Raymond James Financial Services v. Steven W. Saldukas

CHIEF JUSTICE: GOOD MORNING.THE NEXT CASE ON THE COURT'S DOCKET IS RAYMOND JAMES VERSUS SALDUKAS. GOOD MORNING.

GOOD MORNING , SIR . KEEP THIS FROM DIVING ON THE FLOOR HERE. MAY IT PLEASE THE COURT. I A M BURTON WIAND AND I AM HERE REPRESENTING RAYMOND JAMES FINANCIAL SERVICES AND RICHARD VANDENBERG.MR. VANDENBERG IS A REGISTERED REPRESENTATIVE OF MY CLIENT RAYMOND JAMES FINANCIAL SERVICES. IT IS A BROKERAGE FORM A BROKERAGE FIRM. THIS IS A CASE THAT INVOLVES AN ARBITRATION CHRICHLT WHATIS THE LEGAL ISSUE THAT WE HAVE BEFORE US? CAN YOU STATE OR AN ARTICULATE THAT FOR US?

YES, SIR, THE PRIMARY ISSUE HAS BEEN CERTIFIED BY THE LOWER COURT, AS TOWHETHER OR NOT THERE SHOULD BE A DETERMINATION OR WHETHER IT IS NECESSARY TO FIND PREJUDICE IN CONNECTION WITH DETERMINING WHETHER OR NOT THERE HAS BEEN WAIVER OF AN ARBITRATION AGREEMENT.

PREJUDICE IN ADDITION TO WAIVER OR PREJUDICE AS PART OF THE WAIVER?

AS PART OF THE WAIVER , SIR.

ISN'T THE LAW IN THIS CASE , ALREADY BEEN ANNOUNCED BY THIS COURT , IN CLOISTERS , WHERE THIS COURT SAID THAT WE ARE SATISFIED THAT ARONSEN'S CONDUCT SUBSEQUENT TO ARBITRATION WAS WITHIN ITS DEMAND AND CONSTITUTED A WAIVER. A PARTY'S CONTRACT RIGHT MAY BE WAIVED BY ACTIVELY PARTICIPATING IN A LAWSUIT OR TAKING ACTION INCONSISTENT WITH THAT RIGHT. I MEAN , THAT IS THE LAW THAT THIS COURT HAS ANNOUNCED , ON THIS ISSUE . CORRECT?

I BELIEVE THAT THAT LAW , FROM 1973 , IS SUBSTANTIALLY INCONSISTENT WITH THE LAWTHAT THIS COURT SHOULD APPLY , AND I THINK THAT RELATES TO THE SUPREME COURT PRECEDENT , AND THIS COURT 'S SUBSEQUENT DECISION, INDICATING IT THAT THE FEDERAL LAW RELATING T O THE FEDERAL ARBITRATION ACT , IS SOMETHING THAT THE COURT SHOULD, THAT IT IS THE LAW HERE.

YOU WOULD AGREE, WOULDYOU NOT THAT , THIS COURT DID NOT DEAL IN SEIFERT , WITH THE FACT THAT IT MADE THIS STATEMENT AS TO THE RULE I N CLOISTERS. IT DIDN'T DEAL WITH CLOISTERS AT ALL IN SIEFERT.

IN SIEFERT I T DID NOTDEAL WITH CLOISTERS , BUT WHAT IT ACKNOWLEDGED WASTHAT THE FEDERAL , THE LAWUNDER THE FEDERAL ARBITRATION ACT WAS THE LAW THAT THE STATE OF FLORIDAAPPLIES , AND THAT LAW HAS SIGNIFICANTLY CHANGED FROM THE TIME THAT CLOISTERS WAS DECIDED.

THAT IS WHAT , YOU ARE ASKING US TO RECEDE FROM CLOISTERS , IN EFFECT, IS THAT CORRECT?

WELL , I THINK THAT CLOISTERS , WHEN YOU LOOK AT THAT CASE AND REALIZE THAT IT SAYS THAT SECURITIES CASES CAN'T BE ARBITRATED , I THINK ONE NEEDS TO RECOGNIZETHAT THAT CASE IS NOTSOMETHING THAT THIS COURT SHOULD BASE ITS DETERMINATION ON, IN LOOKINGAT THIS PARTICULAR MATTER.

CLEARLY, THOUGH, WE ARTICULATED IN THAT CASE , THAT THERE COULD BE A WAIVER , AND WE DIDN'T STATE, SET OUT THAT THERE WAS NO REQUIREMENT OF A SHOWING OF PREJUDICE , BUT IN OUR TERMSOF DEFINING WAIVER , THERE IS NO REFERENCE WHATSOEVER , NO REQUIREMENT IN THAT ANALYSIS , TO A NEED FOR SHOWING OF PREJUDICE.ISN'T THAT CORRECT ?

I BELIEVE IT IS CORRECT. I BELIEVE THAT ONE COULD FIND PREJUDICE IN A CASE BUT I BELIEVE YOU ARE CORRECTTHAT IT DOES NOT ARTICULATE THAT.

YOU ARE SAYING , I GUESS , THAT THE APPROVAL OF ARBITRATION OR WHATEVER , THAT THE POLICY O F THAT HAS , REALLY , CHANGED OVER THEYEARS , NOW , AND THAT YOU BELIEVE AS PART OF THAT , THAT THERE SHOULD BE A DEMONSTRATION OF PREJUDICE BEFORE THERE WOULD BE A WAIVER OF THE RIGHT TO ARBITRATION , SINCE IT IS GENERALLY FAVORED. IS THAT A FAIR STATEMENT?

I BELIEVE IT IS DRAMATICALLY CHANGED , SIR.

LET'S GO TO THE ISSUE OF WHY SHOULD THERE BE AN ADDITIONAL REQUIREMENT O F A DEMONSTRATION OF PREJUDICE? ISN'T THAT, REALLY , SORT OF GIVING THE PARTY THAT CHOOSES TO GO AND PARTICIPATE , CONTRARY TO THE RIGHT THAT THEY HAVE TO SEEK ARBITRATION , BY PART PATING IN A LAWSUIT , IT SOUNDS LIKE IT IS SORT O F GIVING THEM A SECOND CRACK AND A VETO OF POWER. THAT IS THAT, IF THEY G O AND PARTICIPATE , NOW , IN THE LEGAL PROCEEDINGS , THEY CAN GO ALONG, AND THEN AT SOME POINT , THEY CAN SAY, WELL , I AM TIRED OF THIS. IT LOOKS LIKE IT IS GOING THE WRONG WAY AND NOW I WANT TO GO BACK AND RELY ON MY RIGHT TO CLAIM ARBITRATION , AND DOESN'T THAT VIOLATE ANUMBER OF PRINCE PEST OF LAW ?

WELL , I DON'T THINK IT VIOLATES PRINCIPLES OF LAW, AND I DON'T THINK IT VIOLATES THE PRECEDENT THAT WE HAVE IN THE STATE OFFLORIDA, WITH RESPECT TO WAIVER. ON TOP OF THAT , WITH RESPECT TO THE PRINCIPLE O F PREJUDICE , IF YOU HAVE A SITUATION WHERE SOMEONE SAYS I A M GOING TO GO ALONG WITH THIS IS , GO ALONG WITH THE LITIGATION FOR SOME POINT , PERIOD OF TIME, THEN THAT PREJUDICE WILL BE FOUND BY THE COURTS.

WELL , IT IS VERY DIFFICULT, IS IT NOT, TO, REALLY, ESTABLISH ACTUAL PREJUDICE ? BUT WHY SHOULDN'T SOMEBODY THAT HAS THE RIGHT TO HAVE A PROCEEDING ARBITRATED , AS OPPOSED TO HAVING TO PROCEED IN COURT, HAVE THE OBLIGATION, AT THE VERY OUTSET THAT, IF THEY HAVE THIS RIGHT, THEN THEY SHOULD ANNOUNCE IT AND SAY I HAVE GOT THAT RIGHT , AND NOT ACT INCONSISTENT WITH THAT , BY PARTICIPATING IN LEGALPROCEEDINGS , AND THAT IS ESSENTIALLY THE HOLDING OF CLOISTERS , IS IT NOT?

I THINK ONE NEEDS TO LOOKAT THIS CASE, AND WE CAN SEE WHY, WHY THAT RULE THAT YOUARE TALKING ABOUT , IS NOTRIGHT.IN THIS SITUATION

LET'S START WITH THE PROPOSITION THAT THE PARTY THAT HAS THE RIGHT TO ARBITRATION , SHOULD EXERCISE IT AT THE EARLIEST OPPORTUNITY. OKAY. WHAT IS WRONG WITH THAT PRINCIPLE?

THAT PRINCIPLE THAT A PARTY THAT HAS THE OBLIGATION TO ARBITRATE , SHOULD PARTS PATE IN THE SHOULD PARTICIPATE IN THE ARBITRATION , UNLESS THERE ARE MATTERS THAT NEED TO BE DETERMINED BY A COURT.

THAT IS NOT THE WAY I ARTICULATED THAT. LET'S SAY THAT A PERSON THAT HAS THE CONTRACTUALPROVISION IN THEIR FAVOR TO ALLOW THEM TO ARBITRATE , RATHER THAN PARTICIPATE IN A LAWSUIT , WHAT IS WRONG WITH THE RULE THAT SAYS , IF THEY HAVE THAT , THAT THEY MUST ANNOUNCE THAT AT THE EARLIEST AVAILABLE OPPORTUNITY ?

I DON'T BELIEVE THAT YOU CAN TAKE AND HAVE A SITUATION SUCH AS THIS PARTICULAR SITUATION, WHERE A PARTY APPEARS WITH NO , WITH NO BASIS , N O FACIAL BASIS OF HAVING THAT RIGHT TO ARBITRATE , AND MAKES A CLAIM , AND THEN CLAIMS SOME ALTERNATIVE RIGHT TO THAT. I MEAN , LET'S , WAIT A MINUTE , LET ME TAKE IT THIS WAY .

YOU WAIT A MINUTE , IF YOUWOULD , PLEASE.

I AM SORE I I APOLOGIZE .

I NEED TO FIND OUT WHAT YOUR POSITION IS ON HOW THE FACTS DEVELOPED HERE.

CORRECT.

AND BECAUSE WHAT I AM CONCERNED ABOUT IS THAT HERE THERE WAS , IN RAYMOND JAMES'S CONTRACT, THIS ARBITRATION PROVISION , AND THESE , THIS PERSON IS PROCEEDING WITH A CLAIM AS TO RAYMOND JAMES. NOW, I KNOW THERE IS ALL OF THIS CONFUSION , APPARENTLY , ABOUT WHO IS THE CORRECT PARTY OR NOT , BUT WHAT I DON'T UNDERSTAND IS, IF THIS IS REALLY AN ATTEMPT TO FIND OUT WHETHER OR NOT THERE IS A , THE CORRECT PARTY, ANDTHAT PARTY HAS THE RIGHT TO ARBITRATE , WHY ISN'T THE TELEPHONE UTILIZED , AND THAT SIMPLY STRAIGHTENED OUT? IT SEEMS TO ME THIS WHOLE THING COULD HAVE BEEN AVOIDED BY A TELEPHONE CALL.

WELL , IMMEDIATELY UPON , IN RESPONSE TO THE STATEMENT OF CLAIM , MY CLIENT FOUND , FILED A LETTER WITH THE ARBITRATION AUTHORITIES, THAT SET FORTH EVERY PROBLEMTHAT IT HAD , WITH RESPECT TO THE STANDING OF THIS ENTITY THAT WAS FACIALLY NOT ENTITLED TO ARBITRATE THIS CLAIM . WHAT HAPPENED WAS , IS THE APPELLEE S IN THIS CASE CHOSE TO LIE IN SECRET AND THEN GO OFF AND FILE A CASE IN COURTAND ATTEMPT TO AVOID THE ARBITRATION PROCEEDINGS.MY CLIENT WAS STRAIGHTFORWARD ABOUT THEIRDESIRES , AND THEY PUT IT INTHE ARBITRATION

HOW DID THEY LIE IN SECRET? THAT IS WHAT I AM A LITTLE CONFUSED WITH.

WHY DIDN'T THEY RESPOND TO THAT MOTION?

IT APPEARS TO ME THAT THEY HAD SUBMITTED SOME TYPE OF CLAIM ON A PARTICULAR ACCOUNT , DID THEY NOT?

THEY DID SUBMIT A CLAIMON A PARTICULAR ACCOUNT.

SO THIS ENTITY THAT HAD THIS ACCOUNT DOESN'T KNOW WHAT ACCOUNT THEY ARETALKING ABOUT.

NOW, THE SITUATION IS THAT THERE WAS A LIMITED PARTNERSHIP . EYE UNDERSTAND ALL THOSE THINGS.

OKAY. AND THEN A LLC COMES IN AND SUBMITS T.

I UNDERSTAND ALL THOSE FACTS. THOSE ARE WELL EXPLORED , BUT THEY ARE ALL RELATED TO A SINGULAR ACCOUNT , DO THEY NOT?

CORRECT.

DO THEY NOT DISCLOSE WHO THEY WERE WITH REGARD TO THAT ACCOUNT?

WHAT THEY DISCLOSED WAS THAT THEY HAD , THAT THERE WAS , THAT THEY WERE , IFORGET

THE EXACT TERM BUTTHEY WERE NOW THAT ACCOUNTOR SOMETHING LIKE.THAT THERE WAS NO LEGAL TERMINOLOGY WHAT IT WAS ANDMY CLIENT, AS THE RECORD CLEARLY SAYS , WENT BACK TO THE PUBLIC RECORDS TO FIND OUT WHO THESE PEOPLE WERE, TO SEE IF THERE WAS ANY EXISTENT OF ANY RIGHT FOR THEM TO DO THAT.

SO THERE WAS SOMETHING THAT INDICATED THE RELATIONSHIP OF THE PARTIESWITH REGARD TO THAT ACCOUNT, DID THEY NOT, AND YOU TOOK THE POSITION THAT THEY WERE NOT WHAT THEY SAID THEYWERE.

AND WE FILED IT WITH THE ARBITRATION FORUM AND SET IT UP FOR HEARING BEFORE THE ARBITRATION FORUM AND NEVERWAIVED THAT RIGHT.

LET ME SPEAK TO.THAT THE SECOND DCA SAID YOU COULD HAVE RAISED THE STANDING ISSUE IN THE ANSWER AND ASKED THE ARBITRATION PAN TOLL DETERMINE THE STANDING ISSUE , BUT INSTEAD OF DOING THAT , I DON'T THINK IT SPEAKS TO THAT , BUTINSTEAD OF DOING THAT, THERE WAS THE THREAT TO FILE A SEPARATE LAWSUIT TO STA Y ARBITRATION PROCEEDINGS. IS THAT CORRECT?

WELL , I THINK THAT THAT NEEDS TO BE LOOKED AT. FIRST OF ALL , I QUESTION WITH RESPECT TO THE PROCEDURES BEFORE THE ARBITRATION PANEL , WHETHEROR NOT YOU FILED THIS AS A MOTION OR YOU FILE IT AS A N AFFIRMATIVE DEFENSE AND A RESPONSE TO THE STATEMENT OF CLAIM , SOMETHING THAT A COURT DETERMINES ABOUT AN ARBITRATION PROCEEDING WITH RESPECT T O ITS PROCEEDINGS , AND FRANKLY THAT COMMENT, I THINK, BY THE COURT , IS OUT OF PLACE. IT IS NOT THEIR DECISION. IT IS THE ARBITRATOR 'SDECISION AND IT SHOULD HAVE BEEN LEFT WITH THE ARBITRATORS.

SO DO YOU AGREE WITH THE SECOND DCA THAT , INSTEAD OF FILING A REQUEST TO DISMISS THE ACTION WITH PREJUDICETHAT , YOU COULD HAVE FILEDAN ANSWER AND ASKED THE ARBITRATOR S TO DETERMINE THE STANDING ISSUE , INSTEAD OF

LAWYER COULD HAVE CHOSEN ANY NUMBER OF WAY TO SAY DO. THAT THIS LAWYER CHOSE A WAY OF FILING A MOTION TO RAISE THE STANDING ISSUE, AND THE OTHER PARTY HAD A RESPONSIBILITY, UNDER THE NEW YORK STOCK EXCHANGE RULES, TO RESPOND TO THAT MOTION, WHICH THEY NEVER DID , AND THEY NEVER CAME FORWARDWITH ANY EVIDENCE WITH RESPECT TO WHAT THIS MERGER RELATIONSHIP IS. THIS RECORD IS ABSENT OF ANY SUCH

ARE WE NOW GETTING INTO FACTS OF A CASE ABOUT WHETHER THE CONDUCT OF RAYMOND JAMES IN THIS CAS E , WAS INCONSISTENT WITH ITS SUBSEQUENT REQUEST FOR ARBITRATION? IS THAT , IT SOUNDS LIKE THAT IS WHAT WE ARE NOW HAVING A BACK AND FORTH ABOUT.

I THINK IT WAS DEFINITELY PART OF THIS CASE , AND I THINK IT IS VERY IMPORTANT.

BUT THE CONFLICT ISSUE OR THE ISSUE THAT I THOUGHT THAT WE WERE HERE TO DECIDE, IS WHETHER, AS , THERE IS A REQUIREMENT THAT THERE BE PREJUDICE TO THE OTHER PARTY. WE ARE NOT HERE, AT LEAST I WASN'T THINKING I WAS HERE TO REEVALUATE WHETHER THE CONDUCT OF RAYMOND JAMES WAS INCONSISTENT WITH ITS SUBSEQUENT REQUEST FOR ARBITRATION , WHICH IS A CASE BY CASE SITUATION. YOU ARE NOT GOING TO ALWAYS FIND THE SAME EXACT CONDUCT IN EVERY CASE. SO WOULD YOU

I THINK THIS, THESE FACTORS ARE EXTREMELY IMPORTANT , IN YOUR DETERMINATION OF WHETHER ORNOT YOU ARE GOING TO SAY PREJUDICE IS NECESSARY, AND HERE IS THE REASON. NO COURT HAS EVER NO COURTS EVER HOLD THAT FILING A MATTER IN A N ARBITRATION IN RESPONSE TO A CLAIM IS A WAIVER. YOU DON'T SEE IT HERE. WITH RESPECT TO THE ACTIONSTHAT WERE TAKEN BY RAYMOND JAMES IN CONTESTING PROCEDURAL MATTERS BEFORE THE CIRCUIT COURT , THE LAWIS CLEAR THAT THOSE MATTERS DON'T CONSTITUTE WAIVER AT

ARBITRATION. WITH RESPECT TO THE LETTER THAT WAS WRITTEN TO COUNSEL FOR APPELLEE

WHAT YOU ARE SAYING IS THAT YOU ADD UP A , B , C , D , E, F AND G, IT DOESN'T AMOUNT TO WAIVER AS MATTER OF LAW. REGARDLESS OF THE PREJUDICE, IT SEEMS TO ME THAT YOU ARE SAYING THAT WHAT THEY DID WASN'T INCONSISTENT WITH THEIR DESIRE TO HAVE ARBITRATION. ISN'T THAT BECAUSE ARE ARGUING?

I BELIEVE

ISN'T THAT WHAT YOU ARE ARGUING THOUGH? IN OTHER WORDS, THAT THOSE ACTIONS, THE WAY THEY DID IT , SHOULDN'T BE EVEN UNDER OURCOMMISSION LAW , WAIVER AS AMATTER OF LAW.

WELL , I THINK THAT IS ABSOLUTELY TRUE, AND I THINK SOMEBODY

DON'T WE HAVE TO ASSUME , FOR PURPOSES OF ANSWERING THE LEGAL ISSUE THAT WE HAVE BEFORE US , AS TO WHETHER OR NOT THERE SHOULD BE AN ADDITIONAL REQUIREMENT O F PREJUDICE , THAT THERE HAS BEEN A WAIVER ? IN OTHER WORDS THAT , ISN'TTHAT ASSUMED BY THE ISSUE THAT WE HAVE BEFORE US?

I DON'T THINK YOU HAVE TO ASSUME THAT , AND I THINK, ALSO, IT IS IMPORTANT TO LOOK AT THESE PARTICULAR ACTS AND THE NATURE OF THE LEGAL PRECEDENT SURROUNDINGTHEM , IN ORDER TO DETERMINE WHY THE PREJUDICE IS NECESSARY.THAT IS BECAUSE I AM SORRY. EXCUSE ME.

LET ME ASK YOU THIS. HOW DID RAYMOND JAMES FIRST BECOME AWARE OF THE, O F THIS CLAIM?

THROUGH THE STATEMENT OF CLAIM.

I AM SORRY?

I BELIEVE IT WAS THROUGH THE RECEIPT OF THE STATEMENT OF CLAIM.

OKAY. AND THEN DID RAYMOND JAMES HAVE A DOCUMENT WHICH IT WENT TO, TO SEE I F THESE PARTIES WERE PART OF A CONTRACT?

ABSOLUTELY.

OKAY. AND RAYMOND JAMES CAME TO , I MEAN I T ASSERTED THESE PEOPLE WERE NOT A PART OF THE CONTRACT.

THEY DID .

AND SO IT SEEMS TO ME IT IS PRETTY SIMPLE. EITHER THESE PEOPLE WERE PART OF THE CONTRACTOR WERE NOT A WERE PARTY OF THE CONTRACT, OR WERE NOT A PARTY TO THE CONTRACT. IF THEY WERE WRONG , TOMORROWS LIKE THEN WE GETINTO A LAWSUIT AND RAYMOND JAMES IS ASSERTING , WELL , THESE PEOPLE , WE SHOULD ARBITRATE.ISN'T THAT WHAT HAPPENED ?

MAYBE I CAN ANSWER IT THIS WAY. IF WE HAD A SITUATION WHERE A LAWSUIT HAD BEEN FILED BY THIS LLC , RAYMOND JAMES WOULD HAVE HAD NO INFORMATION THAT THIS LLC HAD ANY RIGHT TO ARBITRATE , AND ONCE DISCOVERY BEGAN IN THAT ARBITRATION , AND IT CAME OUT THAT THESE , THIS CLAIM WAS BEING MADE THROUGH RIGHTS OF THE LIMITED PARTNERSHIP, AT THAT POINT IN TIME , RAYMOND JAMES COULDHAVE MOVED TO COMPEL ARBITRATION. THERE IS

NO SIGNIFICANT DIFFERENCE BETWEEN WHAT WEHAVE HERE AND THAT PARTICULAR SITUATION , AND MY POINT EARLIER , WAS THAT, IF YOU TAKE ALL OF THESE DIFFERENT ITEMS THAT HAVE SAID TO BE INCONSISTENCIES , THEY ARE THINGS THAT HAVE ALL BEEN HELD TO BE INCONSISTENT WITH ARBITRATION. THE COURT NOW DETERMINES THAT THEY ARE CONSISTENT , AND A SHOWING OF PREJUDICE

DON'T WE HAVE A SITUATION HERE, WHERE YOUR OPPONENT STARTED OUT ASKING FOR ARBITRATION , AND THEY FILED A STATEMENT OF CLAIM AND THEY WANTED TO ARBITRATE , AND YOUR CLIENT SAID , NO WAY ! AS A MATTER OF FACT , IF THE NEW YORK STOCK EXCHANGE ALLOWS THIS ARBITRATION T O PROCEED , BOYS , WE WILL SUEYOU QUICKER THAN A THE FLASH OF AN EYE , SO NOW WE HAVE A COMPLETE REVERSAL , AFTER RAYMOND JAMES HAS TAKEN THEPOSITION THAT THERE IS NO WAY THAT THEY WOULD ARBITRATE THIS. NOW THEY ARE COMING BACK AND SAYING , AT THE END OF THEDAY, THAT THAT IS EXACTLYWHAT SHOULD HAPPEN HERE. SO DON'T YOU FIND SOME INCONSISTENCY IN THE ACTIONS OF RAYMOND JAMES?

I DO NOT FIND INCONSISTENCY WITH THAT, AND MY CLIENT HAS CONTINUALLYTAKEN THE POSITION THAT IF IT WAS SHOWN THAT THESE PEOPLE HAD A RIGHT TO THIS ARBITRATION THROUGH THE ARBITRATION AGREEMENT, THAT THEY WOULD HAVE ARBITRATED FROM THE BEGINNING.

I THOUGHT YOU ANSWERED JUSTICE BELL'S QUESTION BY SAYING THAT INDEED IT WOULD BE THE PEOPLE , THE ARBITRATOR S THAT WOULD RESOLVE THAT ISSUE.

IT SHOULD HAVE BEEN.

WELL, IF IT SHOULD HAVE BEEN, THEN WHY DID RAYMOND JAMES SAY YOU HAVE NO BUSINESS ARBITRATING IT?

RAYMOND JAMES FILED A MOTION WITH THE ARBITRATORS , TO HAVE IT DETERMINED. THIS CASE WENT ON. IT WAS SCHEDULED FORHEARING.I THOUGHT RAYMOND JAMES PUT EVERYBODY ON NOTICE THAT, IF THE ARBITRATORS PROCEEDED ANY FURTHER , THEY WOULD FILE THIS LAWSUIT!

THAT WAS A LETTER THAT WAS SENT SOLELY TO COUNSEL , AND I THINK IF YOU LOOK AT THE HAMMER CASE THAT WE HAVE , THE SECOND DCA HADPREVIOUSLY HELD THAT THAT KIND OF CONDUCT WAS CLEARLY NOT A WAIVER, BECAUSE PEOPLE SEND LETTERS LIKE THAT.

CHIEF JUSTICE: OKAY. THE MARSHAL HAS TURNED ON THE LIGHT.

COULD I GET A CLARIFICATION.

SURE.

I JUST NEED TO UNDERSTAND, TO MAKE SURE, IN THE STATEMENT OF CLAIM

RIGHT.

DID IT SAY THAT , STETSELL OR WHATEVER THE NAME IS , STETSELL LLC, ONE OF THE PARTIES , ONE OF THE PARTIES WAS FORMERLY KNOWNAS STETSELL LIMITED PARTNERS .

IT WAS NOW KNOWN AS.

IT WAS NOW KNOWN AS. WHY WOULD THAT NOT TELL RAYMOND JAMES WHO THIS PARTY WAS AND ITS RELATIONSHIP TO THE PARTY OF THE ACCOUNT, THE SPECIFIC ACCOUNT THAT RAYMOND JAMES HAD , AND WHY WOULD THAT PROVOKE A LETTER SAYING WE ARE GOING TO SUE YOU IF

YOU GO ANY FURTHER, WHICH WILL SERVE , AS THE SECOND DISTRICT SAID , WITH THE MOTION TO DISMISS. IT WAS NOT SOME KIND OF SUBSEQUENT LETTER AFTER. IT WAS SERVED , ACCORDING TO THE OPINION , WITH THIS.

I THINK THE SITUATIONHERE IS THAT WHAT RAYMOND JAMES DID IS THEY WENT ANDCHECKED THE PUBLIC RECORDS TO SEE WHAT THE SITUATIONWAS AND WHETHER THEY WERE DEALING WITH ONE ENTITY OR THE OTHER.THE SAME WAY IF THE LLC HAD WALKED UP TO THE CASHIER O F RAYMOND JAMES AND SAID GIVE ME THE PROCEEDS OF THIS ACCOUNT AND THIS IS A LLC , THEY WOULD HAVE SAID HOW DO YOU DO THIS?

CHIEF JUSTICE: IF YOU WANT TO SAVE ANY TIME FOR REBUTTAL, YOU SHOULD PAUSE HERE. GOOD MORNING .

GOOD MORNING. MR . CHIEF JUSTICE , JUSTICES OF THE COURT. MY NAME IS PAUL BLAND. I REPRESENT THE APPELLEES IN THIS CASE ALONG WITH MY CO-COUNSEL CHRISTOPHER VERNON. I WOULD LIKE TO START OFF, IF I COULD, ON THE LEGAL ISSUE ABOUT THE RELATIONSHIP OF FEDERAL LAW TO LOCAL LAW , BECAUSE I THINK IT AFFECTSTHE MAJORITY OF WHAT IS SET OUT HERE.

WOULD THE FEDERAL JURISDICTIONS HAVE SAID THAT?

THE SEVENTH SAID IT I N THREE SEPARATE CASES , THE SEVENTH CIRCUIT AND THE SIXTH CIRCUIT WITH JUDGE MICK LER.

SINCE WE HAVE EVOLVED FROM A TIME WHEN ARBITRATIONWAS NOT FAVORED AND YOU ARE OUSTING IT A COURT 'S JURISDICTION AND ALL OF THELANGUAGE USED A LONG TIME AGO , AND NOW WE HAVE SEEMED TO HAVE EVOLVED TO A POLICY OF FAVORING ARBITRATION. WHY SHOULDN'T THIS REQUIREMENT OF PREJUDICE BE A STRONG FACTOR TO SUPPORT THE POLICY IN FAVOR O F ARBITRATION , ESPECIALLY WHEN WE ARE TALKING ABOUT THE FEDERAL ARBITRATION ACT?

WELL , FIRST OF ALL , YOURHONOR , I THINK THAT THE EVOLUTION DIDN'T TAKE PLACE QUITE THAT WAY. IN FACT , THE CASES, THE FEDERAL CASES THAT FIND THAT THERE IS A REQUIREMENT O F PREJUDICE , TEND TO BE VERY OLD CASES , AND THEY TEND TO SAY THAT THIS REQUIREMENT OF PREJUDICE , LITERALLY IN A SINGLE SENTENCE , AND WE TRACKED THROUGH IN OUR BRIEF, A GAME OF WHIZER. THEY FIND THE PREJUDICE IN A CASE 15 YEARS BEFORE THAT AND ULTIMATELY TRACKED T O A MARITIME CASE WHERE THERE IS NO STATE LAW AT ALL , A CASE BACK IN THE 1930s .

ARE YOU SAYING THOSECASES ARE NOT WELL-REASONED?

NOT WELL-REASONED AT ALL . IN THE CASES ON OUR SIDE , THE SETTING OUT OF DETAILS OF WHY THERE IS NOT PREJUDICE UNDER THE FEDERAL ARBITRATION ACT , ARE QUITE WELL-REASONED. IN THE PAGEANTRY CASE .

GIVE US AN ARTICULATION ON. THAT WHY SHOULDN'T PREJUDICE BE REQUIRED AND WHAT IS THE BASIS FOR REJECTING THE ADDITIONAL REQUIREMENT OF PREJUDICE IN ADDITION TO WAIVER?

THERE ARE TWO REASONS. THERE IS A LEGAL ARGUMENT INVOLVING FEDERAL PREEMPTION AND A VERY STRONG POLICY ARGUMENT THAT IS SET OUT IN CASES ON OUR SIDE. WITH THE PREEMPTION ISSUE , BASICALLY WHAT THE COURT SAID IN THE PERRY VERSUS THOMAS CASE , THE MOST IMPORTANT CASE INVOLVING THE FEDERAL ARBITRATION ACT , WAS THAT UNDER THE FEDERAL ARBITRATION ACT , STATE NOT FEDERAL LAW GOVERNS, ISSUES REGARDING CONTRACT ENFORCEMENT , INTERPRETATION , REVOCATION , REINFORCEMENT , ALL CONTRACT ISSUES WITH

ONE EXCEPTION , AND ONE EXCEPTIONIS THAT ARE NOT PERMITTED TO TREAT ARBITRATION CLAUSES WORSE.IN THE STATE SAID THE NORMAL WAIVER LAW IS NOT TO FIND PREJUDICE BUT WE ARE NOT GOING TO FIND PREJUDICE WITH THE ARBITRATION LAW, BUT IT WAS SET OUT , LAST JUNE IN THE CASE OF GREEN TREE CORPORATION VERSUS BASS HEWILL, NOT ONLY VERSUS BAZELL, NOT ONLY GREEN TREE BUT THEY HAD AMICUS GROUPS THAT SAID THIS IS ALL FEDERAL LAW AND FEDERAL LAW DECIDES EVERYTHING, SIX JUSTICES OF THE SUPREMECOURT , THE MAJORITY OF THE PLURAL IT Y BY JUSTICE BREYER AND THE DISSENT BY JUSTICE S THOMAS AND STEVENS , SAID THIS IS A QUESTION OF STATE LAW. THAT IS LAST YEAR AND IN EOC VERSUS WAFFLE HOUSE , WAFFLE HOUSE SAID ARBITRATIONCLAUSES ARE DIFFERENT THAN OTHER TYPES OF CONTRACTS. THEY ARE SPECIAL , BETTER THAN OTHER TYPES OF CONTRACTS. YES , WE WOULD HAVE LOST THIS CASE IF WE TOOK NORMAL ARBITRATION RULES BURKES THE FEDERAL POLICY AGAINST ARBITRATION IS SO BIG.

WHAT WE HAVE HERE IS THAT THE FEDERAL LAW IS NOT UNIFORM , RIGHT? DOES THAT REQUIRE US, THEN , TO FOLLOW THE MAJORITY , IF FEDERAL LAW IS NOT UNIFORM, OR CAN WE DECIDE FOR OURSELVES , WHICH CASES WE ARE GOING TO ALIGN WITH?

YOUR HONOR , IT IS ABSOLUTELY CLEAR THAT YOU HAVE THE RIGHT TO DECIDE WHICH OF THE CASES THAT ARE BETTER REASONED.I MEAN, IT IS REGULARLY THE CASE IN FEDERAL PREEMPTION CASES, BECAUSE I DO A LOT OF THESE CASES, THAT THE CASE WILL GO UP TO THE U.S. SUPREME COURT, WHERE EVERY SINGLE FEDERAL COURT OF APPEALS WILL FIND THAT THEREIS PREEMPTION UNDER A STATUTE AND EVERY SINGLE STATE SUPREME COURT WILL FIND THAT THERE IS N O FEDERAL PREEMPTION OF A STATUTE.IN THE CASE OF MERCURY MARINE THAT OUR FIRM HANDLEDTHAT CASE LAST TERM, THERE WAS SOMETHING LIKE EIGHT FEDERAL COURT OF APPEALS THAT FOUND THAT THE BOAT SAFETY ACT PREEMPTED ALLSTATE LAWS AND THE COURT TOOK THE CASE BECAUSE THE TEXAS SUPREME COURT DISAGREED AND SAID NO , YOU DON'T WIPE AWAY STATE LAWTHAT EASILY. IT IS AN ACT OF SILENCE AND YOU ARE NOT GOING TO WIPE OUT STATE LAW. THE COURT TOOK IT. YOU DON'T ADD UP THE CASE UNTIL THEY HAVE MORE BEANS THAN WE DO .

HOW ABOUT COMING TO THE POLICY ANALYSIS?

OKAY. WHAT JUDGE POSTNER OF THE SEVENTH CIRCUIT SAID , WAS ON POINT WITH WHAT HAPPENED IN THIS CASE.HE SAID THAT , IF WHAT YOU DO , THAT YOU DON'T HAVE A RULE AS YOU ANNOUNCED HERE , AS YOU SUGGESTED YOUR HONOR , OF AS SOON AS A PARTY THINKS IT HAS THE RIGHT TO ARBITRATE , IT HAS TO COMPEL ARBITRATION , THEN YOU UNDERMINE THEPURPOSE OF THE WHOLE FEDERAL ARBITRATION ACT , BECAUSE THEPURPOSE OF THE FEDERAL ARBITRATION ACT IS TO HAVE A QUICKER , EASIER , FASTER PROCESS, BUT IF YOU GO BACK AND FORTH FROM ONE FORUM TO ANOTHER FORUM AND YOU CANSORT OF BE JERKED ON A CHAINTHIS WAY , THAT HAS THE EFFECT OF

LET ME ASK YOU THIS , IN ORDER FOR THERE TO BE A WAIVER, DOES IT HAVE TO BE AN INTENTIONAL WAIVER ON THE PART O F THE PARTY? IN OTHER WORDS DOES THE PARTY HAVE TO INTEND, BY THEIR ACTS , TO WAIVE ARBITRATION , OR IS THERE SOME LOSER STANDARD LOOSER STANDARD THAT WOULD BE LESS THAN INTENT , AND HOW, WHAT IS THE STANDARD, IF THERE IS A LOOSE !!ER STANDARD?

IT I S EXACTLY WHAT WAS SET OUT IN CLOISTER IT IS , YOUR HONOR. WE HAVE TO SHOW THAT THEREIS A INTENTION TO WAIVER,BUT YOU CAN INFER THAT FROM EITHER LANGUAGE OR FROM ACTIONS.

IT APPEARS THAT YOUR OPPOSITION IS SUGGESTING THAT WE HAD A MAN FROM MARSTHAT CAME IN AND DEMANDED ARBITRATION OF THIS CLAIM, AND WAS NOT UNTIL MUCH LATER WE FOUND OUT , WOE, THIS IS THE PERSON WE HAVE WHOA, THIS IS THE PERSON THAT WE HAD AN

ACCOUNT WITH , ANDONCE WE DISCOVERED THAT , WE DID ASSERT IT AT THE EARLIEST POINT IN TIME. WHAT IS WRONG WITH THAT RATIONALE?

THE FIRST THING THAT IS WRONG WITH IT IS WHETHER THE STANDING OF THE CLAIM OF THEMAN FROM MARS WAS A PROPER CLAIMANT , IS AN ASHABLE ISSUE AND THE SECOND CAS E AN ARBITRABLE ISSUE , AND THAT ISSUE IS FOR THE ARBITRATOR TO DECIDE, SO WHEN W E PUT THIS UP AND THERE IS AN ARBITRABLE ISSUE THAT THE ARBITRATOR SHOULD DECIDE, WE DON'T RECOGNIZE THAT THERE IS ANY ISSUE THAT WE SHOULD ARBITRATE AND MOREOVER IF YOU DO ARBITRATE, WE WILL SUE YOU IN COURT , S O WHAT THEY D O IS GO FORWARD, KNOWING THAT IF YOU GO FORWARD , THEY ARE GOING TO SUE I N COURT .

I THINK YOU NEED TO FIND THE PARTY THAT IS OF PROPER STANDING , CORRECT?

ACTUALLY WITH RESPECT TO STANDING IN THE NATIONAL , IN THE NEW YORK STOCK EXCHANGE RULES , YOU DON'T ACTUALLY HAVE TO HAVE A CONTRACT WITH SOMEONE TO HAVE STANDING. THERE ARE A NUMBER OF CASES THAT SAY THAT THE STANDING , UNDER THE NEW YORK STOCK EXCHANGE RULE 600.A , GOES TO WHEN ACCOMPANY DECIDES THERE IS GOING TO BE A BROKERAGE , ANY ISSUE THAT RELATES TO THE BROKERAGE WORK IS AUTOMATICALLY ARBITABLE , WHETHER IT IS A PARTY OR NOT .

ASSUMING THAT IS TRUE, THEN WHY DIDN'T YOU JUST RESPOND TO THE MOTION TO DISMISS INSTEAD OF FILING A INDEPENDENT ACTION?

BECAUSE ONCE THEY CAME AND SAID , BECAUSE THEY SAID IF YOU WIN A N ARBITRATION, WE ARE GOING TO GO TO COURT. IT IS SORT OF UNREASONABLE TO SAY THAT WE HAVE TO WIN THIS ISSUE TWICE. FIRST WIN THEN WE DECIDE WE ARE GOING TO GO TO COURT. WHEN THEY SENT A LETTER SAYING WE REFUSE TO ARBITRATE AND WE ARE GOING TO GO TO COURT , WHY SHOULD OUR CLIENT DO THAT?

WASN'T THAT WRAPPED IN A CLEAR CASE OF STAND SOMETHING WHY DIDN'T YOUFILE AN AMENDED CLAIM , CLARIFYING THE STATUS OF THE I.R.A. ACCOUNT O R THE LLCVERSUS THE PARTNERSHIP CLARIFY THE ISSUE OF STANDING IN RESPONSE? YOU COULD HAVE FILED A N AMENDED STATEMENT OF CLAIM REPRESENTED BY COUNSEL, AN AMENDED STATEMENT OF CLAIM IN RESPONSE TO THE MOTION TO DISMISS.

I THINK THAT WOULD HAVE BEEN AN UNREASONABLE REQUIREMENT PUT ON OUR CLIENTS IN THIS CIRCUMSTANCE. FOR ONE THING , WE DON'T HAVE TO HAVE STANDING IN THE SENSE OF HAVING A CONTRACT WITH THEM. UNDER THE NEW YORK STOCK EXCHANGE RULES, IT IS ABSOLUTELY CLEAR THAT NONMEMBERS, PEOPLE WHO ARE NOT CLIENTS OF THE BROKERAGE CAN STILL SUE THEM UNDER THE BROKERAGE RULES, AND IT IS CLEAR THAT RAYMOND JAMES IS COVERED BY RULE 600.A, BECAUSE THEY ARE A ASSOCIATED ENTITY , ASSOCIATED PERSONS.

WHAT BOTHERS ME IS THAT I AM CONCERNED ABOUT THESE CASES GETTING INTO A LEVEL OF GAMES MAN SHIP , WHERE PEOPLE ARE TRYING TO MANIPULATE WHETHER THEY DO ARBITRATOR THEY DON'T ARBITRATE , AND SO I WANT TO KNOW WHAT THE BOUNDARIES ARE , IS THE REASON I ASKED YOUTHE QUESTION ABOUT INTENT , AND I WANT TO KNOW, IF RAYMOND JAMES SENDS A LETTER AND SAYS WE HAVE GOT THIS CLAIM , WE DON'T SEE THAT YOUARE A PARTY TO A CONTRACT HERE, AND SO THEREFORE WE ARE NOT GOING TO ARBITRATE WITH YOU , IS THAT ENOUGH?IS THAT IT ?

IF RAYMOND JAMES, WELL , RAYMOND JAMES CAN'T SAY WE ARE NOT GOING TO ARGUE WITH YOU , WE ARE NOT GOING TO ARBITRATE WITH YOU UNDER THE NEW YORK STOCK EXCHANGE RULES THEY HAVE AGREED TO FOLLOW. UNDER THE NEW YORK STOCK EXCHANGE RULES, THEY HAVE TO COME IN AND SAY

EVEN IF SOMEBODY IS A TOTAL STRANGER TO THEM , TO RAYMOND JAMES , THEY ARE BOUND TO GO T O ARBITRATION.

THAT'S RIGHT. BECAUSE THERE HAVE BEEN CASES WHERE SOMEBODY HAS SUED ONE BROKERAGE AND SAID I AM NOT ACTUALLY A CUSTOMER OF YOU BUT YOU GAVE ADVICE THAT NONETHELESS HARMED ME BECAUSE IT GOT TO ME THROUGH ANOTHER FORUM AND SEVERAL COURTS SAID THOSE ISSUES ARE STILL ARBITRABLE , BECAUSE IF YOU AGREE TO FOLLOW THE NEWYORK STOCK EXCHANGE RULESAND WE SIGNED AN ARBITRATION AGREEMENT THAT WE AGREE TO FOLLOW THE NEW YORK STOCK EXCHANGE RULES , THEN WEWOULD HAVE LOST THE ARBITRATION.

YOUR POSITION IS THAT OUR RULE SHOULD BE THAT IT IS SUDDEN DEATH RAYMOND JAMES ZNTH A LETTER AND SAYS WE ARE NOT - - IF RAYMOND JAMES AM SENDS A LETTER AND SAYS WE ARE NOT GOING TO ARBITRATE , THEY WAIVE , REGARDLESS OF ANY OTHER CIRCUMSTANCES.

WELL , I CAN IMAGINE OUR CLIENT WOULD LET THEM OFF THE HOOK IF THAT KIND OF THING HAPPENS SOMETIMES , BUT I THINK THAT THE RULE THAT IS SET OUT IN THE SEVENTH CIRCUIT AND SOME OF THE OTHER OPINIONS THAT HAVE COME OUT THAT YOU DON'T NEED TO HAVE A PREJUDICE SHOWINGAND SO FORTH , HAS BEEN THAT A PARTY HAS A N OBLIGATION TO RESPECT ARBITRABLE ISSUES. IF THEY WANT TO ARBITRATE, THEY HAVE TO SAY THEY WANT TO ARBITRATE FROM THE OUTSET. WHAT THEY CAN'T DO IS INSIST ONGOING TO COURT THEN GETTING INTO COURT ANDFILING A MOTION TO DISMISSON THE STANDING ISSUE AND THEY ARGUE ON THE STANDING ISSUE.

LET ME GET INTO THE STANDING ISSUE BECAUSE YOU ARGUED THAT CONSTITUTE ADD WAIVER, ALSO , BUT IN OUR CASES , THE FLORIDA CASES , DON'T WE REQUIRE THAT A PARTY, IN ORDER TO WAIVE AN ARGUMENT LIKE PERSONAL JURISDICTION OR OTHER THINGTHAT IS CAN BE WAIVED BUT NOT ASSERTED AT THEBEGINNING OF THE CASE, HAVEN'T WE SAID THAT A WAIVER OCCURS WHEN A PARTY SEEKS AFFIRMATIVE RELIEF , AND I DON'T SEE THAT THEMOTION TO DISMISS IS NOT AFFIRMATIVE RELIEF.

YOUR HONOR , IN THE ARBITRATION SETTING THERE, ARE AN AM IN OF

IF YOU ARGUE TO DISMISSTHE CASE, HOW DO YOU ATTEMPTTO INVOKE THE JURISDICTION OF THE COURT? YOU ARE ATENTING TO NOT INVOKE? YOU ARE ATTEMPTING TO SPECIFICALLY GET RID OF THE JURISDICTION OF THE COURT.

YOU ARE ATENTING T O INVOKE THE JUDGMENT OF THECOURT IN AN ISSUE THAT CAME UP EXACTLY IN THE CANCER AND NATIONAL FEDERATION CASE.

LET'S GO BACK BETWEENSTATE AND FEDERAL LAW. IS THAT AN ISSUE OF A STATE LAW OR FEDERAL LAW , WHETHER FILING A MOTION TO DISMISSIN A FLORIDA STATE COURT , WAIVES A CLAIM OR NOT.

I BELIEVE THAT IS AN ISSUE OF FLORIDA LAW. I DON'T THINK THAT IT HAS RESOLVED THE INSTANCE BY ANY STRETCH. WHAT I THINK THAT I AM URGING THIS COURT TO ADOPT , IN TERMS OF THE CASE LAW THAT IS OUT THERE OF WHAT CONSTITUTES A WAIVER ANDWHAT SORTS OF FACTS ARE ENOUGH TO INFER A WAIVER FROM, IS THERE ARE A NUMBER OF COURTS THAT HAVE SAID THAT , WHERE A PARTY ASKS THECOURT TO DECIDE AN ARBITRABLE ISSUE, THAT THAT CONSTITUTES EVIDENCE THAT THEY INTEND TO WAIVE THE CLAIM AND THE REASON IS THAT THE POLICY ISSUE THAT THE ISSUE IS PROPOSED T O RAISE TO THE COURT.

THE CLOISTERS SAYS THAT A PARTY CAN WAIVE BY ACTIVELY PARTICIPATING IN A LAWSUIT.

IT IS BEYOND THE EFFECT OF CLOISTERS. I THINK THAT ASKING THECOURT TO DECIDE AN ISSUE ,

DECIDE THE CASE, FINALLY DISPOSE OF OUR CLIENTS' CLAIMS , HAVE REST JUDICATA WITH CASES HAVE RES ADJUDICATA WITH CLAIMS BEING DISMISSED AS PREJUDICE BECAUSE OF AN ARBITRABLE ISSUE, THAT I S ACTIVE PARTICIPATION IN LITIGATION .

ONE OF MY ARGUMENTS WITH ONE OF MY POSITIONS WITH YOUR OPPONENT IS , AND MAYBEYOU CAN ADDRESS THIS I S IN WHAT OTHER AREA OF LAW DO WE REQUIRE AN ADDITION TO THE WAIVER OF PREJUDICE , AND I DON'T SEE WHERE WE REQUIRE THAT I N ANY OTHER AREA OF LAW , BUT M Y QUESTION TO YOU, THEN, IS IN WHAT OTHER AREA OF LAW HAVE WE SAID THAT A MERE MOTION TO DISMISS IS ENOUGH ACTIVE PARTICIPATION IN A CASE, T O , THEN , WAIVE A CLAIM?

I DON'T BELIEVE THAT THI S COURT HAS SPOKEN TO THAT ISSUE , YOUR HONOR. YOBL I DON'T THINK THERE IS A FLORIDA I DON'T THINK THERE IS A FLORIDA SUPREME COURT CASE THAT SAYS THAT A FILING OF A MOTION DOES THAT.

I KNOW THAT THERE ARE SEVERAL CASES THAT HAVE SAID THAT A MERE FILING OF A MOTION TO DISMISS DOES NOT WAIVE A PERSONAL JURISDICTION OR CHANGE OF VENUE OR OTHER THINGS OFTHAT NATURE , SO WE WOULD BE MAKING AN EXCEPTION FOR THEISSUE OF ARBITRATION.

NEW YORK CITY YOUR HONOR, BECAUSE HERE ARBITRATION IS A LITTLE BIT UNIQUE AS IT GOES TO WHO SHOULD BE DECIDING IT. THE QUESTION I S WE SHOULD NOW TALK ABOUT THE FACTUAL ISSUE OF WHAT CONSTITUTES EVIDENCE AFTER INTENT TO WAIVE, AND FILING A MOTION TO DISMISS DOESN'T WAIVE YOUR MOTION FOR PERSONAL JURISDICTION. IT HAS NOTHING TO DO WITH IT. FILING A MOTION TO DISMISSASKING THE COURT T O RESOLVEAN ISSUE THAT YOU COULD HAVE HAD AN ARBITRATOR DECIDE AND NOW COMPELLING TO RAISE THESAME ISSUE AND GET A SECOND BITE OF APPLE IN FRONT OF AN ARBITRATOR, THAT IS UNIQUE TO THE SITUATION BECAUSE OF ARBITRATION . IT IS VERY CLEAR THAT THE ARBITRATOR WOULD HAVE A WHOLE NEW BITE. IF YOU LOOK AT THE BAZELL CASE THAT THE SUPREME COURTJUST DECIDED , IT DECIDEDED THAT AN ARBITRATION CLAUSE THAT WAS SILENT ON WHETHER OR NOT CLASS ACTIONS COULD BE PURSUED, WAS AN ISSUETHAT YOU COULD HAVE A CLASS ACTION WHERE THE ARBITRATIONCLAUSE WAS SILENT , AND WHAT THE SUPREME COURT PLURALITY DID WAS SENT IT BACK TO AN ARBITRATOR TO DECIDE THE ISSUE, SO GREEN TREE WAS GETTING A SECOND BITE DESPITE THE CONCLUSIVE RULE BUYING THE SUPREME COURT. IF THE CASE BELONGED IN ARBITRATION, THEN WHATEVER THE TRIAL COURT DID WOULDN'T HAVE MATTERED , SO THEY COULD HAVE GOTTEN A WHOLE SECOND BITE AT IT , AND THERE IS NO ISSUE AS TO WHY YOU STAY WHERE YOU ARE STARTING OFF .

ILL LIKE TO GO BACK TO A STATEMENT THAT I WOULDLIKE TO GO BACK TO A STATEMENT THAT YOU MADE THAT SAID RAYMOND JAMES HAD A STANDING ISSUE , EVEN IF IT WAS SOMEONE THAT DIDN'T HAVE A STANDING CONTRACT WITH THEM , WOULD HAVE HAD TO GO THERE ARBITRATION , BECAUSETHEY IN FACT , HAVE A CONTRACT WITH THE NEW YORK STOCK EXCHANGE THAT SAYS THEY DO. ISN'T THAT A STATEMENT THAT YOU MADE?

THAT'S RIGHT.I AM SORE I.

SO IF THAT IS THE CASE I AM SORRY .

SO IF THAT IS THE CASE, THEN I AM HAVING A PROBLEMHERE, WITH TRYING TO UNDERSTAND WHY, IF RAYMONDJAMES HAD TO GO THROUGH ARBITRATION , YOUR CLIENT DID NOT CONTINUE DOWN THAT ARBITRATION PATH, EVEN THOUGH THEY HAD FILED A MOTION OR FILED A LETTER THAT CONTESTED YOUR CLIENT'S STANDING TO PROCEED .

BECAUSE OUR CLIENT WANTED TO HAVE THIS ISSUE COME UP ONCE. THEY WANTED TO RESOLVE THE STANDING ISSUE ONE TIME , AND WHAT THEY DID

SO IF THE ARBITRATOR HAD, IN FACT , WHAT THEY DID WAS SAID YOUR CLIENT HAD STANDING AND CONTINUED ON WITH THE ARBITRATION , RAYMOND JAMES WOULD NOT HAVE BEEN BOUND BY IT?

THAT IS WHAT THEY WERE SAYING IN THE LETTER. THE LETTER OF

I AM NOT ASKING YOU WHAT THEY ARE SAYING IN THELETTER. I A M HIM ASKING YOU WHAT DOES THE LAW SAY ABOUTWHETHER OR NOT , IF THEY HAD TO GO THROUGH ARBITRATION AND YOU CONTINUED ON WITH ARBITRATION , AND A DECISION WAS MADE , WOULD RAYMOND JAMES HAVE BEEN BOUND BY IT?

I THINK THEY WOULD HAVE BEEN BOUND WHEN THEY SAY WE REFUSE ASH FRATION AND WANT TO GO T O REFUSE ARBITRATION AND WANT TO GO TO COURT AND THEIR ATTORNEY IS SAYING WE WANT TO GO T O COURT, THEN THAT FREEZE US UP AND THAT IS AN ARGUMENT OF WAIVER. IF A PARTY COMES OUT AND SAYS THIS, THEN THAT GIVES US AN ARGUMENT IN COURT THAN TO GO T O ARBITRATION AND WIN AN ARE A WARD AND THEY SAY THEY WIN AN AWARD AND THEY SAY THEY ARE GOING TO CHALLENGE IT IN COURT. BUT HERE THEY GO ON FOREVER BECAUSE THEY GET TWO BITESOF THE AMEND, MAKES US FEEL WE MIGHT AS WELL GO TO COURT. ONE THING

FACTUAL QUESTION. QUESTION AS TO THE RIGHT TO ARBITRATOR THE REQUIREMENT TO ARBITRATE , BECAUSE NORMALLY I AM THINKING IT IS THE BROKERAGE HOUSE THAT WANTS TO ARBITRATE AND THE INVESTOR THAT DOESN'T WANT, TO BUT SALDUKAS ACTUALLY HADAN ACCOUNT WITH RAYMOND JAMES, DIDN'T HE?

THAT STANDING ISSUE IS A RED HERRING , BECAUSE WE WERE THE RIGHT CLIENTS. WE DID HAVE A RIGHT TO BRING THIS CASE , EVEN UNDER THE MOST RESTRICTIVE VERSION.

SO RAYMOND JAMES 'S VERSION WOULD SHOW THAT , AT LEAST AS TO ONE OF THE INDIVIDUALS FILING FOR ARBITRATION, THAT THEY HADAN ACCOUNT WITH THEM .

RIGHT. I THINK OUR CLIENT HAD A STRONG SENSE IN THE BEGINNING THAT THIS WHOLE ISSUE OF STANDING WAS A RED HERRING , THAT THEY WERE SORT OF BEING PULLED AROUND.

SO WHAT YOU ARE SAYING IS THAT RAYMOND JAMES, IF THEY WANT ARBITRATION, THEY SHOULD HAVE BEEN AS HAPPY AS PUNCH TO HAVE THIS ARBITRATION FILED , BUT INSTEAD WHAT THEY DID IS THEY FILED A MOTION T O DISMISS . BECAUSE WE HAVE BEEN SAYING THERE WAS A LETTER, BUTTHERE WAS ACTUALLY A PLEADING FILED IN THE NEW YORK PROCEEDINGS AS WELL.

UNDER THE RULE THAT SAYS IF THE MOTION TO DISMISS IS GRANTED, YOU ARE LEFT WITH YOUR OPTIONS AT LAW, SO IF THEY HAD WON THEIR MOTION TO SAY DISMISS , WE WOULD HAVE BEEN BACK IN COURT ANYHOW , SO WHY GO THROUGH ALL OF THAT, IF WE ARE GOING TO JUST END UP IN COURT.

TALK ABOUT WHAT CONSTITUTES A WAIVER , WOULD YOU AGREE THAT , AND IN THE LAWSUIT , WHERE A PARTY IS SEEKING TO HAVE A COURT ADJUDICATE WHETHER ITS RIGHTS HAVE BEEN VIOLATED AND DAMAGES O R WHATEVER, IF THE DEFENDANT COMES IN AND FILES A MOTION TO DISMISS THAT EXPLICITLY SETS OUT THAT , IF THERE IS A RIGHT TO ARBITRATE THIS , AND ASKS THECOURT TO DISMISS OR STAY THIS ACTION , AND DIRECT ARBITRATION, WOULD YOU AGREETHAT THAT WOULD NOT CONSTITUTE A WAIVER OF THE RIGHT?

THEY ARE MAKING A NOTION DISMISS BECAUSE THERE IS A ARBITRATION CLAUSE, YOURHONOR?

RIGHT.

YES. IF THEY HAD SAID WE MOVE TO COMPEL ARBITRATION IN COURT, THEN THEY WOULDN'T HAVE WAIVED, BY THE , BY MAKING THE MOTION TO DISMISS ON THE ARBITRABLE ISSUE. THEY WOULD HAVE SAID THIS IS A ISSUE FOR THE ARBITRATOR .

YOU HAVE TO BE BRIEF. WE HAVE TO WRAP UP.

WE HAVE TWO DIFFERENTISSUES. WE HAVE THE WAIVER AND THE OTHER ARGUMENT.

WE HAVE TO TAKE THAT ON THE BRIEFS AND WHAT YOU ARGUED ALREADY. COUNSEL , MR. MARSHAL . JUST HAVE A VERY BRIEFAMOUNT OF TIME.

OKAY. VERY BRIEFLY , I THINK TO ANSWER ONE QUESTION , THE ACCOUNT THAT WE ARE TALKINGABOUT WAS AN ENTITY ACCOUNT. IT WAS NOT AN INDIVIDUAL ACCOUNT , AND MR . SALDUKAS 'S AGREEMENTS WERE INDIVIDUAL AGREEMENTS NOT FOR THAT , SO HE DIDN'T HAVE A RIGHT TO BRING IT ON BEHALF OF THOSE AC OCCUPANTS, BUT I THINK THAT I WOULD VERY QUICKLYLIKE TO TALK ABOUT ONE POINT. THE NATURE O F THESE ARBITRATION DISPUTES , AND LOOK AT THE HISTORY OF THEM OF ALL OF THE CASES THAT YOU HAVE BEFORE YOU, IT IS THE CLIENTS TRYING TO SQUIRM OUT OF THE ARBITRATION AGREEMENTS THAT THEY SIGNEDTO HAVE THESE ACCOUNTS. THAT IS NORMALLY WHAT TRANSPIRES HERE. HERE, IN THIS SITUATION , WE HAVE A CLAIM THAT WAS FILED BY SOME SPURIOUS ENTITIES THAT HAS NEVER BEEN CLEARED UP , AND MY CLIENT QUESTIONS THAT IN THE ARBITRATION PROCEEDING.

HOW WOULD YOU ARTICULATE THE RULE OF WAIVER? LEAVE THE PREJUDICE OUT OF IT FOR A MINUTE .

OKAY.

BUT HOW WOULD YOU ARTICULATE THE RULE , THE LEGAL RULE, THAT SAYS THERECAN BE A WAIVER , AND THAT HERE IS THE LEGAL DEFINITION OF WAIVER? HOW WOULD YOU ARTICULATE THAT?

I BELIEVE THAT THE RULE,WITH RESPECT TO PARTICIPATING IN A COURT PROCEEDING, INDICATES THAT YOU HAVE TO SUBSTANTIALLY PARTICIPATE IN THE PROCEEDING, ON THE MERITS O F THE CONTROVERSY AND NOT PROCEDURAL ITEMS , AND THAT DID NOT HAPPEN HERE.

CHIEF JUSTICE: OKAY. AGAIN, I AM GOING , BECAUSETHE TIME IS UP, TO TAKE ITON THAT. WE APPRECIATE , ESPECIALLY , YOU ALL RESPONDING TO OUR NUMEROUS QUESTIONS AND INQUIRIES. THANK YOU ALL VERY MUCH. THE COURT IS GOING TO TAKE ITS MORNING RECESS OF 1 5 MINUTES. WE WILL COME BACK ON THE BENCH AT A QUARTER OF THE HOUR , TO HEAR THE NEXT CASE. WELL STAND IN RECESS .

MARSHAL: MAKE PLEASE RISE.