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**Global Travel Marketing, Inc. v. Mark P. Shea**

CHIEF JUSTICE: GOOD MORNING. I DON'T WANT ANYONE TO FEEL BADLY THAT THE CROWD LEFT IN IT TIME FOR YOUR ORAL ARGUMENT. THE NEXT CASE ON THE COURT'S DOCKET IS GLOBAL TRAVEL MARKETING VERSUS SHAI. MR . VERSUS SHEA. MR . GOULD.

THANK YOU, YOUR HONOR . BRUCE E JACOBS, A LAWYER A LAWYER AND HER SON WENT ON A SAFARI .

COULD YOU TELL U S WHO YOU REPRESENT.

YES, YOUR HONOR. WE REPRESENT GLOBAL TRAVEL. THE CLIENT WENT ON A SAFARI . AS A CONDITION OF GOING ON THE SAFARI , MS. JACOBS HAD TO SIGN AN ARBITRATION CLAUSE ON HER OWN BEHALF AND ON BEHALF OF HER ELEVEN-YEAR-OLD CHILD.

NOW, YOU ARE NOT CONTESTING OR I GUESS THIS IS REALLY , WOULD BE MR . BURLINGTON , BECAUSE I UNDERSTAND THE SITUATION WITH THE FATHER NOT HAVING BEEN A PARTY THERE, IS NOT , I GUESS THERE IS NOT A QUESTION IN THIS AS TO THAT THE FATHER ACCEPTS THAT THE MOTHER HAD WHATEVER AUTHORITY THERE WOULD HAVE BEEN, TO SIGN ON BEHALF OF THE CHILD. CORRECT?

THAT IS MY UNDERSTANDING, YOUR HONOR .

CHIEF JUSTICE: THAT DIDN'T SEEM TO BE AN ISSUE.

I DO NOT THINK THAT IS AN ISSUE .

IS THERE AN ISSUE HERE ABOUT WHETHER THE FATHER IS BOUND FOR HIS OWN DAMAGES ? ANY CAUSE OF ACTION HE MAY HAVE PERSONALLY?

I DON'T BELIEVE HE IS SUING IN HIS OWN RIGHT. I THINK HIS LAWSUIT IS AS THE EXECUTOR OF THE ESTATE , AND I THINK IT IS NOT IN DISPUTE THAT, AS THE EXECUTOR OF THE ESTATE , HE STANDS IN THE SHOES O F THEBOY , WHATEVER

DOESN'T HE HAVE AN INDIVIDUAL CLAIM ? THE PERSONAL REPRESENTATIVE , AS I UNDERSTAND OUR STATUTES , IS THE ONLY INDIVIDUAL THAT CAN BRING A LAWSUIT, BUT YOU MAY HAVE OTHERS THAT HAVE PERSONAL INJURIES OR RIGHTS ARISING OUT OF THAT , SO ALTHOUGH HE MAY BE APERSONAL REPRESENTATIVE , HE MAY , ALSO , HAVE INDIVIDUAL OR INDEPENDENT RIGHTS. I THINK THAT IS WHERE THEQUESTION IS COMING FROM, IS THAT AN ISSUE OR IS IT NOTAN ISSUE?

THINKY DO NOT THINK THAT IS I DO NOT THINK THAT ISAN ISSUE , YOUR HONOR. THE BOY , OBVIOUSLY AS IS CLEAR ON THE PAPERS , WAS TRAGICALLY KILLED BY A LINE, A WHEN THE HYENA BY A HIGHEEN, A WHEN THE HYENA ENTERED HIS TENT. THE MOTHER FILED A LAWSUIT. THE MOTHER IS NOW IN ARBITRATION. THE FATHER , AS EXECUTOR , FILED THE LOWER COURT ORDERED ARBITRATION. THE COURT OF APPEALS REVERSED. WE ARE NOW BEFORE THIS COURT.

LET ME ASK YOU THIS QUESTION, IF A PARENT WANTED A CHILD TO EXPERIENCE THE THRILL OF THE RISK AND WOULD SIGN A CHILD UP TO ENGAGE IN A GAME O F RUSSIAN ROULETTE AND SIGN ALL THESE WAIVERS, YOU KNOW, YOU MAY B E INJURED BY THIS BUT , BOY, THE THRILL , THE RUSH OF ALL OF THIS IS WORTH THE EXPERIENCE, AND OH, IF YOU GET SHOT , THENYOU ARE

GOING TO HAVE TO COME ARBITRATE IT. WOULD THAT BE VALID UNDER FLORIDA LAW?

IT IS NOT A QUESTION OF FOREIGN LAW SO MUCH AS IT IS A QUESTION OF ARBITRATION LAW.

I THINK IT IS A QUESTION OF FLORIDA LAW, BASED UPON OUR CASES THAT SAID WE LOOK TO FLORIDA LAW AS ENFORCEABILITY TO THE CONTRACT, ITSELF, SO IF YOU WOULD ADDRESS IT IN THAT MANNER, I WOULD APPRECIATE IT.

I WILL, YOUR HONOR. WE CAN LOOK AT FLORIDA LAW, BUT THE ISSUE IS WHETHER THE FLORIDA LAW OR THE FLORIDA PUBLIC POLICY IS NULLIFYING ONLY CERTAIN TYPES OF ARBITRATION AGREEMENTS. AND THAT IS EXACTLY WHAT THE COURT OF APPEAL DID HERE.

AGAIN I ASK YOU THE SAME QUESTION. WE HAVE THE SAME CONTRACT BUT THE EVENT WAS RUSSIAN ROULETTE, AND THE CHILD IS INJURED. THE CHILD IS KILLED. PLACE THAT IN THIS CONTEXT. IS THAT AN ENFORCEABLE ARBITRATION PROVISION IN THAT KIND OF CONTRACT, UNDER FLORIDA LAW, THE WAIVER OF ANY RIGHTS FOR THAT CHILD?

I BELIEVE A FLORIDA LAW SAYING THAT ARBITRATION WAS VOID UNDER THOSE CIRCUMSTANCES, WOULD BE PREEMPTIVE BY FEDERAL LAW. THE ISSUE AND THE, REALLY, THE ONLY ISSUE THAT NEEDS TO BE DECIDED, IS WHETHER THERE IS A POLICY WHICH I THINK IS ALL WE HAVE HERE. WE DON'T HAVE A STATE STATUTE. WE HAVE A POLICY LAID DOWN BY THE COURT OF APPEALS. THE ISSUE IS WHETHER THAT IS DISCRIMINATORY AGAINST ARBITRATION CONTRACTS, AND THE ANSWER IS, IT CLEARLY IS. IT NOT ONLY IS DISCRIMINATORY AGAINST ARBITRATION CONTRACTS, IT IS ONLY DISCRIMINATORY AGAINST CERTAIN TYPES OF ARBITRATION CONTRACTS.

SO IF THE FOURTH DISTRICT'S OPINION HAD SAID THAT THE PARENT DOES NOT HAVE THE ABILITY TO AGREE TO AN ARBITRATION CLAUSE IN ANY KIND OF A CONTRACT ON BEHALF OF THEIR CHILD, WHETHER IT WAS THE CHILD GOING UP TO DISNEY WORLD IN HIGH SCHOOL, WOULD THAT BE, THEN, WOULD THAT BE DIFFERENT? IN OTHER WORDS, IF IT WAS A BROADER ANNOUNCEMENT?

I UNDERSTAND THE QUESTION, YOUR HONOR. NO. IT WOULD BE NO. IT IS NOT, IT IS THAT IT IS, DISCRIMINATES AGAINST ARBITRATION.

BUT WHERE, JUST SO WE ARE CLEAR ABOUT THIS, WE ARE TALKING ABOUT IN THIS CONTRACT, THERE IS ALSO A RELEASE OF LIABILITY FOR THE RISK INVOLVED, AND AS I AM UNDERSTANDING IT, WE ARE NOT TO LOOK AT ALL, AT WHETHER THAT RELEASE IS VALID IN THIS CASE AND WHETHER THAT, THE VALIDITY OF THAT RELEASE IS AN ARBITRABLE ISSUE OR A QUESTION OF LAW THAT, THAT IS NOT BEFORE US?

THE EXCULPATORY CLAUSE IS NOT BEFORE THIS COURT.

OR WHETHER THE CLAUSE IS ONE THAT COULD BE, SHOULD BE DECIDED IN A COURT OF LAW OR SUBJECT OF AN ARBITRATION?

WELL, THAT ISSUE IS, BECAUSE IF IT GOES TO ARBITRATION, THE ARBITRATOR WILL, THEN, DECIDE THE VALIDITY OF THE EXCULPATORY CLAUSE.

SO THERE IS TWO ISSUES THEN. WE HAVE TO DECIDE WHETHER THE RELEASE IS, SHOULD BE DECIDED IN A COURT OF LAW.

NO, SIR, YOUR HONOR. THE ONLY ISSUE BEFORE THE COURT, IS WHETHER THIS CLAIM MUST BE ARBITRATED.

BUT IF WE, BECAUSE I AM CONCERNED AS JUSTICE LEWIS ALLUDED TO, THAT THE PROBLEM

THAT I SEE WITH THIS , IS THE RELEASE OF LIABILITY , AND THAT SEEMS TO ME , TO BE SOMETHING THAT WOULD BE A QUESTION OF LAW FOR THE COURT, WHETHER THAT IS A VALID RELEASE, BECAUSE THAT IS REALLY WHAT THE STATUTES DEAL WITH IN THIS STAY STATE , IS THE FACT THAT IN THIS STATE, IS THE FACT THAT THE COURTS MUST BE INVOLVED BEFORE THERE IS ANY RELEASE OF LIABILITY.

THAT IS NOT THE ONLY ISSUE BEFORE THE COURT. THE ONLY ISSUE IS THE ARBITRATION CONTRACT, AND IF THE ARBITRATION CONTRACT IS TREATED DIFFERENTLY FROM CONTRACTS IN GENERAL , IT IS PREEMPTED.

LET ME GO BACK TO JUSTICE LEWIS 'S QUESTION, THOUGH , FOR JUST A MOMENT.

PLEASE.

IT SEEMS TO ME THAT HE POSED TO YOU, A QUESTION THAT INVOLVED AN ILLEGAL , UNLAWFUL CONTRACT . THAT IS A CONTRACT TO PARTICIPATE OR HAVE YOUR CHILD PARTICIPATE I N RUSSIAN ROULETTE. ARE YOU SAYING , EVEN UNLAWFUL OR ILLEGAL CONTRACTS CAN BE COMPELLED TO BE ARBITRATED , EVEN THOUGH THAT THE CONTRACT UNDER FLORIDA LAW , WOULD BE VOID AND UNLAWFUL AND AGAINST PUBLIC POLICY ? I AM GOING BACK

THE ISSUE, I UNDERSTAND.

THAT, REALLY, WE TALKED ABOUT RUSSIAN ROULETTE.

YES. YES.

THAT IMMEDIATELY RINGS ABELL , AND YOU SAY WAIT A MINUTE, YOU KNOW , HOW COULD A PARENT , THAT WOULD BE THE PARTIES ENTERING INTO A , AND AGAINST ALL PUBLIC POLICY , STATE , FEDERAL OR INTERNATIONAL , I SUPPOSE.

I DON'T WANT TO SUGGEST THAT , FOR ONE MINUTE I WOULD THINK THAT A RUSSIAN ROULETTE CONTEST OF THE PARENTAL ALLOW THE CHILD TO ENGAGE IN , WOULD WITHSTAND SCRUTINY BY ANY JUDGE OR ARBITRATOR , AND I SUPPOSE , FOR PURPOSES OF THIS ARGUMENT, IF THERE IS A STATUTE THAT ABSOLUTELY FORBIDS CONDUCT , POSSIBLY IT DOESN'T HAVE TO GET TO ARBITRATION , ALTHOUGH I THINK , UNDER THE SUPREME COURT , THE UNITED STATES SUPREME COURT ANALYSIS , IN DOCTORS ASSOCIATES , I THINK THE ISSUE OUGHT TO BE ONE OF ARBITRATION .

THE DOCTORS, THE POINT THAT I THINK JUSTICE ANSTEAD IS GETTING TO , IS THIS DIFFERENTIATION BETWEEN A VOID INITIAL YO CONTRACT AND AVOIDABLE , BECAUSE IT SEEMS TO ME THAT UNDER FLORIDA LAW, IT SEEMS TO ME A VERY RECOGNIZED , WIDELY RECOGNIZED PRINCIPLE THAT , IF YOU HAVE SOMETHING THAT IS VOID ADMONITIO , , THAT IN A SENSE IT IS ILLEGAL TO DO IT , THEN THE CONTRACT DOESN'T EVER COME INTO EXISTENCE , UNDER THE LAW , ISN'T THAT CORRECT? INCLUDING THE ARBITRATION CLAUSE!

YES. I THINK THAT , PERHAPS , IS RIGHT , JUSTICE WELLS , IF IT IS A CONTRACT THAT IS VOID ADMONITIO , A CLEARLY VOID ADMONITIO , THEN , PERHAPS THERE IS NO CONTRACT, SO LONG AS THAT ANALYSIS IS APPLIED TO ALL CONTRACTS.

SO THE ANALYSIS HERE, REALLY, STEMS FROM THE FACT AS TO WHETHER OR NOT THIS COMMERCIAL TRAVEL AGREEMENT , WHICH HAS THIS PERSPECTIVE TORT RULING , VOID ADMONITIO , WHETHER YOU CAN HAVE A CONTRACT EVER COME INTO EXISTENCE , THAT HAD THAT KIND

I DON'T THINK THAT IS TRUE, YOUR HONOR. I DON'T THINK THAT AN EXCULPATORY CLAUSE , AND

THERE IS TWO ISSUES IN THE EXCULPATORY CLAUSE. ONE IS OF THE NEGLIGENCE OF THE COMPANY THAT HAD MS. JACOBS SIGN IT. THE OTHER IS A S AGAINST THIRD PARTY NEGLIGENCE, AND I DON'T THINK THERE IS ANY STATUTE THAT SAYS THAT EITHER IS VOID, AND I DON'T THINK THERE IS SUCH A UNIFORM SENSE OF OPINION THAT IT IS LIKE RUSSIAN ROULETTE. I MEAN , THERE ARE COURTS THAT HAVE HELD EXCULPATORY CLAUSES VALID. THERE ARE SOME THAT HAVE HELD THEM INVALID , BUT THAT ISSUE IS CLEARLY SUBJECT TO THE DOCTORS ASSOCIATE CASE OF THE UNITED STATES SUPREME COURT. THAT IS A VERY POWERFUL CASE . THE MONTANA STATUTE THAT WAS PREEMPTED IN THAT CASE WAS A NOTICE REQUIREMENT. ALL IT SAID WAS THAT, IF YOU ARE GOING TO HAVE AN ARBITRATION CLAUSE, YOU HAVE GOT TO STATE IT IN BOLD PRINT ON THE CONTRACT. THAT IS ALL IT SAID!

LET ME ASK YOU THIS , IT IS UNDISPUTED HERE THAT THE CHILD DID NOT SIGN THE ARBITRATION. CORRECT, YOUR HONOR.

IN FACT H E DIDN'T SIGN ANYTHING. ' SIGNED NOTHING.

SO ISN'T THE REAL ISSUE HERE, WHETHER THE MOTHER CAN BIND THE CHILD TO THE ARBITRATION AGREEMENT ?

ABSOLUTELY.

ISN'T THAT, THEN , AN ISSUE OF FLORIDA LAW NOT FEDERAL LAW , BECAUSE IT HAS NOTHING TO DO WITH THE ARBITRATION AGREEMENT ITSELF, SIMPLY WHETHER A MOTHER CAN BIND HER CHILD TO ARBITRATION.

IT IS A FLORIDA LAW QUESTION, SO LONG AS FLORIDA LAW IS BEING UNIFORMLY APPLIED , NOT SKIM TORL APPLIED TO NOT SKIMTORILY APPLIED TO ARBITRATION , AND NOT SKIMTORILY APPLIED TO ARBITRATION , AND WHAT IS BEING DONE HERE IS TO APPLY IT DISSKIM TORL . A PARENT CAN BIND A CHILD FOR MEDICAL CARE.

WHERE I DISAGREE WITH YOU ON THE ANALYSIS , IS THAT WE ARE SPEAKING HERE AS IF THE CHILD IS A PARTY TO THE ARBITRATION AGREEMENT AND WE ARE TALK ABOUT WHETHER IT SHOULD BE ENFORCED . THE CHILD DIDN'T SIGN IT, SO IT DOESN'T SEEM TO BE AN ISSUE OF FEDERAL ARBITRATION LAW AT ALL. IT ONLY SEEMS TO BE AN ISSUE , UNDER FLORIDA LAW OF WHETHER A MOTHER CAN BIND HER CHILD IN AN ARBITRATION AGREEMENT.

IF A MOTHER COULD NOT BIND A CHILD TO ANY CONTRACT, THEN FEDERAL LAW LOOSE JUST TO FLORIDA LAW. BUT THAT IS LAW LOOKS JUST TO FLORIDA LAW, BUT THAT IS NOT THE CASE.

LET ME SUGGEST THAT THAT MAY BE THE CASE, BECAUSE THE MOTHER HERE COULD NOT , CONTRARY TO THE FLORIDA STATUTES, RESOLVE ANY CLAIMS OF THE CHILD , ACCORDING TO OUR STATUTES. I MEAN, WE HAVE THAT PROVISION . LET'S ASSUME THAT THIS CLAIM, WHATEVER IT IS , IS WITHIN THE MONETARY LEVEL THAT REQUIRES COURT APPROVAL OF ANYTHING THAT HAPPENS WITH A MINOR'S CLAIM. CAN THE MOTHER SIGN THE PIECE OF PAPER THAT WOULD SAY THE COURTS CAN'T DO THAT, THAT ARBITRATORS ARE GOING TO APPROVE THE SETTLEMENT?

NO. IF , THERE ARE CLASSES OF CASES , SUCH AS SETTLEMENT OF , SETTLEMENT OF LITIGATION OVER \$15,000 , PLUNDERING OF ASSETS , THERE ARE A SERIES OF CASES THAT SAY THAT A COURT MUST BE INVOLVED, AND YOU CAN'T DIE VEST THE COURT OF JURISDICTION .

I MEAN THAT , IS THE POINT THAT WE ARE TALKING ABOUT. I THINK JUSTICE CANTERO SPEAKS DIRECTLY TO THAT ISSUE. CAN WE, UNDER FLORIDA LAW, DO WE UNDER FLORIDA LAW , RECOGNIZE A PARENT'S ALTERNATIVE PROCEDURE FOR RESOLVING WHATEVER RIGHTS THE CHILD MAY HAVE , WHEN STATUTES ALREADY CONTROL WHAT A PARENT CAN OR CANNOT DO?

ALL THE ARBITRATION CLAUSE DOES IS PROVIDE A FORUM. THERE IS A STRONG FEDERAL POLICY IN FAVOR OF ARBITRATION. IT DOES NOT DO ANY MORE THAN THAT .

LET ME SPEAK TO THE FORM. ASSUMING THAT WE GET TO THE FORM IN THE ARBITRATION, THEN WHAT BOUNDARIES ARE THERE, IN THE ARBITRATOR 'S DECISION, AS TO THE PUBLIC POLICY OF FLORIDA , REGARDING THE EXCULPATORY CONTRACT?

CONTRACT? ARE THEY BOUND BY FLORIDA LAW?

THE APPEAL RIGHTS FROM AN ARBITRATOR'S DECISION ARE LIMITED.THE IDEA BEHIND ARBITRATION IS THAT THEY FOLLOW THE LAW. THAT IS WHAT THEY ARE SUPPOSED TO DO. THAT IS WHAT THE AAA , THE AMERICAN ARBITRATION ASSOCIATION , STATES WILL HAPPEN , AND THERE IS NO APPEAL UNDER, EXCEPT UNDER EXTREME CIRCUMSTANCES.

SO IF THERE HAS BEEN NO DETERMINATION IN THE STATE OF FLORIDA AS TO WHETHER OR NOT A PARENT CAN SIGN AN EXCULPATORY CONTRACT REGARDING A MINOR 'S NEGLIGENT OR EVEN A GROSS NEGLIGENT CAUSE OF ACTION , THEN HOW IS THAT DECISION REACHED? IS IT JUST ARBITRARY FOR THE ARBITRATOR?

NO.I DON'T THINK IT IS ARBITRARY.I THINK THE ARBITRATOR WOULD LOOK AT IT THE WAY A JUDGE WOULD. THE ARBITRATOR WOULD LOOK AT A NUMBER OF CASES THERE. IS A CASE IN COLORADO

THE ARBITRATOR WOULD BE THE SOLE ANSWER OF THAT QUESTION.

ON THAT CASE , YES.

LET ME GO BACK TO SOMETHING.IT STARTED TO OCCUR TO ME AGAIN THAT MAYBE WE ARE, EVEN THOUGH I UNDERSTAND HOW THE PARTIES HAVE FRAMED THIS , THAT ISN'T THE REAL ISSUE IN THIS CASE THAT THE CONTRACT IS VOID , BECAUSE IT IS , IT INCLUDES A PERSPECTIVE RELEASE OF LIABILITY. THE ARBITRATION IS REALLY JUST SECONDARY, BECAUSE THERE IS NOTHING TO ARBITRATE, IF THERE IS, IF , SINCE THERE IS A RELEASE OF LIABILITY, AND SHOULDN'T WE BE LOOKING AT THIS AS WHAT THIS CONTRACT HAS DONE, WHAT THE MOTHER HAS DONE , IS PERSPECTIVELY RELEASED YOUR CLIENT FROM ANY NEGLIGENCE.

THE PRIMA CASE FROM THE UNITED STATES SUPREME COURT , SPECIFICALLY REJECTED THAT ANALYSIS, YOUR HONOR. IT SAID YOU MUST LOOK ONLY AT THE ARBITRATION PROVISION.THAT IS THE ONLY ITEM THAT YOU CAN LOOK AT . ONCE IT IS ASH ONCE IT IS ARBITRATED, THEN THE ARBITRATOR CAN LOOK AT THE OTHER ISSUES.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME. I WILL SIT DOWN. THANK YOU.

I WILL SIT DOWN. THANK YOU.

MAY IT PLEASE THE COURT. I AM PHILLIP BURLINGTON , HERE ON BEHALF OF MARK SHEA AS PERSONAL REPRESENTATIVE OF GARRETT SHEA, AND WITH ME IS SCOTT MURRAY , WHO IS TRIAL COUNSEL, AT COUNSEL TABLE.

CHIEF JUSTICE: I HAVE A COUPLE OF HYPOTHETICALS. LET'S ASSUME THAT THERE WASN'T THIS PERSPECTIVE RELEASE OR, OF THE ARBITRATION AGREEMENT , BUT WHAT HAPPENED WAS THE LAWSUIT GOT FILED AND THERE WAS A QUESTION AS TO WHETHER THEY WERE GOING TO HAVE THIS BE BY JURY TRIAL OR NOT, AND THE PARENT DECIDES TO WAIVE THE RIGHT TO A JURY TRIAL , WOULD THAT , WOULD THERE BE A PROBLEM IN THAT?

YES. WE BELIEVE SO , BECAUSE THE CASE LAW APPEARS CLEAR THAT A PARENT DOES NOT HAVE

THE RIGHT TO WAIVE SUBSTANTIVE RIGHTS OF A CHILD. THERE IS A MECHANISM IN PLACE FOR IT TO BE DONE THROUGH THE COURT SYSTEM.

SO THE SAME THING , IF THERE WAS AN ISSUE THAT AROSE AS TO WHETHER THE , AFTERWARDS, THAT THEY DECIDED THAT ARBITRATION WOULD BE THE BEST WAY TO GO, AND I AM THINKING , REALLY , THERE USED TO BE ALL THOSE UNINSURED MOTORIST THE CONTRACTS THAT HAD MOTORIST CONTRACTS THAT HAD , THEY ALL WENT TO ARBITRATION , YOU KNOW , EVEN IF IT WAS THE INSURANCE COMPANY, AND IF YOU HAD A KID, I DON'T THINK ANYONE EVER MADE THE ARGUMENT THAT YOU COULDN'T, THAT THAT WOULD BE IMPROPER FOR THE CHILD TO GO THROUGH THAT SAME PROCESS THAT EVERYBODY ELSE IS GOING THROUGH.

I AM NOT AWARE OF ANY CASES ON THAT ISSUE. THERE ARE SITUATIONS WHERE, IF IT IS A CONTRACT FOR, LIKE, GROUP HEALTH INSURANCE, THE PARENT DOES HAVE THE AUTHORITY TO ENTER INTO A CONTRACT AND THEREFORE HAS THE AUTHORITY TO BIND THE CHILD TO CERTAIN PROVISIONS. WE DO NOT BELIEVE NECESSARILY THAT THAT MEANS THAT THE COURT HAS NO ROLE.

LET ME ASK YOU IN FOLLOW-UP TO JUSTICE PARIENTE, THAT THE , HAVE WE HELD, HAS THIS COURT HELD THAT A PARENT CANNOT PERSPECTIVELY RELEASE A CHILD'S TORT CLAIM?

THIS COURT HAS NOT ADDRESSED THAT ISSUE , I DO NOT BELIEVE.

AND HAS THE DISTRICT COURT?

THERE, NO , THERE IS NOT A SPECIFIC DECISION. THERE ARE VARIOUS RIGHTS, SUCH AS THERE IS THE ROMISH CASE THAT HOLDS

I KNOW. I NOTICE THAT JUDGE STONE DIDN'T CITE ANY CASE TO THAT IN HIS OPINION.

CORRECT.

NOW, I NOTICE THAT WHAT JUDGE STONE ATTEMPTS TO DO IS TO NARROW THIS TO ONLY COMMERCIAL CONTRACTS .

CORRECT.

BUT HOW IS THAT POSSIBLE? I MEAN, WHY, IF WE HELD THAT THERE COULD BE NOT BE THAT THERE COULD NOT BE A PERSPECTIVE RELEASE , WOULD THAT NOT AFFECT EVERY BAND OR FOOTBALL TEAM OR ANY KIND OF SPORTS HE DEFER , THAT ARE OPERATED BY LITTLE LEAGUE FOOTBALL OR CHEERLEADING OR ANY OF THOSE OTHER ACTIVITIES?

WELL , AS JUDGE STONE NOTED IN THE OPINION , THE ISSUE OF THE AUTHORITY OF THE PARENT TO BIND THE CHILD , IS BASED ON PUBLIC POLICY. SUCH AS THE PRINCIPLE THAT PARENTS CAN BIND THEIR CHILDREN TO CONTRACTS FOR NECESSITIES. THAT IS PUBLIC POLICY DETERMINATION . THAT PUBLIC POLICY DETERMINATION CAN , ALSO, BE APPLIED IN THIS CASE, AS TO WHAT IS APPROPRIATE. WE ARE HERE SOLELY ON A HIGH-RISK , HIGH ADVENTURE SAFARI .

WELL , IS THAT NOW , YOU WANT TO NARROW, IS THAT THE PUBLIC POLICY THAT TOOK PLACE THAT MAYBE WHAT THE LAW SHOULD BE IS THAT THE PARENT REALLY SHOULDN'T BE ALLOWED TO HAVE CONTRACTED ON BEHALF OF THEIR CHILD, IT TO GO TO A HIGH-RISK TYPE OF SITUATION , I MEAN, BECAUSE RIGHT NOW , I WOULD HAVE A HARD TIME UNDERSTANDING WHY WE, IF A SCHOOL TRIP , AND JUSTICE WELLS IS TALKING ABOUT GOING , YOU KNOW , DOING LITTLE LEAGUE , BUT I AM JUST THINKING OF THE TRADITIONAL END OF THE YEAR TRIPS TO DISNEY WORLD , IT SEEMS LIKE JUDGE STONE'S OPINION EXEMPTS THOSE KINDS OF THINGS, AND I AM TRYING TO UNDERSTAND WHAT THAT PUBLIC POLICY DISTINCTION IS, BECAUSE THEY TALKED

ABOUT COMMERCIAL TRAVEL. THEY DON'T TALK ABOUT WE ARE JUST GOING TO BAN HIGH-RISK , HIGH -TRAVEL AGREEMENTS TO ARBITRATE, SO COULD YOU INFORM US ON THAT .

I THINK THE WAY THE ANALYSIS, EXCUSE ME , THE ANALYSIS SHOULD GO , IS THERE IS A PREEMPTION THAT THE PARENT DOES NOT HAVE THE RIGHT TO WAIVE SUBSTANTIVE RIGHTS OF THE CHILD, AND THAT SHOULD BE, AND IT IS THE COURT'S ROLE TO PROTECT THE MINOR'S RIGHTS , AND WE HAVE MANY CASES IN FLORIDA ON THAT PRINCIPLE . THE QUESTION IS AT WHAT POINT DOES THE COURT MAKE A PUBLIC POLICY DETERMINATION ,, WHICH OF COURSE, COULD ALSO BE MADE BY THE LEGISLATURE. ZOO SO WE ARE SAYING THAT THE PARENT DOES HAVE THE MR. CHIEF JUSTICE

SO WE ARE SAYING THAT THE PARENT DOES .

CHIEF JUSTICE: SO YOU ARE SAYING THAT THE PARENT DOES HAVE A RIGHT TO BIND A CHILD TO A HIGH-RISK SAFARI? THAT THE PARENT WOULD BE ALLOWED TO PUT A CHILD AT THIS TYPE OF RISK, BE IN A TENT BY HIMSELF, IF THERE WASN'T THIS ARBITRATION PROVISION? IN OTHER WORDS NOTHING WRONG WITH THE CHILD , GOING BACK, THE PARENT BINDING THE CHILD TO THE CONTRACT.

WE DO NOT BELIEVE THE PARENT HAS THE AUTHORITY TO BIND THE CHILD TO THE CONTRACT WHICH SAT ISSUE. AND IN THE RECORD - - WHICH IS A T ISSUE, AND IN THE RECORD WHAT IS UNIQUE , PERHAPS ABOUT, THIS CASE IS THERE IS ONE CONTRACT SIGNED BY THE MOTHER SOLELY ON HER OWN BEHALF, WHICH IS THE ONE THAT HAS TERMS AND CONDITIONS , CANCELLATION PROVISION ANSWER SO FORTH. THE ONE DOCUMENT THAT SHE SIGNED ON BEHALF OF THE CHILD , WAS A RELEASE OF LIABILITY AND ASSUMES OF RISK. THAT WAS AND ASSUMPTION OF RISK. THAT WAS A SEPARATE DOCUMENT AND THE ONLY DOCUMENT SHE SIGNED ON BEHALF OF HER MINOR CHILD. THAT IS WHY WE BELIEVE YOU ARE CORRECT IN STATING THAT IT SEEMS AS THOUGH THAT ISSUE HAS TO BE ADDRESSED , BECAUSE THE PARENT'S AUTHORITY TO ENTER INTO THAT CONTRACT, IS A QUESTION OF CONTRACT FORMATION THAT IS GOVERNED BY STATE LAW. IT IS OUR POSITION THAT THE PARENT DOES NOT HAVE AUTHORITY TO ENTER

BUT DOESN'T THAT CONTRACT THAT WAS SIGNED ON BEHALF OF A CHILD , ALSO INCLUDE A REFERENCE TO THE OTHER PROVISIONS OF THE CONTRACT THAT SHE HAD SIGNED ON HER OWN BEHALF?

IT SAYS AS A CONDITION OF GOING ON THIS.

THAT THOSE SAME CONDITIONS WOULD APPLY TO THIS CHILD.

IT DOES NOT DO. THAT IT JUST SAYS AS A CONDITION OF GOING ON THIS TRIP, AND THEN IT GOES ON FROM THERE.

WELL , I , YOU KEEP SAYING THAT A PARENT CAN'T WAIVE WHETHER OR NOT TO HAVE TRIAL BEFORE A JUDGE VERSUS A JURY TRIAL . DID I HEAR YOU CORRECTLY?

WELL , IT IS, THERE IS NO CASE DIRECTLY ON THAT POINT , BUT WE ARE SAYING A PARENT, AND THERE HIS CASE LAW , FOR EXAMPLE THE ROMISH CASE , THEY SAY THAT THE FATHER COULD NOT RELINQUISH THE CHILD'S RIGHT TO FILE A COMPULSORY CLAIM WITHOUT APPROVAL.

I UNDERSTAND THAT IS TRUE AND THAT A COMPULSORY COUNTERCLAIM IS ACTUALLY A DIFFERENT THING FROM WHETHER YOU CAN HAVE A TRIAL BEFORE A JUDGE OR A JURY , AND YOU KEEP SAYING THAT IT IS SUBSTANTIVE AND YOU SAY IT WITH SUCH AUTHORITY THAT , I AM TRYING TO GET FROM YOU WHETHER OR NOT THERE ARE ANY CASES OUT THERE THAT SAY, IN FACT, THAT THAT IS THE SUBSTANTIVE ISSUE AND THAT A PARENT CAN'T WAIVE IT .

THERE ARE CASES THAT SAY THE RIGHT TO JURY TRIAL IS SUBSTANTIVE AND THE CONSTITUTION SAYS THE RIGHT TO ACCESS TO COURTS .

YOU HAVE TO TELL THE U.S. SUPREME COURT , WHO JUST CAME OUT IN SUMMER LIEN AND SAID THAT PROCEDURAL RIGHTS , BE THAT AS IT MAY.

ALL RIGHT. WELL, THERE IS ALSO THE RIGHT TO ACCESS TO COURTS , AND TO HOLD THAT THE MOTHER IN THIS CASE COULD BIND THIS CHILD TO THIS CONTRACT , WOULD MEAN NOT ONLY THE AUTHORITY TO BIND THE CHILD TO A CONTRACT BUT WOULD B E TO WAIVE THE RIGHT TO ACCESS TO COURTS , WHICH IS A SUBSTANTIVE RIGHT IN FLORIDA.

HOW ABOUT COMING BACK , THOUGH, BECAUSE YOU AT THE OUTSET , SEEM TO EMBRACE THIS NARROWING OF JUST COMMERCIAL CONTRACTS OR WHATEVER , AND THE NUMBER OF HYPOTHALWAYS HAVE BEEN POISED TO YOU HYPOTHETICALS HAVE BEEN OPPOSED TO YOU, WITH REFERENCE TO THE ROUTINE NATURE OF PARENTS ENTERING INTO CONTRACTS, WITH REFERENCE TO ALL KINDS OF TRIPS , SPORTS ACTIVITIES , JUST ACROSS THE BOARD. I MEAN THAT , IS WHAT SOCIETY IS DOING OUT THERE RIGHT NOW. AND I WANT YOU TO CONFRONT THAT DIRECTLY AND TELL US , NUMBER ONE , WHETHER YOU THINK PROVISIONS LIKE THIS AND THOSE CONTRACTS THAT PARENTS ENTER INTO , ARE LAWFUL , DOES THE PARENT HAVE THE AUTHORITY TO ENTER INTO CONTRACTS LIKE THAT WITH REFERENCE TO RUNNING IN A 5K RACE OR A 10K RACE OR A SCHOOL TRIP OR THE BAND OR PLAYING LITTLE LEAGUE FOOTBALL OR BASEBALL O R OTHER SPORTS AND HAVING PROVISIONS, YOU KNOW , LIKE THAT IN THOSE CONTRACTS, IS IT YOUR VIEW THAT A PARENT HAS NO AUTHORITY TO DO THAT ?

WELL , LET ME BACK UP . WHEN YOU SAY THAT I AM EMBRACING THE COMMERCIAL TRAVEL CONCEPT, I WANT TO POINT OUT THAT WE ARE ARGUING SIMPLY OUR CONTRACT.

THAT IS THE PROBLEM THAT I AM HAVING.WE HAVE A LEGAL ISSUE BEFORE US, YOU SEE , EVERYBODY THAT IS UP HERE , YOU KNOW, WANTS TO SAY, LOOK, JUSTICES , WE ONLY HAVE THIS LITTLE NARROW THING HERE FOR OUR CLIENT, AND THAT IS ALL WE ARE INTERESTED IN. OKAY . AND A GREAT DEAL OF DAMAGE CAN BE DONE TO THE LAW , IFWE JUST , THAT IS NOT WHAT OUR FUNCTION IS, IS TO DO THAT.

CORRECT. CORRECT .

SO I WOULD LIKE TO YOU START FROM SORT O F A BROAD GENERAL PROPOSITION AND GIVE US YOUR VIEW , BECAUSE SURELY YOU MUST HAVE RESEARCHED THIS AS TO WHETHER OR NOT A PARENT HAS THE AUTHORITY TO SIGN UP FOR A CHILD TO RUNIN A 5K RACE AND RELEASE THE SPONSORS FROM LIABILITY OR TO AGREE THAT ANY DISPUTES SHALL BE ARBITRATED IN THAT. DOES THE PARENT HAVE THE AUTHORITY TO DO THAT ON BEHALF THE MINOR CHILD?

THERE ARE CASES THAT DO THAT , AND THEY LOOK AT A MYRIAD OF FACTORS , INCLUDING WHETHER IT IS A VOLUNTEER ORGANIZATION, WHETHER IT IS A RECREATIONAL ACTIVITY THAT IS ASSOCIATED WITH THE SCHOOL. I ALSO BELIEVE IT IS RELEVANT THAT , IF THIS IS AN ACTIVITY THE CHILD WOULD ENGAGE IN ANY WAY , SUCH AS THE CHILD IS GOING TO PLAY FOOTBALL ON THE SAND LOT ANDIT IS DECIDED LET'S DO IT INAN ORGANIZE !!ED FASHION, AND THE CHILD COULD HAVE THE SAME INJURIES. THERE ARE VARIOUS

I SEEM , IF I AM READINGBETWEEN THE LINES THERE , IT SEEMS TO ME YOU ARE SAYING , YES , PROBABLY THE PARENT DOES HAVE THE AUTHORITY TO DO THAT . NOW , WHAT DISTINGUISH ES THIS SITUATION FROM THAT SITUATION AND WHY SHOULDN'T THE PARENT BE ABLE TO ENTERINTO THE SAME SORT OF TRAVEL ARRANGEMENT AND TO HAVE A VERY EXCITING TRIP CLIMBING MOUNT KILIMANJARO OR GOING ON A SAFARI?

IT PART OF THE SITUATION WHERE THE PARENT IS ALSO GOING ON THE TRIP , YOU RUN INTO

POTENTIAL CONFLICTS OF INTEREST AS TO WHO WANTS TO GO, WHO SHOULD GO. YOU ALSO HAVE A HIGH LEVEL OF RISK. CHILDREN ARE ABLE TO PLAY BASEBALL ON A SAND LOT BUT THEY AREN'T ABLE TO SEND THEMSELVES ON A SAFARI .

ARE WE GOING TO MANAGE WHAT KIND OF TRAVEL IS HIGH-RISK AND WHAT KIND IS NOT HIGH-RISK? WHAT IF A DEVOUT JEWISH FAMILY WANTS TO SEND THE FAMILY TO JERUSALEM TO HAVE BAR MITZVAH IN JERUSALEM. IS THERE GOING TO BE A HIGH COURT DETERMINATION AS TO WHETHER THAT IS OR IS NOT A HIGH-RISK VENTURE?

THERE ARE SITUATIONS, AS IN THE PATRON'S DOCTRINE , THERE ARE SITUATION WHERE IS THIS COURT WILL HAVE THAT DECISION.

WHAT ABOUT THE BASIS FOR THE FOURTH DCA DECISION. ISN'T IT THE PUBLIC POLICY OF THE STATE THAT IT IS THE PARENT'S RIGHT TO RAISE THEIR CHILDREN IN THE WAY THEY SEE FIT, UNLESS THEY ARE ABUSING THEIR CHILD? THOSE ARE THE PARENTS' DECISION TO SAY MAKE AND NOT THE STATE'S?

THERE IS A FUNDAMENTAL RIGHT TO RAISE YOUR CHILDREN. THERE IS NOT A FUNDAMENTAL RIGHT TO CONTRACT AWAY YOUR CHILDREN'S RIGHTS.

ISN'T THAT , REALLY , GO AHEAD, JUSTICE.

LET ME TRY TO PUT LEGS ON THIS. ARE YOU FAMILIAR WITH THE ITCH THAT TUCK' RIVER - - ITCHNATUKEE RIVER , WHERE PEOPLE GO TUBING ALL OF THE TIME AND THERE ARE ALLIGATORS ON THE SHORE. IF MY CHILD'S SCHOOL WANTS TO GO ON A TRIP, WHICH HAPPENS ALL THE TIME DOWN THERE , AND I SIGN AN AGREEMENT LIKE THIS , THAT YOU WOULD ARGUE THAT THAT SHOULD BE ALLOWED , CORRECT?

I WOULD ARGUE THAT THAT SHOULD BE ALLOWED THERE. ARE PUBLIC POLICIES

A SCHOOL EVENT . NOW , IF I TELL MY KID, NO , WE CAN'T GO THAT WEEKEND BUT WE WILL GO AS A FAMILY THENEXT WEEKEND , UNDER YOUR RATIONALE IN THE FOURTH DCA'S OPINION , IF I SIGNED THAT SAME CONTRACT BUT WITH A , THE PEOPLE WHO PROVIDE THE TUBES DOWN THE ITCHNATUKNEE, THAT THAT WOULD BE VOID AS PUBLIC POLICY?

WELL , ONE OF THE DIFFERENCES IS THAT, WHEN THE SCHOOL PROVIDES IT , THERE IS NO QUESTION AS TO THE MOTIVATION AND THE INTENT OF NOT ONLY THE PARENTS BUT THE SCHOOL THAT IS GOING TO BE TAKING CARE OF THE CHILD . WHEN YOU ARE DOING IT WITH COMPANIES FOR PROFIT WHO ARE PROFIT FROM THIS , IT IS NOT UNWHO ARE PROFITING FROM THIS, IT IS NOT UNREASONABLE TO SAY THAT AS A COST MATTER OF BALANCING THE RIGHTS , THE PARENT SHOULD NOT RELEASE THE CHILD'S

SO IF THE SCHOOL DECIDED TO TAKE CHILDREN ON A SAFARI , THEY WOULD HAVE TO , I WOULD IMAGINE THEY WOULD HAVE TO CONTRACT WITH SOME COMPANY LIKE GLOBAL TRAVEL , TO DO THAT. IT WOULD BE OKAY . BECAUSE THE SCHOOL WAS THE SPONSOR , IS THAT WHERE YOU ARE DRAWING THE LINE? THE SCHOOL IS THE SPONSOR OF THIS, AND THEREFORE IT IS GOING TO BE OKAY.

WELL , COURTS HAVE DRAWN THAT LINE , AND THEY EVER DONE IT FOR A FEW REASONS , ONE OF WHICH IS , IF A SCHOOL IS GOING TO DO IT , THERE IS GOING TO BE A VERY STRONG POLICY DETERMINATION AND PARENTS HAVE A RIGHT TO PARTICIPATE. IT IS NOT SIMPLY THE DECISION OF ONE PARENT WHO WANTS TO GO ON A SAFARI .

BUT IT SEEMS TO ME THAT , WHAT YOU ARE REALLY ARGUING IS THAT THE DECISION AS TO WHETHER TO GO ON SOMETHING THAT WOULD BE PERCEIVED TO BE HIGH-RISK ENOUGH THAT

THERE IS A RISK THAT, THERE IS A RELEASE OF LIABILITY AND THIS STATEMENT IN HERE THAT SAFARI IS A HIGH-RISK, THAT THOSE, THAT PARENTS SHOULDN'T BE ABLE TO ENTER INTO THOSE CONTRACTS, BECAUSE THEY SHOULDN'T BE ALLOWED TO HAVE THEIR CHILDREN GO, UNLESS THERE IS A PRIOR COURT APPROVAL. BECAUSE, I MEAN, FOR THIS POOR 11-YEAR-OLD, THIS IS ALL SORT OF A LITTLE IRRELEVANT. I MEAN, THE QUESTION WAS, WAS IT A DECISION THAT THIS MOTHER COULD MAKE ON BEHALF OF HER CHILD, TO GO ON AN AFRICAN SAFARI WITHOUT PRIOR APPROVAL OF THE COURT? AND THAT IS WHERE I, I AM JUST HAVING A, TROUBLE SAYING WE ARE GOING TO PROTECT THIS VALUABLE RIGHT THAT THIS CHILD WHO IS DECEASED, TO HAVE A JURY TRIAL, WHEN THE REAL ISSUE THAT YOU SEEM TO BE SAYING IS THIS IS SO HIGH-RISK, THIS MOTHER WAS IN A CONFLICT OF INTEREST. SHE MIGHT HAVE WANTED TO GO BUT SOMEONE NEEDED TO INTERVENE, BECAUSE SHE REALLY WASN'T MAKING A DECISION IN HER CHILD'S BEST INTERESTS.

WELL, AGAIN, I THINK WE START FROM THE PREMISE THAT PARENTS DO NOT HAVE CARTE BLANCHE AUTHORITY TO CONTRACT AWAY THEIR CHILDREN'S RIGHTS.

BUT DO THEY HAVE CARTE BLANCHE AUTHORITY, WOULD SHE HAVE BEEN ABLE TO CONTRACT TO GO ON THIS TRIP, IF IT DIDN'T HAVE THE ARBITRATION CLAUSE, EVEN IF IT WAS HIGH-RISK, WOULD SHE BE ABLE TO DO THAT?

SHE WOULD BE ABLE TO TAKE HER CHILD.

WHY IS THAT? IN OTHER WORDS, YOU ARE SAYING IT IS A CONFLICT. SHE MAYBE WANTED TO GO ON IT AND MAYBE THE CHILD NEEDED PROTECTION.

BECAUSE THE CHILD HAD LEGAL RIGHTS IN THE RELEASE WHICH SHE SIGNED. IF THIS CHILD HAD BEEN HORRIBLY MAIMED AND CAME BACK IN A STATE THAT NEEDED CONSTANT CARE AND THERE WERE HUGE MEDICAL BILLS, I MEAN, WE HAVE TO DECIDE THIS CASE IN THE LIGHT OF THE SCENARIO OF ANY INJURIES THAT COULD HAPPEN TO A CHILD IN THIS SCENARIO, AND THE FACT THAT THIS ONE TURNED OUT UNFORTUNATELY, TO BE A DEATH, SHOULD NOT CHANGE THE ANALYSIS.

I THINK YOU ARE HAVING, BECAUSE YOU ARE MIXING IN MY VIEW, TWO DIFFERENT THINGS, WHICH IS WHEN WE GAVE YOU THE HYPOTHETICALS OF THE SCHOOL TAKING A CHILD ON A TRIP THAT IS THE TRIP, ITSELF, SOMEONE IS MAKING MONEY, I MEAN, THIS IS ALL THE TIME, NOW, SCHOOLS ARE NOT DOING THEIR OWN TRIPS. THEY ARE ALWAYS CONTRACTING WITH TOUR COMPANIES, AND THOSE TOUR COMPANIES HAVE PROVISIONS, AND WHY IS IT THAT, THE SCHOOL INVOLVED, IT IS GOING TO BE OKAY, BUT WITH THE PARENT INVOLVED, IT IS NOT OKAY.

WELL, FIRST OF ALL, I THINK ONE OF THE DIFFERENCES IS THAT, IF A SCHOOL IS GOING TO DO IT, IT IS A DECISION MADE BY THAT INSTITUTION, AND THAT INSTITUTION GETS INPUT FROM ALL OF THE PARENTS. IT IS NOT AN UNILATERAL DECISION OF ONE PARENT THAT IS NOW, ACCORDING TO THEIR ARGUMENT

WAS IT A GOOD IDEA TO GO ON THE TRIP?

EXCUSE ME?

WHETHER IT IS A SAFE TRIP TO GO ON?

AND AS TO THAT PARTICULAR CHILD.

SO THEREFORE AGAIN, I THINK YOU ARE SAYING THAT THIS PARENT, THIS MOTHER, DIDN'T HAVE, SHE WAS IN CONFLICT WITH HER CHILD, BECAUSE MAYBE SHE WANTED A HIGH-RISK ADVENTURE BUT HER CHILD DIDN'T, AND I AM JUST

WHAT I AM HIM SAYING IS THAT THOSE KIND OF FACTORS , ARE THE FACTORS THAT CAN IMPLEMENT CAN IMPLY INDICATE THE PUBLIC POLL IMPLICATE THE PUBLIC POLICY SITUATION .

MR . BURLINGTON , IT SEEMSTO ME THAT WE HAVE TO RECOGNIZE IN SOCIETY TODAY , NOBODY WANTS TO BE RESPONSIBLE FOR ANYTHING. YOU READ THESE THING THAT IS COME HOME FROM SCHOOL. THEY CAN VIRTUALLY KILL YOUR CHILD AND IT I S NOT THEIRFAULT.THAT IS WHERE WE ARE GETTING , BUT FLORIDA LAW , THROUGH STRICT SCRUTINY OF THESECONTRACTS FOR PRE-INJURY RELEASES, AND I HARK BACK TO THE DECISION OF THE THIRD DISTRICT ON SWIMMING WITH DOLPHINS DOWN IN THE KEYS , AND THAT OPINION AS I RECALL, WAS SHORT BUT MUST HAVE CITED 50 CASES , SAYING THAT THAT IS HOW WE APPROACH THIS ISSUE OF A PRE-INJURY RELEASE , THROUGH STRICT SCRUTINY OF THE DOCUMENT, ITSELF, NOT BY VOIDING THE ENTIRE DOCUMENT.

WELL , I DON'T RECALL WHETHER THAT ONE INVOLVED A MINOR , BUT , YES , THERE IS STRICT SCRUTINY O F PRE-INJURY RELEASES, BUT WHEN IT IS A PARENT DOING IT , BECAUSE WE KNOW STATUTORILY THE PARENT CANNOT WAIVE THE CHILD'S RIGHTS OR CONTRACT THE CHILD'S CLAIMS AWAY AFTER THEY COME TO FRUITION . NOW , THE LEGISLATURE, I N CHAPTER 74 473 , HAS -743, HAS PASSED CERTAIN LEGISLATION AS TO CONTRACTS FOR MINORS , SOME OF WHICHCAN BE ENTERED TO , SOME OF WHICH REQUIRE PROBATE APPROVAL. THAT IS PERHAPS THE IDEAL WAY THIS WILL ULTIMATELY BE RESOLVED IS BY THE LEGISLATURE, BUT THIS COURT HAS THE PARENT'S PATRIARCH AUTHORITY AND DUTY TO PROTECT THE MINOR , AND TO SIMPLY SAY THAT THE PARENT CAN MAKE AN UNILATERAL DECISION AND CAN ELIMINATE THE PARENT 'S PATRIARCH ROLE BY SIGNING AWAY RIGHTS UNDER A CONTRACT UNION LAT UNILATERALLY , I S NOT PROPER GROUNDS.

IF WE ARE GOING TO WRITEAN OPINION , WHAT ARE THE PARAMETERS OF THE OPINION? IS IT LIMITED TO TRIPS ON AFRICAN ADVENTUROUS OR LIMITED TO TRIPS TO AFRICA OR WHAT?

IT IS LIMITED TO THE RELEASE IN THIS CASE, WHICH CONTAINS AN ARBITRATION CLAUSE.

BUT WE HAVE TO HAVE A GENERAL PROPOSITION OF LAW. THE FOURTH DCA'S DECISION WAS BASED ON PUBLIC POLICY , AND PRESUMABLY WE HAVE TO BASE OUR DECISION ON PUBLIC POLICY, SO WHAT PUBLIC POLICY ARE WE GOING T O ENFORCE AND WHAT ARE THE PARAMETERS OF THE ENFORCE ABILITY O F ARBITRATION AGREEMENTS SUCH AS THIS?

I THINK THE PUBLIC POLICY GROUND IS THAT WE START FROM THE PREMISE THAT PARENTS DO NOT HAVE THE AUTHORITY TO WAIVE SUBSTANTIVE RIGHTS OF THEIR CHILDREN AND THAT THERE ARE SITUATIONS WHICH IS NOT PRESENTLY BEFORE THIS COURT , IN WHICH THERE AREENOUGH FACTORS OF PUBLIC POLICY , THAT MAY AUTHORIZE IT , BUT THEY DO NOT EXIST IN THIS CASE. NOW, MAYBE THAT MAKES THIS CASE INAPPROPRIATE FOR RESOLUTION A S A QUESTION

IF YOU WROTE AN OPINION LIKE THAT, DON'T YOU THINK THERE WOULD BE UTTER CONFUSION , NOT ONLY IN THE COMMERCIAL TRAVEL FIELD BUTIN THE YOUTH SPORTS FIELD, IN THE CAMPING TRIPS FIELD, IN ALL KINDS OF FIELDS, BECAUSE THEY HAVE NO IDEA WHETHER THIS FALLS WITHIN THAT PUBLIC POLICY OR OUTSIDE THAT PUBLIC POLICY?

WELL , RIGHT NOW THERE IS NO OPINION , AND THERE HAS NEVER BEEN ONE YET IN FLORIDA , SO TO THE DEGREE THAT THE SITUATION CAN BE CLARIFIED , IT WILL B E HELPFUL, BUT TO SAY THAT YOU CAN ADDRESS EVERY POTENTIAL CONTRACT IN ONE OPINION , I WOULD SUBMIT IS A HERCLEAN TASK.

CHIEF JUSTICE: MR.BURLINGTON, YOUR TIME IS UP.

I WOULD SAY THAT THERE ARE SO MANY DIFFERENT TYPES OF CONTRACT THAT COULD COME UP , TO TRY TO SAY IN THIS CASE THAT YOU CAN DO A RULE THAT APPLIES TO ALL OF THEM IS INCONSISTENT . WE ARE DEALING WITH ONE CONTRACT , AND MAYBE THAT MAKES IT INAPPROPRIATE FOR RESOLUTION .

THANK YOU, YOUR HONOR. ARBITRATION IS PROCEDURAL. IT IS NOT SUBSTANTIVE. THE UNITED STATES CONGRESS HAS PASSED THE ARBITRATIONACT. IF YOUR HONORS OR ANY OTHER COURT WISH TOES PASS A LAW WISHES TO PASS A LAW

DOES IT REALLY , WHEN YOU REALLY THINK ABOUT ARBITRATION , IS IT REALLY JUST PROCEDURAL , BECAUSE AS SOMEONE ALLUDED TO EARLIER, ONCE YOU HAVE GONE THROUGH ARBITRATION , YOU HAVE VERY LIMITED RIGHTS TO APPEAL. ISN'T THAT CORRECT?

THAT IS RIGHT THAT, THE CONGRESS HAS SAID THAT THAT IS IN THE PUBLIC INTEREST. I MEAN, A N ARBITRATOR SHOULD FOLLOW THE LAW. IF THE LAW O F FLORIDA IS THAT EXCULPATORY CLAUSES ARE VOID, THEN AN ARBITRATOR SHOULD FOLLOW THAT, JUST AS

I GUESS THE POINT I AM TRYING TO MAKE AND TRYING TO HAVE YOU DISCUSS HERE , ISWHETHER OR NOT , BECAUSE OF THAT , THERE REALLY SHOULD , THERE REALLY IS SOME THERE , IS MORE SUBSTANCE TO ARBITRATION AGREEMENTS THAN JUST PROCEDURE .

I DON'T THINK SO , YOUR HONOR . I THINK IT IS MORE AKIN TO A FORUM SELECTION , CONTRACT,BUT I THINK THAT THE ISSUEIS THAT THE UNITED STATES HAS PASSED A LAW THAT HAS PREEMPTIVE EFFECT AGAINST DISCRIMINATORY TREATMENT OF ARBITRATION CONTRACTS, AND THAT IS THE ONLY ISSUEBEFORE US .

HOW WOULD IT BE DISCRIMINATORY, IF WE IN FACT, HELD THAT A PARENT COULD NOT CONTRACT AWAY A CHILD'S RIGHT TO HAVE A HEARING IN COURT?

IF THE FLORIDA LEGISLATURE OR THIS COURT , DECIDED THAT, UNDER N O CIRCUMSTANCES , COULD A PARENT WAIVE ANY RIGHT O F A CHILD WITH REGARD T O ANY PROCEEDING AT ALL , THAT WOULD BE ONE THING, BUT IT HASN'T DONE I T . AND EVEN IF IT HAD , IF THE CONTRACT PROHIBITION WERE LIMITED TO ARBITRATION , IT STILL WOULD FAIL. IF I COULD ADDRESS ONE OTHER ISSUE , O N THIS PURPORTED CONFLICT, THERE IS NO CONFLICT HERE.THERE IS NO RECORD EVIDENCE OF A CONFLICT. THE CHILD ENJOYED THIS SAFARI. HE WENT ON A SAFARI THE YEAR BEFORE. THERE IS NOTHING TO SUGGEST THAT SAFARIS ARE INAPPROPRIATE FAMILYACTIVITIES . IN TERMS OF THE COURT OF APPEAL 'S TRYING TO DIVINE A BRIGHT LINE MARKER BETWEEN COMMERCIAL TRIPS AND SCHOOL TRIPS , AS I THINK YOUR HONOR POINTED OUT , IT IS CLEAR THAT MOST SCHOOL TRIPS ARE RUN B Y COMMERCIAL COMPANIES FOR PROFIT.THERE IS N O REAL DIFFERENCE THERE.

SO YOU WOULD ACTUALLY BROADEN THE CERTIFIED QUESTION.

WELL , IF I COULD , YOURHONOR , I THINK MR. CHIEF JUSTICE

INOTHER WORDS , YOU THINK THEIR LINE I THINK

CHIEF JUSTICE: IN OTHER WORDS YOU THINK THEIR LINE WAS DRAWN TOO NARROWLY. ONE OTHER QUESTION , IF W E DECIDED THAT THE PRERELEASE PORTION OF THIS CONTRACT WAS VOID, IS THE CONTRACT SEVERABLE TO ALLOW THE REMAINING PART TO BE ARBITRATED ? YOU SEE , BECAUSE THAT IS NOT REALLY, THAT IS NOTHING THAT JUST GOES TO ARBITRATION. ASSUMING THIS WAS A CONTRACT THAT DIDN'T HAVE ARBITRATIONBUT IT HAD THE PRERELEASE, AND WE SAID THAT YOU CAN'T, THE PARENT CAN'T DO THAT IN FLORIDA .

I THINK UNDER PRIMER PAINT , THE UNITED STATES SUPREME COURT CASE, YOU CANNOT DO

THAT CONSTITUTIONALLY, BUT IF YOU WERE TO DO IT, THEN WE WOULD HAVE ARBITRATION WITH THE FLORIDA SUPREME COURT , HAVING OPINED THAT THIS TYPE OF EXCULPATORY CLAUSE IS VOID.

WE SEVERED THAT PART .

YOU SEVERED.

IN ESSENCE I F WE DECIDED TO DO THAT AND YOU GO BACK TO MY QUESTION EARLIER , WE CANNOT GIVE GUIDANCE TO ARBITRATORS ON HOW TO DEAL WITH THIS BUT YET THEY CAN TAKE GUIDANCE FROM COLORADO.

NO, NO , NO , NO , YOUR HONOR.

YOU SAID WE CAN'T DEAL WITH THE ISSUE.

NO. IF THE FLORIDA SUPREME COURT CAN ISSUE ADVISORY OPINIONS AND IT WISHES TO ISSUE AN ADVISORY OPINION CONCERNING EXCULPATORY CLAUSES, IT CERTAINLY CAN DO SO. NOW , WE HAVE NOT BRIEFED EXCULPATORY CLAUSES AS SUCH IN THIS CASE, BUT IF THE FLORIDA COURT WISHES TO DO SO , THERE IS NOTHING TO PRECLUDE IT FROM DOING SO.

PRIMER PAINT WOULDN'T PRECLUDE US FROM DOING THAT.

I THINK PRIMER PAINT MIGHT PRECLUDE THE COURT FROM SEVERING OUT AND SAYING THAT THE EXCULPATORY CLAUSE IS VOID , UNLESS THE FLORIDA COURT WERE DOING IT SIMPLY AS AN ADVISORY OPINION.

CHIEF JUSTICE: THANK YOU. YOUR TIME IS UP. APPRECIATE BOTH SIDES ANSWERING OUR QUESTIONS. THANK YOU.