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Julio Aravena v. Miami-Dade County

THE LAST CASE ON THIS MORNING'S DOCKET IS ARAVENA VERSUS MIAMI-DADE COUNTY. IF THE PARTIES ARE READY, MR.^LEACH YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MY NAME IS MARCH -- MARTIN LEACH AND I REPRESENT THE PETITIONER IN THIS CASE, JULIO ARAVENA, BRINGING THIS ON BEHALF OF HIS DECEASED WIFE, MRS.^VEGA.

CAN YOU DISCUSS HOW EXPRESS AND DIRECT CONFLICT EXISTS IN THIS CASE? BECAUSE IT SEEMS THAT UNDER THESE LINES OF CASES, THE UNRELATED WORK EXCEPTION, THE CASES ARE SO FACT SPECIFIC THAT THE TWO CASES HAVE TO BE BASED ON PRETTY SIMILAR FACTS IN ORDER TO HAVE A CONFLICT.

THE RULE OF LAW THAT THIS COURT, AS YOUR HONOR KNOWS, ONE OF THE BASES FOR A CONFLICT JURISDICTION IS WHERE THE LOWER COURT FAILED TO APPLY THE PROPER LAW TO THE FACTS AND CIRCUMSTANCES OF THE CASE. IN THIS CASE, THE 3RD DISTRICT BASICALLY ADHERED TO THE OLD TEST THAT IT HAD BEEN USING GOING BACK TO LANG VERSUS SCHOOL BOARD IN APPLYING THAT BROAD IDEA OF WHAT THE PROJECTS WERE OF THE RESPECTIVE EMPLOYEES AS A RESULT OF A CONFLICT BECAUSE OF A MISAPPLICATION OF THE LAW IN THESE PARTICULAR FACTS AND CIRCUMSTANCES. IN THIS PARTICULAR CASE WE ARE DEALING WITH AN AFFIRMATIVE DEFENSE. AN AFFIRMATIVE DEFENSE THAT WAS RAISED BY THE COUNTY THAT THIS COURT ESTABLISHED IN THE MANDECO CASE WORKERS' COMP IS AN AFFIRMATIVE DEFENSE THAT HAS TO BE RAISED AND PROVEN BY THE COUNTY SO THE BURDEN IS FOR THE COUNTY TO COME FORWARD WITH EVIDENCE DEMONSTRATING THE SEPARATENESS AND DISTINCTNESS BETWEEN THESE TWO EMPLOYEES.

WHAT HAPPENS IF WE HOLD IN YOUR FAVOR? DO WE THEN DETERMINE AS A MATTER OF LAW THAT THEY ARE NOT -- THAT THEY ARE ENGAGED IN UNRELATED WORK OR DO WE SAY THAT'S AN ISSUE OF FACT FOR THE JURY?

IN THIS PARTICULAR CASE, AS THE COURT KNOWS, THIS CASE WENT ALL OF THE WAY THROUGH A TRIAL. THERE WAS A TRIAL, THERE WAS AN OPPORTUNITY FOR THE DEFENDANT IF IT WISHED TO HAVE THE JURY INSTRUCTED ON THE UNRELATED WORK EXCEPTION. THERE WAS A SUMMARY JUDGMENT MOTION FILED ON IT, AND A DIRECTED VERDICT MOTION FILED ON IT. IN THIS PARTICULAR CASE, WE ARE DEALING WITH A LOT OF UNDISPUTED FACTS, THAT IS TRUE, BUT WE ARE ALSO DEALING WITH CERTAIN FACTS THAT REALLY -- THE RECORD IS KIND OF SILENT ON AND THE REAL QUESTION IS WHO HAS THE BURDEN OF ADDUCING PROOF IN THE AREA WHERE THE RECORD IS SILENT.

THIS IS GOING TO BE AN ISSUE -- HAVE YOU, I KNOW THE JURISDICTION ISSUE IS ONE THAT THE COURT HAS DISAGREEMENT ABOUT, AND I JUST WANT TO MAKE SURE BEFORE WE GO ON THAT YOU HAVE ADEQUATELY ADDRESSED JUSTICE CANTERO'S QUESTION ON JURISDICTION.

I AM NOT SURE IF I HAVE OR IF I HAVE NOT.

YOU ARE SAYING THAT IT MISAPPLIED OUR TEST IN TAYLOR AND THAT'S THE BASIS OF THE CONFLICT. I'M NOT SURE THAT WE ARTICULATED A TEST IN TAYLOR AND WE REJECTED ANY

OTHER DISTRICT TESTS. I JUST DON'T RECALL RIGHT NOW WHETHER WE SAID WE DON'T THINK ANY TEST IS APPROPRIATE, SO I'M NOT SURE ABOUT THE MIS APPLICATION. I KNOW THAT THERE IS ANOTHER POSSIBLE AREA OF CONFLICT WITH KELLY WHICH I WILL GIVE YOU AN OPPORTUNITY TO ARGUE. I THINK IT IS PRETTY SIMILAR, BUT AGAIN THESE CASES ARE BASED ON SUCH SPECIFIC FACTS.

IN TAYLOR, THIS COURT DID SET FORTH A RULE WHICH WAS TO BE APPLIED. AS THE COURT KNOWS THERE WAS A CONCURRING OPINION BY JUSTICE LEWIS WHICH HAS BEEN WIDELY CITED IN SOME OF THE DISTRICT COURTS BUT THE COURTS RULE WOULD SAY THAT AN EXCEPTION COULD APPLY WHEN IT HAS BEEN DEMONSTRATED THAT A FELLOW EMPLOYEE WAS RELATED TO THE DUTY OF THE INJURED EMPLOYEE SO BASICALLY THE ANALYSIS IN THIS CASE HAS TO BE WHETHER MISS VEGA, WAS ENGAGED IN DUTIES THAT WERE RELATED TO THE DUTIES OF A TRAFFIC SIGNAL REPAIR PERSON, AND IN IT PARTICULAR CASE THE COURT SAID IN THE TAYLOR CASE THAT YOU NEED TO LOOK AT A NUMBER OF FACTORS. AMONG THOSE FACTORS IS DO THEY HAVE OVERLAPPING DUTIES? DID THEY WORK AS PART OF A TEAM? DID THEY COOPERATE WITH EACH OTHER?

DID WE SAY THE MAJORITY?

IN THE MAJORITY OPINION THERE IS A LOT OF DISCUSSION ABOUT THE FACTORS THE COURT SHOULD APPLY.

BUT THE MAJORITY DIDN'T USE THE TERM TEAM IN TAYLOR.

NO, I DON'T THINK THEY USED THE ACTUAL WORD TEAM.

IN FACT, THE MAJORITY IN TAYLOR SAID THAT THIS EXCEPTION IS TO BE NARROWLY CONSTRUED, CORRECT?

I DON'T DISPUTE THAT THE TEST IS TO BE NARROWLY CONSTRUED AND THIS IS ONE OF THOSE FEW CASES WHERE THE EXCEPTIONS WOULD CLEARLY APPLY AND THE REASON THAT IT WOULD CLEARLY APPLY IS BECAUSE THESE PEOPLE HAVE ABSOLUTELY NO CONNECTION WHATSOEVER WITH EACH OTHER. THEY WOULDN'T HAVE KNOWN EACH OTHER IF THEY HAD FALLEN OVER EACH OTHER.

ONE OF THE CONCERNS I HAVE ABOUT -- AND I'VE READ EVERY CASE THAT HAS COME OUT OF THE DISTRICT COURTS BACK AND FORTH AND BACK AND FORTH, AND IT APPEARS THAT EVERY CASE WAS DECIDED ON SUMMARY JUDGMENT, AND MY CONCERN REALLY IS THAT OF COURSE I JOIN WITH JUSTICE LEWIS IN FEELING LIKE SOME TEST HAD TO BE SAID THAT WE HAVE KELLY, WHICH SEEMS LIKE UNDER THE SAME ESSENTIAL FACTS, DIFFERENT CONCLUSIONS HAVE BEEN REACHED, AND SO IF A JURY WAS TO BE INSTRUCTED ABOUT THIS AFFIRMATIVE DEFENSE WHAT WOULD THE JURY BE INSTRUCTED BASED ON ALL OF THESE CASES? HOW WOULD YOU ENUNCIATE HOW A JURY OR A JUDGE, TRIAL JUDGE OR A DISTRICT COURT OF APPEAL JUDGE IS TO DETERMINE WHETHER SOMEBODY IS ASSIGNED BECAUSE THEY ARE ACTING IN FURTHER ANSWER OF THE EMPLOYER -- FURTHERANCE OF THE EMPLOYER'S BUSINESS BUT ASSIGNED PRIMARILY TO UNRELATED WORK. THAT'S THE STATUTORY TERM. WHAT WOULD BE, YOU KNOW, I HEARD SOMEONE TALK ABOUT FORESEEABILITY, BUT WHAT WOULD THAT BE, HOW WOULD YOU ARTICULATE HOW YOU DETERMINE WHETHER THEY ARE ASSIGNED PRIMARILY TO UNRELATED WORK IN A JURY INSTRUCTION OR AS A RULE OF LAW?

I WOULD SAY FOR PURPOSES OF THE JURY INSTRUCTION, YOU WOULD LOOK AT THE RULE THAT THE COURT HAS ANNOUNCED IN THE TAYLOR CASE, AND ASK BASICALLY WHETHER THEIR DUTIES ARE RELATED TO ONE ANOTHER. WHETHER THESE PEOPLE, YOU KNOW, BASICALLY THE COURT'S RULE IN TAYLOR KIND OF RESTATES THE LANGUAGE OF THE STATUTE BUT IT TURNS IT AROUND.

BUT THE DUTIES, WE'RE AT THE SUPREME COURT OF FLORIDA AND I HAVE THOUGHT OF THIS SINCE TAYLOR, AND WE ARE A COHESIVE BUILDING, OKAY? MY DUTY IS THE ADMINISTRATION OF JUSTICE. WE HAVE MAINTENANCE PEOPLE, AND, YOU KNOW, THEY MAY MOP UP THE FLOOR. THEIR DUTY IS THE MAINTENANCE OF THE FLOOR. CAN I, IF I SLIP RIGHT OUT THERE, CAN I SUE THE MAINTENANCE PERSON?

I WOULD ARGUE THAT, WELL, THE ANALYSIS THAT WE WOULD ENGAGE IN FIRST WE WOULD SAY YOU AND YOUR JANITORIAL SERVICE WORK IN THE SAME BUILDING. THIS IS A RATHER SMALL BUILDING. THIS -- THERE AREN'T A LOT OF EMPLOYEES.

BUT YOU SEE YOU ALREADY STARTED WITH YOU HAVE PRIMARILY DIFFERENT DUTIES. SO THAT'S NOT GOING TO DO IT AND IT IS CERTAINLY NOT GOING TO DO IT FOR THE HOSPITAL CASES WHERE --

WELL, IN A HOSPITAL SETTING, THOUGH, WE'RE DEALING WITH A HUGE COMPLEX. NORTH BROWARD GENERAL HOSPITAL IS ONE OF THE CASES THAT WE -- THAT HAS COME DOWN DEALS WITH THE HOSPITAL THAT LITERALLY EMPLOYS THOUSANDS OF PEOPLE.

BUT YOU WOULD BE ASKING US TO RECEDE FROM THAT CASE.

THAT CASE I THINK WAS WRONGLY DECIDED.

BUT, YOU KNOW, SO WE ARE HERE GOING BACK TO, SO YOU SAY IT IS RELATED DUTIES OR UNRELATED DUTIES. WHAT ELSE?

I THINK YOU HAVE TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES. YOU LOOK AT WHAT THE TWO EMPLOYEES, WHAT THEY DO ON A -- WHAT THEY ARE PRIMARILY ASSIGNED RESPONSIBILITIES ARE. YOUR PRIMARILY ASSIGNED RESPONSIBILITY IS TO BASICALLY ADMINISTER THE ENTIRE BUILDING AND DEAL WITH EVERYTHING THAT GOES ON IN THIS BUILDING AMONG YOUR DUTIES AS THE CHIEF JUSTICE.

I'M GLAD YOU KNOW THAT THAT IS PART OF MY DUTIES.

THE DUTIES OF THE JANITOR WOULD BE, YOU KNOW, YOU HAVE TO DRAW LINES AND SOMETIMES IT IS NOT EASY, BUT WHEN YOU ARE DEALING WITH A SMALL BUILDING LIKE THAT THAT'S THE ONLY OTHER I WOULD HAVE A PROBLEM. IF YOU WERE THE ADMINISTRATOR OF NORTH BROWARD HOSPITAL AND YOU SLIPPED AND FELL OR YOU WERE IN THE REST ROOM AND THE WALL CAVED IN ON YOU BECAUSE OF SOME ERROR BY THE JANITORIAL OR THE MAINTENANCE CREW I WOULD AGREE THAT YOU WOULD BE ENGAGED IN UNRELATED WORK.

IT SEEMS TO ME IN TAYLOR THE HOLDING OF THIS COURT, THE MAJORITY HOLDING WAS THAT THE TWO PEOPLE THERE WERE -- HAD IN COMMON THE PROVISION OF TRANSPORTATION SERVICES IN BREVARD COUNTY, OKAY? IN YOUR CASE, THESE TWO PEOPLE HAD IN COMMON THE MATTER HAVING TO DO WITH THE REGULATION OF TRAFFIC AND THE MAINTENANCE OF THE TRAFFIC LIGHT AND ONE WAS HELPING PEOPLE -- THE SCHOOL KIDS ACROSS THE STREET. NOW, THEY WERE INVOLVED IN A COMMON TYPE OF ACTIVITY, AS I WOULD UNDERSTAND THE WORD. NOW, IN KELLY WHERE I SEE THE SITUATION, ONE WAS WORKING AT THE AIRPORT IN MAINTENANCE AND THE OTHER WAS WORKING IN A ROCK PIT AND IT MAY HAVE STARTED FROM THE SAME LOCATION, BUT THEY WERE PERFORMING DIFFERENT FUNCTIONS FOR THE COUNTY.

THEY WERE BOTH MAINTENANCE.

THEY WERE TOTALLY UNRELATED TO EACH OTHER. MY QUESTION, AND I KNOW THAT'S A LONG PREFACE. MY QUESTION IS: ISN'T THAT WHAT THIS IS REALLY TRYING TO GET TO IS WHERE YOU

DON'T HAVE SOMETHING THAT IS IN COMMON WITH ONE ANOTHER?

IN PALM BEACH VERSUS KELLY BOTH EMPLOYEES WORKED IN MAINTENANCE. THE ONE GUY WORKED AT MAINTENANCE AT THE PALM BEACH AIRPORT. THE OTHER WORKED AT A BOCA RATON ROCK PIT. THEY ARE BOTH MAINTENANCE WORKERS SO IF WE ARE GOING TO TAKE THE TEST AND APPLY IT AS BROADLY AS YOUR QUESTION SUGGESTS WHAT WE WOULD SAY IS THEY WERE BOTH INVOLVED IN MAINTENANCE THEREFORE PALM BEACH COUNTY VERSUS KELLY WAS WRONGLY DECIDED.

WOULD YOU AGREE WITH ME THAT IF THE DECEDENT WAS AFTER THE TRAFFIC LIGHT MALFUNCTIONED WAS CALLED BY THE DEPARTMENT OF PUBLIC WORKS AND WAS OUT THERE TO REGULAR YOU LATE TRAFFIC BECAUSE THE TRAFFIC LIGHT WASN'T FUNCTIONING, WOULD THAT BE A DIFFERENT SITUATION?

THEN WE MIGHT BE DEALING WITH A SITUATION WHERE SHE HAS HAD INTERACTION IN DEALING.

WASN'T SHE PART OF THE SAME TEAM THEN?

I DON'T REALLY THINK SO, BECAUSE SHE WAS STILL -- THAT'S STILL NOT HER PRIMARY ASSIGNMENT BUT THE ISSUE IN THIS CASE IS THE COUNTY NEVER ADDUCED ANY EVIDENCE WHATSOEVER THAT SUGGESTS THAT SHE HAD ANYTHING TO DO WITH THEM. THE RECORD IS PRETTY CLEAR, AND I SAY THAT THROUGH SILENCE IS CLEAR SHE DIDN'T KNOW THESE PEOPLE. SHE DIDN'T KNOW THE PEOPLE THAT FIXED IT.

NOT THAT SHE DIDN'T KNOW THEM BUT THIS WOULD BE A FRIENDLY QUESTION BUT SHE IS ENGAGED AS A CROSSING GUARD WORKING FOR THE DEPARTMENT OF SAFETY AND IT IS THE DEPARTMENT OF PUBLIC WORKS THAT WORKS ON TRAFFIC LIGHTS.

THAT'S CORRECT.

DIFFERENT DEPARTMENTS?

THE FACT THAT SHE EXISTS DOESN'T MAKE THEIR JOB FIXING A TRAFFIC LIGHT ANY EASIER OR MORE DIFFICULT. THAT'S THE REAL BOTTOM LINE ON THIS POINT WHETHER THERE IS A CROSSING GUARD AT THAT PARTICULAR INTERSECTION DOESN'T HAVE ANYTHING TO DO WITH THEIR JOB. GOING OUT THERE, THERE WAS JUST NO RELATIONSHIP WHATSOEVER BETWEEN THE CROSSING GUARD AND THE REPAIR PERSON. THERE IS NO RELATIONSHIP.

WHAT I FIND OF REAL INTEREST HERE AND I DON'T KNOW IF IT WAS AN ISSUE IN THE LOWER COURT, BUT WE HAVE A PERSON WHO WORKS FOR THE MIAMI-DADE POLICE DEPARTMENT, RIGHT, AND WE HAVE A PERSON WHO WORKS FOR THE COUNTY'S PUBLIC WORKS DEPARTMENT, AND SO IN THIS WHOLE SCHEME WE ARE TALKING ABOUT FELLOW EMPLOYEES, CORRECT?

CORRECT.

SO DO WE TAKE THE EMPLOYER THEN IN THESE SITUATIONS TO BE THE WHOLE COUNTY? I MEAN, SO IS THAT -- DOES THAT MAKE THEM FELLOW EMPLOYEES BECAUSE THEY BOTH WORK FOR THE COUNTY, OR DO YOU NEED TO NARROW THIS TO THEY BOTH WORK FOR THE PUBLIC WORKS DEPARTMENT OR THEY BOTH WORK FOR THE POLICE DEPARTMENT BECAUSE I COULD SEE IT A LOT OF PROBLEMS IF WE ARE GOING TO MAKE THE EMPLOYER A REALLY BIG ENTITY.

WELL, I THINK THE UNRELATED WORK EXCEPTION BECAUSE I THOUGHT ABOUT THIS WOULD ONLY APPLY TO EMPLOYERS SUCH AS 30,000 EMPLOYEES OF DADE COUNTY WHICH HAS 45 DIFFERENT DEPARTMENTS. DADE COUNTY I THINK IS THE SECOND BIGGEST EMPLOYER IN THE STATE OF FLORIDA.

OF COURSE IF THEY WEREN'T EMPLOYEES OF THE SAME ENTITY WE WOULDN'T BE HERE, RIGHT, IT WOULDN'T BE A WORKERS' COMP CLAIM?

EXACTLY.

DADE COUNTY'S BUDGET IS BIGGER THAN THE JUDICIAL BUDGET FOR THE STATE OF FLORIDA. THAT'S HOW BIG THEY ARE. SO WE GET BACK.

ALMOST BIGGER THAN RHODE ISLAND.

BECAUSE THEY BOTH WORK FOR DADE COUNTY, WE KEEP THIS UNDER THE FELLOW EMPLOYEE SITUATION?

YES. CLEARLY IF THEY WEREN'T FELLOW EMPLOYEES THEN YOU WOULDN'T HAVE A WORKERS' COMP CLAIM, BUT THEN IT WOULD BE A THIRD PARTY, ANOTHER ENTITY SO TO SPEAK.

DON'T YOU THINK THIS IS AN ISSUE THAT THE LEGISLATURE AT SOME POINT NEEDS TO CLEAR UP? BECAUSE THE BIGGEST TIME THAT IT OCCURS, AT LEAST IN MY EXPERIENCE, HAS BEEN WE ALL WORK FOR THE STATE OF FLORIDA. I WORK FOR THE STATE OF FLORIDA, THE DEPARTMENT OF TRANSPORTATION PEOPLE WORK FOR THE STATE OF FLORIDA, SO WE ALL WORK FOR THE STATE, AND I DON'T THINK ANYBODY WOULD BE COMING UP HERE AND SAY THAT IF, YOU KNOW, I WAS RUN OVER BY SOMEBODY FROM THE DEPARTMENT OF CORRECTIONS, YOU KNOW, THAT THAT WOULDN'T BE, YOU KNOW, WE ARE ALL WORKING FOR THE SAME EMPLOYER BUT THAT DIFFERENT, WELL, THAT OUR BUSINESSES DOING GOOD FOR THE CITIZENS OF THE STATE. SO WE HAVE THE EASY ONES THAT ARE THOSE EXTREMES, I THINK WHAT HAPPENS IS AS I LOOK AT THESE CASES THEY STARTED OUT WITH CONSTRUCTION SITE CASES.

THAT IS CORRECT.

THOSE HAVE SORT OF GONE BY THE WAYSIDE IT SEEMS LIKE IF YOU ARE AT THE SAME CONSTRUCTION SITE NO ONE IS GOING TO TRY TO SUE A FELLOW EMPLOYEE UNDER THE UNRELATED WORKS AND THEN WE GOT TO HOSPITALS AND NOW, YOU KNOW, AND I'M NOT SURE I AGREE OR DISAGREE BUT THE BIGGEST ONE IS REALLY OCCURRING IN THESE SITUATIONS WHERE YOU'VE GOT DEPARTMENTS WITHIN A GOVERNMENTAL ENTITY.

IF I COULD PLAY OFF OF THAT A LITTLE BIT. TO PLAY OFF OF YOUR EXAMPLE EARLIER IF YOU SLIP AND FALL BECAUSE OF MAINTENANCE. LET'S SAY THE MAINTENANCE PERSON IS SOMEONE THAT DOES WORK AT ALL OF THE BUILDINGS FOR THE STATE, THE LARSON BUILDING, THE CAPITOL BUILDING, EVERYWHERE AND IT IS NOT SOMEONE WHO IS ON SITE EMPLOYED HERE AT THE SUPREME COURT BUILDING THEN WE COULD CLEARLY AGREE THAT WOULD BE UNRELATED WORKS IF YOU WERE TO SLIP AND FALL. IF I COULD GO BACK TO JUSTICE WELLS' POINT BEFORE, TAYLOR, YOU ARE DEALING WITH A PERSON WHO ACTUALLY USED THAT LIFT. THAT WAS A PART OF HIS JOB WAS TO ACTUALLY MANIPULATE AND USE THAT LIFT. THAT WAS A PART OF HIS JOB. IN THIS CASE, MISS VEGA DID NOT USE THIS TRAFFIC LIGHT. THE TOOLS OF HER JOB WERE A STOP SIGN AND A FLUORESCENT COLORED VEST, WHICH SHE WOULD USE WHEN SHE WAS HAPPENING TO BE HELPING CHILDREN GO ACROSS THE STREET.

SO WHEN SHE WAS SEEING WHETHER IT WAS SAFE TO OBSERVE -- WALK ACROSS THE STREET OR NOT, SHE DIDN'T OBSERVE THE TRAFFIC SIGNAL?

IT WOULD GUIDE HER BUT IT WAS NOT SOMETHING SHE WAS USING IN THE WAY MR. TAYLOR WAS.

SHE WAS DEPENDENT UPON IT, THOUGH, RIGHT?

I'M NOT SURE THAT I WOULD SAY WHAT HAPPENED IN THE FACTS IN THIS PARTICULAR CASE -- IN REALITY IF SHE WASN'T THEN THERE WOULD BE NO NEGLIGENCE, RIGHT?

WELL, I THINK THERE WOULD STILL BE NEGLIGENCE BECAUSE THERE WERE THE TWO RED LIGHTS OUT AT THIS PARTICULAR INTERSECTION, AN EASTBOUND CAR T-BONED A NORTHBOUND CAR AND IT PUSHED THE CAR OFF ON TO THE SWALE. SHE WASN'T EVEN IN THE INTERSECTION. SHE WAS OFF ON THE SIDE IN THE GRASS. THE CAR CAME OVER AND RAN HER DOWN WHEN IT GOT PUSHED OFF OF THE SIDE. THAT'S -- THOSE ARE THE FACTS AS THEY APPEARED IN THIS CASE, BUT SHE DIDN'T OPERATE THE TRAFFIC LIGHT THE WAY MR. ^TAYLOR OPERATED THE LIFT. SO MR. ^TAYLOR MIGHT GET INTO AN ARGUMENT WITH THE GUY WHOM HE KNEW AND WORKED WITH AT THE SAME LOCATION. THAT'S THE FACTS IN TAYLOR, AND SAY, LOOK, THE REASON THAT LIFT COLLAPSED IS BECAUSE YOU DIDN'T OPERATE IT PROPERLY. YOU DIDN'T DO WHAT YOU WERE SUPPOSED TO DO. NOW YOU HAVE THESE TWO GUYS FIGHTING WITH EACH OTHER AND THAT CREATES DISHARMONY IN THE WORKPLACE WHICH IS THE PURPOSE BEHIND THE EXCEPTION. THE GENERAL APPLICATION OF THE UNRELATED WORKS TO COEMPLOYEES WITH THE EXCEPTION, THE EXCEPTION IS TO DEAL WITH PEOPLE THAT HAVE ABSOLUTELY NOTHING TO DO WITH EACH OTHER, AND WHEN THEY HAVE NOTHING TO DO WITH EACH OTHER IT IS NOT GOING TO CREATE ANY PROBLEM IN THE WORKPLACE, CREATE DISHARMONY AND THAT'S ESSENTIALLY THE ARGUMENT WE ARE MAKING HERE AND I KNOW IN TAYLOR THE COURT WAS WRESTLING WITH THE ISSUE ABOUT WHAT REALLY IS THE PURPOSE HERE.

I KNOW YOU ARE INTO YOUR REBUTTAL TIME BUT ARE YOU ADVOCATING WE ADOPT A SPECIFIC TEST OR LEAVE TAYLOR ALONE OR WHICHEVER WORKS FOR YOU?

WELL, THE GOOD THING ABOUT IT IS IF YOU NOTICE IN MY BRIEF I ARGUED BOTH APPROACHES, A COMMON LAW TYPE INTERPRETATION OF A STATUTORY, STATUTE, BECAUSE EITHER WAY --

YOU DID A GOOD JOB OF TRYING TO DIVINE THE LEGISLATIVE INTENT IN THIS EXCEPTION.

I WAS THINKING A LOT ABOUT THAT AS WELL AND I REMEMBER I'VE GONE BACK AND LOOKED IN MY INJURIES -- JURISPRUDENCE BOOKS BUT I REMEMBER SOMETHING JUSTICE DOUGLAS SAYS THAT THERE IS NO RULE OF STATUTORY JUSTICE THAT SAYS WE HAVE TO IGNORE COMMON SENSE. THAT'S THE BOTTOM LINE. THE COMMON LINE TO ME IS, AND I DON'T THINK THERE IS ANY DISAGREEMENT ON THIS, THE PURPOSE OF THIS STATUTE WAS TO -- RELATED TO THE EXCEPTION IS RELATED TO THE INTERACTION BETWEEN EMPLOYEES. IT HAS SOMETHING TO DO WITH THE INTERACTION IN THE RELATIONSHIP BETWEEN EMPLOYEES, AND TO ME, THE COMMON BOND THAT BRINGS IT ALL TOGETHER IS IF THERE IS GOING TO BE DISHARMONY IN THE WORKPLACE THAT'S WHERE YOU ARE GOING TO HAVE A PROBLEM AND THAT'S WHERE WE WANT TO NOT ALLOW YOU TO SUE AS COEMPLOYEES. I RESERVE THE BALANCE OF MY TIME FOR REBUTTAL.

THANK YOU. MR. ^EHRlich.

I'M ASSISTANT COUNTY ATTORNEY AND I REPRESENT THE COUNTY IN THIS APPEAL AND YOUR HONORS, I WOULD LIKE TO BEGIN WITH THE CONFLICT QUESTION, BECAUSE WHAT YOU HAVE JUST HEARD FROM COUNSEL FOR PETITIONER IS THAT THE COURT SHOULD APPLY SOME TEST DIFFERENT THAN WHAT WAS THE HOLDING IN TAYLOR. THE HOLDING IN TAYLOR WAS CLEAR. IT SAID, THE UNRELATED WORK EXCEPTION SHOULD BE NARROWLY CONSTRUED. SHOULD BE APPLIED ONLY WHEN IT CAN BE CLEARLY DEMONSTRATED THAT THE DUTIES OF THE TWO EMPLOYEES IN QUESTION ARE UNRELATED AND IF YOU LOOK AT THE HOLDING SPECIFICALLY IN TAYLOR, THE COURT FOCUSED ON THE FACT THAT THESE EMPLOYEES BOTH PROVIDED, THEY SHARED THE GOAL OR PROVIDED TRANSPORTATION SERVICES TO STUDENTS.

THIS IS A REPAIR -- TRAFFIC REPAIR LIGHT PERSON PROVIDES TRANSPORTATION SERVICE FOR CHILDREN; IS THAT WHAT YOUR ARGUMENT IS?

TO THE SAME EXTENT THAT THE BUS MECHANIC IN TAYLOR --

HOW ABOUT THE POLICE OFFICER THAT HAD RUN THIS LADY DOWN, THE POLICE OFFICER WAS CERTAINLY ENGAGED IN PROTECTION OF ALL OF THE PUBLIC EVEN FAR MORE CLOSELY THAN A TRAFFIC SIGNAL THAT HAPPENED TO BE IN THE VICINITY OF WHERE THIS LADY WAS. SO THEY WOULD BE IMMUNE AS WELL THEN?

NO, YOUR HONOR, IF A GARBAGE TRUCK OR A POLICE CAR IS RACING THROUGH THE INTERSECTION.

I SAID WHAT IF A POLICE CAR STRIKES HER.

THE POLICE CAR IS NOT ENGAGED IN REGULATING TRAFFIC AND PEDESTRIANS AT THAT INTERSECTION. THE TRAFFIC PATROL SIGNAL REPAIR PERSON.

IS THERE AN UNRELATED WORKS?

SURE, THERE IS, KELLY. THE 4TH DISTRICT COURT'S OPINION IN KELLY. THOSE EMPLOYEES IN KELLY HAD NOTHING TO DO WITH EACH OTHER, EXCEPT THEY BOTH PICKED UP THEIR TRUCKS FROM BUILDINGS AT THE PALM BEACH AIRPORT. THAT'S IT. ONE WORKED AT A ROCK PIT AND THE OTHER --

THEY WERE ENGAGED IN THE BUSINESS OF ADVANCING THE COUNTY INTEREST.

NO, IT WAS MORE, THE THIRD DISTRICT --

YOU WANT TO PEEL THE ONION. WE HAVE TO TAKE EVERY CASE AND PEEL THE ONION AND THERE IS NO TEST BECAUSE EVERYBODY HAS A COMMON INTEREST.

WELL, YOUR HONOR, THAT'S WHAT IT COURT HELD IN TAYLOR. IT WAS THAT IT IS A CASE BY CASE DETERMINATION AND IN RESPONSE TO JUSTICE CANTERO'S QUESTION, THE COURT DID REJECT THE TEST IN TAYLOR. THE COURT REJECTED THE TEST APPLIED BY THE SECOND DISTRICT IN LOPEZ WHERE IN LOPEZ THE MAJORITY FOCUSED ON THE LOCATION OF THE EMPLOYEES. IT FOCUSED ON THE SPECIFIC DUTIES THAT I THINK IT DID NOT HAVE THE SAME DISTINCT DUTIES AND JUSTICE QUINCE WROTE A DISSENTING OPINION THAT WAS APPROVED BY THIS COURT IN TAYLOR, AND SO THE COURT DID REJECT THAT APPROACH AND INSTEAD CHOSE TO TAKE THE APPROACH OF GIVING GUIDANCE TO THE LOWER COURTS BY HOLDING AND THIS IS A HOLDING THAT IS NOT DISPUTED HERE THAT THE EXCEPTION MUST BE NARROWLY CONSTRUED AND APPLIED ONLY WHERE IT CAN BE FAIRLY DEMONSTRATED THEY ARE NOT RELATED.

WHAT DOES THAT MEAN? HOW DO YOU CLEARLY DEMONSTRATE THEY ARE NOT RELATED? AGAIN, WHAT'S THE CRITERIA?

YOU EXAMINE THE DUTIES OF THE EMPLOYEES AND THE CRITERIA THAT THIS COURT APPLIED IN TAYLOR.

WHAT ARE YOU LOOKING FOR?

THE THIRD DISTRICT DID EXACTLY WHAT THIS COURT DID IN TAYLOR. WHAT THE EMPLOYEES OF THE BUS MECHANIC, WHAT HIS RESPONSIBILITIES WERE. HE REPAIRED BUSES AND THAT WHEELCHAIR LIFT ON THE BUS. THE COURT HELD THAT HIS DUTIES ARE RELATED --

NO ONE DISAGREED WITH THAT.

WELL, YOU JOINED, OF COURSE.

WE ALL AGREED. THAT WAS SORT OF THE NO-BRAINER ON THE OTHER SIDE.

HOW MANY TRAFFIC SIGNALS IN DADE COUNTY?

YOUR HONOR, I DON'T KNOW THE ANSWER TO THAT QUESTION.

DON'T WE KNOW, THOUGH, THAT THE ANSWER IS PROBABLY IN THE THOUSANDS OR TENS OF THOUSANDS?

SURE.

OKAY.

SO DOESN'T THIS KIND OF THING JUST COMPLETELY COINCIDENTALLY THAT THIS PARTICULAR TRAFFIC LIGHT AS OPPOSED TO THE THOUSANDS OF OTHER TRAFFIC LIGHTS THAT THIS PERSON HAS RESPONSIBLE -- IS RESPONSIBLE FOR WAS INVOLVED IN THIS PARTICULAR ACCIDENT?

YOUR HONOR, I DON'T THINK THE COURT'S DECISION IN TAYLOR EXAMINED WHETHER THE MECHANIC WORKED ON LOTS OF BUSES OR JUST THAT BUS.

WHAT DOES THIS CROSSING GUARD HAVE TO DO WITH THIS PERSON, OTHER THAN THE PURE COINCIDENCE THAT THIS ACCIDENT OCCURRED AT THIS PARTICULAR TIME AT THIS LOCATION AND THIS FELLOW, THE CROSSING GUARD, WAS A BYSTANDER, REALLY, YOU KNOW, TO THE ACCIDENT THAT HAPPENED. ISN'T THAT CORRECT? HE WAS A BYSTANDER?

SHE. SHE.

MUCH LIKE SOMEBODY THAT DIDN'T WORK FOR ANYBODY OR THAT A SCHOOLTEACHER OR THE PRINCIPAL OR WHOEVER WOULD HAVE BEEN STANDING OUT THERE. ISN'T THAT RIGHT?

I DON'T THINK SO, YOUR HONOR. I THINK THEIR DUTIES ARE RELATED AND IF -- TO PLAY ON THAT, BECAUSE I THINK YOUR HONOR IS FOCUSED ON THE LOCATION AND THIS ONE TRAFFIC SIGNAL. IF A DIFFERENT TRAFFIC SIGNAL HAD BEEN OUT SOMEWHERE ELSE IN THE COUNTY AND THE PUBLIC WORKS REPAIR PEOPLE WENT OUT THERE AND IN THE COURSE OF FIXING IT THEY HAD TO TURN OFF THE TRAFFIC SIGNAL AT THE INTERSECTION WHERE MISS VEGA WAS WORKING I THINK THEIR WORKS WOULD BE RELATED. THEIR DUTIES ARE RELATED.

IF THIS TRAFFIC CONTROL PERSON WAS DRIVING TO AND FROM WORK AND WENT THROUGH ONE OF THESE OTHER INTERSECTIONS, WOULD THE UNRELATED WORKS EXCEPTION THEN APPLY?

I DON'T KNOW, YOUR HONOR. I DON'T KNOW IF IN THAT SITUATION THEY ARE ENGAGED IN FURTHERANCE OF THE EMPLOYER'S --

LET'S TAKE A WORKER, YOU KNOW, THAT INSTEAD OF TAKING CARE OF THE TRAFFIC LIGHT UP THERE, THEY WORK FOR THE MAINTENANCE DEPARTMENT OF THE COUNTY ROAD DEPARTMENT, AND WHAT THEY DO IS THEY GO AROUND THE COUNTY ALL DAY AND THEY FILL IN POTHOLES, ALL RIGHT? AND SO THIS ACCIDENT THAT WE HAVE HERE INSTEAD OF IT BEING AN ACCIDENT THAT WAS CAUSED BY THE PROBLEM WITH TRAFFIC LIGHTS, WAS CAUSED BY A GREAT BIG HOLE IN THE ROAD, YOU KNOW, THAT DIDN'T GET FIXED IN TIME, EVEN THOUGH EVERYBODY HAD NOTICE AND ALL OF THAT KIND OF STUFF, OR IT WAS NEGLIGENTLY FIXED. THEY THREW IT IN. NOW, WE HAVE THE NEGLIGENCE NOW OF THE PUBLIC WORKS DEPARTMENT PERSON. ARE THOSE RELATED WORKS?

NO, BECAUSE APPLYING THIS COURT'S HOLDING IN TAYLOR FOCUSING ON THE DUTIES OF THE

EMPLOYEES INVOLVED IN THAT SITUATION THERE IS NO RELATIONSHIP.

WHY ISN'T THERE A RELATIONSHIP IF THE MAINTENANCE OBVIOUSLY THE SAFETY OF THE ROADWAY THERE IS, YOU KNOW, THAT'S WHY YOU FILL THE POTHOLES IS TO MAKE IT SAFE, RIGHT?

YOUR HONOR, I THINK THAT'S MORE OF A STRETCH FRANKLY THAN WE HAVE HERE.

WHY?

BECAUSE HERE THE DUTIES --

WHY ARE POTHOLES FILLED ON ROADWAYS?

TO MAKE THE ROADS SAFE BUT THE SCHOOL CROSSING GUARD IS NOT OUT THERE --

WHY ARE TRAFFIC LIGHTS KEPT MAINTAINED?

TO REGULATE PEDESTRIANS AT THE INTERSECTION.

TO MAKE THAT INTERSECTION SAFE, RIGHT?

THE DUTIES OF THE EMPLOYEES HERE WERE TO REGULATE PEDESTRIANS AND VEHICULAR TRAFFIC AT THIS INTERSECTION AND THE THIRD DISTRICT APPLIED THIS COURT'S HOLDING IN TAYLOR THE CONFLICT IF THERE IS ONE HAS TO BE BETWEEN THIS COURT'S HOLDING IN TAYLOR AND THE 3RD DISTRICT'S HOLDING. IT CAN'T BE BETWEEN WHAT TAYLOR MIGHT HAVE BEEN. IT CAN'T BE BETWEEN THE CONCURRING OPINION --

THERE IS ALSO A POTENTIAL CONFLICT BETWEEN THE THIRD DISTRICT'S HOLDING AND KELLY AT LEAST POTENTIALLY, AND CAN YOU -- IT SEEMS TO ME THAT ONE WAY OF DETERMINING CONFLICT THAT WE HAVE SAID IS CAN YOU LOOK AT THESE TWO CASES AND SAY THAT THEY CAN STAND SIDE BY SIDE AND I HAVE DIFFICULTY CONCLUDING THAT THE THIRD DCA CASE IN KELLY CAN STAND SIDE BY SIDE.

IF IT CAN STAND SIDE BY SIDE, FIRST OF ALL KELLY WAS DECIDED BEFORE THIS COURT'S OPINION IN TAYLOR SO THE 4TH DISTRICT DIDN'T HAVE THE BENEFIT OF KELLY WHEN THEY DECIDED IT. OF COURSE THEY CAN FOCUS ON WHAT THIS COURT SAID THEY CAN FOCUS ON, THE DUTIES OF THE EMPLOYEES. THE DUTIES OF THE EMPLOYEES IN KELLY WERE COMPLETELY UNRELATED. THEY HAD NOTHING TO DO WITH EACH OTHER.

LET ME GET TO THAT POINT, BECAUSE THE STATUTE SAYS THAT THERE IS AN EXCEPTION WHERE THE EMPLOYEES ARE ENGAGED PRIMARILY IN UNRELATED WORKS, AND IT SEEMS TO ME UNDER OUR CASES WE HAVE TO GIVE MEANING TO EVERY WORD IN THE STATUTE. SO THE WORD PRIMARILY HAS TO BE GIVEN SOME MEANING. AND UNDER THAT, IT SEEMS TO ME THAT IF THE DUTIES OF EMPLOYEES ARE SEEN AS A CIRCLE THERE MAY BE POINTS AT WHICH THE CIRCLES INTERSECT, BUT IF TWO EMPLOYEES ARE ENGAGED PRIMARILY IN UNRELATED WORKS, THE FACT THAT THEY INTERSECT AT POINTS IS NOT DISPOSITIVE AND, IN FACT, DOESN'T TAKE AWAY THAT THEY ARE UNRELATED WORKS AND IT SEEMS TO ME THAT'S EXACTLY WHAT'S HAPPENED HERE IS WE HAVE ONE EMPLOYEE WHO IS WORKING IN PUBLIC SAFETY WITH HELPING CHILDREN ACROSS THE ROAD, AND ANOTHER EMPLOYEE WHO IS ENGAGED IN REPAIRING AND MAINTAINING TRAFFIC LIGHTS ALL AROUND DADE COUNTY WHICH IS VERY BIG, AND THOSE DUTIES MAY HAVE INTERSECTED AT ONE PARTICULAR INTERSECTION, BUT THAT DOESN'T NECESSARILY MEAN THEY ARE ENGAGED IN RELATED WORKS. THEY MAY STILL BE ENGAGED PRIMARILY IN UNRELATED WORKS.

I THINK YOUR HONOR'S CONCERN WAS ADDRESSED BY THE COURT IN TAYLOR. THE BUS MECHANIC IN TAYLOR DID NOT WORK ONLY ON THE WHEELCHAIR LIFT ON THE PARTICULAR BUS WHERE THE ACCIDENT OCCURRED. THOSE BUS MECHANICS WERE RESPONSIBLE FOR ALL OF THE BUSES IN THE SCHOOL DISTRICT. IN LOPEZ, THE MECHANICS WHO WORKED ON THE VAN, WORKED ON -- THE COURT'S OPINION WORKED ON THE FLEET OF VEHICLES. THEY WEREN'T PRIMARILY ASSIGNED TO THAT VAN NO MORE SO THAN THE MECHANIC WAS PRIMARILY ASSIGNED TO THAT WHEELCHAIR LIFT IN TAYLOR.

AT LEAST IN TAYLOR THE BUS DRIVER AND THE MECHANIC BOTH HAD SOME DUTIES CONCERNING THE BUS, AND HERE VEGA HAD NO DUTIES CONCERNING THE TRAFFIC LIGHT. HERE DUTIES CONCERNED GETTING CHILDREN ACROSS THE ROAD. SHE HAD NO MAINTENANCE RESPONSIBILITIES OR ANY RESPONSIBILITIES WHATSOEVER CONCERNING THE TRAFFIC LIGHT.

WELL, YOUR HONOR, IN TAYLOR, THE WHEELCHAIR OPERATOR OF THE LIFT HAD NO MAINTENANCE DUTIES WITH REGARD TO THE LIFT AND IN THIS CASE, MISS VEGA IS GOVERNED BY THAT TRAFFIC SIGNAL ABOVE HER.

SHE WAS A BYSTANDER, THOUGH, SHE WASN'T USING THE LIGHT WHEN THIS INCIDENT OCCURRED, WAS SHE?

YOUR HONOR, THE RECORD DOESN'T REFLECT WHETHER SHE WAS ESCORTING CHILDREN ACROSS AT THE TIME.

SHE GOT HIT BY A VEHICLE THAT DIDN'T -- BECAUSE OF THE MALFUNCTION OF THE TRAFFIC LIGHT, AND ENDED UP HITTING HER. THEY COULD HAVE HIT THE KIDS, I MEAN, YOU KNOW, I MEAN YOU MENTIONED I THINK THE TEST OF FORESEEABILITY. IT IS LIKE SO FAR OUT OF FORESEEABILITY IN THIS CASE THAT EVEN UNDER YOUR FACTS IT IS A HARD THING. I THINK IT WOULD BE DIFFERENT IF MISS VEGA HAD BEEN SENT OUT AND THEY SAID THE TRAFFIC LIGHT IS NOT FUNCTIONING, WE BETTER SEND MISS VEGA OUT TO HELP DIRECT TRAFFIC THERE. AT THAT POINT MAYBE IT IS AT THAT MOMENT SHE IS ASSIGNED PRIMARILY TO SOMETHING RELATED TO THE LIGHT BUT THAT'S NOT THE FACTS OF THIS CASE.

YOUR HONOR, DON'T FORGET THE LAWSUIT WAS PREMISED ON AN ALLEGATION OF NEGLIGENCE BY THE COUNTY. OF COURSE THE TWO CARS COLLIDED AND THAT'S WHAT CAUSED THE INJURY BUT IT IS THE COUNTY'S NEGLIGENCE IS THE BASIS OF THE PETITIONER'S LAWSUIT.

DON'T YOU HAVE -- IS YOUR POSITION THIS IS A QUESTION OF -- ALWAYS A QUESTION OF LAW, A QUESTION OF FACT OR WHAT? WHAT IS IT?

NO, IT IS A QUESTION OF LAW WHEN THERE ARE NO FACTS IN DISPUTE AS IN THIS CASE.

SO WE THEN -- SO THE JURY HAD NO ROLE IN THIS AS FAR AS --

IN THIS PARTICULAR CASE, NO, BUT THE PARTIES DON'T -- THERE IS NO FACTUAL DISPUTE AT THIS POINT, EITHER.

SO THERE IS NO QUESTION. YOU HAVE NOTHING TO SHOW THAT MISS VEGA WAS OUT THERE IN ANY WAY ON THAT DAY RELATED TO SOMETHING REGARDING THE TRAFFIC LIGHTS? IN OTHER WORDS, SHE WAS A TRAFFIC CROSSING GUARD FOR THE CHILDREN EACH AND EVERY DAY, WHETHER THERE WAS TRAFFIC SIGNALS OR NOT. SHE WASN'T SENT OUT THERE BECAUSE THAT WAS A MALFUNCTIONING --

NO.

TO ME THAT'S AN IMPORTANT --

BUT HER DUTIES THAT DAY WERE DIFFERENT WHEN THE TRAFFIC SIGNAL THAT GOVERNS HER IS NOT OPERATING PROPERLY.

WHERE IS THAT IN THE RECORD?

YOUR HONOR --

NO, RECORD, RECORD. YOU WENT TO A JURY TRIAL. WHERE IS THAT?

YOU SAY THERE IS NO RECORD. THERE'S GOT TO BE A RECORD. SOMEONE TRIED THIS CASE.

UNLESS THE COURT IS GOING TO ASSUME THAT SHE WALKS KIDS ACROSS THE STREET NOTWITHSTANDING A GREEN LIGHT IN THE OPPOSITE DIRECTION, I THINK IT IS A FAIR COMMON SENSE ASSUMPTION TO MAKE SHALL THAT SHE IS GOVERNED BY THE TRAFFIC LIGHT ABOVE HER IN DOING HER DUTIES OF ESCORTING CHILDREN ACROSS THE STREET. I DON'T THINK THAT THAT'S

--

LET'S SAY THAT I, AGAIN, I COULD GO OVER TO THE -- TO SEE THE GOVERNOR, TO THE CAPITOL AND I'M GOING THERE FOR SOMETHING TO DO WITH MY ROLE AS THE JUSTICE, AND SOMETHING HAPPENS TO ME OVER AT THE CAPITOL. DO I -- AM I ABLE TO SUE SOMEBODY THAT WORKS IN THE -- FOR MAINTENANCE OVER THERE?

I THINK SO.

I AM GOING OVER THERE, AT THAT POINT AREN'T I FURTHERING THE SAME INTEREST AS THE GOVERNOR WHEN I GO OVER THERE?

AS THE MAINTENANCE PEOPLE --

NO, NO, AS TO THE FACT THAT THERE IS A -- MY ROLE IS RELATED TO MY JOB, I'M GOING OVER THERE, AND I'M INJURED OVER THERE.

YOUR HONOR, OF COURSE IT WOULD DEPEND ON THE DUTIES OF THE NEGLIGENT EMPLOYEES THAT RESULT IN YOUR INJURY. I DON'T KNOW HOW TO ANSWER THAT QUESTION WITHOUT KNOWING THOSE.

IF I SAW SOMEBODY WHO WAS ALSO RELATED TO THE JUSTICE SYSTEM, EVEN THOUGH THEY WEREN'T RELATED TO THE COURT BUT THEY WERE IN FURTHERANCE OF SOMETHING TO DO WITH THE ADMINISTRATION OF JUSTICE, AND I WAS INJURED AT THAT TIME THAT THAT WOULD BE --

YOUR HONOR, YOU WOULD HAVE TO -- EXAMINING THIS COURT'S HOLDING IN TAYLOR YOU WOULD HAVE TO LOOK AT THE DUTIES OF THE EMPLOYEES INVOLVED AND ASK WHETHER HE WHETHER THEY ARE RELATED. THAT'S EXACTLY WHAT THE 3RD DISTRICT DID HERE. IF THE FEELING OF THE COURT IS THAT TAYLOR IS NOT A GOOD ENOUGH TEST THAT'S A DIFFERENT QUESTION THAN WHETHER IT IS A CONFLICT. I THINK TAYLOR WAS RIGHTLY DECIDED. I THINK THE COURT WAS RIGHT TO STATE THAT IT COULD NOT HOPE TO ANTICIPATE THE MYRIAD OF FACTUAL CIRCUMSTANCES THAT COULD AROSE -- ARISE AND THERE NEEDS TO BE A CASE BY CASE DETERMINATION.

THAT'S THE PROBLEM AGAIN I THINK THAT WE ARE FACED WITH IS THAT BECAUSE THESE ARE ALL UNDISPUTED FACTS CASES, AGAIN I DIDN'T SEE ANY THAT WENT TO A JURY FOR A DETERMINATION. SOME SAID THEY WERE FACTS, BUT 95% WERE SUMMARY JUDGMENT. MY CONCERN IS THAT WE ARE REALLY LEAVING IT UP TO ONE PANEL OF THE 3RD DISTRICT TO DO IT THIS WAY AND THEN THERE IS THAT OTHER CASE THAT SOUNDED LIKE THEY EMBRACED TAYLOR, WELL, THEY WILL DO IT THAT WAY AND THE 4TH DISTRICT IS GOING TO DO IT THIS WAY AND WE

HAVE CHAOS OUT THERE.

HERE'S HOW THE COURT SHOULD TREAT THAT. YOU'VE GIVEN A HOLDING, THE HOLDING OF TAYLOR IS THAT THE EXCEPTION MUST BE NARROWLY CONSTRUED AND APPLIED SPARINGLY. NOW THE DISTRICT COURTS ARE IN THE PROCESS OF DIGESTING THAT HOLDING, APPLYING IT TO THE FACTS OF THE CASE AND THERE MAY COME A DAY WHEN THERE IS A CONFLICT BETWEEN TWO DISTRICT COURTS APPLYING TAYLOR AND THIS COURT COULD GIVE CLARITY TO THE DISTRICT COURTS. THIS CASE WAS DECIDED A YEAR AGO, YOUR HONOR. THE DISTRICT COURTS HAVE HARDLY HAD A CHANCE TO APPLY TAYLOR. THERE HAVE ONLY BEEN A COUPLE OF CASES THAT HAVE CITED IT. THERE IS NO REASON TO CONCEDE FROM THE TESTS IN TAYLOR.

UNLESS YOU SEE DESPITE THE ATTEMPT IN TAYLOR, THE LESE FAIR IS INTERPRETING THIS TO THE MAJORITY OF THE COURT.

THAT'S RIGHT, YOUR HONOR, BUT AT THIS POINT IT IS PREMATURE TO SAY THAT, AND IN THE DOCTRINE OF STARE DECISIS IS EXACTLY WHAT I BELIEVE YOUR HONOR IS TALKING ABOUT. IF IT PROVES TO BE UNWORKABLE OF COVERS THE -- OF COURSE THE COURT IS NOT BOUND BY THE TESTIMONY. AT MOST --

ARE YOU SUGGESTING THAT THE TAYLOR HOLDING IS THAT THE STATUTE IS STRICTLY CONSTRUED? THAT'S WHAT YOU SAY THE HOLDING IS?

ONE OF THE HOLDINGS IS THAT THE STATUTE MUST BE STRICTLY -- THE EXCEPTION SHOULD BE STRICTLY CONSTRUED AND THAT WAS IN DISPUTE PRIOR TO TAYLOR SO THAT WAS A HOLDING OF TAYLOR. THE OTHER HOLDING WAS THAT IN THAT CASE THE BUS MECHANIC AND THE WHEELCHAIR LIFT OPERATOR WERE BOTH PROVIDING TRANSPORTATION SERVICES. THAT'S A HOLDING OF TAYLOR THAT WHETHER THIS COURT WANTS TO REVISIT THAT OR NOT IS A DIFFERENT QUESTION BUT THAT IS A CLEAR HOLDING OF TAYLOR. ANOTHER HOLDING OF TAYLOR WAS THE REJECTION OF THE SECOND DISTRICT'S APPROACH. THEIR TEST WHICH WAS MORE OF A BRIGHT LINE TEST IS FOCUSED ON LOCATION, FOCUSED ON THE SPECIFIC DUTIES OF THE EMPLOYEES. THIS COURT REJECTED THAT TEST IN TAYLOR.

IT IS AN UNDISPUTED HOLDING OF TAYLOR. THOSE HOLDINGS ARE BEING APPLIED BY THE DISTRICT COURTS BELOW AND THERE MAY COME A TIME WHERE THEY ARE BEING APPLIED INCONSISTENTLY WHERE THIS COURT WOULD HAVE TO PROVIDE CLARITY AND UNIFORMITY. WE ARE NOT AT THAT STAGE YET.

YOU THINK WITH THE STATE OF FLORIDA WITH ITS VARIOUS DEPARTMENTS, DO YOU THINK THAT IF THE DEPARTMENT OF CORRECTIONS, DEPARTMENT OF TRANSPORTATION, IS THAT JUST A CASE BY CASE BASIS OR WOULD YOU -- WERE THE INSTITUTIONAL EMPLOYER HAS THESE DEFINED DEPARTMENTS, THAT GENERALLY SPEAKING THEY ARE NOT GOING TO BE ENGAGED?

I THINK YOU HAVE TO TAKE IT ON A CASE BY CASE BASIS. I UNDERSTAND THE TEMPTATION TO GIVE A RULE. HERE'S THE PROBLEM, OFTEN YOU HAVE EMPLOYEES OF DIFFERENT DEPARTMENTS WORKING TOGETHER ON THE SAME SITE.

THROUGH THE SAME COOPERATIVE PROJECT OR TEAM.

SURE.

THAT'S WHY I WOULD SAY THAT IF THIS THIS SITUATION MISS VEGA WAS CALLED OUT BY THE DEPARTMENT OF PUBLIC WORKS TO ASSIST IN A MALFUNCTIONING TRAFFIC LIGHT, I THINK THAT UNDER THE CONCURRENT WITH JUSTICE LEWIS IT MAY BE INVOLVED IN PART OF THE SAME TEAM OR IS A PROJECT AT THAT POINT ASSIGNED PRIMARILY TO RELATED WORKS, BUT WE DON'T HAVE THAT YET.

NO, NO, BUT YOUR HONOR THE EXAMPLE THAT YOU GAVE, THOUGH, THE DEPARTMENT OF CORRECTIONS AND DEPARTMENT OF TRANSPORTATION, THOSE WERE THE EXACT THINGS IN THE HODGE CASE FROM THE 1ST DISTRICT WHERE TWO RANDOM STATE EMPLOYEES HAD A CAR ACCIDENT. PERFECT EXAMPLE OF UNRELATED WORKS. KELLY, ALL THEY HAD IN COMMON WAS THEY PICKED UP THEIR CARS FROM THE SAME PLACE TO BEGIN THEIR DAY AND YOUR HONOR REFERRED TO KELLY AS A PURE HAPPENSTANCE DURING THE ORAL ARGUMENT IN TAYLOR AND YOU ARE RIGHT IT WAS PURE HAPPENSTANCE. THAT'S DIFFERENT THAN THIS CASE. THESE EMPLOYEES WERE BROUGHT TOGETHER ON THE OCCASION OF THIS ACCIDENT FOR A REASON BECAUSE THEY SHARED COMMON DUTIES OF REGULATING PEDESTRIANS AND TRAFFIC AT THIS INTERSECTION. THERE IS NO CONFLICT BETWEEN THE 3RD DISTRICT DECISION BELOW AND THE COURT'S HOLDING IN TAYLOR AND THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND THE DECISION IN KELLY. THOSE CASES ARE COMPLETELY DISTINGUISHABLE AND THERE IS -- NOT TO MENTION KELLY WAS DECIDED BEFORE TAYLOR SO TO THE EXTENT THAT IT CONFLICTS WITH TAYLOR OR ARAVENA IT IS NO LONGER GOOD LAW. IT HAS BEEN OVERRULED. YOUR HONOR, I WOULD LIKE TO ADDRESS IN THE TIME I HAVE REMAINING COUNSEL'S SUGGESTION THAT THE EXCEPTION FIRST OF ALL THAT WHOSE BURDEN IT IS TO PROVE THIS. THE IMMUNITY MIGHT BE AN AFFIRMATIVE DEFENSE BUT PROVING AN EXCEPTION TO THE IMMUNITY APPLIES IS A QUESTION FOR THE PLAINTIFF AND THAT'S CONSISTENT WITH THIS COURT'S HOLDING. THIS COURT HELD IT CAN'T BE APPLIED UNLESS IT IS CLEARLY DEMONSTRATED THAT THEIR DUTIES WERE UNRELATED. THAT WOULD BE SOMETHING THAT THE PLAINTIFF WOULD WANT TO CLEARLY DEMONSTRATE. THE DEFENDANT WOULDN'T CLEARLY DEMONSTRATE THAT.

THAT'S A HARD ONE BECAUSE AGAIN I AGREE WITH YOU CONCEPTUALLY, BUT SINCE WE HAVE SAID IT IS RAISED AS AN AFFIRMATIVE DEFENSE.

NO, THE IMMUNITY IS AN AFFIRMATIVE DEFENSE AND THEN PROVING THAT AN EXCEPTION TO THE IMMUNITY APPLIES.

YOU ARE SAYING AN AVOIDANCE.

THANK YOU, YOUR HONOR. THEN SECOND THE IDEA THAT SOMEHOW LOCATION MATTERS, AND COUNSEL AGAIN TALKS ABOUT THAT THE IDEA HERE WAS TO PREVENT DISHARMONY IN THE WORKPLACE FROM EMPLOYEES SUING EACH OTHER THERE ARE SEVERAL REASONS WHY THAT DOESN'T MAKE SENSE MUCH THE FIRST IS IN THE CONTEXT OF GOVERNMENT DEFENDANTS LIKE THE COUNTY IN THIS CASE AND ALMOST ALL OF THESE CASES WE ARE DEALING WITH SCHOOL BOARDS, WITH COUNTIES, AND IN NO SITUATIONS YOU ARE EVER GOING TO HAVE EMPLOYEE VERSUS EMPLOYEE LITIGATION BECAUSE IN CASES OF ORDINARY NEGLIGENCE THE GOVERNMENT STEPS IN AND SERVES AS THE DEFENDANT SO THE EMPLOYEES ARE NOT ENGAGED IN LITIGATION AGAINST EACH OTHER. THAT'S CERTAINLY THE LEGISLATURE WAS AWARE OF THAT SO PREVENTING DISHARMONY IN THE WORKPLACE.

BUT THE LEGISLATURE WAS AWARE THERE ARE LARGE CORPORATIONS THAT ARE GOING TO HAVE WORKERS' COMP BENEFITS AND THERE MAY VERY WELL BE HARMONY ISSUES WITH RESPECT TO THOSE.

PERHAPS, YOUR HONOR, THERE ARE TWO OTHER REASONS I -- MY TIME HAS EXPIRED BUT I DO WANT TO ADDRESS THEM. THERE COULD BE SITUATIONS WHERE EMPLOYEES ARE ENGAGED IN RELATED WORKS FROM DIFFERENT LOCATIONS, OR UNRELATED WORKS FROM THE SAME LOCATION SO IT IS OVERBROAD AND UNINCLUSIVE IN THAT RESPECT AND FINALLY THIS ARGUMENT WAS PRESENTED TO THIS COURT IN TAYLOR IN RESPONSE TO A QUESTION FROM JUSTICE LEWIS DURING THE ORAL ARGUMENT IN THAT CASE THE PETITIONER SAID, THIS WAS TO PREVENT DISHARMONY IN THE WORKPLACE AND THE COURT DID NOT ADOPT THAT IN ITS MAJORITY OPINION. FOR THESE REASONS I RESPECTFULLY REQUEST THAT THE COURT DISMISS THIS PETITION AS IT IS GRANTED BECAUSE THERE IS NO CONFLICT. THE COURT SHOULD NOT DO

THAT BUT HOLD THAT THE 3RD DISTRICT'S DECISION WAS CONSISTENT WITH THE HOLDING OF THE MAJORITY IN TAYLOR AND APPROVE THE THIRD DISTRICT'S DECISION.

THANK YOU VERY MUCH. THANK YOU TO BOTH PETITIONER AND RESPONDENT. YOU HAVE MORE. SORRY.

VERY BRIEFLY, YOUR HONOR. BECAUSE THERE SEEMED TO BE A DISPUTE ABOUT SOME OF THE FACTS IN THE CASE I WANT TO MAKE SURE THAT WE ARE CLEAR ABOUT THIS AND THESE COME FROM THE INVESTIGATING OFFICER WHO WAS -- TESTIFIED AT TRIAL, CAROL DELAUSE. THE ACCIDENT HAPPENED AT 7:18 IN THE MORNING. SCHOOL STARTED FOR THE CHILDREN AT 8:20. MISS VEGA ARRIVED AT WORK AT 7:00 A.M.. SHE WAS STANDING ON -- IN THE GRASS, IN THE SWALE, PROBABLY STILL WAITING FOR CHILDREN TO COME. SHE WAS ON THE SWALE WHEN THE ACCIDENT HAPPENED. THE TWO NORTHBOUND LIGHTS WERE OUT. THIS IS IN A RESIDENTIAL AREA, TWO NORTHBOUND LIGHTS WERE OUT. CARS COMING THROUGH NORTHBOUND DOESN'T APPARENTLY REALIZE THAT -- BECAUSE THE LIGHTS ARE OUT DOESN'T REALIZE THEY HAVE THE RED LIGHT. THE CAR COMES FROM WEST TO EAST, T-BONES THE CAR GOING NORTH. THE IMPACT OF THE T-BONE PUSHES THE CAR INTO MY CLIENT WHO WAS KILLED. THAT IS HOW THIS ACCIDENT HAPPENED. IT DIDN'T WHILE HAPPEN WHILE SHE WAS HELPING A CHILD ACROSS THE STREET, WHILE THE CHILD WAS EVEN THERE BECAUSE PRESUMABLY IF A CHILD WAS THERE THEY WOULD HAVE BEEN KILLED AS WELL.

THE REASON SHE WAS THERE WAS TO ASSIST CHILDREN, TO PERFORM HER DUTIES? I MEAN, IN HER DUTIES WERE TO ASSIST CHILDREN AT THAT INTERSECTION TO GET ACROSS THE STREET?

THAT WAS HER JOB, THAT WAS WHAT SHE WAS THERE TO DO. THOSE WERE HER DUTIES. IN THIS PARTICULAR CASE, WE ARE JUST DEALING WITH VERY SIMPLE FACTS WHERE YOU HAVE TWO PEOPLE THAT DON'T KNOW EACH OTHER. YOU ARE DEALING WITH A HUGE EMPLOYER OF 30,000 PEOPLE IN 45 DIFFERENT DEPARTMENTS, AS JUSTICE QUINCE IS POINTING OUT WHEN YOU ARE DEALING WITH SUCH DISCONNECT BETWEEN PEOPLE, THE REASON THE EXCEPTION EXISTS FULLY COMES INTO PLAY. IF YOU LOOK AT THE STATUTE FROM THE TEXTUALIST PERSPECTIVE OR A COMMON LAW PERSPECTIVE, EITHER WAY THE FACTS IN THIS CASE ARE A CLASSIC EXAMPLE OF UNRELATED WORKS WITHIN THE MEANING OF THE EXCEPTION. AS A RESULT WE WOULD RESPECTFULLY REQUEST THAT THIS COURT REVERSE THE JUDGMENT NOTWITHSTANDING THE VERDICT ENTERED BY THE 3RD DISTRICT COURT OF APPEAL WITH DIRECTIONS TO REINSTATE THE FINAL JUDGMENT ENTERED BY THE TRIAL COURT. THANK YOU, YOUR HONORS.

THANK YOU VERY MUCH. THE COURT IS NOW IN RECESS UNTIL 9:00 TOMORROW MORNING.

THE MARSHAL: PLEASE RISE.