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**John A. Cardegna v. Buckeye Check Cashing, Inc.**

GOOD MORNING.

GOOD MORNING. ALL RIGHT F COUNSELL READY TO PROCEED, YOU MAY -- ALL RIGHT. IF COUNSEL IS READY TO PROCEED, YOU MAY PROCEED.

IF IT PLEASE THE COURT, I AM CLAYTON YATES FROM FT. PIERCE AND MY CO-COUNSEL, PAUL BLAND AND I WOULD LIKE TO SPLIT THE ARGUMENT BETWEEN US, RESERVING FOUR MINUTES FOR REBUTTAL.

CHIEF JUSTICE: ALL RIGHT. IF YOU WILL TRY TO WATCH YOUR TIME ACCORDINGLY. THE MARSHAL IS ADVISED.

YES. OF COURSE, ON THE CONTINUING ARBITRATION CLAUSE IN THE CONTRACT, I WOULD LIKE TO ADDRESS WITH YOU WHY THE CONTRACT IS CRIMINAL AND ILLEGAL.

THE ISSUE HERE ISN'T WHETHER THE CONTRACT IS CRIMINAL OR ILLEGAL. IT IS WHO WILL DETERMINE WHETHER THE CONTRACT IS CRIMINAL OR ILLEGAL. CORRECT?

YES, SIR.

OKAY AND WHETHER THE COURT OR WHETHER IT NEEDS TO BE ARBITRATED, ALONG WITH OTHER ISSUES.

THE --

OKAY. AND WE ARE BASICALLY DEALING, DO YOU AGREE THAT THIS IS, THAT THIS AGREEMENT FALLS UNDER THE FEDERAL ARBITRATION ACT?

YES, WE DO.

THERE FOR WE NEED TO INTERPRET FEDERAL LAW.

THIS COURT CAN STILL APPLY FLORIDA CONTRACT LAW TO FIND THAT THE UNDERLYING CONTRACT IS CRIMINAL ON ITS FACE.

AGAIN, THAT IS NOT THE ISSUE BEFORE US. THE ISSUE IS WHO IS GOING TO DETERMINE WHETHER OR NOT THE UNDERLYING CONTRACT IS ILLEGAL, AND IN THAT DETERMINATION OF WHICH ISSUES MUST BE ARBITRATED AND WHICH MUST BE DECIDED BY A COURT, WE ARE BOUND BY FLORIDA COURT'S INTERPRETATION OF THE FEDERAL ARBITRATION ACT, ARE WE NOT?

YOUR HONOR, IF THE COURT DOESN'T WANT TO HEAR MY ARGUMENT ABOUT THE ILLEGALITY OR CRIMINALITY OF THE CONTRACT, ITSELF ON ITS FACE, I WOULD DEFER TO MR. BLAND TO ARGUE.

WE ARE SORT OF ACCEPTING THE BASIS OF YOUR ARGUMENT HERE, AS CHALLENGING THE LEGALITY OF THE CONTRACT. BUT THAT JUST, IN OTHER WORDS THAT PUTS YOU ACTUALLY IN A BETTER POSITION.

YES, SIR.

BECAUSE ASSUMING THAT THE CONTRACT IS, THAT YOU HAVE MADE SUFFICIENT ALLEGATIONS OF THE LEGALITY, AS JUSTICE CANTERO SAYS, THE PRECISE QUESTION THAT WE HAVE IS THAT, WHO DECIDES THAT, THE ARBITRATORS THAT ARE PROVIDED FOR IN THE CONTRACT? OR THE COURTS? SO YOUR COLLEAGUE IS GOING TO ADDRESS THAT ISSUE. ALL RIGHT. THANK YOU VERY MUCH.

DO YOU WANT ME TO REPEAT MY --

NO, I TOTALLY GOT IT YOUR HONOR. MY NAME IS PAUL BLAND FROM WASHINGTON, D.C., AND I ALSO REPRESENT THE PLAINTIFFS. THE FEDERAL ARBITRATION ACT DOESN'T SET ANY RULES FOR CONTRACT EXCEPT ONE.

MY QUESTION IS, DO YOU AGREE THAT THIS FALLS UNDER THE FEDERAL ARBITRATION ACT?

CERTAINLY.

AND DO YOU AGREE THAT WE ARE BOUND BY OR AT LEAST IS PERSUASIVE OF THE COURT'S INTERPRETATION OF THE --

I DON'T AGREE THAT WE ARE BOUND BY THE CONTRACT. THERE IS REGULAR --

OR ARE WE BOUND BY THE UNITED STATES SUPREME COURT?

WE ARE BOUND BY THE UNITED STATES SUPREME COURT, AND I WOULD ARGUE THAT THE FEDERAL COURTS THAT HAVE BEEN CITED BY THE OTHER SIDE HAVEES EX-ALLY -- HAVE ESSENTIALLY IGNORED WHAT IS SAID BY THE FEDERAL ARBITRATION ACT.

WHY DON'T YOU TELL ME WHAT IS SET IN PRIME A PAINT, TO SET OUT A RULE.

PRIMA PAINT SETS OUT A RULE, AND THE FEDERAL ACT IS IDENTICAL TO WHAa THE STATE LAW WAS. IT WAS A CASE OF AVOIDABLE CONTRACa.

I UNDERSTAND, BUT IS THERE ANYTHING IN THE HOLDING OF THE COURT THAT DISTINGUISHES VOIDABLE VERSUS VOID CONTRACTS AND WHETHER THERE THOSE ARE ARBITRABLE?

THE MOST IMPORTANT FACT THAT SETS THE SEEDS FOR THE DISTINCTIJRUt ARE DRAWING, BECAUSE THE CASE DIDN'T INVOLVE AVOID ADMONISH YO CONTRACTS: THEY DIDN'T DISCUSS T BUT THE MOST IMPORTANT DECISION FOR THIS CASE, IN FOOTNOTE 12, JUSTICE FORD SAID THAT ARBITRATION CLAUSES ARE JUST AS ENFORCEABLE AS OTHER CONTRACTS BUT FOR MORE SO. THEY AREN'T SUPER CONTRACTS AND BIGGER AND MORE IMPORTANT AND HAPPIER THAN OTHER CONTRACTS. THEY FOLLOW THE SAME RULES OF CONTRACTS AS OTHER CONTRACT LAW. NOW, IN PRIMA PAINT, WHERE YOU ARE AVOIDING CONTRACT, THERE IS NO REGULAR INDUCEMENT UNDER REGULAR CONTRACT LAW THAT THAT WOULD BE INDUCEMENT BY THE ARBITRATOR, BECAUSE THE ARBITRATION CONTRACT IS NOT IN ANY WAY AFFECTED BY THE ALLEGED FRUD FRAUD IN THIS CASE, SO THERE WAS NO REASON TO SAY THERE IS NO CONTRACT IN EXISTENCE, WHICH OF COURSE IS WHERE THE FEDERAL ARBITRATION ACT BEGINS. INSTEAD IT IS CLEAR THAT JUSTICE FORD FELT THAT THE DECISION THAT HE WAS MAKING WAS COMPLETELY CONSISTENT WITH GENERAL RULES OF STATE CONTRACT LAW. HE SAID YOU NEVER GO FURTHER THAN THAT.

ISN'T THAT OPINION NOT ABLE VOIDABLE AND VOID DRTS CONTRACTS BUT -- CONTRACTS, BUT BETWEEN THE ALLEGATIONS OF CONTRACT VERSUS ALLEGATIONS OF ILLEGALITY OF THE ARBITRATION AGREEMENT, WHETHER THE PARTIES HAD ACTUALLY AGREED NOT TO THE CONTRACT, ITSELF, NOT TO THE GENERAL CONTRACT, BUT TO THE SPECIFIC AGREEMENT TO ARBITRATE, AND THAT IS WHAT WE FOCUS ON, AND THE COURT SAID, WELL, BECAUSE YOU ARE NOT ARGUING THAT ARBITRATION AGREEMENT WAS FRAUDULENTLY INDUCED, THE WHOLE

THING MUST BE DETERMINED BY AN ARBITRATOR.

THE COURT DID NOT SPEAK ABOUT ILLEGALITY. THE COURT SPOKE ABOUT FRAUDULENT INDUCEMENT. THE DIFFERENCES BETWEEN THOSE ARE ENORMOUS, AS A MATTER OF STATE CONTRACT LAW. THE SUPREME COURT NEVER SAID, WE THROW OUT STATE CONTRACT LAW. THERE IS A NEW BODY OF FEDERAL CONTRACT LAW. THE SUPREME COURT INSTEAD SAID, UNDER THE FEDERAL ARBITRATION ACT, YOU HAVE TO TREAT THESE CONTRACTS JUST AS WELL AS ALL OTHER TYPES OF CONTRACTS. YOU CAN'T DISCRIMINATE AGAINST THESE TYPES OF CONTRACTS, BUT YOU DON'T TREAT THEM BETTER, SO IF THE REGULAR RULE UNDER STATE CONTRACT LAW WOULD BE THAT WITH A CONTRACT, WHERE THERE WAS A CLAIM OF FRAUDULENT INDUCEMENT, YOU STILL ENFORCE THE ARBITRATION CLAUSE, THAT WOULD BE THE LAW OF THE FEDERAL SYSTEM. YOU CAN'T HAVE A DIFFERENT SET OF RULES FOR ARBITRATION LAWS, TO TREAT THEM WORSE, BUT IN FEDERAL 12, HE WENT ON TO THE NEXT STEP AND SAID YOU ALSO WILL NOT TREAT THEM BETTER, AND IT IS IMPORTANT NOT TO JUST LOOK AT PRIMA FACIE, BUT SINCE THEN IF YOU READ THE FEDERAL CASES OF THE SNOWDEN CASE AND THE BEST CASE AND THE BURDEN CASE OF THE SIXTH -- THE SNOWDEN CASE AND THE BEST CASE AND THE BURDEN CASE OF THE SIXTH CIRCUIT, ALL OF THE ARBITRATION LAW WAS WRITING A NEW BODY OF CONTRACT LAW. THERE WAS NEVER A DESCRIPTION IN THE SNOWDEN CASE, FOR EXAMPLE, THAT SAID HERE IS THE RULE UNDER MARYLAND CONTRACT LAW. WE FIND IT TO BE PREEMPTED. THERE IS NEVER A DISCUSSION OF THAT.

WHAT ABOUT THE ELEVENTH CIRCUIT'S DECISION OUT OF ALABAMA?

THE ELEVENTH CIRCUIT'S DECISION COMES DOWN TO A FLAT ASSERTION, WHERE THEY SAY, WELL, WE RECOGNIZE THAT THERE ARE A NUMBER OF CASES THAT FIND WHERE NO CONTRACT EVER CAME INTO EXISTENCE, THAT IN THAT SETTING YOU CAN'T ENFORCE THE ARBITRATION CLAUSE, AND THEY TOTALLY ACCEPT THE SEVERE AND DRAKE DECISION FROM THE SEVENTH CIRCUIT AND ALL OF THE CASES WHERE ONE PARTY DIDN'T HAVE AUTHORITY TO SIGN AND SO FORTH AND SO ON, BUT THEY THEN GO ON TO SAY THAT IS DIFFERENT FROM AN ILLEGAL CONTRACT, BECAUSE IT NEVER COMES INTO EXISTENCE. THAT IS A DIFFERENT KIND OF ISSUE. IT IS A ASSERTION OF LAW. I AM SURE I.

SO IS YOUR ARGUMENT, THEN, THAT ALLEGATIONS THAT YOU HAVE MADE ABOUT THIS CONTRACT, SPILLS OVER AND INCLUDES THE ARBITRATION AGREEMENT, AND THEREFORE THAT THE ARBITRATION AGREEMENT IS VOID AB INITIO, ALSO?

OUR ALLEGATION IS THAT, BECAUSE IT IS VOID AB INITIO, WHICH DOESN'T DISPUTE, AND MOST OF THE CASES IN THE STATEMENT, SHOW THAT THERE NEVER WAS A CONTRACT IN THE FIRST PLACE.

SO AS FAR AS THE AGREEMENT.

RIGHT. AS FAR AS THE CONTRACT, THERE WAS NEVER AN AGREEMENT IN THE FIRST PLACE, JUST AS IF YOU HAD A CONTRACT BETWEEN DRUG DEALERS, THIS COURT DOESN'T SAY WE WILL VOID OUT THE PART ABOUT DRUG DEALERS AND THE PART ABOUT ARBITRATION DOESN'T DEAL WITH AB INITIO BETWEEN DRUG DEALERS. THIS COURT GOES BACK WITH HUNDREDS OF YEARS OF ARBITRATION CLAUSES AND NO MISTREATMENT OF THE ARBITRATION CLAUSES THAT THE FEDERAL ARBITRATION LAW TALKS ABOUT.

YOU ARE SAYING IT WOULD CONTROL THE RELATIONSHIP BETWEEN THE PARTIES.

THAT'S RIGHT. IF THE CONTRACT IS, IN FACT, ILLEGAL, SO IT IS USURIOUS, AND IT IS A SINGLE PURPOSE CONTRACT, NOT A CONTRACT TO HAVE USURIOUS LOANS AND TO BUILD PIZZA PALACES AND SO FORTH, IT IS VOID AB INITIO.

WHAT WOULD BE, IN YOUR VIEW, IF IT DID GO TO ARBITRATION AND THE ARBITRATORS CONCLUDED THAT THE CONTRACT WAS USUROUS, WOULD ANY PARTS OF THE CONTRACT STAND?

IT WOULD DEPEND ON WHAT THE ARBITRATOR'S VIEW AND WHAT THE ARBITRATORS SAID IN THAT SETTING. THE PROBLEM WITH, THERE IS ONE OF THE FEDERAL CASES WHERE THEY CITE. SORE I.

I AM, AS OPPOSED TO WHAT THE ARBITRATORS, DID I AM ASSUMING THAT THE ARBITRATORS FOLLOWED THE LAW, OKAY, WITH REFERENCE TO USURY IN FLORIDA, SO WHAT WOULD BE THE EFFECT OF, IF THE ARBITRATORS CONCLUDED THAT THE TRANSACTION WAS USURY OR --

I GUESS THE ARBITRATOR WOULD SAY THAT I HAVE NO RIGHT TO DECIDE THIS CASE BECAUSE THERE IS NO CLAUSE IN THE CONTRACT IN THE FIRST PLACE. IT WOULD BE LIKE A SNAKE EATING HIMSELF. THERE IS NO WAY THAT THE ARBITRATOR GETS THAT, WITHOUT A CONTRACT IN THE FIRST PLACE.

THAT WOULD EXTEND TO THE ARBITRATION PROVISIONS OF THE CONTRACT AS WELL?

ABSOLUTELY. WHEN THE RULE, AS A CONTRACT, AS A QUESTION OF CONTRACT, THE QUESTION OF PUTTING ASIDE THE QUESTION OF WHETHER FEDERAL LAW WIPES AWAY CONTRACT LAW, THERE IS NO QUESTION THAT THERE IS NO DOUBT IF YOU HAVE A SINGLE-PURPOSE CONTRACT AND THE SINGLE PURPOSE IS ILLEGAL, LOAN SHARKING, IT VIOLATES THE STATUTE, THAT THE WHOLE CONTRACT FALSE. THIS COURT HAS REPEATEDLY SAID THAT IT IS NOT GOING TO ENFORCE PART OF A CONTRACT, WHERE THE CONTRACT AS A WHOLE IS ILLEGAL.

AND THAT THE STATUTORY SCHEME, THEN, STEPS AND IN TAKES ITS PLACE. IS THAT IT?

RIGHT. BECAUSE, THE QUESTION, REALLY, THE ONLY ARGUMENT IS DOES FEDERAL LAW COULD NOT WIPE AWAY ALL FLORIDA STATE CONTRACT LAW, AND FIRST OF ALL, IN TERMS OF TALKING ABOUT THE PRIMA FACIE CASE, I VERY STRONGLY URGE YOUR HONORS TO LOOK AT THE OPPOSITES -- AT THE OPTIONS IN THE CASE, BECAUSE THE COURT SAID THAT TO APPLY FORMULA CONTRACT LAW IN ARBITRATION CASES AND YOU SHOULD LOOK AT BASS HE WILL VERSUS DEGREE GREEN TREE -- THE BAZELL VERSUS GREENTREE CASES DECIDED LAST FALL --

IT HAS TO DO WITH THE FORMATION OF, AS TO WHETHER THERE IS AN ARBITRATION CLAUSE, CORRECT?

IT HAD TO DO WITH INTERPRET AN ARBITRATION CLAUSE. IF -- INTERPRETING AN ARBITRATION CLAUSE. THERE WAS AN ARBITRATION CLAUSE, AND THE QUESTION IS WHETHER IT APPLIED TO THIS DISPUTE OR NOT, AND JUSTICE CRIER'S OPINION STATED THAT YOU LOOK AT CONTRACT FORMATION AND LOOK AT CONTRACT FORMATION, BECAUSE THAT IS EXACTLY WHAT WE ARE TALKING ABOUT HERE, BECAUSE IF IT IS VOID AB INITIO, THERE WAS NEVER ANY CONTRACT FORMED, HE SAID TO LOOK AT BASIC PRINCIPLES OF STATE LAW.

IN THIS CASE, DISTINGUISH IT, IF YOU CAN, FROM BEST. IS IT A SEPARATE ARBITRATION AGREEMENT SIGNED?

NO. THIS CASE IS NOT DISTINGUISHABLE FROM BEST, YOUR HONOR. WE JUST BELIEVE THAT BEST IS WRONG. BEST FINDS -- SO YOU HAVE A PREFERRED PAYMENT AGREEMENT AND A SEPARATE ARBITRATION AGREEMENT THAT APPEARS IN BEST? WHICH APPEARS -- IT IS ON THE NEXT PAGE BUT IT IS PART OF IT.

THAT IS MY QUESTION. WAS IT SUPPOSED TO BE INITIALED SEPARATELY OR SIGNED SEPARATELY?

THERE IS --

OR IS IT -- OKAY.

THERE IS A SIMPLE LINE FOR THE INITIALS THERE.

WAS IT INITIALED?

I HAVE TO LOOK. I THINK IT WAS BUT I DON'T RECALL.

SO IT IS NOT A CLAUSE WITHIN THE AGREEMENT. IT IS ACTUALLY SEPARATE AGREEMENT?

IT IS A TWO-PAGE, I MEAN, IT IS ON THE SECOND PAGE. IT IS ON THE BACK PAGE OF IT. IT IS NOT LIKE THEY HAD, I MEAN, I THINK IT IS CLEARLY PART OF THE CONTRACT. THEY HAD ONE CONTRACT TO GIVE THESE PEOPLE MONEY. THERE IS NO SEPARATE CONSIDERATION. IT IS NOT LIKE THEY SAID WE WILL GIVE YOU THE MONEY TO SIGN THE FIRST PAGE AND THEN WE WILL GIVE YOU WHO ARE MONEY, IF YOU SIGN THE SECOND PAGE. IT IS NOTHING LIKE THAT THEY DIDN'T SIGN TWO SEPARATE CONTRACTS, YOUR HONOR. IT IS A SEPARATE DEAL. THE FACT THAT IT IS ON THE BACK DOESN'T CHANGE --

I HIM LOOKING AND THEY HAD SIGNED AN ARBITRATION AGREEMENT, BECAUSE IN BEST THEY HAD ONLY ARGUED THAT THE ARBITRATION CONTRACT WAS UNCONSCIONABLE.

THEY ARGUED UNKONKS ABILITY BUT -- UNKONKS ABILITY BUT -- CON KONKSABILITY BUT THEY ALSO ARGUED ARBITRATION CLAUSE.

THAT IS WHAT THE BEST COURT SAID.

THE BEST COURT SAID THAT, BUT THE ONLY WAY THAT THE BEST COURT COULD HAVE REACHED THAT CONCLUSION WAS TO TALK ABOUT ALABAMA CONTRACT LAW, BECAUSE THEY REACHED THAT DECISION WITHOUT EVEN IDENTIFYING THAT THIS IS THE LAW THAT THEY DECIDED TO PREEMPT. WHAT BEST DOES, IN THE MIDDLE OF A PARAGRAPH, SAYS WHETHER SOMETHING SILL LEGAL OR NOT DOES NOT GO TO WHETHER A CONTRACT EXISTS OR NOT. FLAT STATEMENT. THERE IS NO CITE TO ANY ALABAMA CONTRACT CASE THAT SAID THAT, BECAUSE IT SURE ISN'T ALABAMA CONTRACT LAW. THAT IS WHAT THE ALABAMA SUPREME COURT, WHO GETS TO SPEAK FOR ALABAMA CONTRACT LAW SAYS. CRITICISM THAT THE DISSENTERS IN PRIMA PAINT MADE IN THE MAJORITY OPINION, WHEN IT SAYS, AND THE ARBITRATORS TO THE COURT HOLDS OR ADD JUDD INDICATES THE LEGAL VALIDITY OF THE CONTRACT NEED NOT EVEN BE LAWYERS: I MEAN, THE COURT HOLDS WHAT IS TO ME, FANTASTIC, THAT THE LEGAL ISSUE OF CONTRACT'S AVOIDANCE AS TO FRAUD SHOULD BE DECIDED BY PERSONS DESIGNATED TO DECIDE FACTUAL CONTROVERSY. THE DISSENTERS PINPOINTED EXACTLY YOUR POSITION.

I DON'T AGREE, YOUR HONOR, BECAUSE STILL, THE IMPORTANT THING IS THE FEDERAL ARBITRATION ACT ABSORBS AND HOLDS AND PROTECTS AND HOLDS ON TO CONTRACT LAW WITH ONLY ONE EXCEPTION, WHERE THE STATE CONTRACT LAW TREATS THE ARBITRATION CLAUSE WORSE THAN OTHER TYPES OF CONTRACTS, AND IN PRIMA PAINT, THE SUPREME COURT WAS APPLYING A RULE OF STATE CONTRACT. NOW, I THINK THE DISSENT THAT WAS A BAD RULE, AND I AM NOT HERE TO GIVE YOU MY PERSONAL OPINION ABOUT THAT. I WASN'T ON THE SUPREME COURT. BUT THE DISSENT IS NEVER SAYING THE PROBLEM WITH THIS DAYS CASE IS IT IGNORES AN OVERTURNED STATE LAW, BECAUSE THAT IS NOT WHAT IT IS SAYING. EVERYONE AGREES THAT IN PRIMA PAINT, THE CONTRACT LAW GOT TO DECIDE. IT IS NO MORE SO THAN IN OTHER TYPES OF CONTRACTS. IN PRIMA PAINT -- IN PRIMA PAINT, THE HOLDING DOESN'T MAKE IT MORE ENFORCEABLE THAN OTHER TYPES OF CONTRACTS, AND IN THIS CASE IT DOES.

LET ME SEE IF I UNDERSTAND YOUR POSITION, NOT TO OVERSIMPLIFY IT BUT TO BE SURE THAT I HAVE.

ABSOLUTELY.

THIS COURT HAS HELD THAT IT IS THE COURT'S OBLIGATION TO DETERMINE THE VALIDITY OF OR LEGALITY OF AN ARBITRATION PROVISION THAT, THAT IS, THAT THAT MUST BE DETERMINED BEFORE THERE CAN BE ARBITRATION, IF THERE IS A CHALLENGE TO THE VALIDITY OR LEGALITY OF AN ARBITRATION PROVISION. AND IF I UNDERSTAND YOU CORRECTLY, YOU ARE SAYING THAT YOU ARE CHALLENGING THE ARBITRATION PROVISION AND THAT YOUR ATTACK ON THE ARBITRATION PROVISION IS THAT THIS ENTIRE CONTRACT WAS VOID, AND THEREFORE THE ARBITRATION PROVISION WAS NEVER A VALID ARBITRATION PROVISION.

THAT'S RIGHT, YOUR HONOR. I THINK THERE IS ONE IMPORTANT QUALIFICATION YOU NEED TO MAKE, YOUR HONOR, LEGALITY AND VALIDITY ARE DIFFERENT ISSUES. THERE ARE A LOT OF CONTRACT CHALLENGES TO THE VALIDITY OF A CONTRACT THAT DON'T SAY IT WAS NEVER A CONTRACT IN THE FIRST PLACE. VOID ADMONICIO IS NEVER A CONTRACT CHALLENGE -- ISN'T ALWAYS A CONTRACT CHALLENGE F I VOID THE CONTRACT, YOU HAVE AN OPTION OF FOLLOWING IT OR NOT. THERE IS A DEFENSE TO IT AND THAT IS STANDARD CONTRACT LAW, SO THAT THAT EXTENT, THERE IS ALL KINDS OF CHALLENGES, ALL KINDS OF KONKS ABILITY CHALLENGE -- LEGALITY IS DIFFERENT. THAT'S RIGHT. EXACTLY.

THE CLAUSE GOES DOWN WITH THE VOID ADMONICIO CONTRACT.

THAT'S RIGHT. IT IS A DISTINCT AND UNUSUAL TYPE OF CHALLENGE.

CHIEF JUSTICE: THE MARSHAL IS INDICATING --

THANK YOU VERY MUCH. I WILL RESERVE THE REMAINDER OF MY TIME.

MAY IT PLEASE THE COURT, JUSTICES OF THE COURT AND MR. CHIEF JUSTICE. AMY BROWN REPRESENTING BUCKEYE CHECK CASHING.

YOU WOULD AGREE WOULD YOU NOT, THAT A CONTRACT, BY REPRESENTATION OF BEING ILLEGAL, AND NEVER COMES INTO EXISTENCE, THEN NONE OF THE PROVISIONS OF THAT ALLEGED CONTRACT WHICH NEVER CAME INTO EXISTENCE, EXISTS, ISN'T THAT CORRECT?

NO. I DON'T BELIEVE IT IS CORRECT IN THE CONTEXT OF AN ARBITRATION AGREEMENT, AND I THINK THAT -- EVEN THOUGH THE CONTRACT NEVER CAME INTO EXIST, WE HAVE GOT THIS ARBITRATION AGREEMENT FLOATING AROUND OUT THERE.

BECAUSE IT DID COME INTO EXISTENCE, IN THAT THE PARTIES AGREED TO ARBITRATE THEIR DISPUTE CONCERNING THE CONTRACT.

WHAT HAPPENS IF THERE IS A CHALLENGE, FOR INSTANCE, THE CLAIM IS THAT, YES, I SIGNED THAT CONTRACT, AND IT HAD AN ARBITRATION PROVISION, BE -- BUT A GUN WAS BEING HELD TO MY HEAD. AND THE HAMMER WAS PULLED BACK, AND THE STATEMENT WAS MADE, DO YOU HAVE ANY DOUBT IN YOUR MIND WHATSOEVER, THAT I WILL RELEASE THAT HAMMER AND PULL THIS TRIGGER, IF YOU DON'T PUT YOUR NAME TO THAT CONTRACT? AND YOU KNOW, HE SIGNED THE CONTRACT, AND IT HAS AN ARBITRATION PROVISION, AND NOW THERE IS A DISPUTE, AND IT IS CLAIMING THAT IT SHOULD BE ARBITRATED. ARE YOU TELLING ME THAT THAT DISPUTE WOULD HAVE TO GO TO THE ARBITRATORS, AND IT WOULD NOT BE CHALLENGEABLE IN A COURT OF LAW?

NO. BECAUSE I THINK THAT SITUATION IS DIFFERENT IN FRONT OF, AS COMPARED TO THE ONE THAT IS IN FRONT OF THE COURT --

WHAT WOULD BE THE EFFECT, IF THE COURT, THEN, HAD IT AND THEY HELD THAT THAT

CONTRACT IS VOID ADMONICIO, BECAUSE OF THE CIRCUMSTANCES UNDER WHICH IT WAS ENTERED INTO? THE ARBITRATION CLAUSE WOULD BE JUST AS IN VALUED -- AS IN VALID AS THE REST OF THE CONTRACT, ISN'T THAT CORRECT, IN MY HYPOTHETICAL?

NO. BECAUSE THE PARTIES DIDN'T ASCENT TO ARBITRATION. THERE WAS A CONSEQUENCE IN MAKING THE ARBITRATION AGREEMENT, AND UNDER PRIMA PAINT, THE UNITED STATES SUPREME COURT HELD THAT THAT ISSUE WOULD BE HELD BY THE COURT.

BUT THE PRIMA PAINT CORPORATION, THAT CASE DEALS WITH FRAUD AND CONSISTENT WITH FLORIDA LAW, GOING BACK TO CASES SUCH AS SABATA, SOME MAINTENANCE ORGANIZATION IN THE 80s, FLORIDA LAW PERMITTED ARBITRATION WITH REGARD TO ISSUES REGARDING TO FRAUD ARISING OUT OF THE CONTRACT. FLORIDA HAS NEVER PERMITTED ILLEGAL CONTRACTS. HAVE THEY? CAN YOU GIVE WAS CASE ANYWHERE WHERE THERE IS A ILLEGAL CONTRACT. CONTRACT FOR MURDER, FOR ILLEGAL DRUGS, CONTRACT FOR ANYTHING THAT IS PROHIBITED BY LAW, FROM PROCEEDING TO ARBITRATION, WHEN A PARTY SAYS THAT IS A TOTALLY ILLEGAL CONTRACT?

BUT PRIMA PABT WASN'T A.M. QUESTION OF STATE -- PAINT WASN'T A QUESTION OF STATE LAW, CONTRARY TO --

IT WAS A QUESTION OF FRAUD AND INDUCEMENT AND NOT A QUESTION OF LEGALITY, WAS IT?

NO.

IT WAS NOT.

THERE WAS A HOLDING THAT WOULD LIMIT IT TO CASES WHERE THE CLAIM WAS CONTRACT FRAUD -- YOU WOULD HAVE TO EXTEND IT ONE STEP FURTHER, IN ILLEGAL CONTRACTS, WOULD YOU NOT?

THE HOLDING IT SELF, DOESN'T NEED TO BE EXTENDED, BECAUSE IT IS A BROAD HOLDING, AND AS JUSTICE BLACK RECOGNIZED IN ITS DISSENT, IT WOULD APPLY TO CLAIMS WHERE THE CONTRACT NEVER CAME INTO EXISTENCE.

THAT IS A CASE OF FRAUD NOT ILLEGALITY. HE WAS MAKING THAT SAME STATEMENT.

IT WAS NOT THE STATEMENT AS THE PETITIONERS ARE MAKING HERE. I ALSO THINK IT IS IMPORTANT THAT THE PETITIONERS UNDER PRIMA PAINT, UNDER NEW YORK LAW, WOULD NOT VOID THE ARBITRATION AGREEMENT BECAUSE IT WAS NOT ENFORCEABLE.

THAT IS AS TO ILLEGALITY, IS THAT CORRECT?

BUT THE NEW YORK COURTS SAID THIS IS NOT AN ISSUE OF FEDERAL LAW. IT IS A QUESTION OF NEW YORK LAW. IT IS A QUESTION OF WHAT SDT COURT CONSIDER IN THE FAA, WHEN TRYING TO CONSIDER, AND THE COURT HELD THAT IT CAN ONLY GO TO THE CHALLENGES OF MAKING AN ARBITRATION AGREEMENT AND CHALLENGES THAT GO AS TO THE MAKING OR PERFORMANCE OF A CONTRACT, MUST BE RESOLVED IN ARBITRATION.

IT SEEMS TO ME THAT TAKING YOUR ARGUMENT TO A LOGICAL EXTENSION, WOULD MEAN THAT A STATE, UNDER THE CONSTITUTION, IS PROHIBITED FROM HAVING CERTAIN ILLEGAL, CERTAIN ACTIVITIES DECLARED ILLEGAL, AND MADE NOT THE SUBJECT OF CONTRACTS. ISN'T THAT WHERE YOU ARE GOING?

NO. I THINK A WHAT IT IS, IS IT IS NOT THAT THE STATE CAN'T DECLARE CERTAIN CONTRACTS ILLEGAL. THIS ISSUE WILL BE LITIGATED. IT IS JUST FORUM IN WHICH IT IS GOING TO BE

LITIGATED, AND --

NOW, THE FEDERAL --

COURTS, THE COURTS OF THIS STATE, YOU ARE SAYING THE COURTS OF THIS STATE, CAN, ONCE THE LEGISLATURE SAYS THAT THERE IS AN ACTIVITY WHICH IS ILLEGAL, CANNOT ENFORCE WHAT THE LEGISLATURE HAS SAID, BY STATING THAT THERE ARE NO CONTRACTS IN THIS STATE THAT ARE GOING TO CARRY OUT THAT ILLEGAL ACTIVITY.

BUT WHAT PRIMA PAINT WAS SAYING WAS THAT THE ARBITRATION AGREEMENT IS SEPARABLE FROM THE UNDERLYING CONTRACT, AND SO IF THERE ARE NO CHALLENGES GOING SPECIFICALLY TO THE ARBITRATION AGREEMENT, AND THE PETITIONERS CONCEDE THAT THERE AREN'T HERE, THEN THE FORUM IN WHICH THE UNDERLYING CONTRACT IS RESOLVED, IS ARBITRATION.

BUT I AM NOT SURE THAT, AND I TOTALLY AGREE WITH WHAT YOU ARE SAYING THEY CONCEDE THAT IT IS NOT. MY UNDERSTANDING OF THEIR ARGUMENT IS THAT THE ARBITRATION AGREEMENT IS INCLUDED IN THE WHOLE FACT THAT THIS WAS A TOTALLY ILLEGAL CONTRACT, INCLUDING EVERY PART OF IT, AND THAT ARBITRATION AGREEMENT IS A PART OF IT. DO YOU AGREE? THAT THE ARBITRATION AGREEMENT IS A PART OF THE ENTIRE CONTRACT.

IN THIS CASE, IT IS CONTAINED WITHIN THE CONTRACT, BUT I BELIEVE THAT WHAT THE COURT IN PRIMA PAINT WAS SAYING IS THAT YOU MUST LOOK AT THE ARBITRATION AGREEMENT, SEPARATE AND APART FROM THE UNDERLYING CONTRACT.

HOW CAN YOU HAVE A PART OF A CONTRACT, IF THE CONTRACT IS ILLEGAL, HOW CAN YOU HAVE A PART THAT IS LEGAL?

BECAUSE IF YOU PICK THE ARBITRATION AGREEMENT UP OUT OF THIS CONTRACT AND PUT IT INTO ANOTHER CONTRACT --

WHAT IF YOU END UP HAVING TO ARBITRATE. IN OTHER WORDS IF, IN FACT, THE CONTRACT IS ILLEGAL, WHAT ARE YOU LEFT TO ARBITRATE?

THE LEGALITY OF THE CONTRACT, AND THIS HAS BEEN ADDRESSED BY NOT ONLY THE ELEVENTH CIRCUIT, THE FOURTH CIRCUIT AND THE SIXTH CIRCUIT, ALL UNDER THE SAME ARGUMENT THAT YOU CAN'T ARBITRATE AN ILLEGAL CONTRACT, AND ALL OF THESE COURTS HAVE HELD THAT PRIMA PAINT APPLIES, AND THAT UNDER PPLT RIMA PAINT, YOU LOOK AT WHETHER THERE IS ASCENT TO THE ARBITRATION AGREEMENT, WHICH THERE IS HERE. YOU LOOK AT WHETHER THERE ARE ANY ISSUES SPECIFIC TO THE MAKING OF THE ARBITRATION AGREEMENT, WHICH THERE AREN'T HERE.

BUT COULD YOU AS EN, EVEN IF THE CONTRACT, ITSELF, IS CONTRARY TO FLORIDA LAW, WHAT IS THERE TO CONSENT TO? NO PARTY CAN CONSENT TO AN ILLEGAL CONTRACT, CAN THEY?

WELL, THEY CAN CONSENT TO ARBITRATION. THERE, THEY, IN FACT THEY AGREED HERE, TO ARBITRATE ANY DISPUTES CONCERNING THE ENFORCE ABILITY OR VALIDITY OF THE CONTRACT.

SO TO ACCEPT THAT, YOU HAVE TO ACCEPT THAT WE REALLY HAVE TWO DIFFERENT CONTRACTS HERE.

NO. I THINK --

TWO DIFFERENT AGREEMENTS HERE.

YOU ARE LOOKING AT TWO SEPARATE AGREEMENTS. YOU ARE LOOKING AT THE ARBITRATION

AGREEMENT, SEPARATE AND INDEPENDENT FROM THE UNDERLYING CONTRACT. AND THAT IS WHAT THE SUPREME COURT SAID, IN PRIMA PAINT, AND THE PETITIONERS TRIED TO SAY THAT FOOTNOTE TWELVE SOMEHOW TRIES TO MAKE IT SEEM THAT YOU CAN'T TREAT ARBITRATION AGREEMENTS DIFFERENTLY, AND THAT IS WHAT THE COURT WAS SAYING, ONCE YOU HAVE SEVERED THEM.

WOULD YOU AGREE THAT, WHAT YOU JUST SAID, CRYSTALIZES THE ISSUE HERE, AND THAT IS WHETHER YOU SAY THAT THESE PARTIES AGREED TO ARBITRATE THE ENFORCE ABILITY AND THE VALIDITY OF THE CONTRACT, THE ISSUE IS WHETHER THEY AGREED TO ARBITRATE THE EXISTENCE OF THE CONTRACT.

YES. BUT HERE THEY ARE NOT CLAIMING THAT THE ARBITRATION AGREEMENT DIDN'T COME INTO EXISTENCE. THEY ARE NOT CLAIMING THAT THEY DIDN'T SIGN THE ARBITRATION AGREEMENT, THAT THEY DIDN'T AGREE TO ARBITRATE THEIR DISPUTE, INCLUDING THE ENFORCE ABILITY OF THE UNDERLYING CONTRACT.

I UNDERSTAND THAT THAT IS IS THE POSITION, BUT IT CIRCLES AROUND TO WHAT IS THE LAW OF THIS STATE. WHAT IS A SIGNATURE ON A PIECE OF PAPER THAT CONTRACTS WERE AN ILLEGAL ACTIVITY. DOES THAT CONTRACT EVER COME INTO EXISTENCE? THAT IS THE ISSUE, ISN'T IT?

I THINK THAT THE ISSUE IS, THOUGH, THAT IT DID COME INTO EXISTENCE, AND NOW THEY ARE CLAIMING THAT IT IS VOID ADMONICIO, BUT THEY DO ADMIT THAT THEY SIGNED THE ARBITRATION AGREEMENT, THAT THEY AGREED TO ARBITRATE THEIR DISPUTE.

THAT WOULD BE, WOULD IT NOT, BE SIMILAR TO A CONTRACT FOR MURDER OR A CONTRACT FOR DRUGS? IT SEEMS TO ME THAT YOU ARE MISSING THE THRUST OF THE QUESTION, IS THAT YOU MAY HAVE A SIGNATURE ON A PIECE OF PAPER, BUT THAT DOESN'T END THE INQUIRY. THE INQUIRY IS NOT, THAT YOU CAN'T DO IT? IT IS PROHIBITED? YOU CAN'T DO IT, AND SO HOW ARE YOU GOING TO THROW IT INTO ARBITRATION TO DECIDE THAT YOU CAN'T DO IT. YOU KEEP SAYING THAT WE HAVE A PIECE OF PAPER WITH A SIGNATURE, BUT THAT IS NOT THE LEGAL POINT.

I THINK IN THE EXTREME CASE OF THE MURDER-FOR-HIRE, IN THE CIVIL SITUATION WHERE THERE IS A CONTRACT BETWEEN THE PARTIES AND THERE WAS AN ARBITRATION AGREEMENT, THAT COVERED THAT DISPUTE, THAT CLAIM WOULD GO TO ARBITRATION. IT WOULD BE RESOLVED BY THE ARBITRATOR. OF FEDERAL LAW, THE FEDERAL ARBITRATION ACT APPLIES HERE, AND WHAT THE SUPREME COURT WAS SAYING, WAS THAT, AS A MATTER OF FEDERAL LAW, UNDER THE FAA, WHEN THE COURT CONSIDERS AN ARBITRATION MOTION, IT ONLY LOOKS AT CHALLENGES GOING TO THE MAKING OF THE ARBITRATION AGREEMENT.

LET ME ASK YOU THIS QUESTION, WHAT DOES THE LAST PHRASE IN SECTION TWO OF THE FEDERAL ARBITRATION ACT MEAN, WHEN IT SAYS, TALKS ABOUT WE ARE GOING TO ENFORCE THEM. DOES IT SAY UPON SUCH GROUNDS THAT EXIST IN LAW OR INEQUITY EXIST FOR ANY CONTRACT? DOES THAT SAVE MEAN EXCEPT?

YES, AND WITH REGARD TO THE ARBITRATION AGREEMENT, IF YOU LOOK AT THE FIRST PART OF SECTION TWO, IT IS REFERRING TO THE ARBITRATION AGREEMENT, AND THE COURTS HAVE HELD IN THE DC CIRCUIT, WHICH HAS EXPRESSLY ADDRESSED THIS ISSUE, THAT SECTION TWO IS LIMITED TO THE MAKING OF ARBITRATION AGREEMENT, AND HERE, LIKE I SAID, IF YOU PICKED UP THIS ARBITRATION AGREEMENT AND MOVED IT TO ANOTHER CONTRACT, THEY WOULDN'T HAVE AN ARGUMENT AGAINST ARBITRATION, WHICH SHOWS THAT THEIR ARGUMENT IS NOT GOING TO THE MAKING OF THE ARBITRATION AGREEMENT.

ONCE AGAIN, IN PRIMA PAINT, YOU HAD VERY SOPHISTICATED BUSINESSES, NEGOTIATION, PURCHASES AND SALE AND YOU HAD A SEPARATED NEGOTIATED ARBITRATION AGREEMENT, IS

THAT CORRECT?

THAT'S CORRECT.

AND IN BEST, YOU HAD A SEPARATE AGREEMENT FOR SOME REASON, EVEN THOUGH THAT WAS A CONSUMER AGREEMENT. THAT WAS A SEPARATE ARBITRATION AGREEMENT THAT WAS SIGN.

I AM NOT SURE IF IT WAS SEPARATE OR IF IT WAS PART OF THE CONTRACT. I KNOW THAT IN BURTON AND SNOWDEN, IT WAS A PART OF THE CONTRACT, AND THEY ARE NOT MAKING THE CLAIM THAT IT IS SOMEHOW UNCONSCIONABLE. THEIR SAYING THAT THE AGREEMENT IS UNENFORCEABLE.

WHAT ABOUT WHEN THEY SAY WE NORTH DECIDING THE QUESTIONS OF ALABAMA CONTRACT LAW. RATHER WE ARE DECIDING THE DISTRICT COURT'S AUTHORITY UNDER SECTION THE FEDERAL LAW?

THAT IS EXACTLY I HAVE -- BEEN DISCUSSING THIS MORNING, WHICH IS THAT PRIMA PAIN WAS THE COURT LAW, AND THEN WHAT THE ELEVENTH CIRCUIT WAS SAYING IN BEST, IN RESPONSE TO THE FACT THAT ALABAMA LAW APPLIED, IT WAS SAYING THAT, NO, THE QUESTION IS WHO DECIDES THE LEGALITY OF THE CONTRACT IS A QUESTION OF FEDERAL LAW AND NOT STATE LAW, AND THAT IS WHY YOU NEVER GET TO THE QUESTION OF FLORIDA CONTRACT LAW, BECAUSE IT ONLY COMES INTO PLAY IF THERE IS A CHALLENGE TO THE MAKING OF THE ARBITRATION AGREEMENT, WHICH THERE IS NOT A CHALLENGE HERE.

WHAT IS YOUR TAKE ON WHAT WOULD HAPPEN, IF THE ARBITRATORS DID GET THE CASE, AND THEY DECIDED THAT THIS WAS AN ILLEGAL CONTRACT UNDER FLORIDA LAW? WHAT WOULD BE THE EFFECT OF THAT, ON THE ARBITRATION PROVISION OF THE CONTRACT?

I DON'T THINK IT WOULD HAVE ANY EFFECT. AT THAT POINT, YOU HAVE THEN FORCED -- YOU HAVE ENFORCED THE ARBITRATION AGREEMENT. THE COURT HAS BEEN SATISFIED THAT THERE WERE NO ISSUES CONCERNING THE MAKING OF THE ARBITRATION AGREEMENT, SO IT WOULD --

SO UPHOLDING BY THE ARBITRATORS THAT THE AGREEMENT WAS ILLEGAL, WOULD NOT INCLUDE THE ARBITRATION PROVISION?

NO. NO. IT WOULD NOT.

ISN'T THAT CONTRARY TO FLORIDA LAW?

I DON'T THINK IT IS, IN TERMS OF AT THAT POINT, THERE HAS ALREADY BEEN A DECISION TO ARBITRATE THE DISPUTE, SO I DON'T THINK IT WOULD BE CONTRARY TO FLORIDA LAW. I ALSO --

ISN'T FLORIDA LAW THAT, IF IT IS AN ILLEGAL CONTRACT, THAT ALL PARTS OF THE CONTRACT ARE VOID ADMONICIO?

WELL, THERE IS A CASE OUT OF FLORIDA, WHERE THERE IS A PREVAILING ATTORNEYS FEES PROVISION, WHICH THE COURT ULTIMATELY ENFORCED, EVEN THOUGH IN THE CAPP CASE, EVEN THOUGH IT FOUND THAT THE UNDERLYING CONTRACT WAS UNENFORCEABLE, AND IT DID THAT BECAUSE THE PARTIES HAD ASCENTED AND AGREED TO THAT PROVISION, EVEN THOUGH ULTIMATELY THE CONTRACT WAS NOT ENFORCED, AND SO I THINK THAT IS A SIMILAR KNOWLEDGE TO WHAT IS, THE SUPREME COURT FOUND TO BE THE SEVERABILITY DOCTRINE, WITH RESPECT TO ARBITRATION AGREEMENT UNDER THE FEDERAL ARBITRATION ACT. I ALSO THINK IT IS IMPORTANT THAT WE LOOK AT THE BROAD IMPACT THAT THE COURT'S HOLDING IN THIS CASE IS GOING TO HAVE. IT IS NOT GOING TO BE LIMITED TO THE DEFERRED PREVENTMENT IN THE INDUSTRY. IT IS GOING TO HAVE BROAD IMPACT ON ANY CLAIM THAT THE ARBITRATION

CAN'T BE HELD BECAUSE THE UNDERLYING CONTRACT WAS VOID OR WAS ILLEGAL, AND WE HAVE SEEN THIS RECENTLY IN AN ELEVENTH CIRCUIT CASE WHERE THIS CAME UP IN THE CONSTRUCTION CONTEXT. ONE PARTY ARGUED THAT THE ARBITRATION AGREEMENT WASN'T ENFORCEABLE BECAUSE THE CONTRACT WAS VOID UNDER THE CONSTRUCTION LAWS. THE ELEVENTH CIRCUIT, IN THE GOODMAN CASE, FOUND THAT PR A. MA -- THAT PRIMA PAINT APPLIED IN THAT PARTICULAR CASE AND USED IT IN BEST IN THIS SITUATION.

WHAT WOULD BE THE RESULT OF THE ARBITRATOR FINDING THE CONTRACT TO BE ILLEGAL? WHAT WOULD BE THE RESULT OF THE CONTRACT OF THE ARBITRATOR'S FINDING THAT IT WAS LEGAL? AND THEN PROCEEDING TO DETERMINE DAMAGES, I WOULD, I SUPPOSE?

YES. THAT IS WHAT THEY ARE SEEKING.

WHAT CAN BE APPEALED FROM THAT?

I THINK THAT THE, IT IS UNDER, IT IS GOVERNED BY THE FEDERAL ARBITRATION ACT, AND SO IF EITHER PARTY DISPUTED THE AWARD, IT WOULD BE A MOTION TO VACATE THE AWARD.

WHAT ARE THE GROUNDS? THE GROUNDS ARE NOT ON THE QUESTIONS OF LAW. THE GROUNDS ARE ON OTHER GROUNDS. THAT IS THE QUESTION SHE IS ASKING.

IT WOULD BE, I THINK, A MANIFEST DISREGARD OF THE LAW, IN THE SITUATION OF A MURDER-FOR-HIRE CONTRACT, I THINK THERE WOULD BE GROUNDS, IF THE COURT, I MEAN IF THE ARBITRATOR ENFORCED THAT AGREEMENT, BUT IT WILL BE THE GROUNDS SET FORTH IN NINE USC SECTION 10.

WHICH ARE PRIMARILY GOING TO THE MOTIVES THE ARBITRATORS AND IT IS AN INVALID PROCESS AND DUE PROCESS, YOU HAVE NOT BEEN ABLE TO PRESENT A CLAIM. IT IS NOT TRADITIONALLY ABLE TO CHALLENGE ARBITRATION AWARDS ON JUST MISTAKES OF LAW, CORRECT?

YES. I ADMIT IT IS A HIGHER 12D STANDARD.

HAVE ALL FEDERAL CIRCUITS DECIDED THE ISSUE IN YOUR FAVOR?

THERE ARE THREE FEDERAL COURT ACES E CASES, AND ALL HAVE GONE -- CASES, AND ALL HAVE GONE IN OUR FAVOR. I ALSO WANT TO NOTE THAT, WITH RESPECT TO THE IDEA OF LITIGATING OR ARBITRATING CONDUCT THAT IS ALLEGED TO BE CRIMINAL, THE UNITED STATES SUPREME COURT HAS ADDRESSED THESE ARGUMENT, WHEN IT HAS HELD THAT SHERMAN ANTITRUST CLAIMS ARE ARBITRABLE. WHEN IT HELD THAT RICO CLAIMS ARE ARBITRABLE, SO THIS ISSUE YE ARISES IN NAME OF CONTEXTS, NOT JUST LIMITED TO THE DEFERRED PRESENTMENT INDUSTRY. I, ALSO, WOULD LIKE TO BRIEFLY DISCUSS THE RECENT CASE IN FAST FUNDING VERSUS BEST, FROM THE FIFTH DISTRICT. THE PETITIONERS ORIGINALLY DECIDED THAT CASE AS THE GROUND FOR CONFLICT JURISDICTION, AND IN AUGUST OF THIS YEAR, THE COURT ISSUED A DECISION ON THE LEGALITY OF THE CONTRACT, ACTUALLY FOUND THAT THEY WERE LEGAL UNDER FLORIDA LAW, BUT IN DOING SO, THE COURT SAID THAT IT HAD READ THE BUCKEYE DECISION, AND IT SAID, QUOTE, WE AGREE WITH THE REASONING OF THE FOURTH DISTRICT, THAT THE ARBITRATION AGREEMENT IS ENFORCEABLE, SO IT APPEARS THAT THE FIFTH DISTRICT HAS NOW COME IN LINE WITH THE FOURTH DISTRICT, AND THE THREE FEDERAL COURTS OF APPEALS THAT HAVE ADDRESSED THIS ISSUE, FINDING THAT PRIMA PAINT DICTATES THAT THIS CASE BE SENT TO ARBITRATION AND THAT THE CHALLENGE OF LEGALITY IN ARBITRATION.

THEY DIDN'T RECEDE FROM --

NO, THEY DIDN'T RECEDE FROM IT JUST SAID THAT THE BUCKEYE DECISION, THEY AGREED WITH.

WE HAVE GOT ONE PANEL GOING ONE WAY AND ANOTHER GOING ANOTHER WAY. ISN'T THAT ESSENTIALLY WHAT WE HAVE GOT?

I WAS UNDER THE IMPRESSION THAT THERE ARE FEDERAL CIRCUIT COURTS THAT HAD HELD THAT THE VALIDITY OF THE CONTRACT IS FOR THE COURT AND NOT FOR THE ARBITRATOR.

THE FEDERAL --

SEVENTH CIRCUIT HOLD THAT WAY AND THE TENTH CIRCUIT SAID, REGARDING THE MENTAL CAPACITY OF THE PLAINTIFF, THAT THAT IS AN ISSUE FOR THE COURT?

THE SEVENTH CIRCUIT, IN SPEAR, DRAKE, AND THE TECHBT CIRCUIT, AS WELL -- AND THE TENTH CIRCUIT AS WELL AS THE NINTH CIRCUIT, IN ALL OF THOSE CASES, THERE WAS A QUESTION OF THE MAKING OF THE ARBITRATION AGREEMENT, A QUESTION OF WHETHER IT IS SENT TO THE ARBITRATION, THE AGREEMENT, BUT THE TENTH CIRCUIT IN THE OTHER CASES, THE HARTER CASE AND THE SWEET DREAMS CASE, BOTH CASES HELD THAT IT WAS ILLEGAL AND THE COURT HELD THAT ARBITRATION MUST BE COMPELLED IN THOSE SITUATIONS, SO THE STEER DRAKE CASES AND THE NINTH CIRCUIT CASE AND THREE VALLEYS, ARE LIMITED TO WHERE THERE IS AN ATTACK ON THE MAKING OF THE ARBITRATION AGREEMENT, WHICH ISN'T WHAT IS BEING PUT FORTH BY THE PETITIONERS HERE.

IS THAT SIMILAR TO THE ELEVENTH CIRCUIT'S DISTINGUISHING CHASTAIN, SAYING THAT, WELL, IF THE CONTRACT IS NOT SIGNED IN THE FIRST PLACE, THEN THE ISSUE IS AS TO WHETHER THERE WAS EVEN A CONTRACT, AND THAT IS FOR THE COURT?

EXACTLY. EXACTLY. THAT, IN FACT, CHASTAIN, SPEAR, DRAKE AND THREE VALLEYS, ARE USUALLY GROUPED TOGETHER, AND THE BEST COURT, THE BURDEN COURT AND THE SNOWDEN COURT ALL DISTINGUISHED THOSE CASES AND FOUND THAT THEY DIDN'T APPLY, BECAUSE THE CHALLENGE HERE IS AS TO THE UNDERLYING CONTRACT. THERE IS NO CLAIM THAT THE PARTIES DID NOT ASCENT TO ARBITRATION. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. COUNSEL, HOW MUCH TIME LEFT?

VERY BRIEFLY, THE KATZ CASE DOES NOT IN ANY WAY GET IN THE WAY OF OUR THEORY IN THIS CASE. THE KATZ CASE IS NOT A CASE INVOLVING A LEGAL CONTRACT. IT IS NOT A CASE OF AVOID ADMONICIO. IN ONE CASE, IT WAS VOID AFTER THE CONTRACT AROSE.

NOTHING TO DO WITH ATTORNEYS FEES. HOW ABOUT THE OTHER FEDERAL CIRCUITS? DO YOU HAVE OTHER FEDERAL CIRCUIT DECISIONS?

THERE ARE FEDERAL CIRCUIT DECISIONS WHICH FIND THAT CONTRACTS WHICH ARE VOID ADMONICIO O, THAT THE ARBITRATION CLAUSES EMBEDDED IN A CONTRACT, THAT IS FOUND VOID ADMONICIO WERE VOID AND WOULD NOT BE RENAMED. BUT WHAT THEY DID WAS SPLIT THE APPLE AND SAID THAT WE ARE GOING TO TAKE STATE CONTRACT LAW OF THINGS THAT ARE VOID ADMONISH YO OF -- AT DMONICIO, AND IN THOSE CASES WE ARE GOING TO TREAT IT WITH RESPECT. IN THE STATE LAW, WHERE SOMETHING IS VOID ADMONICIO BECAUSE IT IS ILLEGAL, WE ARE GOING TO FIND THAT THE NEW LAW PREEMENTS THAT AND VOID THAT. THAT IS THE BRIGHT LINE THAT THEY ARE DRAWING AND TO ME MAKES NO SENSE AT ALL AND IN 1929, WHY CONGRESS SAID WE ARE GOING TO ACCEPT THIS SET OF STATE CONTRACT LAWS BUT IGNORE THIS OTHER SET OF STATE CONTRACT LAWS. THERE ARE CASES THAT SPECIFICALLY INVOLVE ILLEGAL CONTRACTS BEING VOID ADMONICIO AND ALL CASES FAVOR THEM. HOW THE CASES GET THERE AND AVOID DRAKE IS A WEIRD PATH THAT MAKES NO SENSE. THE LINE OF FAA PREEMPTION, SET OUT AGAIN AND AGAIN BY THE SUPREME COURT, THAT THE ARBITRATION LAW SKIM SNATS, EXCUSE ME, THAT STATE LAW DISCRIMINATES AGAINST ARBITRATION LAW. IT HAS TO BE IN BIG

PRINT ON THE FRONT PAGE AND THE SUPREME COURT SAID, HEY, THAT IS TREATING THEM DIFFERENTLY THAN OTHER TYPES OF CONTRACTS. YOU ARE PUNISHING THEM AND YOU HAVE TO TAKE THAT AWAY AND AGAIN AND AGAIN THEY SAID THAT IN THOSE TYPES OF CASES. THIS SET OF LAWS THAT WE ARE TALKING ABOUT, FLORIDA'S LAW THAT ILLEGAL CONTRACTS ARE NOT GOING TO BE ENFORCED, HAS NOTHING TO DO WITH -- NOTHING TO DO WITH DISCRIMINATING ARBITRATION CLAUSES. THIS RISES FROM OVER 100 YEARS AGO IN CASES THAT DID NOT INVOLVE ARBITRATION. THE STATE LAW IS REWRITING THE ARBITRATION CONTRACTS AND IT IS NOT SOME EXTREME RULING BY THIS COURT TO AVOID ARBITRATION CONTRACTS. THE IDEA THAT YOU WOULD PREEMPT IT ON THE EXTREME GROUNDS THAT YOU WOULD AVOID ARBITRATION CLAUSES, DOESN'T MAKE ANY SENSE. THERE IS A SPLIT IN AUTHORITY HERE. THE THREE CASES THAT ARE CLOSEST TO THIS ONE AND THE EXACT KIND OF FACT PATTERN IN THE FEDERAL SYSTEM AGAINST US, THERE ARE THREE CASES THAT ARE FOR US AND THERE ARE A BUNCH OF COURT OF APPEALS THAT HAVE IDEALS IN THEIR MINDS THAT HAVE NOT BEEN GIVEN HONOR IN LATER CASES DISTINGUISHING THEM. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU VERY MUCH. WE PARTICULARLY APPRECIATE YOUR BEING RESPONSIBLE I HAVE TO OUR QUESTIONS -- RESPONSIVE TO OUR IDEAS AND QUESTIONS. WE WILL STAND IN RECESS UNTIL TOMORROW.

MARSHAL: PLEASE RISE.