AT SOME CASES. WHEN YOU LOOK AT THE GROSS BUILDERS CASE THAT HAS BEEN BRIEFED ON BOTH SIDES, THEY LOOK AT SUBSECTION 4 AND SPECIFICALLY SAY, SPECIFICALLY THAT IT IS, ITS INTERPRETATION, THAT DCA'S INTERPRETATION, THAT THE LIMITATION DOES NOT END ON THE PERIOD OF MINORITY. THAT WAS THE PRECISE ARGUMENT MADE IN THAT CASE. IT FOUND THAT THE STATUTE WAS CLEAR AND IT INTERPRETED IT IN JUST A THAT WAY. THEN YOU MOVE TO THE STRESS CON CASE, A DCA CASE ALSO BRIEFED BY BOTH PARTIES THAT IS NOT PRECISELY ON POINT. THAT IS OUR STATUTE, THOUGH. THAT IS THE SUBSECTION 3 THAT RELATES TO MINOR CHILDREN. WHAT STRESS CON SAYS IS, LOOK, THERE WAS NOT A TIMELY TRIAL OBJECTION MADE, SO WE CAN'T GET YOU THERE ON A DECISION, BUT IF WE WERE ASKED, THAT IS EXACTLY AND PRECISELY THE WAY WE WOULD GO. NOW, IF YOU REJECT THOSE ARGUMENTS AND SAY IT IS JUST NOT CLEAR ENOUGH FOR ME, THEN WE DO NEED TO UNDERSTAND AND EMBARK UPON AN INTERPRETATION, AN UNDERSTANDING -- EMBARK UPON AN INTERPRETATION, AN UNDERSTANDING, AND WE START WITH A REMEDIAL STATUTE. WE RECOGNIZE FROM THIS COURT'S PRIOR OPINIONS IN NUMEROUS THAT IT MUST BE LIBERALLY CONSTRUED. WHAT WE DO IS GO BACK TO THE LOGICAL REASONING AND UNDERSTANDING OF THE STATUTE, IN USING WHAT WE WOULD THEN HAVE TO AGREE IS UNCLEAR. OTHERWISE WE ARE NEVER THAT FAR IN THE ANALYSIS. LOOKING AT THE THOSE FOUR CORNERS ONCE AGAIN, THROUGH THE SAME ANALYSIS THAT I HAVE JUST EMBARKED -- THROUGH THE SAME ANALYSIS THAT I HAVE JUST EMBARKED UPON, BECAUSE A LOOK AT ALL FOUR CORNERS, WHICH IS WHAT THIS NEEDS TO BE, BECAUSE THIS IS WHAT THIS IS ABOUT, THEN ALL OF THE PIECES ARE INCLUDED THERE. SO THERE IS REALLY NO OTHER CONCLUSION TO REACH HERE. WHETHER YOU WOULD LIKE TO SAY IT IS A CLEAR STATUTE ON ITS FACE, FOR WHATEVER ANALYSIS YOU USE, OR WHETHER YOU SAY IT IS AMBIGUOUS IN SOME WAY AND EMBARK UPON A LOGICAL ANALYSIS, YOU CAME TO THE SAME CONCLUSION. LOOK AT THE MODEL, THE STANDARD JURY INSTRUCTION. IT SAYS THE SAME THING. IT SAYS THAT IT SPECIFICALLY PROVIDES THAT YOU CAN USE A JOINT LIFE EXPECTANCY IN SUBSECTION 3. NOW, WE WILL ALL AGREE THAT THOSE WORDS ARE NOT IN THE STATUTE, ITSELF, BUT IS IT LOGICAL? IT MAKES PERFECT SENSE. IN FACT THERE, IS NO OTHER LOGICAL CONCLUSION THAT YOU COULD POSSIBLY REACH, SO REALLY NO MATTER WHICH WAY YOU LOOK AT THIS, YOU CAN COME TO NO OTHER CONCLUSION, AND REALLY THE PROOF OF THE PUDDING IS TO LOOK AT THE LENGTH OF TIME THE STATUTE HAS EXISTED. THIS IS A 1972 STATUTE. NOW, IT HAS GONE THROUGH REVISIONS, THE MOST RECENT BE -- THROUGH REVISIONS, THE MOST RECENT BEING IN 1990, BECAUSE PRIOR TO THAT TIME

ADULT MINOR CHILDREN DIDN'T EXIST. THROUGH EACH INTERPRETATION, THE CONCEPT OF THE MINOR, THE CONCEPT OF THIS PARTICULAR PARAGRAPH HAS NOT CHANGED FROM THE TIME THAT TRAWICK ENGAGED IN AT THE TIME THAT THE STATUTE WAS APPROVED. LOOK AT THE PLAUSEITY OF THE CASES AND WHAT DOES IT TELL US? 33 YEARS AND THERE HAVE BEEN NO ARGUMENTS MADE AND FOR THE REASON THERE IS NO ARGUMENT TO HA MAKE.

BUT BEFORE 1990, DID IT SAY THAT THE MINOR CHILDREN OF THE DECEDENT MAY ALSO RECOVER FOR LOST PARENTAL, IN OTHER WORDS, WAS THAT PHRASE ADDED IN 1990,, NO SURVIVING SPOUSE?

YES.

THAT WAS BEFORE 1990, SUBSECTION 3 READ EXACTLY LIKE SUBSECTION 4 FOR THE MINOR CHILD?

YES. THE MINOR CHILD'S RIGHTS, ONCE CLASSIFIED AS A MINOR CHILD, AND THERE HAVE BEEN SOME ITERATIONS ON WHETHER THE RIGHTS OF THE MINOR CHILD AND THAT SORT OF THING, BUT THE RIGHTS OF THE MINOR CHILD HAS NOT CHANGED ONCE.

THE POLICY THAT CAN BE SAID TO BE FAIR IS THAT THE ADULT CHILD OVER 26 IS NOT ENTITLED TO PAIN AND SUFFERING. WAS THERE EVER AN EQUAL PROTECTION CHALLENGE ON BEHALF OF ADULT CHILDREN, THAT THAT CATEGORY WAS ARBITRARY OR CAP RISH US?

THE ONLY -- CAP RISH US? -- CAPRICIOUS?

NO. THE ONLY CATEGORY OF EQUAL DEATH, THE CATEGORY OF NURSING HOME, GUARANTEES, CAN BE READ INTO ADDITIONAL DAMAGES OR WHETHER ONE SUPERSEDES THE OTHER, AND ON THAT ISSUE THE COURT HAS HELD THAT THERE IS NO EQUAL PROTECTION ARGUMENT AND BOTH DAMAGES STAND ALONE, BUT THERE HAS NEVER BEEN AN EQUAL PROTECTION CONSTITUTIONAL ARGUMENT ASSERTED AGAINST ANY SUBSECTION OF 768.21. YOUR HONORS, FOR THE COMMENTS I HAVE MADE, THERE IS ONE CONCLUSION TO REACH, AND IT IS THE CONCLUSION NOT ONLY INTENDED BY THE LEGISLATURE BUT CLEARLY ARTICULATED IN THE STATUTE, AND THAT IS TO FIND THAT THE WAY IN WHICH THE FIFTH DCA UNANIMOUSLY UNDERSTOOD AND ANALYZED THE CERTIFIED QUESTION, IS THE WAY IN WHICH THE DECISION SHOULD COME FROM THIS COURT. THANK YOU VERY MUCH.

CHIEF JUSTICE: MR. MARSHAL, HOW MUCH TIME LEFT ON REBUTTAL? OKAY. ALL RIGHT. VERY SHORT, BUT.

TWO QUICK POINTS. AS I SAID, THE COURT NEEDS TO LOOK AT THE LEGISLATIVE INTENT TO PROVE THE PLAIN MEANING OF WHAT THIS PARTICULAR ACT MEANS, AND WHILE IT IS REMEDIAL, AS RELATING TO THE QUESTION JUSTICE BELL ASKED, IT CAN'T BE CONSIDERED SO LIBERALLY AS TO DISREGARD THE PURPOSE OF THE LEGISLATION. WHEN YOU LOOK AT THE REMEDIAL NATURE OF THE LEGISLATION IN THE LEGISLATIVE HISTORY, ITSELF, IT IS VERY CLEAR THAT THE SENATE AND HOUSE REPORTS TALK IN TERMS OF DESCENDING ORDER OF PRIORITY, AND ADDRESSING, ONCE AGAIN, ONE OF JUSTICE PARIENTE'S CONCERNS, WHEN YOU TAKE A LOOK AT THE PLAIN MEANING OF THIS PARTICULAR STATUTE, THIS MEANS THAT A MINOR JUST LIKE WITH BENEFITS, SOCIAL SECURITY BENEFITS, VETERANS BENEFITS, ALL SORTS OF OTHER TYPES OF BENEFITS, YOU MAY HAVE A RIGHT VESTED WHEN YOU ARE A MINOR, BUT WHEN YOU HIT ADULTHOOD, YOU HAVE NO ENTITLEMENT TO THOSE RIGHTS, AND THE SAME IS TRUE UNDER THIS STATUTE WITH CONSORTIUM. ONCE THE PERSON BECOME AS ADULT, FOR WHATEVER REASON, THE LEGISLATURE HAS DECIDED TO CHANGE THE COMMON LAW, UNLESS THE RIGHT TO ADULT CHILD RECOVERY KICKS IN AS DEFINED BY THE STATUTE, THERE SIMPLY ISN'T ANY, AND PUT ANOTHER WAY, THE WORDING CLEARLY DEFINES AN END DATE. ONCE PEOPLE ARE OVER THE AGE OF 25, THEY HAVE NO CLAIM FOR DAMAGES FOR THE LOSS OF ONE IN FAVOR OF EXPANDING CLASSES OF

RECOVERY. SO HOWEVER COMPELLING THE REASONS MAY BE, THE ACT, AS A REMEDIAL ACT, FOCUSES ON WHEN AN ADULT CHILD MAY RECOVER AND ONLY WHEN, AND THAT IS WHEN BOTH PARENTS ARE DEAD. OTHERWISE, YOU GET THE AND ONLY LOUS SITUATION THAT -- YOU GET THE ANOMOLOUS SITUATION THAT I MENTIONED BEFORE, AND JUSTICE ANSTEAD, YOU FOLLOWED UP THAT POINT WITH MY QUESTION TO OPPOSING COUNSEL. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT IS GOING TO TAKE JUST A VERY BRIEF RECESS TO HAVE JUSTICE CANTERO REJOIN US ON THE PANEL, AND SO COUNSEL FOR STATE VERSUS BAEZ MAY CAME UP TO COUNSEL TABLE. WE WILL BE IN BRIEF RECESS.

MARSHAL: PLEASE RISE.