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Aramark Uniform & Career Apparel, Inc. v. Samuel Easton, Jr.

LAST CASE IS ARAMARK UNIFORM AND CAREER APPAREL INC., VERSUS EASTON.

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GOOD MORNING. YOUR HONORS, MAY IT PLEASE THE COURT, I'M VINCENT PROFACI, I REPRESENT THE PETITIONERS, ARAMARK UNIFORM AND CAREER APPAREL. AND DELL SACK, INC.. I KNOW YOUR HONORS ARE FAMILIAR WITH THE FACTS. I WILL BRIEFLY STATE THEM AND IF YOUR HONORS REQUIRE ANY SUPPLEMENTATION, I'LL BE HAPPY TO PROVIDE IT. BASICALLY THE RESPONDENT IN THIS CASE, MR. SAM EASTON, SUED THE PETITIONERS FOR CONTAMINATION ON HIS PROPERTY. HE IS THE TRUSTEE OF AN INVESTMENT LAND TRUST THAT OWNS PROPERTY IN JACKSONVILLE, FLORIDA. THE PETITIONER ARAMARK OWNS ADJACENT PROPERTY. ARAMARK PURCHASED THEIR PROPERTY IN DECEMBER OF 1986. AFTER PURCHASING IT, THEY CONDUCTED A CONTAMINATION ASSESSMENT, AS WAS THEIR PRACTICE NATIONWIDE. THEY DETERMINED THAT CONTAMINATION WAS PRESENT. AND THEY DETERMINED THAT CONTAMINATION HAD MIGRATED OFF SITE ONTO MR. EASTON'S PROPERTY. MR. EASTON PURCHASED HIS PROPERTY FOLLOWING YEAR --.

WHAT KIND OF PROPERTY IS EASTON'S PROPERTY? IS THAT COMMERCIAL?

COMMERCIAL PROPERTY, YES, YOUR HONOR. MR. EASTON PURCHASED HIS PROPERTY IN APRIL OF 87, AT WHICH TIME OF PURCHASE, HIS PROPERTY HAD ALREADY BEEN CONTAMINATED. SO BOTH PROPERTIES HAD BEEN CONTAMINATED PRIOR TO PURCHASE. MR. EASTON --.

DID HE KNOW THAT AT THE TIME THAT HE PURCHASED THE PROPERTY?

NO, HE DID NOT. NEITHER PARTY WAS AWARE OF THAT.

WELL YOU SAY NEITHER PARTY. YOU MEAN ARAMARK WASN'T AWARE EITHER?

THAT'S CORRECT.

BUT PRESUMABLY -- ARAMARK BROUGHT IT FROM A DRY CLEANING BUSINESS, RIGHT?

THAT'S CORRECT. THEY BOUGHT IT FROM A COMPANY CALLED SERVICE CO, WHICH HAD ENGAGED IN DRY CLEANING OPERATIONS AS FAR AS EVERYBODY IS AWARE. AND IN CONNECTION WITH THAT PURCHASE, IT ASSUMED SERVICE CO'S OBLIGATIONS, BUT NO EVIDENCE WAS EVER PRESENTED AS TO WHO ACTUALLY DID THE CONTAMINATION, WHETHER IT WAS SERVICE COOR A PREDECESSOR TO SERVICE COOR SOME THIRD PARTY THAT NO ONE IS AWARE OF.

AT LEAST ARAMARK WAS ON NOTICE OF THE POSSIBILITY OF CONTAMINATION BECAUSE THE PREDECESSOR OWNER WAS A DRY CLEANING OPERATION?

THAT'S CORRECT. AND THAT IS PROBABLY THE REASON WHY THEY DID THESE CONTAMINATION ASSESSMENTS WHEN THEY WOULD PURCHASE PROPERTY, BECAUSE THEY WERE AWARE THERE MIGHT BE A POTENTIAL PROBLEM.

YOU SAID THEY DID A CONTAMINATION ASSESSMENT AND WHAT WAS REVEALED BY THAT?

THAT THE GROUNDWATER ON THEIR PROPERTY WAS CON TAM NANTED WITH DRY CLEANING SOLVENTS. AND IT HAD MIGRATED OFF SITE THROUGH THE GROUNDWATER, THROUGH THE NATURAL FLOW OF GROUNDWATER ONTO MR. EASTON'S PROPERTY.

I THOUGHT UNSAID THAT NEITHER OWNER WAS AWARE.

AT THE TIME OF PURCHASE. ARAMARK CONDUCTED ITS ASSESSMENT AFTER THEY PURCHASED.

SO THE ISSUE AS TO THE, THAT THE CAUSE OF MR. -- THE CONTAMINATION OF MR. EAST ON'S PROPERTY WAS FROM THE ARAMARK PROPERTY, THAT IS NOT AN ISSUE?

NO, THAT IS NOT AN ISSUE. THERE WERE INDICATIONS AT TRIAL MAY HAVE BEEN OTHER SITES THAT WERE INVOLVED, BUT PREDOMINANTLY IT WAS FROM THE PROPERTY --.

NO ONE'S CONTENDING IN TERMS, BEING STRICT LIABILITY STATUTE, THAT THERE IS A REQUIREMENT TO SHOW WHERE THE CONTAMINATION CAME FROM? THAT IT HAS TO HAVE COME FROM YOUR, THE OWNER'S PROPERTY?

WELL I WOULD CERTAINLY AGREE WITH THAT. BUT WE WOULD ALSO, AS OUR ARGUMENT INDICATES, THERE HAS TO BE MORE THAN THAT. THERE HAS TO BE MORE THAN JUST THAT THE CONTAMINATION IS EMANATING FROM SOMEONE'S PROPERTY. THERE HAS TO BE SOME SORT OF CAUSATION.

THAT'S, WHEN I THINK OF CAUSATION, THAT'S WHY I WANTED TO ASK AND MAKE SURE WE ARE ON THE SAME PAGE. I WOULD THINK OF CAUSATION AS THAT IF THE DISCHARGE COMES FROM ANOTHER PROPERTY ONTO SOMEONE ELSE'S PROPERTY, THAT IT'S THAT PROPERTY THAT HAS CAUSED THE CONTAMINATION. LEGAL RESPONSIBILITY AS TO WHETHER THERE HAS TO BE NEGLIGENCE OR JUST IS STRICT LIABILITY, THAT'S THE QUESTION OF WHAT KIND OF CONDUCT THERE HAS TO BE. BUT CAUSATION STILL HAS TO BE ESTABLISHED, CORRECT?

EXCEPT THAT THE CONTAMINATION ACTUALLY BEGAN BEFORE ARAMARK PURCHASED THEIR PROPERTY. WAS ALREADY IN EXISTENCE. AND WHAT THE FIRST DCA CONCLUDED IS THAT STATUTE BASICALLY MR. EASTON SUED UNDER COMMON LAW DOCTRINE AS WELL AS SECTION 376.313 FLORIDA STATUTES. AND WHAT THAT STATUTE SAYS, BASICALLY IS THAT NOTHING IN THIS ACT THAT DEALS WITH CLEAN UP OF DRY CLEANING CONTAMINANTS SHALL PROHIBIT ANY PERSON FROM BRINGING A CAUSE OF ACTION FOR DAMAGES. AND THEN IT SAYS THAT IN ANY SUCH ACTION, IT IS NOT NECESSARY TO PLEAD OR PROVE NEGLIGENCE. AND THAT THE DEFENSES IN THIS, UNDER SUCH AN ACTION ARE LIMITED TO THOSE SET FORTH IN 376.308.

IT'S BEEN 12 OR 13 YEARS SINCE I USED TO DO THIS, BUT BACK WHEN I WAS A REAL ESTATE ATTORNEY WHENEVER THERE WAS REAL PROPERTY PURCHASED, PARTICULARLY COMMERCIAL PROPERTY, AND THERE WAS ANY INDICATION IT WAS USED AS PETROLEUM FACILITY OR DRY CLEANING, THAT IT WAS UNDER SIRKLA AND FEDERAL LAW PARTICULARLY AND IT WAS EMERGING THAT YOU HAD TO DO THE ASSESSMENT AND THERE WAS STRICT LIABILITY UNDER THE FEDERAL LAW. THE STATE LAW WAS JUST EVOLVING AT THIS POINT. BUT EVEN IF YOU HAD NOTHING TO DO WITH CAUSATION UNDER THE CLEAN UP UNDER KRIRKLA, THEY HAD SUPERFUND REQUIREMENTS. AND I NOTICE UNDER THIS STATUTE THEY HAVE AN OUT IF YOU ARE PARTICIPATING IN VOLUNTARY CLEAN UP. BUT THERE WAS A CONCERN ABOUT PEOPLE BUYING COMMERCIAL PROPERTIES BACK IN 28 OTHER, THAT IF WE DON'T DO THIS REMEDIATION STUDY OR DO THE ENVIRONMENTAL STUDY BEFORE PURCHASE, THIS WHETHER OR NOT WE HAD ANYTHING TO DO WITH CAUSING THE VIOLATION, WE'RE GOING TO HAVE TO BE RESPONSIBLE FOR CLEANING IT UP. HOW HAS THAT CHANGED?

AND THAT MAY HAVE BEEN THE CASE UNDER THE SIRKLA STATUTE BECAUSE THE STATUTE WAS

SPECIFIC IN THAT REGARD. THE PLAINTIFF FIRST SUED UNDER SIRKLA. AND THE FEDERAL COURT GRANTED SUMMARY JUDGMENT? FAVOR OF THE PETITIONERS ON THE GROUNDS THAT THE PARTY, THAT THE RESPONDENT RATHER HAD NOT STATED A CLAIM UNDER SIRKLA. I BELIEVE IT WAS BECAUSE OF THE NATURE OF THE CONTAMINANTS INVOLVED. BUT SIRKLA AND THERE ARE STATUTES IN OTHER STATES. I USED TO PRACTICE IN NEW JERSEY. NEW JERSEY HAS A STATUTE THAT SAYS IF YOU OWN PROPERTY THAT IS CON TAM NANTED, YOU -- CONTAMINATED, YOU NEED TO CLEAN IT UP. SO PEOPLE DO CONTAMINATION ASSESSMENT, IF IT IS CONTAMINATED THEY WON'T BUY IT OR THEY WILL SOMEHOW, MAYBE HOLD FUNDS IN ESCROW OR WHATEVER, FOR THE CLEAN UP. FLORIDA HAS NOT CLEARLY STATED THAT THAT IS THE CASE. AND THAT'S THE WHOLE PROBLEM HERE. WE HAVE A STATUTE THAT SAYS NOTHING SHALL PREVENT SOMEONE FROM BRINGING A CAUSE OF ACTION. IT DOESN'T SAY THAT SOMEONE -- THAT ANYONE MAY BRING A CAUSE OF ACTION. AND IT DOESN'T SAY WHO THE POTENTIALLY LIABLE PARTIES ARE.

WHY DOES THAT MATTER? WHAT'S THE DIFFERENCE WHETHER THE STATUTE CREATES THE CAUSE OF ACTION OR WHETHER IT SIMPLY MODIFIES THE COMMON LAW? EITHER WAY, DOESN'T, DON'T THE STATUTORY PROVISIONS APPLY?

I DON'T BELIEVE SO, YOUR HONOR, BECAUSE THERE IS NO COMMON LAW DOCK O -- DOCTRINE AVAILABLE AGAINST PETITIONERS SUCH AS THE PETITIONERS HERE WHO DID NOT SOMEHOW CAUSE OR CONTRIBUTE TO THE CONTAMINATION.

BUT THAT'S THE STANDARD IN THE EVENT THAT YOUR CLIENT HAD BEEN CALLED TO TASK BY THE STATE, UNDER 308.

CORRECT.

308 IS THE ONE THAT SAYS IF YOU CAUSED IT OR WAS CAUSED WHILE YOU OWN IT.

EXACTLY.

SO THAT'S A DISTINCTION. BUT DOES THAT SAME DISTINCTION APPLY AS WAS THE INQUIRY, IF IT IS A PRIVATE CITIZEN? AND WHAT'S THE LEGAL THEORY THAT CONNECTS THE TWO?

I BELIEVE THAT THE DISTINCTION MUST APPLY. I THINK FIRST WE HAVE TO START WITH THE FACT THAT 376.303 ON ITS FACE DOES NOT CREATE A NEW CAUSE OF ACTION. IF IT DOES CREATE A NEW CAUSE OF ACTION -- BEFORE I EVEN GET TO THAT, ONE OF THE ARGUMENTS WE MADE WAS THAT YOU REALLY HAVE TO READ THESE TWO STATUTES TOGETHER. 313 AND 308. BECAUSE 308 SAYS THAT THE DEP CAN'T SUE YOU UNLESS YOU OWN THE PROPERTY AT THE TIME OF THE CONTAMINATION OCCURRED, OR YOU CAUSED THE CONTAMINATION. AND THE DEP IS THE AGENCY THAT'S ENTRUSTED WITH ENFORCING COMPLIANCE WITH THE DRY CLEANING SOLVENTS STATUTE. IT WOULD MAKE NO SENSE TO BAR THE D DEP FROM SUING THE PETITIONERS, YET ALLOW A PRIVATE PROPERTY OWNER TO SUE PETITIONERS.

BUT IT DOES -- THE 313 DOESN'T MAKE REFERENCE TO NON-EXCLUSIVENESS OF REMEDIES AND INDIVIDUAL CAUSE OF SACKS FOR DAMAGES.

RIGHT. YES, BUT IT SAID NOTHING SHALL PROHIBIT. IT DOESN'T ACTUALLY CREATE A CAUSE OF ACTION. SO --.

IF THAT'S THE CASE THEN, WHAT DOES THE REST OF THAT STATUTORY LANGUAGE MEAN? WHO IS IT REFERRING TO WHEN IT SAYS AND ANY SUCH SUIT, IT IS NOT NECESSARY FOR SUCH PERSON TO PLEAD OR PROVE NEGLIGENCE? IF THERE IS NO CAUSE OF ACTION, WHAT DOES THAT APPLY TO?

WELL, THERE WOULD BE A CAUSE OF ACTION UNDER CERTAIN CIRCUMSTANCES. LIKE IN, IN THE -- I THINK IT WAS THE CUNNINGHAM CASE, WHERE EMPLOYEES SUED THEIR EMPLOYER UNDER THIS

STATUTE FOR CONTAMINATION THAT THEY ALLEGED CAUSED THEM BODILY INJURY. IN A CASE LIKE THAT, YOU HAVE A COMMON LAW CAUSE OF ACTION TO BEGIN WITH BECAUSE THE DEFENDANT DID CAUSE THE INJURY.

SO IN ANY ACTION THAT ALREADY EXISTS, YOU WOULD NOT HAVE TO PROVE NEGLIGENCE IN ANY MANNER?

EXACTLY. AND THEN I THINK IT GOES FURTHER AND SAYS YOUR DEFENSES ARE LIMITED TO WHAT ARE LISTED.

SO WHY WOULDN'T THAT LANGUAGE ALSO APPLY TO ANY COMMON LAW CAUSE OF ACTION?

I THINK THEY APPLY TO ALL COMMON LAW CAUSES OF ACTION. OUR ARGUMENT IS THAT ALL THIS STATUTE DOSE, IT ONLY MODIFIES COMMON LAW TO TO THE EXTENT THAT IT SPECIFICALLY STATES. AND THERE IS PRECEDENT OF THIS COURT THAT SAYS THAT LAWS WILL NOT THAN CONSTRUED TO MODIFY COMMON LAW EXCEPT TO THE EXTENT THAT IT'S EXPRESSLY STATED IN THE STATUTE.

AND DOESN'T THE STATUTE EXPRESSLY STATE SUCH PERSON NEED ONLY PROVE, PLEAD AND PROVE THE FACT OF THE PROHIBITIVE DISCHARGE FOR OTHER POLLUTIVE CONDITIONS AND THAT IT HAS OCCURRED? DOESN'T THAT SEEM TO REMOVE A CAUSATION REQUIREMENT?

WE ARGUE THAT IT DOESN'T. THERE ARE OBVIOUSLY A LOT MORE THINGS THAT HAVE TO BE PROVED IN A CAUSE OF ACTION THAN JUST THE THINGS STATED IN THAT STATUTE. YOU HAVE TO -- I MEAN.

STATUTE ALSO PROVIDES CERTAIN DEFENSES, DOESN'T IT?

IT DOES YOUR HONOR.

AND TWO OF THE DEFENSES ARE INSTANT PURCHASER AND THIRD PARTY CAUSATION DEFENSE. SO DOESN'T THE STATUTE SEEM TO BE MAKING CAUSATION NOT A PLEADING REQUIREMENT BUT AN AFFIRMATIVE DEFENSE? OTHERWISE, WHY WOULD YOU NEED THOSE DEFENSES OF INNOCENT PURCHASER OR A THIRD PARTY?

BECAUSE YOUR HONOR, WE BELIEVE THERE COULD BE COMMON LAW CAUSES OF ACTION THAT DON'T REQUIRE CAUSATION AS AN INITIAL ELEMENT.

LIKE WHAT?

WE ARGUE PARTNERSHIP LIABILITY. IF ONE OF THE PETITIONERS WAS IN A JOINT VENTURE WITH ANOTHER PARTY THAT ACTUALLY CAUSED THE CONTAMINATION, THE PETITIONER MIGHT BE HELD LIABLE UNDER A PARTNERSHIP LIABILITY.

FORGET ABOUT PARTNERSHIP LIABILITY IN. THE KIND OF SITUATION WE HAVE HERE WHERE AN ADJACENT PROPERTY OWNER SUFFERS CONTAMINATION, FROM SOMEBODY ELSE'S CONTAMINANTS, WHAT COMMON LAW CAUSE OF ACTION EXISTS RIGHT NOW?

YOU HAVE TRESPASS. YOU'D HAVE POTENTIALLY NUISANCE. ULTRA HAZARDOUS ACTIVITY. ALL OF -- NEGLIGENCE. THOSE WERE THE, SOME OF THE CAUSES OF ACTION ALLEGED BY THE PLAINTIFFS. ALL OF THOSE CAUSES OF ACTION WOULD EXIST. HAD BUT EACH OF THOSE CAUSES OF ACTION REQUIRES PROXIMATE CAUSE. THERE HAS TO BE PROXIMATE CAUSE BETWEEN THE ACTIONS OF THE DEFENDANT AND THE INJURIES.

WHY AREN'T THOSE COVERED BY THE AFFIRMATIVE DEFENSES THAT ARE SET OUT IN THIS

STATUTE? THAT IS, THE INNOCENT PURCHASER, OR THE THIRD PARTY RESPONSIBILITY? DOESN'T IT JUST NOW SHIFT THAT RESPONSIBILITY TO THE DEFENDANT, TO ADVOCATE THOSE? AND WHY ISN'T THAT ADEQUATE REALLY IN THIS SITUATION? THAT IS, THAT LET'S GO WITH THE AFFIRMATIVE DEFENSE OF, THAT IT WAS A THIRD PARTY? WHY ISN'T YOUR CLIENT PROTECTED AS FAR AS LET'S SAY THAT WE'RE TALKING ABOUT THE PREVIOUS DRY CLEANER STARTED IN 1975, WENT OUT OF BUSINESS THE YEAR BEFORE YOU TOOK OVER THE PROPERTY. AND THAT ALL OF THE CONTAMINATION TO THE ADJACENT PROPERTY OCCURRED IN THAT PREVIOUS TIME PERIOD, SO UNDER THIS AFFIRMATIVE DEFENSE, YOU HAVE THE RIGHT TO DEMONSTRATE THAT AND THEREFORE NOT BE LIABLE ASSUMING THERE IS NO CONTINUING. LEACHING OR CONTAMINATION ONTO THE ADJACENT SITE. WHY WOULDN'T THAT BE A WAY THAT THIS STATUTE BE INTERPRETED TO PLAY OUT AND LEAVE YOU WITH THAT FULL PROTECTION IF IT WAS THE PREVIOUS DRY CLEANERS THAT CAUSED THE REAL DAMAGE?

JUDGE, WE BELIEVE THAT IF THIS CASE IS ACTUALLY REMANDED AND WE DO GO BACK TO TRIAL, THAT WE HAVE PROVED THE DEFENSES. THE FIRST DCA SIMPLY SAID THAT YOU NEED TO GO BACK BEFORE THE TRIAL COURT AND THE TRIAL COURT HAS TO CONSIDER THESE DEFENSES. WE ARGUED THE DEFENSES AT TRIAL. WE BELIEVE WE HAVE PROVED THEM. BUT THIS CASE, IT REALLY -- WHAT IT DOES IS IT BASICALLY -- IF WE LOOK AT THE STATUTE THAT WAY, THEN OF THE SHIFTS THE BURDEN OF PROOF TO US. WE BELIEVE WE HAVE PROVED THEM BUT WHO KNOWS WE HAVE PROVED WHAT APPROPRIATE STANDARD OF CARE WAS BACK IN 1986? THAT'S WHY I THINK IT'S IMPORTANT THAT THIS COURT INTERPRET WHAT THIS STATUTE MEANS. WE DO FEEL THAT THERE IS A SUBSTANTIVE DIFFERENCE. IF THE STATUTE SIMPLY MODIFIES EXISTING CAUSES OF ACTION, THEN CAUSATION HAS TO BE AN INITIAL ELEMENT.

DOESN'T IT SEEM TO BE THE PURPOSE OF THE STATUTE TO, TO PLACE THE RESPONSIBILITY FOR PROVING CAUSATION ON THE PARTY THAT HAS THE BEST ACCESS TO THE FACTS? IN OTHER WORDS, AN ADJACENT LAND OWNER MAY NOT BE ABLE TO PROVE CAUSATION BECAUSE THEY DON'T KNOW THE HISTORY OF THAT PROPERTY, BUT THE PROPERTY OWNER WHO'S GUILTY OF THE CONTAMINATION HAS BETTER ACCESS TO THE FACTS TO DETERMINE THE HISTORY AND HOW THOSE CONTAMINANTS OCCURRED.

YOUR HONOR, I REALLY DON'T BELIEVE THAT THE LEGISLATURE ACTUALLY THOUGHT IT OUT THAT CLEARLY. ONE OF THE PROBLEMS WE HAVE HERE IS THAT THE STATUTE IS VERY POORLY WORDED. WHAT I BELIEVE THE -- IF WE HAVE TO LOOK AT TENANTS OF STATUTORY CONSTRUCTION, I THINK BECAUSE POINT 313 DOESN'T SAY WHO CAN BE HELD LIABLE. WE HAVE TO LOOK AT 308. WHICH IS INCORPORATED BY REFERENCE INTO 1313. THAT STATUTE SAYS THE F DEP CAN'T SUE SOMEONE UNLESS THEY CAUSED THE CONTAMINATION OR OWNED THE PROPERTY AT THE TIME THE DISCHARGE OCCURRED. I BELIEVE YOUR HONOR THAT WHEN THE LEGISLATE -- AND THEN 308 GOES ON TO SAY THAT IF THE F DEP PROVES THAT, THEN YOU CAN PROVE THESE DEFENSES. ONE OF WHICH IS THAT YOU DIDN'T CAUSE IT. SO EVEN THOUGH YOU OWN THE PROPERTY AT THE TIME THE CONTAMINATION OCCURRED, YOU CAN PROVE THAT YOU DIDN'T CAUSE IT, THAT SOMEONE ELSE DID IT, AND I THINK THAT IS WHAT THE LEGISLATURE INTENDED TO LIMIT THAT DEFENSE TO, CASES WHERE THE F DEP DID PROVE THAT YOU OWNED THE PROPERTY AT THE TIME THE CONTAMINATION --.

I TAKE IT THAT FUNDAMENTAL TO YOUR POSITION IS THAT THIS STATUTE SHOULD BE GIVEN ITS PLAIN MEANING?

THAT'S EXACTLY CORRECT, YOUR HONOR.

AND THAT YOUR POSITION REVOLVES AROUND THE LANGUAGE WHICH SAYS NOTWITHSTANDING ANY OTHER THE INTRO -- ANY OTHER PROVISION OF LAW, NOTHING PROHIBITS.

THAT'S CORRECT, YOUR HONOR. AND RESPONDENT POINTED OUT A VERY SIMILAR STATUTE,

SECTION 376.205, WHICH IS IN A SECTION OF THE TITLE THAT DEALS WITH PETROLEUM CONTAMINATION. IN THAT STATUTE, THE LEGISLATURE SAID ANY PERSON CAN BRING A CAUSE OF ACTION FOR DAMAGES RESULTING FROM CONTAMINATION COVERED BY THIS TITLE AGAINST ANY RESPONSIBLE PARTY. AND THEN THE STATUTE IN ITS DEFINITION SECTION GOES ON TO DESCRIBE WHO A RESPONSIBLE PARTY IS. THE OWNER OF PROPERTY, ETCETERA. THIS STATUTE DOESN'T SAY ANY OF THAT. IT SIMPLY SAYS NOTHING WILL PREVENT SOMEONE FROM BRINGING A CAUSE OF ACTION AND DON'T HAVE TO PROVE NEGLIGENCE. IT DOESN'T SAY WHO CAN BE SUED. THAT'S A VERY SIGNIFICANT DIFFERENCE.

WELL GIVE ME VERY SMALL NUTSHELL THE REASON THAT THIS WAS NECESSARY FOR THE LEGISLATURE TO PUT IN TO THIS WHOLE STATUTORY FRAMEWORK.

ELSEWHERE IN THE STAT TURKTS I BELIEVE IN POINT 3078 IS A PROHIBITION FOR SUING A PARTY THAT IS CONDUCTING A VOLUNTARY CLEAN UP, A PROHIBITION AGAINST SUING THEM FOR INJUNCTIVE RELIEF TO COMPEL A CLEAN UP. I THINK THE LEGISLATURE'S INTENTION MAY HAVE BEEN TO SAY FIRST, LOOK, YOU CAN STILL SUE UNDER THE COMMON LAW. BUT WE ARE ALSO SAYING THAT YOU DON'T HAVE TO PROVE NEGLIGENCE. IF SOMEBODY CAUSED CONTAMINATION AND CAUSED DAMAGES FLOWING FROM THAT CONTAMINATION, YOU DON'T HAVE TO PROVE NEGLIGENCE. IT'S STRICT LIABILITY. AND, BUT -- AND THEN DEFENSES ARE LIMITED. I THINK THE LEGISLATURE SORT OF CREATED A LOST CONFUSION BY EN GRAFTING THE DEFENSES IN A DEP ACTION INTO THIS COMMON LAW CAUSES OF ACTION. BUT NEVERTHELESS, IT DOES LIMIT DEFENSES. AND I THINK THE LEGISLATURE'S INTENTION THERE WAS TO MAKE PEOPLE LIABLE FOR CONTAMINATION THEY HAVE CAUSED. AND I THINK THEY HAVE DONE THAT SIMPLY BY MODIFYING THE COMMON LAW THROUGH THIS STATUTE.

THE PARTIAL -- MARSHAL HAS REMINDED YOU OF THE TIME YOU WANTED TO BE REMINDED OF TO HAVE REBUTTAL TIME.

I WOULD JUST LIKE TO ASK ONE MORE THING. IF THE STATUTE IS CONSTRUED AS CREATING A NEW CAUSE OF ACTION, THIS COURT STILL HAS TO ANSWER THE QUESTION AS TO WHOM CAN BE SUED. AND I THINK THE ONLY WAY THE COURT CAN REASONABLY DO THAT IS AGAIN BY REFERRING BACK TO POINT 308, WHICH SAYS WHO THE DEP CAN SUE. THE OWNER OF THE PROPERTY AT THE TIME THE CONTAMINATION OCCURRED, OR THE PERSON WHO CAUSED THE CONTAMINATION.

DOESN'T IT ALSO SAY PERSONS SPECIFIED IN 403727 AND THERE IN A IT SAYS THE OWNER OR OPERATOR OF A FACILITY?

YES, YOUR HONOR, AND WE HAVE ADDRESSED THAT AGAIN THE STATUTORY LANGUAGE IS VERY CONFUSING. IT WAS NEVER ARGUED AT TRIAL THAT WE WERE LIABLE PURSUANT TO THAT STATUTE, AT LEAST I DON'T RECALL THAT IT WAS. BUT NEVERTHELESS, THAT STATUTE STATUTE -- THERE IS NO DEFINITION FOR FACILITY IN THAT STATUTE.

SO DON'T WE THEN GO TO THE DICTIONARY DEFINITION?

HAZARDOUS WASTE FACILITY IS DEFINED IN THE STATUTE.

IF IT DOESN'T SAY HAZARDOUS WASTE FACILITY HERE THEN IT DOESN'T FAUNLDZ THE DESKS OF HAZARDOUS WASTE FACILITY. SO WOULDN'T WE JUST REFER TO THE DICTIONARY DEFINITION OF A FACILITY?

WELL, WE COULD DO THAT BUT WE COULD ALSO LOOK AT I BELIEVE THE F DEP REGULATIONS WHEN THEY DEAL WITH FACILITIES, THEY DEAL WITH PERMITTING ISSUES. DO YOU NEED A PERMIT, ARE YOU ASKING FOR A PERMIT TO OPERATE A CERTAIN FACILITY? I THINK THAT NOTHING THAT THE PETITIONERS ARE DOING ON THIS PROPERTY CAN BE CONSIDERED A FACILITY

THAT EITHER CREATES OR USES HAZARDOUS SUBSTANCES. THERE SIMPLY IS NO FACILITY. HAZARDOUS SUBSTANCES, IF THEY'RE HAZARDOUS SUBSTANCES ARE IN THE GROUNDWATER.

WE'RE GOING TO HAVE TO END ON THAT NOTE. WITH OUR HELP WE HAVE USED UP ALL OF YOUR TIME. THANK YOU.

THANK YOU.

GOOD MORNING.

MAY IT PLEASE THE COURT. I AM DEBORAH WALTERS OF THE WALTERS LAW FIRM AND I AM HERE ON KMOF OF THE RESPONSE DENT. IF I COULD I'D LIKE TO BEGIN WHERE WE LEFT OFF, WHICH IS THIS QUESTION OF FACILITY BECAUSE I THINK I HAVE THE ANSWER FOR THAT. IN THE EARLIER DISCUSSION, THERE WAS TALK ABOUT SIRKLA AND HOW FLORIDA LAW AS EVOLVED. AND THIS VERY SECTION THAT WE ARE DISCUSSING THAT HAS A DEFINITION, A ---DOES NOT HAVE DEFINITION OF FACILITY IS PART OF FLORIDA'S MINI SIRKLA. BASICALLY FLORIDA ADOPTED SIRKLA WITH A FEW CHANGES. ONE CHANGE BEING THAT UNDER THE FEDERAL SIRKLA, THERE IS A INNOCENT PURCHASER DEFENSE AVAILABLE TO ALL POTENTIALLY RESPONSIBLE PARTIES. UNDER FLORIDA LAW, THE INNOCENT PURCHASER DEFENSE IS ONLY AVAILABLE TO THOSE PERSONS WHO QUALIFY UNDER THE STATE FUNDED PETROLEUM PROGRAM OR THE STATE FUNDED DRY CLEANING PROGRAM. OTHERWISE, THERE IS NO INNOCENT PURCHASER DEFENSE UNDER FLORIDA LAW.

BUT THERE IS STILL A THIRD PARTY DEFENSE, RIGHT?

THAT'S CORRECT. AND THE THIRD PARTY DEFENSE -- MAKE SURE I STRESS THOUGH THAT UNDER THE INNOCENT PURCHASER DEFENSE, INNOCENCE IS NOT ABOUT CAUSATION. INNOCENCE IS ABOUT KNOWLEDGE. TO AVAIL YOURSELF OF AN INNOCENT PURCHASER DEFENSE, YOU HAVE TO SHOW THAT YOU UNDERTOOK SOME REASONABLE DUE DILIGENCE PRIOR TO ACQUIRING THE PROPERTY AND THEN IF YOU DISCOVER THE CONTAMINATION, YOU BUY THE PROPERTY KNOWING THAT YOU ARE GOING TO ASSUME THE STRICT LIABILITY. THE PURPOSE OF THE INNOCENT PURCHASER DEFENSE, WHICH BY THE WAY IS RARELY SUCCESSFULLY USED, IS FOR THOSE PEOPLE WHO FIND THEMSELVES BUYING A PIECE OF PROPERTY AND THERE IS UNKNOWN OR UNDISCOVERED CONTAMINATION THAT COULD NOT HAVE BEEN DISCOVERED OR WAS NOT DISCOVERED IN THE COURSE OF REASONABLE DUE DILIGENCE. IT'S THE SURPRISE ELEMENT. THE REASON IT'S RARELY SUCCESSFULLY USED IS BECAUSE IF YOU DO THE LEVEL OF DUE DILIGENCE NECESSARY TO ASSERT A SUCCESSFUL DEFENSE, YOU TEND TO FIND THE CONTAMINATION.

DO YOU -- WELL WHAT IS YOUR TAKE ON WHETHER THIS STATUTE SHOULD BE GIVEN PLAIN MEANING FIRST? AND SECONDLY, -- WELL, WHAT IS THE LANGUAGE NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, NOTHING CONTAINED PROHIBITS ANY PERSON WOULD SEEM TO BE THE GIST OF WHERE THE SECOND DISTRICT CAME DOWN ON THIS STATUTE.

CERTAINLY OUR POSITION IS THAT THE PLAIN MEANING OF THE STATUTE SHOULD BE GIVEN EFFECT, THAT THE PLAIN MEANING IS THAT IT CREATES AN INDIVIDUAL, A STATUTORY CAUSE OF ACTION. NOT THAT IT, THAT IT INFUSES INTO EXISTING COMMON LAW CLAIMS AND USE STANDARD OF CARE BUT THAT IT ACTUALLY CREATES A SEPARATE CAUSE OF ACTION. AND IF I COULD FOLLOW-UP, WE WERE TALKING ABOUT THE ISSUE OF FACILITY, WHICH IS VERY IMPORTANT HERE BECAUSE UNDER THE UNIVERSE OF LIABLE PARTIES, ONE OF THE POINTS ARAMARK CONTINUES TO MAKE IS THAT, THEY SAID IT AGAIN IN ARGUMENT, IS THAT IF YOU INTERPRET SECTION 376.313 TO CREATE A PRIVATE CAUSE OF ACTION, THAT YOU ARE GIVING TO A THIRD PARTY THEIR RIGHTS DEP DOES NOT HAVE AND STATE OF FLORIDA DOES NOT HAVE. AND THAT IS SIMPLY UNTRUE. THEY ARE FOCUSING SOLELY ON THE UNIVERSE OF PARTIES THAT AS THEY SAID WERE THE OWNERS AT THE TIME OF THE DISCHARGE. BUT AS YOUR HONOR HAD POINTED OUT, THERE WAS ALSO SECTION B, WHICH SAYS THOSE PARTIES REFERENCED IN 403.727,

THAT IS FLORIDA'S MINI SIRKLA. AND SO THE WAY THAT THE COURTS HAVE INTERPRETED FLORIDA'S MINI SIRKLA, IF YOU HAVE A DEFINITION THAT IS NOT INCLUDED IN THE STATUTE, THIS THAT YOU LOOK HOW IT HAS BEEN DID HE FINE ADD AUENEDZ SIRKLA, FACILITY IS DEFINED IN SIRKLA AND BASICALLY HAS A VERY BROAD MEANING, WHICH IS IF ANY PLACE THE CONTAMINATION HAS COME TO REST. BECAUSE THE POINT THERE IS THAT IF YOU HAVE A CONTAMINATED PIECE OF PROPERTY, AND SO YOU ARE LIABLE IF YOU ARE THE CURRENT OWNER OF THE PROPERTY, OR IF YOU WERE THE OWNER AT THE TIME OF THE DISCHARGE OR IF YOU ARRANGED FOR THE DISPOSAL, THERE IS A NUMBER OF PARTIES WHO ARE LIABLE THERE. BUT THE FOCUS IS ON THE CONTAMINATION AT THE QUOTE FACILITY, WHICH AGAIN IS JUST A REALLY UNDER SIRKLA IS JUST A PROPERTY THAT IS CONTAMINATED.

LET ME TAKE YOU BACK TO JUSTICE WELLS' QUESTION. HOW DO WE INTERPRET THE STATUTE IN LIGHT OF THE FACT IT SAYS NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NOTHING CONTAINED IN THESE SECTIONS PROHIBITS ANY PERSON FROM BRINGING A CAUSE OF ACTION. AND THEN IT GOES ON TO SAY IN ANY SUCH SUIT, IT IS NOT NECESSARY FOR SUCH PRN ETCETERA, SO -- PERSON, ETCETERA. IF YOU TAKE THAT LANGUAGE TOGETHER, DOESN'T THAT SAY WELL YOU CAN BRING A COMMON LAW ACTION AND WE ARE GOING TO MODIFY THE STANDARDS OF THAT COMMON LAW ACTION AS WE SAY HERE? INSTEAD OF CREATING CAUSE OF ACTION, IT SEEMS TO BE MODIFIES -- MODIFYING THE CAUSES OF ACTION ALREADY EXIST.

I THINK THE POSITION OF THE FIRST DISTRICT IS IT WAS PLAIN ON, STATUTE IS PLAIN ON ITS FACE BECAUSE FIRST IT USES THE TERM INDIVIDUAL CAUSE OF ACTION. IT THEN SETS FORTH A STANDARD OF CARE. IT SETS FORTH DEFENSES. AND IT'S ACTUALLY EVEN MORE DETAILED THAN THAT BECAUSE NOT ONLY DOES IT SET FORTH A STANDARD OF CARE AND ATTORNEY'S FEE PROVISION AND IT TALKS ABOUT JOINT AND SEVERAL LIABILITY, AND PRESERVING RIGHTS OF CONTRIBUTION, IT ALSO THEN GOES ON TO SAY BUT IN THESE OTHER LIMITED CASES, WHERE YOU HAVE PETROLEUM SITES OR DRY CLEANING SITES, WE ARE GOING TO SAY THERE IS A NEGLIGENCE STANDARD OF CARE. STANDARD OF CARE OF NEGLIGENCE IN THOSE CASES. AND IF YOU GO ON TO CONTINUE TO READ 313 IT INCLUDES THAT. SO IT IS REALLY A VERY COMPREHENSIVE STATUTE, WHICH DOES CREATE A CAUSE OF ACTION. AND THE POINT PRIMARY ARGUMENT OF ARAMARK IT DOESN'T DEFINE THE UNIVERSE OF PARTIES. BY INCORPORATING 376.308 INTO THAT PROVISION, IT DOES DEFINE THE UNIVERSE OF PARTIES. IT IS THE SAME UNIVERSE OF PARTIES THAT THE DEP CAN SUE AND THE STATUTE ALSO SAYS THAT YOU HAVE TO BE COVERED BY THE STATUTE IN ORDER FOR THE INDIVIDUAL CAUSE OF ACTION TO ARISE. SO TO BE COVERED BY IT, YOU HAVE TO OTHERWISE BE LIABLE UNDER THAT STATUTE. SO THERE IS A VERY DEFINED UNIVERSE OF PARTIES. AND IN ARAMARK WOULD BE ONE OF THOSE PARTIES IN THIS INSTANCE BECAUSE THEY ARE THE OWNER OF THE PROPERTY AND THEY ARE LIABLE UNDER 3037274.

IS IT YOUR PROVISION THE LANGUAGE, SUCH PERSON ONLY NEED TO PROVE FACT OF PROHIBITED DISCHARGE AND POLLUTED CONDITIONS, THAT THAT CREATES STRICT LIABILITY?

ABSOLUTELY.

WITHOUT THE NEED FOR CAUSATION?

ABSOLUTELY. AND ONE OF THE, POINT I WAS MAKING EARLIER ABOUT THE INNOCENT PURCHASER DEFENSE IS THAT THE FOCUS OF THAT IS OWN KNOWLEDGE, NOT ON CAUSATION. THE INNOCENT PURCHASER DEFENSE DOESN'T SAY AS LONG AS YOU DIDN'T CAUSE THE CON TAM NARX YOU'RE NOT LIABLE. IT SAYS AS LONG AS YOU DIDN'T KNOW ABOUT THE CONTAMINATION, YOU'RE NOT LIABLE. AND I THINK THAT'S A CRITICAL DISTINCTION BECAUSE THE ENTIRE STATUTORY SCHEME IS FOUNDED UPON STRICT LIABILITY. EVERYTHING IN 403 AND 376 IS BASED UPON STRICT LIABILITY. AND THE ONLY DISSENT IS IF YOU -- DEFENSE IS IF YOU DIDN'T KNOW AFTER YOU TOOK APPROPRIATE DUE DILIGENCE TO FIND OUT.

SO WHAT ARE THESE OWNERS OF LAND THAT HAS CONTAMINATION TO DO WITH THEIR PROPERTIES? CAN THEY EVER SELL THEIR PROPERTIES BECAUSE MAYBE THEY HAVE A OBLIGATION TO GIVE NOTICE OF THE CONTAMINATION? ONCE THEY GIVE NOTICE NOW, THE INNOCENT PURCHASER IS NO LONGER, NO LONGER HAS THE INNOCENT PURCHASER DEFENSE SO THEY SAY WELL NOW THAT YOU HAVE TOLD US, WE DON'T WANT THE PROPERTY. CAN THEY EVER SELL THE PROPERTY?

YES THEY CAN. FIRST THEY CAN REMEDIATE THE PROPERTY OR THEY CAN SELL IT TO SOMEONE WHO IS WILLING TO REMEDIATE IT. AND IN FACT, THROUGHOUT THE ENTIRE BROWNS FIELDS MOVEMENT IS BASED UPON THAT VERY PUBLIC POLICY CONCERN. YOU HAVE PEOPLE WHO HAVE PROPERTIES, THEY DON'T HAVE THE FUNDING TO CLEAN UP THE PROPERTIES, AND SO YOU HAVE WHAT WE CALL THE BROWNFIELDS MOVEMENT AND WE HAVE IN FLORIDA THE BROWNFIELDS REDEVELOPMENT ACT, WHICH IS DESIGNED TO PROVIDE LIABILITY RELIEF AND ECONOMIC INCENTIVE PACKAGES TO PURCHASERS WHO ARE WILLING TO COME IN AND BUY A PIECE OF PROPERTY, REMEDIATE IT AND REDEVELOP IT IN THE PROCESS.

DOES THAT APPLY TO PARTIES LIKE ARAMARK THAT IS NOT A DRY CLEANING BUSINESS?

YES. THE BROWNS FIELD REDEVELOPMENT ACT WOULD APPLY TO A PARTY LIKE ARAMARK, ABSOLUTELY. AND THE POINT IS, THAT YOU WOULDN'T NEED THE BROWNFIELDS REDEVELOPMENT ACT TO INCENT PURCHASERS TO CLEAN UP AND REDEVELOP PROPERTIES IF THEY WEREN'T OTHERWISE STRICTLY LIABLE.

STRICTLY LIABLE UNDER YOUR THEORY BECAUSE THE STATUTE SAYS NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NOTHING CONTAINED PROHIBITS ANY PERSON FROM BRINGING A CAUSE OF ACTION. I MEAN THAT'S THE REASON THEY'RE STRICTLY LIABLE?

WELL THEY'RE STRICTLY LIABLE TO THE STATE OF FLORIDA IN THE FIRST INSTANCE. AND THEY'RE STRICTLY LIABLE FOR THE CONTAMINATION, MEANING THAT THE STATE OF FLORIDA COULD -- AND THAT'S THE POINT WE HAVE A HUGE DISAGREEMENT IS THAT THE STATE OF FLORIDA CAN REQUIRE AND DID REQUIRE ARAMARK TO REPEAT -- REMEDIATE THIS PROPERTY. THEY WERE NOT A VOLUNTEER. THE STATE OF FLORIDA THREATENED AN ENFORCEMENT ACTION AGAINST THEM BECAUSE THEY WERE THE CURRENT OWNER.

AND THE STATE OF FLORIDA FILE A CAUSE OF ACTION FOR DAMAGES OR SIMPLY TO REQUIRE REMEDIATION?

TO REQUIRE REMEDIATION AND FOR DAMAGES TO THE NATURAL RESOURCES.

WHAT MY CONCERN IS, AND I'D LIKE FOR TO YOU SPEAK TO IT. HERE YOU START OFF THIS ARGUMENT BY SAYING WELL, YOU KNOW, WE HAVE A VERY LIMITED INNOCENT PURCHASER APPLICABILITY HERE. WE HAVE GOT A SITUATION IN WHICH IF YOU CANNOT -- MOST PEOPLE WOULDN'T COME WITHIN THE INNOCENT PURCHASER, THEY, NO MATTER HOW INNOCENT THEY WERE, THEY BOUGHT THIS PIECE OF PROPERTY. AND THEN THEY'RE GOING TO BE STRICTLY LIABLE AND IT WOULD SEEM TO ME THAT IF THAT'S THE EFFECT OF WHAT THE LEGISLATURE DID, THAT THE LEGISLATURE OUGHT TO STATE THIS IN AFFIRMATIVE STATEMENT, NOT ON SOME BASIS THAT NOTWITHSTANDING ANYTHING WITHIN THIS LAW, AND POINT OUT SPECIFICALLY A LIABILITY THAT THAT PERSON IS GOING TO HAVE TO BE ON NOTICE OF. I MEAN WOULDN'T THAT BE SOUND POLICY?

WELL I BELIEVE THAT IT WOULD, AS AN ENVIRONMENTAL PRACTICE TITION NEAR, I THINK EVERYONE ASSUMES THAT THERE IS STRICT LIABILITY UNDER 403 AND 376. AND THAT THIRD PARTY LIABILITY EXISTS. IF YOU LOOK THROUGHOUT 376, YOUR HONOR, IN EACH AREA OF THE, OF THESE PROVISIONS THEY HAVE EXCEPTIONS THAT SAY THIRD PARTIES MAY NOT SUE IF YOU

ARE UNDER THE STATE FUNDED DRY CLEANING PROGRAM OR IF YOU'RE UNDER THE STATE FUNDED PETROLEUM PROGRAM, A THIRD PARTY CANNOT SUE YOU TO COMPEL REHABILITATION. BUT, THEY EXPRESSLY CARVE OUT OTHER ECONOMIC DAMAGE CLAIMS AND PERSONAL INJURY CLAIMS. AND THE LEGISLATURE IN MY VIEW AT LEAST, IS SAYING LOOK, YOU AS A PRO PEST -- PROSPECTIVE PURCHASER CAN DO YOUR DUE DILIGENCE, KNOW WHAT YOUR LINLTS ARE GOING TO BE BEFORE YOU ACQUIRE THE PROPERTY. AND IN THAT REGARD, THERE IS A FACT THAT WAS BROUGHT OUT IN ORAL ARGUMENT THAT I FEEL HAS TO BE ADDRESSED. AND THAT IS THAT ARAMARK SAYS THAT IT PURCHASED THE PROPERTY IN 1986. THROUGHOUT THE RECORD, THERE WAS A COMMON WAY OF REFERRING TO THAT SAYING YES ARAMARK PURCHASED THE PROPERTY IN 1986. THAT IS NOT IN FACT WHAT HAPPENED AND THE RECORD IS UNDISPUTED BASED UPON ARAMARK'S OWN INFORMATION THAT THEY HAVE PUT INTO THE RECORD. WHAT ACTUALLY HAPPENED WAS THAT SERVICE CO, THE DRY CLEANING OPERATION, WAS MERGED INTO A PARENT CORPORATION KNOWN AS DELSAC ONE AT THE END OF 1986.

BUT REGARDLESS OF THE FACTS OF THIS PARTICULAR PURCHASE, OBVIOUSLY THIS COURT'S OPINION IS GOING TO BE BINDING ON EVERYBODY THAT HAS BOUGHT A PIECE OF PROPERTY IN FLORIDA EVER. AND PRESENTLY OWNS IT. SO THE FACTS AND THE EQUITY ADVERTISE OF THIS PARTICULAR SITUATION ARE NOT REALLY DECISIVE FACTOR IN MY VIEW BEFORE THIS COURT. MY CONCERN IS THE CONSTRUCTION OF THIS STATUTE, ISN'T THAT WHAT WE'RE HERE TO DO?

YES, YOUR HONOR, IT IS. AND FROM MY STANDPOINT AT LEAST, THERE IS NO ONE WHO IS GOING TO BE SURPRISED BY THE FACT THAT CURRENT OWNERS OF PROPERTY IN FLORIDA ARE STRICTLY LIABLE FOR THAT CONTAMINATION, PARTICULARLY WHERE THE CONTAMINATION IS CONTINUING TO MIGRATE ONTO SOMEONE ELSE'S PROPERTY. IN OUR FACTS IMPORTANT FROM THE STANDPOINT, WE HAVE THE SOURCE WAS STILL ON THE PROPERTY. THE ACTUAL SOURCE MATERIAL. AND THEN IT WAS THE CONTINUING DELETION TO THE GROUNDWATER AND THEN TO MIGRATE. SO THERE IS NO SURPRISE HE -- THERE SHOULD BE NO SURPRISE TO A CURRENT OWNER THAT THEY CAN ALLOW THE SOURCE TO REMAIN ON THEIR PROPERTY AND DO, CONTINUE TO MIGRATE AND CREATE A RISK TO NOT ONLY THE ENVIRONMENT BUT TO HUMAN HEALTH AND PERSONAL PROPERTY AND DO NOTHING ABOUT IT. AND THEY CAN SAY THEY VOLUNTEERED TO DO SOMETHING ABOUT IT. BUT THE REALITY IS THEY WERE COMPELLED TO DO THAT. AND WHAT I WOULD ASSERT IS THAT WHETHER YOU FIND THAT THERE IS A CAUSE OF ACTION CREATED IN THE STATUTE OR AN INJECTION OF A NEW STANDARD INTO EXISTING CAUSES OF ACTION, THE RESULT DOESN'T CHANGE HERE. EASTON WOULD STILL HAVE A CLAIM AND WOULD STILL PREVAIL. IT IS ARAMARK'S POSITION THAT UNDER NO SET OF CIRCUMSTANCES CAN AN ADJOINING PROPERTY OWNER SUE A CURRENT OWNER WHO DID NOT QUOTE CAUSE THE CONTAMINATION. WHAT YOU'RE DOING IF YOU FIND -- IF YOU INTERPRET THIS STATUTE THE WAY THAT ARAMARK ASKS, IS THAT YOU'RE FINDING THESE ADJOINING PROPERTY OWNERS HAVE NO REMEDY AGAINST THE CURRENT OWNER. IF THAT OWNER DID NOT QUOTE CAUSE THE CONTAMINATION.

BUT WOULDN'T THEY HAVE A CAUSE OF ACTION AGAINST SERVES COOR WHATEVER THE PRIOR COMPANY THAT CAUSED THE DAMAGE?

WELL IN THIS CASE, ARAMARK SUCCESSED TO THE LIABILITIES OF SERVICECO. YES THEY WOULD HAVE THAT BUT OFTENTIMES THE CURRENT -- HERE IS WHAT'S CRITICAL DISTINCTION. IS THAT YOU MAY HAVE A CLAIM AGAINST THE PARTY WHO CAUSED THE CONTAMINATION. BUT THE REALITY IS THE PERSON WHO IS IN CONTROL OF THE PROPERTY WHERE THE SOURCE IS LOCATED IS THE ONE WHO IS IN THE POSITION TO DO SOMETHING ABOUT IT. AND SO YOU MAY SUE THEM BUT THEY MAY ARGUE BUT LOOK, YOU HAVE TO BE ABLE TO SUE THE CURRENT OWNER BECAUSE THEY ARE ALLOWING THAT CONTAMINATION TO CONTINUE. THEY'RE NOT ABATING THE SOURCE. AND IT'S THEIR PROPERTY NOW. SO IT IS NOT A COMPLETE REMEDY TO BE ABLE TO ONLY SUE THE PRIOR OWNER. YOU HAVE TO BE ABLE TO SUE IN STRICT LIABILITY THE CURRENT OWNER WHO HAS CONTROL OVER THE PROPERTY, WHO IS IN A POSITION TO ABATE THE SOURCE. AND TO

ABATE THE CONTINUED FLOW OF THE POLLUTION ONTO THE NEIGHBOR'S PROPERTY.

SO THERE WOULDN'T BE COMMON LAW ACTION FOR CONTINUING NUISANCE EVEN IF YOU DIDN'T CAUSE IT, IF YOU ALLOWED THE NUISANCE TO CONTINUE?

THERE WOULD BE COMMON LAW ACTION FOR TRESPASS AND NUISANCE AND VARIOUS THEORIES. BUT OUR CONTENTION IS THERE IS ALSO SEPARATE STATUTE -- STATUTORY CAUSE OF ACTION THAT ALLOWS THAT OR AT A MINIMUM, THERE IS NOW A STRICT LIABILITY IN EACH OF THOSE STANDARD OF CARE IN EACH OF THOSE EXISTING COMMON LAW CAUSES OF ACTION. AS I UNDERSTAND ARAMARK'S POSITION, THERE IS NO COMMON LAW CAUSE OF ACTION THAT WOULD ALLOW AN ADJOINING PROPERTY OWNER TO SUE THE CURRENT OWNER IF THAT CURRENT OWNER DID NOT CAUSE THE CONTAMINATION. SO,.

UNDER THIS STAT TUCHLT BUT I DON'T THINK HE ARGUED THERE IS NOT A COMMON LAW RIGHT FOR CONTINUING NUISANCE.

MY UNDERSTANDING IS THEY ARE ARGUING THAT THERE IS NO COMMON LAW REMEDY AVAILABLE IN THIS SITUATION FOR A ADJOINING PROPERTY OWNER TO SUE THE CURRENT OWNER. AND SO THE LOGICAL CONSEQUENCE OF THAT, TO FOLLOW THEIR ARGUMENT IS, THAT YOU'RE -- ADJOINING PROPERTY OWNERS WOULD HAVE NO REMEDY.

BUT THAT'S NOT REALLY THE ISSUE THAT'S HERE. THE ISSUE THAT'S HERE IS THE CONSTRUCTION OF THIS STATUTE.

THAT'S CORRECT.

AND WHETHER THIS STATUTE SETS FORTH AN AFFIRMATIVE CAUSE OF ACTION.

THAT'S CORRECT. AND YOUR HONOR, I WOULD NOTE, 376205 WHICH WE MENTIONED IN THE BRIEF, WHEN IT WAS ORIGINALLY ENACTED, IT WAS IDENTICAL TO 313. IT WASN'T CHANGED UNTIL 1996, TO READ AS IT DOES TODAY. IT WAS IDENTICAL TO 376.313. AND THE SUPREME COURT FOUND WHEN IT WAS REVIEWED THAT STATUTE THAT IT DID AFFIRMATIVELY CREATE A CAUSE OF ACTION, EVEN THOUGH IT USED THE PRECISE TERMS DOES NOT PROHIBIT. AND SO THE PREEM COURT OF THE UNITED STATES FOUND THAT THERE WAS AN AFFIRMATIVE CAUSE OF ACTION CREATED. NOT SURE WHAT THIS STATUTE DOES. IF IT DOESN'T CREATE A CAUSE -- AN INDIVIDUAL CAUSE OF ACTION, I BELIEVE IT ASKS THE QUESTION, WHAT COULD ITS POSSIBLE PURPOSE BE? AND THE ANSWER CAME BACK, WELL ITS PURPOSE WOULD BE THAT IN THOSE SITUATIONS WHERE THEY HAD PROVIDED IMMUNITY AND SAID YOU COULD NOT SUE THAT, THEY WERE TRYING TO HAVE A SAVINGS CLAUSE. THAT WOULD BE UNNECESSARY. IN 308, THAT SAVINGS CLAUSE WAS ALREADY, 376.3085 IT SAYS VERY SPECIFICALLY THAT FOR ALL THE TIMES THEY HAVE AN IMMUNITY OR SAVINGS CLAUSE, THAT NOTHING HEREIN SHALL PRECLUDE ANY PERSON FROM BRINGING CIVIL ACTION FOR DAMAGES FOR PERSONAL INJURY, ETCETERA, ETCETERA, ETCETERA. SAID THAT THEY HAVE ALREADY PROVIDED THAT SAVINGS CLAUSE IN THE VERY INSTANCE THAT ARAMARK SUGGESTED WOULD BE THE PURPOSE FOR CREATING 376.313. I CANNOT SEE A PURPOSE FOR THAT IF IT DOES NOT CREATE AN INDIVIDUAL CAUSE OF ACTION. I WOULD LIKE, IF I COULD, CONCLUDE THE FACTUAL STATEMENT, I DO THINK IT IS IMPORTANT ON ARAMARK'S PURCHASE. ARAMARK THEN PURCHASED DELSAC, THIS INTERVENING CORPORATION, IN 1988. WHAT HAPPENED IS THEY THEN ASSUMED THE LIABILITIES BACK TO 1986. SO AS A MATTER OF SHORTHAND, EVERYONE SAYS ARAMARK ACQUIRED SERVES VIS COIN 1986. BUT THE REALTY IS, 1986 WAS SERVICECOMPANY, THEN DEL SAC ONE, THEN ARAMARK. WHAT THE RECORD SAYS, AND WE HAVE PUT THIS IN OUR BRIEF AND ALL THE DETAILS RELATED TO IT. THEY DID A PRE-ACQUISITION AUDIT IN 1987 BEFORE ARAMARK, WHICH WAS THEN KNOWN AS AIR RA TEXT ACQUIRED DEL SAC. SO THEY KNEW ABOUT THIS CONTAMINATION, OF ALREADY CONTACTED FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ALREADY SUBMITTED APPLICATION TOSS GET INTO THE PETROLEUM PROGRAM FOR PETROLEUM CONTAMINATION THAT

HAD BEEN DISCOVERED.

WE ARE GOING TO HAVING TO ASK YOU TO CLOSE ON THAT NOTE TOO BECAUSE OF THE EXPIRATION OF THE TIME. THANK YOU BOTH VERY MUCH FOR YOUR HELP ON THIS CASE. WE WILL NOW STAND IN RECESS UNTIL 9:00 TOMORROW MORNING.