**American Honda Motor Corp. V. Jennifer Cerasani**
**SC05-1907**

PLEASE RISE.
HEAR YE, HEAR YE, HEAR YE.
SUPREME COURT IS NOW IN SESSION.
DRAW NEAR, AND YOU SHALL BE
HEARD.
GOD SAVE THESE UNITED STATES AND
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.,,
>> LADIES AND GENTLEMEN.
THE COURT OF THE SUPREME COURT.
>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT AN OUR
ARGUMENTS FOR WEDNESDAY,
SEPTEMBER 20.
THE FIRST CASE ON OUR DOCKET IS
AMERICAN HONDA MOTOR COMPANY
VERSUS CERASANI.
IS THAT CLOSE ENOUGH?
OK.
WOULD ENCOURAGE THE PARTIES TO
UNDERSTAND THAT THE COURT HAS
THOROUGHLY STUDIED ALL THE FACTS
AND ATD TIMES, WE ASK A LOT OF
QUESTIONS.
I WANT ALL OF YOU TO WALK AWAY
FEELING YOU HAVE BEEN ABLE TO
PRESENT YOUR ARGUMENTS, SO
PLEASE BE MINDFUL OF THAT AND
ALSO OUR MICROPHONE.
PLEASE HELP US BY SPEAKING INTO
THE MICROPHONE, SO WE'LL ASSIST
THE COURT ON THAT, OK?
MS. LUMISH.
>> THANK YOU.
MAY IT PLEASE THE COURT, WENDY
LUMISH ON BEHALF OF THE
PETITIONER, AMERICAN ON DAVMENT
I WOULD LIKE TO RESERVE FIVE
MINUTES FOR REBUTTAL.
THE ISSUE IN THIS CASE IS ONE OF
STATUTORY CONSTRUCTION.
THIS CASE IS NOT ABOUT WHETHER

PLAINTIFF IS A LESSEE HAD A
WARRANTY FOR REPAIRS.
SHE DID HAVE A WARRANTY FOR
REPAIRS.
IT'S NOT ABOUT WHETHER OR NOT
PLAINTIFF CAN STATE -- CAN HAVE
STATE LAW REMEDIES.
SHE DOES HAVE STATE LAW
REMEDIES.
IT'S ABOUT WHETHER OR NOT SHE
HAS AN ADDITIONAL REMEDY UNDER A
FEDERAL STATUTE, THE MAGSON MOSS
ACT.
WE CLAIM SHE DOES NOT.
>> MS. LUMISH, WOULD YOU ADDRESS
INITIALLY, IT APPEARS THERE MAY
BE SOME QUESTION AS TO WHETHER
SELLERS IS REALLY IN CONFLICT
WITH THIS CASE, BECAUSE THE
NATURE IN WHICH IT WAS ANALYZED.
WOULD YOU TOUCH ABOUT THAT JUST
BRIEFLY?
BECAUSE I THINK THAT ALSO GOES
TO YOUR POINT, ON THE
CONSTRUCTION OF THE STATUTE AS
WELL.
>> YES.
YOUR HONOR, WE BELIEVE THAT
THERE IS CONFLICT.
UNDER THE SELLERS CASE, THE
COURT FOUND THAT THERE WAS A
NEED TO HAVE A SALE, THAT THE
PLAINTIFF HAD TO DEMONSTRATE
THAT THERE WAS A SALE FOR EITHER
A CATEGORY TWO OR A CATEGORY
THREE CONSUMER.
IN THE CERASANI CASE, THE COURT
FOUND THAT ENFORCEMENT OF A
WARRANTY WAS ENOUGH, EVEN
WITHOUT A SALE.
AND WHAT THAT REALLY MEANS IS,
IF TWO PEOPLE LEASE THE SAME
VEHICLE, ONE IN TALLAHASSEE AND
ONE IN TAM PARK THE INDIVIDUAL
WHO LEASES THE VEHICLE IN
TALLAHASSEE WILL HAVE NO CAUSE
OF ACTION BECAUSE ACCORDING TO
SELLERS, THERE WAS NO SALE AND
THEREFORE THE MAGSON MOSS ACT
DOESN'T APPLY BUT THE INDIVIDUAL
IN TAMPA WILL BE ABLE TO PURSUE
HIS CAUSE OF ACTION BECAUSE HE
CAN ENFORCE THE WARRANTY.
NOW STATED MORE SPECIFICALLY,

THE REAL ISSUE IS WHETHER OR NOT
A CATEGORY THREE CONSUMER MUST
MEET THE TEST OF WRITTEN
WARRANTY.
AND IMPLICIT IN THE DECISION IN
CERASANI, WHEN THE COURT HELD
THAT ALL YOU HAVE TO DO IS
ENFORCE THE WARRANTY, IS THE
FINDING THAT YOU DO NOT HAVE TO
ALSO HAVE A SALE.
THAT'S CRITICAL TO OUR ISSUE
BEFORE THE COURT.
BECAUSE THE PRIMARY POINT HERE
IS THAT THE CAUSE OF ACTION
UNDER 23.10D REQUIRES THERE TO
BE A CONSUMER WHO WAS DAMAGED BY
THE FAILURE OF A WARRANTOR TO
COMPLY WITH A WRITTEN WARRANTY.
>> LET GO TO WHAT YOU SAY WAS
THE PLAIN LANGUAGE.
IF IT'S SO PLAIN, THE COURTS
AROUND THE COUNTRY WOULDN'T BE
STRUGGLING WITH EACH OF THESE
AND I'M SURE CONGRESS MIGHT HAVE
SHOULD SAY LESSEES ARE INCLUDED
OR NOT INCLUDED WOULD MAKE ALL
OF OUR LIVES SIMPLER AND WE'RE
TRYING TO FIND OUT WHAT CONGRESS
MEANT TO DO.
LET'S START WITH WHETHER THERE
IS A -- YOUR DEFINITION OR THE
CONGRESS'S DEFINITION OF WRITTEN
WARRANTY.
AND WHETHER A WRITTEN WARRANTY
CAN EXIST WHERE YOU HAVE A SALE
TO THE FINANCE COMPANY, WHO THEN
LEASES THE VEHICLE UNDER A
LONG-TERM LEASE.
UNDER THAT CIRCUMSTANCE, CAN
THERE -- IS IT YOUR POSITION
THERE CAN OR CANNOT BE A WRITTEN
WARRANTY UNDER THE ACT?
>> WELL, THERE'S A NUMBER OF
ANSWERS TO THAT.
FIRST OF ALL, WE BELIEVE THAT
FACTUALLY, THE LEASE IN THIS
CASE, WHICH WAS ATTACHED TO THE
COMPLAINT, DEMONSTRATES THAT
THIS IS NOT A CIRCUMSTANCE WHERE
WE HAVE A SALE BY THE DEALER TO
THE LEASING COMPANY, SO THAT
PREMISE ASIDE, ONE OF THE
REASONS THAT --
>> THERE WAS NO -- THE

VEHICLE -- WHO OWNS THE VEHICLE?
>> THE VEHICLE WAS OWNED BY THE DEALER, WHO WAS THE LESSOR IN THIS CASE AND THAT'S BORNE OUT, LOOKING AT THE LEASE, THE LEASE HAS ON IT THE NAME OF THE LESSOR IS CROWN HONDA, WHICH IS THE DEALERSHIP, AND THE LESSEE IS THE PLAINTIFF, CERASANI.
SO THE ONLY SALE THAT TOOK PLACE IN THIS CASE, BASED ON THE LEASE, WAS THE SALE BY THE MANUFACTURER TO THE DEALER.
BUT LET ME GO BACK, WHEN I SAY THE PLAIN LANGUAGE.
ONE OF THE PROBLEMS IN A NUMBER OF CASES AROUND THE COUNTRY IS THEY DIDN'T LOOK AT THE PLAIN LANGUAGE AND THE ISSUE JUST TURNED INTO A LET SEE IF A LEASE -- IF IT'S A LEASE OR IT'S A SALE AND THEY DIDN'T DO THE ANALYSIS THAT WE'RE ASKING THE COURT TO DO AND TO GO TO YOUR QUESTION, JUSTICE, THE FIRST QUESTION IS WHETHER OR NOT THERE'S A WRITTEN WARRANTY AND WE HE BELIEVE IT'S CLEAR THE WRIT N WARRANTY IS PART OF THE CAUSE OF ACTION AND IS REQUIRED FOR ANY ACTION OF THE CONSUMER.
>> WHAT WOULD YOU SAY -- WE JUST GOT THE SUPPLEMENTAL AUTHORITY FROM THE ARIZONA CASE, THAT THE FACT THAT IT SAYS THE SALE OF A CONSUMER PRODUCT BY A SUPPLIER TO A BUY!!!!!!!! BUYER, IN OTHER WORDS, THAT THEY HAVE SELECTED WORDS THAT ARE BROADER THAN JUST A CONSUMER, WHICH SEEMS TO THEN SUGGEST THAT THEY INTENDED A BROADER APPLICATION THAN JUST WHAT, YOU KNOW, WHAT YOU'RE ASSERTING.
>> YOU'VE GOT TO START WITH THE FULL LANGUAGE OF THE WRITTEN WARRANTY, THE FIRST THING THAT IT REQUIRES IS THAT THERE BE A WARRANTY MADE IN CONNECTION WITH THE SALE.
AND IF YOU LOOK AT JUST THAT LANGUAGE, WHAT THAT MEANS, AND WHAT THE SELLERS COURT SAID THAT THAT MEANS IS THAT YOU MUST HAVE

AN INITIAL SALE IN WHICH
WARRANTIES ARE MADE.
AS THE COURT SAID, A WARRANTY
MUST ARISE IN CONNECTED WITH THE
SALE.
IF YOU LOOK AT THE WARRANTY IN
THIS CASE, WE HAVE A WARRANTY
THAT DID NOT ARISE IN TO ONE
OF -- UNTIL ONE OF THREE THING
DID HAPPEN.
THERE WAS A LEASE TO THE
VEHICLE, IT WAS USED AS A
DEMONSTRATOR, OR IT WAS
DELIVERED BY THE DEALER TO THE
FIRST PURCHASER HE.
WE KNOW WE DON'T HAVE A DELIVERY
BY THE DEALER TO THE FIRST
PURCHASER BECAUSE IT'S THE
DEALER, WHO IS THE ONLY ONE WHO
PURCHASED IT, ONCE THE LEASE
OCCURS IN THIS CASE, TO
MS. CERASANI, THE WARRANTY --
THE INITIAL SALE THAT THE
PLAINTIFF MIGHT TALK ABOUT,
WHICH WOULD BE A SALE FROM THE
MANUFACTURER TO THE DEALER, IS
NOT ONE IN WHICH THAT WARRANTY
AROSE.
IT DIDN'T ARISE UNTIL THE POINT
IN TIME WHEN THE LEASE OCCURRED
SO WHEN YOU LOOK AT THE VERY
PLAIN LANGUAGE OF THE STATUTE
ITSELF, AND YOU APPLY IT TO A
SITUATION WHERE ALL YOU HAVE IS
A SALE FROM A MANUFACTURER TO A
DEALER, WHAT YOU FIND IS THAT
THAT REQUIREMENT OF MADE IN
CONNECTION WITH THE SALE WASN'T
MET HE.
>> SO THEN THIS BECOMES VERY
FACT SPECIFIC?
IN OTHER WORDS -- AND THIS IS
WHAT I'M HAVING TROUBLE WITH THE
IDEA THAT THIS ACT, WHICH IS
DESIGNED TO GIVE REMEDIES FOR
THOSE THAT WANT TO -- YOU KNOW,
WHO HAVE DEFECTIVE PRODUCTS IS
GOING TO DEPEND ON THESE
NICETIES OF COURTS EXAMINING THE
EXACT CIRCUMSTANCES OF THIS, OF
THE TRANSACTION, BUT THAT'S WHAT
YOU'RE SAYING WE'D HAVE TO DO?
>> WELL, WHAT I'M SAYING IS THAT
IF YOU LOOK AT THE PLAIN

LANGUAGE, AND THE PLAIN LANGUAGE SAYS THAT THE WRITTEN WARRANTY HAS TO BE MADE IN CONNECTION WITH THE SALE, THAT CONCEPT REQUIRES YOU TO DO A VERY STRAIGHTFORWARD ANALYSIS AND THE ANALYSIS IS, AT THE TIME THAT THE SALE WAS MADE, DID A WARRANTY GO INTO EFFECT AND WAS A WARRANTY TRIGGERED, AND IN OUR PARTICULAR CASE WITH OUR FACTS, THE ANSWER MAY BE NO, BUT FOR PURPOSES OF STANDING BEFORE THIS COURT AND LOOKING AT THE RULE OF LAW, THE RULE OF LAW THAT WE WOULD ASK THE COURT TO AVE DON'T IS THAT -- ADOPT IS THAT A WRITTEN WARRANTY IS REQUIRED FOR ALL CATEGORIES OF SELLERS, AND THAT WHEN YOU LOOK AT THE DID HE HAVE ANYTHING, THAT MEANS IT HAD TO BE -- DEFINITION, THAT MEANS IT HAD TO BE A WARRANTY THAT WAS MADE IN CONNECTION WITH THE SALE.
THAT MEANS THAT THE WARRANTY HAD TO ARISE WITH THE SALE.
>> SO DO YOU AGREE OR DISAGREE WITH THE PROPOSITION THAT IF THIS, AS ALLEGED IN THE AMENDED COMPLAINT, THAT IF THIS VEHICLE WAS SOLD TO HONDA LEASING, FROM CROWN HOLDING TO CROWN LEASING AND THEN LEASED, AND HONDA LEASING WAS THE LESSOR, IS IT YOUR POSITION THAT THEN SHE WOULD HAVE STANDING?
>> WELL, I THINK THE ANSWER SO THAT QUESTION, AGAIN, OBVIOUSLY, THAT WE DON'T BELIEVE THAT'S OUR FACTS, EVEN IF THEY DID, YOU WOULD DO -- EVEN IF THIS HAD BEEN THAT SALE, YOU WOULD GO THROUGH THE SAME ANALYSIS AND THE QUESTION YOU WOULD FIRST ASK WAS WHETHER OR NOT THE SALE TO THE FINANCING COMPANY WAS A SALE THAT TRIGGERED A WARRANTY.
IN HOUR CASE, THAT WOULDN'T BE A SALE THAT TRIGGERED A WARRANTY, BECAUSE THE WARRANTY DIDN'T GO INTO EFFECT UPON THE SALE FROM A -- AGAIN, ASSUMING A HYPOTHETICAL SALE, FROM A DEALER

TO THE LEASING COMPANY, THAT WASN'T A SALE IN WHICH THE WARRANTY WAS TRIGGERED, SO THE RESULT UNDER OUR WARRANTY WOULD BE THE SAME.
YOU MIGHT GET A DIFFERENT ANSWER IF FOR EXAMPLE YOU HAD A WARRANTY THAT WENT INTO EFFECT AT SOME EARLIER TIME.
AND I UNDERSTAND JUSTICE, YOUR CONCERN WITH DO IT ON A FACT BY FACT BASIS.
WE'RE TRYING TO PROVIDE A LEGAL FRAMEWORK FROM WHICH THE CASES CAN BE DECIDED BUT AT THE END OF THE DAY I WOULD SUBMIT THAT THE REASON THAT WE'RE GOING THROUGH THIS KIND OF TORTURED ANALYSIS IS BECAUSE WE'RE IGNORING -- OR THE PLAINTIFFS ARE IGNORING THE PLAIN LANGUAGE.
THE PLAIN LANGUAGE OF THE STATUTE DOESN'T REFER TO LEASES AT ALL.
IF THE LEGISLATURE WANTED TO COVER A LEASE, THEY COULD HAVE DONE SO, AND VERY INTERESTINGLY, THE FLORIDA COURTS OR THE FLORIDA LEGISLATURE IN THE LEMON LAW, THEY INCLUDED LEASES WHEN THEY WANTED TO.
THE TRUTH IN LENDING ACT SIX YEARS EARLIER INCLUDED LEASES WHEN THEY WANTED TO.
>> IF THAT'S THE CASE, THEY COULD HAVE LIMITED IT TO A CAT GORE ONE CONSUMER ALSO, WHY WOULD WE NEED THE CATEGORY TWO AND THREE CONSUMERS?
>> THE THREE CATEGORIES COVER DIFFERENT KINDS OF PEOPLE.
CATEGORY ONE CONSUMER IS THE PERSON WHO BIELS.
I BUY A VEHICLE, I'M A CATEGORY ONE CON!!!!!!!! CONSUMER.
I THEN SELL THE SPREEK TO MY COLLEAGUES DURING THE TIME WHEN THE WARRANTY IS STILL IN EFFECT.
HE GETS THAT WARRANTY.
IN THAT SCENARIO, THERE WAS AN INITIAL SALE TO ME, THAT SATISFIES THE DEFINITION OF WRITTEN WARRANTY, THERE AFTER I CAN TRANSFER.

NOW CATEGORY THREE, THAT'S SOMEONE, FOR EXAMPLE, IN MY HOUSEHOLD UNDER 672.318, UNDER THE FLORIDA STATUTES, SOMEONE ELSE IN THE HOUSEHOLD CAN ENFORCE THAT, SO I LET MY SON DRIVE THE CAR, HE WANT TO TAKE THE CAR IN TO GET WARRANTY WORK, BECAUSE I'M A BUYER, I CAN THEN HAVE HIM DO IT.
>> CATEGORY THREE TALKS ABOUT ENFORCEABLE UNDER STATE LAW, CORRECT?
>> CORRECT.
>> SO A STATE LAW ALLOWS A LESSEE TO ENFORCE A WARRANTY, WHY WOULDN'T CATEGORY THREE ALSO APPLY TO A LESSEE?
>> THE REASON THAT'S NOT TRUE IS BECAUSE CATEGORY THREE INCORPTS THE DEFINITION OF WRITTEN WARRANTY, AND IT DOES SO IN SEVERAL WALES.
FIRST OF ALL, BECAUSE PART OF THE CAUSE OF ACTION REQUIRES THERE TO BE A WRITTEN WARRANTY, SO FOR ALL CONSUMERS, YOU HAVE TO HAVE ONE, BUT IN ADDITION TO THAT, IF YOU LOOK AT THE PARROT CASE AN I SHOULD HAVE MENTIONED THAT CASE AT THE OUTSET, THE PARROT CASE GOES THROUGH THE ANALYSIS IN A MANNER THAT WE THINK IS THE WAY THIS COURT SHOULD LOOK HAT IT AND WHEN I REFER TO THAT, THAT'S THE CASE FROM THE ARIZONA SUPREME COURT REVERSING THE APPELLATE COURT DECISION, WE FILED IT AS SUPPLEMENTAL AUTHORITY.
THE PARROT COURT GOES THROUGH THE ANALYSIS AND EXPLAINS VERY CLEARLY, WHEN YOU LOOK AT CATEGORY THREE, IT TALKS ABOUT SUCH WARRANTY, THE WARRANTY IT'S REFERRING TO THERE HAS TO BE THE WRITTEN WARRANTY AND IT REFERS TO A WARRANTOR, A WARRANTOR IS DEFINED AS --
>> I AGREE WITH YOU AS TO THAT, BUT I'M MRS. ASSUMING THAT A -- ALSO ASSUMING THAT A LESSEE CAN ENFORCE THE TERMS OF A WARRANTY. IN FACT, THE WARRANTY HERE

PROVIDES FOR A LESSEE TO BE ABLE
TO ENFORCE IT.
>> THE LESSEE -- THE ISSUE, IT'S
HOW I STARTED MY ARGUE!!!!!!!!!!! ARGUMENT, THE
LESSEE CAN CERTAINLY GO IN AND
GET WARRANTY WORK.
HE CAN ENFORCE THE WARRANTY, GET
THE WARRANTY WORK, THERE'S NO
DISPUTE.
HONDA WAS DOING THE WARRANTY
WORK.
THE QUESTION IS WHETHER OR NOT
IT IS A WRITTEN WARRANTY AS
DEFINED BY THE ACT, AND THAT'S
THE CRITICAL POINT.
>> WHEN WE TALK ABOUT ENFORCING
THE WARRANTY, AREN'T WE
ENFORCING THE WRITTEN WARRANTY
THAT HONDA HAS MADE.
IT'S NOT AN ORAL AGREEMENT, IT'S
THE WRITTEN WARRANTY THAT HONDA
MADE?
>> IT IS ABSOLUTELY A WRITTEN
WARRANTY THAT HONDA MADE.
IS IT A WRITTEN WARRANTY HAS
DEFINED IN THE ACT.
THE DEFINITION IN THE HACKETT IS
A WRITTEN WARRANTY MUST BE MADE
IN CONNECTION WITH THE SALE BY A
BUYER OTHER THAN FOR RESALE, IN
WHICH THE WARRANTY WAS THE BASIS
FOR THE BARGAIN.
SO WHAT WE'RE SAYING IS, WE'RE
NOT TALKING ABOUT WRITTEN
WARRANTY IN THE LAY SENSE OF THE
TERM.
WE'RE TALKING ABOUT IT AS A
DEFINED TERM.
>> THEN I GUESS WARY BACK TO THE
QUESTION IS YOUR ARGUMENT TURNS
ON WHETHER THERE WAS A SALE FROM
THE DEALER TO A LESSOR OR NOT.
>> WELL, OUR POSITION IS THAT
THERE WAS -- IF YOU LOOK OUT AND
SAY THERE HAS TO BE A SALE
SOMEWHERE, WHERE WAS IT, THE
ONLY SALE IS A SALE FROM A
MANUFACTURER TO A DEALER --
>> LET'S FORGET ABOUT THAT.
SELLER SEEMS TO ARGUE WHEN THERE
IS NO SALE FROM A DEALER, THE
ACT DOESN'T APPLY.
IN THIS CASE, CERASANI SEEMS TO
SAY WHEN THERE IS A SALE FROM A

DEALER TO A LESSOR, IT DOES APPLY.
THEY SEEM TO BE RECONCILABLE IT SEEMS AND YOU'RE JUST SAYING THIS IS A SELLERS CASE AND NOT A CASE WHERE THERE WAS A SALE TO A LESSOR.
>> WHAT I WOULD SAY TO THAT IS THE CERASANI CASE SAID IF YOU CAN ENFORCE THE WARRANTY, THAT'S ENOUGH, AND THAT PRESUPPOSES THAT YOU DIDN'T HAVE TO HAVE A SALE.
NOW IN CATEGORY TWO, THEY SPECIFICALLY TALKED ABOUT THERE HAD TO BE A WRITTEN WARRANTY, AND AGAIN, WRITTEN WARRANTY INCORPORATES A SALE, BUT UNDER CATEGORY THREE, AS DETERMINED BY THE CERASANI COURT, YOU DON'T HAVE TO HAVE THAT SALE.
AND SO WHAT THEY'VE DONE IS THEY'VE WRITTEN THE TERMS, WRITTEN WARRANTY, RIGHT OUT OF THE DEFINITION.
>> AGAIN, I WANT TO MAKE SURE ABOUT THIS, BECAUSE THERE ARE COURTS, AND I THINK THE 7th!!!!!! 7TH CIRCUIT HAS DONE THIS, WHICH THEY MAKE THE THIRD CATEGORY SO BROAD, THAT THEY DON'T TIE IT TO THE ACT'S DEFINITION OF WRITTEN WARRANTY, AND YOU DON'T AGREE WITH THAT.
>> THE VOELCKER COURT OUT OF THE 7th CIRCUIT SPECIFICALLY HELD THAT A WRITTEN WARRANTY HAS DEFINED BY THE ACT WAS NOT REQUIRED.
WE DISAGREE WITH THAT.
>> I UNDERSTAND THAT, BUT NOW ON YOUR CONCEPT THAT UNDER YOUR DEFINITION OF CONSUMER HE, ALL THREE CATEGORIES ARE GIVEN EFFECT, WOULDN'T A BUYER UNDER CATEGORY TWO UNDER YOUR DEFINITION ALSO -- CONSUMER ALSO BE -- FIT UNONE RNG IN OTHER WORDS, -- UNDER ONE, IN OTHER WORDS, SOMEONE WHO BUYS A VEHICLE THAT HAS A WRITTEN WARRANTY, WHY WOULD YOU NEED TWO?
>> SOMEBODY WHO BUYS A VEHICLE,

IF I GO IN AND BUY A VEHICLE
FROM A DEALERSHIP, I'M A
CATEGORY ONE CONSUMER.
I THEN SELL THE VEHICLE TO
SOMEONE ELSE, DURING THE TIME
WHEN THE WARRANTY IS IN EFFECT.
THAT SECOND PERSON IS NOW A
CATEGORY TWO CONSUMER.
>> WHY WOULDN'T THEY BE A CALT
GORE ONE -- CATEGORY ONE
CONSUMER UNDER THE DEFINITION?
>> WELL, THEY WOULD BE SOMEBODY
WHO -- THE CATEGORY ONE IS A
CONSUMER WHO PURCHASED -- THEY
DIDN'T PURCHASE IT FROM THE
DEALER, THEY'RE PRESUMABLY -- BY
THE WAY THOSE DEFINITIONS ARE,
THEY'RE A CATEGORY -- THEY WILL
BE A CATEGORY TWO.
>> BUYER OF CONSUMER FOR ANY
OTHER DETAIL?
YOU CAN'T PUT WORDS INTO IT,
THAT'S HE WHAT IT SAYS.
>> THE CATEGORY TWO COVERS
ADDITIONAL CIRCUMSTANCES THAT
MIGHT -- THAT MIGHT HEY RISE
DURING THE -- OR AFTER THE
ORIGINAL SALE, SOMEBODY ELSE
GETS IT, PURCHASES IT, GETS IT
AS A GIFT, LET ME USE THAT FOR
AN EXAMPLE.
THERE'S A TRANSFER THAT'S A
GIFT, IT'S NOT A SALE.
THAT WOULD NOT BE A CATEGORY ONE
CONSUMER, BUT IT WOULD BE A
CATEGORY TWO CONSUMER.
>> YOU'RE IN TO YOUR REBUTTAL.
YOU HAVE ABOUT FOUR MINUTES
LEFT.
YES, SIR?
>> MR. COHEN.
>> MAY IT PLEASE THE COURT,
COUNSEL, MY NAME IS SCOTT COHEN,
I REPRESENT THE PLAINTIFF,
JENNIFER CERASANI.
WE COME BEFORE THIS COURT TODAY
ASKING THIS COURT TO AFFIRM THE
DECISION OF THE DISTRICT COURT
OF APPEALS, AND FIND IN
CONCURRENCE WITH THE MAJORITY OF
COURT OF THIS NATION THAT
JENNIFER CERASANI IS IN FACT A
CONSUMER UNDER THE MAGSON MORRIS
ACT.

>> HONDA -- CAN YOU ADDRESS THE FACTUAL ISSUE THAT MS. LUMISH HAS RAISED AS TO WHETHER OR NOT THERE WAS A SALE FROM THE DEALER TO THE LESSOR OR WHETHER THEY LEASED IT DIRECTLY TO THE CONSUME SNEER.
>> FIRST OFF, I THINK IT'S IMPORTANT TO NOTE THAT THIS COURT IS REQUIRED TO ACCEPT OUR WELL PUT FORTH ALLEGATIONS OF TRUTH.
NOWHERE IN THE LEASE AGREEMENT DOES HONDA CONTRADICT OUR WELL PUT ALLEGATIONS.
DOESN'T SAY THAT THE DEALERSHIP DID NOT SELL THIS VEHICLE TO THE LEASING COMPANY.
WE PLEAD IN HOUR AMENDED COMPLAINT THAT IN FACT THAT THEY DID.
>> NOW YOU DON'T WANT THIS CASE DECIDED ON PLEADINGS, DO YOU?
I MEAN, IS THAT WHAT WE'RE TALKING ABOUT HERE?
>> WELL I THINK TO A CERTAIN DEGREE, JUSTICE WEMS, THAT IT HAS TO BE.
>> WELL THEN WE'RE GOING TO BE BACK.
SOME COURT IS GOING TO BE BACK ON SUMMARY JUDGMENT.
>> I DON'T THINK FRANKLY THAT WE WILL BE BACK ON SUMMARY JUDGMENT FOR THE REASON BEING THAT THESE ARE ALLEGATIONS THAT WE CAN PROVE, BUT WE NEED TO BE GIVEN THE OPPORTUNITY TO DO SO, AS WAS RECOGNIZED BY THE WISCONSIN SUPREME COURT IN THE PETTERSON CASE, BUT AS I MENTIONED, THE LEAST AGREEMENT -- LEASE AGREEMENT GOES ONE STEP FURTHER.
THERE'S AN IMPORTANT PROVISION IN THE LEASE AGREEMENT, IT'S ON PAGE 2 OF THE AGREEMENT, WHICH IS EXHIBIT 4 OF THE DEFENDANT'S APPENDIX, AND EXHIBIT 6 OF OURS.
ON THE SECOND PAGE OF THE LEASE AGREEMENT, THERE'S AN ASSIGNMENT CLAUSE.
VERY COMMON CLAUSE, YOU SEE IT IN EVERY LEASE AGREEMENT THAT I'VE EVER SEEN.

YOU SEE IT IN FINANCING
AGREEMENTS AS WELL.
THE ASSIGNMENT CLAUSE SAYS, THE
LESSOR ACCEPTS HE THIS LEASE,
AND ASSIGNS ALL RIGHT, TITLE,
AND INTEREST TO THIS LEASE IN
THE VEHICLE DESCRIBED HERE IN
AND LESSOR'S RIGHT GUARANTEED
AND SIGNED IN CONNECTION WITH
THIS LEASE TO THE ASSIGNING.
THIS CLAUSE IN THE CONTRACT
INDICATES THAT WHAT IS HAPPENING
IS THAT AT THE MOMENT THAT THIS
CONTRACT IS SIGNED,
SIMULTANEOUSLY THE LESSOR IS
SELLING THIS VEHICLE, ASSIGNING
ALL RIGHT AND TITLE TO THE
LEASING COMPANY.
HOW WOULD THEY GET TITLE BUT FOR
THERE BEING A SALE?
WE HAVE IN THE RECORD THE LEASE
AGREEMENT, AN UNEXECUTED COPY,
WE DON'T HAVE THE DEALER'S
SIGNATURE ON IT, BUT THAT'S
SOMETHING IN DISCOVERY THAT
WE'LL FIND, AND ALTHOUGH I
BELIEVE WHOLEHEARTEDLY BECAUSE I
BELIEVE I WAS AN UNDERSTANDING
AS TO HOW THESE TRANSACTIONS
WORK THAT THE FACTS WILL PROVE
OUR CASE, THIS IS SOMETHING THAT
AT THE PLEADING STAGE I BELIEVE
WE NEED TO BE GIVEN THE
OPPORTUNITY.
>> THE LEASE ITSELF WILL BE
CONSTRUED AS A AS A MATTER OF
LAW, WILL IT NOT, WITH REGARD TO
WHAT THOSE CLAUSES MEAN OR IS IT
SOMETHING THAT YOU BELIEVE IS
SOME TYPE OF FACTUAL DISPUTE
THAT NEEDS FURTHER EVIDENTIARY
FLUSHING OUT?
>> I DON'T BELIEVE THAT THIS IS
AN ISSUE AS TO WHAT THE LEASE
MEANS IN PARTICULAR, BUT RATHER
WHAT IS THE LEASE EVIDENCE AND
THE LEASE EVIDENCE IS THAT IN
FACT THERE'S GOING TO BE A
TRANSACTION BETWEEN THE LEASING
COMPANY -- OR EXCUSE ME, BETWEEN
THE DEALERSHIP, TOWN HONDA, TO
THE LEASING COMPANY.
THIS FACT IS SOMETHING --
>> DOES IT REQUIRE A TRANSFER OF

TITLE OR THOSE KINDS OF THINGS
ON THE MOTOR VEHICLE RECORDS
TO -- DO WE HE GET INVOLVED TO
THAT EXTENT?
>> WELL, IT DOES REQUIRE
TRANSFER OF TITLE AND THERE IS A
TRANSFER OF TITLE.
IT'S REFERENCED IN THE
ASSIGNMENT CHAWS.
>> YOU CAN'T TRANSFER A MOTOR
VEHICLE BY SIMPLY A CLAUSE UNDER
FLORIDA LAW, SO MY QUESTION IS,
DO WE HAVE MOTOR VEHICLE TITLE
TRANSFERS AND IS THIS A
TRADITIONAL SALE?
>> IT IS A TRADITIONAL SALE.
THIS IS SOMETHING THAT THE FACTS
WILL BEAR OUT, AND IT'S
SOMETHING THAT WE HAVE PROVEN IN
OTHER CASES.
WE CITE TO THIS COURT THE COHEN
VERSUS AMERICAN GENERAL CASE.
IN FACT, THE SEMINOLE CASE OUT
OF THE NORTHERN DISTRICT, WHERE
IT WAS -- AT THE SUMMARY
JUDGMENT STAGE, THE EVIDENCE WAS
PRESENTED IN THE FORM OF AN
AFFIDAVIT FROM THE LEASING
COMPANY ITSELF, WHERE THE
LEASING COMPANY INDICATED, WE
BOUGHT THIS VEHICLE, WE AGREED
TO BUY IT AT THE MOMENT THAT THE
CONSUMER WENT IN TO THE
DEALERSHIP HAND SAID HEY, I'M
INTERESTED IN LEASING THE
VEHICLE.
THEY THEN IN TURN BOUGHT THE
VEHICLE, OBTAINED TITLE TO IT.
>> BUT I'M TRYING TO UNDERSTAND,
THE LANGUAGE OF THE STATUTE IN
TERMS OF THE PURPOSE OF THE ACT.
WHAT I'M HAVING TROUBLE WITH IS
PART OF ME JUST WANT TO SAY,
LIKE MS. LUMISH SAYS, IT WAS SO
EASY FOR CONGRESS, IF THEY
WANTED TO INCLUDE LONG-TERM
LEASING, JUST TO INCLUDE THAT.
AND SAY A CONSUMER, A LESSEE OF
A LONG-TERM LEASE IS A CONSUMER,
ENTITLED TO ENFORCE THIS.
WHY DO WE GO THROUGH -- WHY ARE
THE NICETIES OF NUMBER ONE, TWO,
AN THREE TO KIND OF FIGURE OUT
IF THEY'RE A TWO OR A THREE, AN

AGAIN, SOME OF THE COURTS THAT GO CONSUMER NUMBER THREE, IS ANYBODY WHO CAN AFFORD THE WARRANTY.
WELL, THEN THAT KIND OF -- THAT MAKES ONE AND TWO UNNECESSARY, SO GIVE ME YOUR BEST TAKE ON HOW YOU IN GOOD FAITH INTERPRET THE PLAIN LANGUAGE OF THIS STATUTE TO REACH THE RESULT THAT YOU'RE ASKING US TO REACH.
>> FIRST OF OFF, I THINK IT'S IMPORTANT TO NOTE THAT THERE IS NO NEED FOR THE COURT TO GET TO THE LEGISLATIVE HISTORY AS TO WHY CONGRESS DID OR DID NOT INCLUDE THAT PROVISION.
IF THE PLAIN LANGUAGE IS CONCLUSIVE IN THE ABSENCE OF CONTRARY, EXPRESSED INTENT OF CONGRESS, THIS COURT SHOULD NOT EVEN GET TO THE LEGISLATIVE HISTORY.
HOWEVER, I DO BELIEVE THAT I KNOW WHY THE STATUTE WAS DRAFTED IN THE MANNER IT WAS.
THE ENTIRE LEGISLATIVE HISTORY OF THE ACT MAKES IT PLAIN THAT IS TRUE ACT WAS DRAFTED AGAINST THE BACKDROP OF THE U.C.C., THE U.C.C. IS A SALES TYPE DECISION.
THE COURT THAT MY OPPONENT RELIES ON INDICATES THAT THE ACT WAS DRAFTED AGAINST THE BACKDROP OF THE UCC.
BUFF CONGRESS DECIDED TO GO ONE STEP FURTHER.
TO TAKE EXISTING WARRANTIES THAT WERE IN PLACE UNDER THE UCC, AND TO MAKE IT GO ONE STEP FURTHER, TO MAKE THESE WARRANTIES ENFORCEABLE WHERE THEY OTHERWISE WOULD NOT BE ENFORCEABLE, SO CONGRESS DRAFTED A THREE PRONGED DEFINITION.
THEY DO NOT LIMIT IT TO JUST BUYERS OR SALES.
WHEREAS UNDER THE TRADITIONAL UCC, THAT IS HOW THE DEFINITION IS SEEN.
>> SO WHY WOULDN'T THEY JUST SAY ANYONE WHO CAN -- WHO HAS THE BENEFIT OF A WARRANTY AND WHO CAN PSEUDOENFORCE A WARRANTY IS

A CONSUMER UNDER THE ACT IN WHY DO THEY NEED ANYTHING ELSE IF THAT WERE CONGRESS'S INTENT?
>> I THINK CONGRESS WANTED TO BE CLEAR AND LAY OUT THAT THERE ARE THREE DIFFERENT TYPES OF PEOPLE THAT CAN BRING A CLAIM.
NOT JUST ANYONE.
THEY WANTED TO MAKE IT CLEAR THAT NUMBER ONE, A BUYER IS TRADITIONALLY A BUYER COULD DO SO UNDER THE UCC, NUMBER TWO, A TRANSFEREE, WHICH I TAKE ISSUE WITH MY OPPONENT TO TRIED TO TRANSLATE A TRANSFER HEEE INTO A BUYER, I THINK CONGRESS WOULD NOT HAVE DRAFTED A SECOND PRONG THE SAME AS THE FIRST BECAUSE THAT WOULD BE SUPERFLUOUS IF THEY WOULD DO SO.
THE THIRD PRONG, ANYONE ELSE BEING ENTITLED BY THE TERMS OF THE WARRANTY OR UNDER STATE LAW, SO IT'S NOT JUST ANYONE ELSE.
CONGRESS MADE IT CLEAR THAT THEY HAD TO BE SOMEONE WHO WAS ENTITLED BY STATE LAW OR UNDER THE TERMS OF THE WARRANTY.
>> WHAT I'M SAYING IS UNDER THAT DEFINITION, WOULDN'T THAT SUBSUME ONE AND TWO?
>> WELL --
>> CAN YOU CONCEIVE OF A SITUATION WHERE SOMEBODY WOULD BE A CONSUMER AS CATEGORY THREE CONSUMER, THAT WOULDN'T ALSO BE A ONE AND A TWO?
>> I CAN'T NECESSARILY CONCEIVE OF A SITUATION, BUT I'M NOT SURE THAT THERE IS A NEED TO.
I THINK THAT CONGRESS IS BEING CAREFUL IN MAKING A VERY EXPANSIVE DEFINITION OF THE TERM CONSUMER, SOS AS TO ENSURE THAT THE PURPOSE OF THE ACT WAS MET, WHICH WAS TO PROVIDE ENFORCEMENT OF WARRANTY, TO MAKE THESE WARRANTIES ENFORCEABLE, SO THAT WAY A CONSUMER WOULD BE ABLE TO HAVE REDRESS IN A COURT.
TO LIMIT THE DEFINITION OR TO EVEN CONTEMPLATE WHY CONGRESS DID IT, I DON'T THINK IS SOMETHING THAT THIS COURT NEEDS

TO DO.
THE PLAIN LANGUAGE OF THE ACT IS CONCLUSIVE, AND ACCORDING TO OUR WELL PLEAD HE ALLEGATIONS IN HOUR COMPLAINT, THIS COURT SHOULD CONCLUDE THAT THE ACT'S DEFINITION HAVE BEEN MET HAND THAT MS. CERASANI IS A CONSUMER.
>> IF I UNDERSTAND YOUR ARGUMENT CORRECTLY, YOUR ARGUMENT IS BASED ON THE FACT THAT YOU BELIEVE THERE WAS A SALE OF THIS VEHICLE, NOT FROM HONDA TO THE DEALERSHIP BUT TO THE LEASING COMPANY, AND SO IF THERE WAS NO SALE TO THE LEASING COMPANY, AND THERE WAS SIMPLY A SALE TO HONDA, WHAT WOULD -- WOULD YOUR ARGUMENT STILL HAVE THE VALIDITY?
BECAUSE AS I UNDERSTAND YOUR OPPONENT'S ARGUMENT, IT'S UNDER THOSE CIRCUMSTANCES, THERE IS NO WRITTEN WARRANTY.
SO --
>> I WOULD STILL BELIEVE THAT MS. CERASANI AS A CONSUMER UNDER CATEGORY THREE COULD BRING A CAUSE OF ACTION AS RECOGNIZED BY THE UNITED STATES 7th CIRCUIT COURT OF APPEALS IN THE VOLCKER CASE, OF THE 7th CIRCUIT INDICATED THAT THE ACT DOES NOT REQUIRE IN THE THIRD DEFINITION THAT THE TECHNICAL DEFINITION OF A WRITTEN WARRANTY BE MET.
THE ACT UNDER THE DEFINITION OF A CONSUMER UNDER PRONG THREE INDICATES ANY PERSON WHO WAS ENTITLED BY THE TERMS OF SUCH WARRANTY OR UNDER APPLICABLE STATE LAW TO ENFORCE AGAINST THE WARRANTOR THE OBLIGATIONS OF THE WARRANTY.
>> SO WHAT DOES SUCH WARRANTY MEAN?
DOES THAT MEAN SUCH WRITTEN WARRANTY?
>> WELL, CONGRESS DID NOT DRAFT IT AS SUCH WRITTEN WARRANTY, AN EVEN IF YOU GO BACK TO THE PRECEDING DEFINITION OF A TRANSFER HOE WHERE IT TALKS ABOUT A WRITTEN WARRANTY, IT

SAYS A WRITTEN WARRANTY
APPLICABLE TO THE PRODUCT.
IT DOESN'T SAY A WRITTEN
WARRANTY AS DEFINED UNDER THIS
ACT.
IT SAYS A WRITTEN WARRANTY AM
CABLING TO THE PRODUCT.
-- APPLICABLE TO THE PRODUCT.
WHEN YOU LOOK AT THE VOLCKER
DECISION, THE COURT WAS LOOKING
TO ENFORCEMENT UNDER STATE LAW.
WHY WOULD CONGRESS HAVE DRAFTED
THIS PARTICULAR LANGUAGE,
ENFORCEMENT UNDER STATE LAW, IF
IT WAS REQUIRED THAT THE
WARRANTY ALSO BE A TECHNICAL
WRITTEN WARRANTY AS DEFINED BY
THE ACT.
>> JUSTICE CANTERO.
>> I WAS GOING TO ASK THE SAME
QUESTION AS JUSTICE QUINCE AS TO
WHETHER YOU AGREE WITH YOUR
OPPONENT THAT YOU NEED A SALE TO
ANOTHER LESSOR, BUT YOU DON'T
THINK YOU DO.
>> I DON'T THINK THAT YOU DO.
HOWEVER, WE HAVE IT.
WE PLEAD T OUR WELL PLEAD
ALLEGATIONS ARE NOT CONTRADICTED
AND WE CAN PROVE IT.
>> WAS THE LEASE BETWEEN THE --
THE LEASING COMPANY AND
MS. CERASANI?
HOW DO YOU SAY HER NAME?
>> CERASANI.
>> CERASANI, SOMEONE WHO ALWAYS
HAS MY OWN NAME MISPRONOUNCED I
DON'T WANT TO DO THAT TO
MS. CERASANI.
WAS IT BETWEEN THE LEASING
COMPANY AND MS. CERASANI?
>> THE WAY THAT THE LEASE -- YES
TESTIFIES AND THE WAY THIS LEASE
TRANSACTION WORK IS THE CONSUMER
GOES TO THE DEALERSHIP, THE
DEALERSHIP FACILITATES THE
TRANSACTION, FILLS OUT THE AM
--
APPLICATION, GOES TO THE LEASING
COMPANY, SIMULTANEOUS LIVE THE
LEASE TRANSACTION IS
CONSUMMATED.
THE UNITED STATES SUPREME COURT,
HAS MADE IT CLEAR THAT IT'S FORM

OVER SUBSTANCE TO SAY THAT THIS TRANSACTION IS NOT OCCURRING AT THE SAME TIME.
THE COURT INDICATES --
>> REALLY HALL I ASKED IS A QUESTION I WANT TO MAKE SURE I GOT THE ANSWER.
THE LEASE IS BETWEEN NOT THE DEALERSHIP AND MS. CERASANI.
THE LEASE IN THIS CASE IS BETWEEN MS. CERASANI AND THE LEASING COMPANY?
>> ABSOLUTELY.
BECAUSE OF THE ASSIGNMENT.
>> HOW DO SHE THEN -- SHE EVENTUALLY, DID SHE GIVE BACK THE VEHICLE TO HONDA?
WHAT ARE THE FACTS AS FAR AS THAT?
>> SHE ACTUALLY AND WE PLEAD IN OUR AMENDED COMPLAINT, SHE ULTIMATELY SOLD THE VEHICLE ON HER HONE.
>> I HAVE TRYING TO FIGURE OUT, EXPLAIN HOW SOMEBODY WHO DOESN'T OWN A VEHICLE GETS TO SELL A VEHICLE THAT'S NOT HER OWN.
>> SHE DID NOT HAVE TITLE TO THE VEHICLE, CORRECT.
AS A MATTER OF FACT, THIS IS NOT SOMETHING THAT HOUR PLEADINGS ADDRESS, AS A MATTER OF PRACTICALITY, LEASING CM'S, ONCE YOU'VE MADE A CERTAIN NUMBER OF PAYMENTS AND ONCE THEY FEEL THEY HAVE RECOUPED ENOUGH PROFIT OFF THE LEASE ARE GOING TO LET YOU SELL THE VEHICLE SO LONG AS YOU COVER WHATEVER THE CURRENT PAYOFF IS ON THE VEHICLE, SO THEY LET HERZL THE VEHICLE.
>> -- LET HER SELL THE VEHICLE?
>> THE COPY OF THE COMPLAINT I HAVE IS IN AN EFFORT TO MITIGATE HER DAMAGES, PLAINTIFF SOLD THE CIVIC TO CROWN AUTOMOTIVE DEALERSHIP, SO THE ALLEGATION IS SHE TOLD IT BACK TO THE DEALERSHIP.
>> THAT'S RIGHT.
>> THAT'S RIGHT, THAT'S WHAT HAPPENED?
>> THAT'S WHAT HAPPENED.
>> WHICH IS PRETTY INTERESTING,

SINCE THIS GOES BACK TO MAYBE
YOUR ARGUMENT HAS TO WHY SHE
MIGHT FIT INTO A CATEGORY ONE IF
SHE'S ABLE TO SOMEHOW, IF SHE
ACTUALLY SOLD SOMETHING BACK TO
THE DEALER IN THIS CASE,.
>> AND I THINK THE FACT THAT SHE
WAS ABLE TO SELL THE VEHICLE IS
AN IMPORTANT POINT AND -- CHIEF
JUST THINKS LEWIS ASKED AT THE
START OF THIS CASE --
>> SHE DIDN'T SELL THE VEHICLE.
SHE DIDN'T HAVE TIGHT HE WILL TO
THE VEHICLE.
SHE SOLD THE LEASE.
>> SHE ACTUALLY WOUND UP SELLING
THE VEHICLE AND THAT'S SOMETHING
THE EVIDENCE WILL BEAR OUT.
HOWEVER, I'M NOT SURE THAT IN
TERMS OF DETERMINING WHETHER OR
NOT SHE'S A CONSUMER UNDER THE
ACT IT MATTERS AS TO WHETHER SHE
SOLD THE VEHICLE OR SOLD THE
LEASE.
AND THAT'S SOMETHING THAT THE
FACTS WOULD BEAR OUT.
THE IMPORTANCE OF THE ISSUE IS
THE FACT SHE WAS ABLE TO SELL
THE VEHICLE.
THE FACT THAT SHE HAD A PURCHASE
OPTION IN HER CONTRACT THAT
WOULD ALLOW HER TO DO THAT,
WHICH IN THE SELLERS CASE IS
SOMETHING THAT THE FIRST U.C.A.
RECOGNIZED WAS MISSING.
>> SHE SOLD IT UNDER THE
PURCHASE OPTION PROVISION, IS
THAT CORRECT?
>> BECAUSE -- CORRECT.
SHE WAS ABLE TO ESSENTIALLY TAKE
OWNERSHIP OF THE VEHICLE AND
SIMULTANEOUS LIVE SELL IT.
>> RIGHT.
BECAUSE SHE BOUGHT IT AT THE
TIME SHE SOLD IT.
>> IN EFFECT BY GIVING THE
LEASING COMPANY THE PAYOFF, THAT
IS WHAT SHE WOUND UP DOING AND
SIMULTANEOUSLY TRANSFERRING IT
TO SOMEONE ELSE.
BUT WHAT IS IMPORTANT ABOUT THAT
IS THAT UNLIKE THE PLAINTIFF IN
THE SELLERS CASE, THE PLAINTIFF
HERE VIRTUALLY HAD ALL INCIDENTS

OF OWNERSHIP, THAT THE ONE KEY
LINCHPIN THE SELLER DID NOT
HAVE.
SHE TREATED THIS VEHICLE JUST
LIKE IT WAS COMPLETELY HER HONE.
>> LET ME ASK YOU A CATEGORY --
GET BACK TO CATEGORY THREE.
YOUR OPPONENT SAYS IT REFERS TO
SUCH WARRANTY WHICH REFERS BACK
TO A WRITTEN WARRANTY.
AS I UNDERSTAND YOUR ARGUMENT,
THERE'S A SECOND SUBPRONG IN
CATEGORY THREE WHICH SAYS ANY
OTHER PERSON WHO SO ENTITLED
UNDER APPLICABLE STATE LAW TO
ENFORCE AGAINST THE WARRANTOR,
THE OBLIGATIONS OF THE WARRANTY,
AND THAT CLAUSE DOES NOT SAY
SUCH WARRANTY.
>> WELL IT'S IN PART, IT IS IN
MART BASED UPON THAT
INTERPRETATION, BUT IT IS MORE
SO BASED UPON THE PRECEDING
DEFINITION, WHICH IS A WARRANTY
THAT IS APPLICABLE TO THE
PLOTTER.
UNDER THE PRECEDING DEFINITION
OF A DEFINITION OF TRANSFER
HEEE, ANY PERSON WHO SOME SUCH
PRODUCT IS TRANSFERRED DURING
THE IMPLICATION OF THE
WARRANTY --
>> I'M TALKING ABOUT CATEGORY
THREE.
>> CATEGORY THREE IS MODIFYING
WHEN IT TALKS ABOUT OR UPPED
APPLICABLE STATE LAW TO ENFORCE
AGAINST THE WARRANTOR THE
OBLIGATIONS OF THE WARRANTY, I
THINK IT IS REFERRING BACK TO
THE PRECEDING DEFINITION.
THE PREVIOUS SEEDING DEFINITION
BEING THE -- PRECEDING
DEFINITION BEING THE WARRANTY
APPLICABLE TO THE PLOTTING.
CONGRESS AS I MENTIONED, WHY
WOULD THEY HAVE DRAFTED THIS
ENORS MACHINE UNDER STATE LAW IF99!!!!,
AND THEN TO EXPAND UPON IT AND
GIVE CONSUMERS MORE RIGHT.
>> YOUR ARGUMENT IN THIS CASE IS
WE WOULDN'T HAVE TO INTERPRET IT
THAT BROADLY BECAUSE YOU BELIEVE
THAT THERE WAS A WRITTEN

WARRANTY AS DEFINED UNDER THE ACT?
>> ABSOLUTELY.
>> IN THIS LEASE AGREEMENT, THE WARRANTY DOESN'T GO INTO EFFECT, DOES IT, UNTIL AFTER THE LEASE IS EXECUTED, IS THAT CORRECT?
>> IT GOES INTO EFFECT AT THE MOMENT THAT THE LEASE IS EXECUTED.
>> SO THE -- HOW DOES IT MEET THEN, ASSUMING THAT'S THE CASE, A TRANSFER DURING THE DURATION OF A WRITTEN WARRANTY, HOW IS THE DURATION -- DURATION TO ME MEANS IT'S ONGOING.
HOW DOES SOMETHING THAT HAPPENS SIMULTANEOUSLY, ISN'T THAT A STRAINED INTERPRETATION OF DURATION?
>> WELL I THINK DURING CAN ALSO MEAN AT THE BEGINNING.
THE WARRANTY STARTED AND AT THE MOMENT THAT THE WARRANTY STARTED, IN FACT, IT'S REFLECTED IN THE LEASE AGREEMENT, THE ASSIGNMENT INDICATE, THERE'S A SECOND ASSIGNMENT IN THE LEASE AGREEMENT THAT SAYS WE'RE ASSIGNING TO YOU OUR RIGHTS IN THE WARRANTY.
THE WARRANTY WAS IN EXISTENCE, BUT WHAT'S IMPORTANT, AS FAR AS OF THE TIMING, IS THE PLAIN LANGUAGE OF THE STATUTE.
UNDER THE DEFINITION OF A WRITTEN WARRANTY, IT IS ONLY REQUIRED THAT THE WRITTEN WARRANTY BE ISSUED IN CONNECTION WITH A SALE.
IT DOESN'T LOOK TO THE TIMING AS TO WHEN THE WARRANTY WAS ISSUED OR NOT ISSUED.
IT'S SIMPLY ISSUED IN CONNECTION WITH A SALE.
WE KNOW THAT THERE WAS A WRITTEN WARRANTY THAT WAS ISSUED, IT'S REFERENCED IN THE LEASE.
I DON'T THINK ANYONE DISPUTED THAT MS. CERASANI WAS ABLE TO BRING HER VEHICLE IN NOR REPAIR HAND!!!!!!!!!!!!!!!!!!!!!!!!AVE REPAIRS -- IN FOR REPAIRS AND HAVE REPAIRS DONE.
WE ALSO KNOW THERE WAS A SALE

THAT TOOK PLACE SIMULTANEOUS TO THIS TRANSACTION, SO IT WAS ISSUED IN CONNECTION WITH THE SALE.
>> THE COURTS SEEM TO BE DIVIDED ON WHAT A PURCHASE FOR PURPOSES OTHER THAN RESALE MEANS, WITH ONE GROUP OF COURTS SAYING, WELL, IF YOU ARE GOING TO BE RESELLING IT, AS A LESS H!!!!OR IS INTENDING TO DO, THEN IT IS NOT FOR PURPOSES OTHER THAN RESALE, AND YOUR SUPPLEMENTAL AUTHORITY REPRESENTING THE VIEW THAT THAT'S NOT THE CASE, THAT ALMOST EVERY VEHICLE IS EVENTUALLY A CONSUMER IS INTENDING TO RESELL IT AND THAT WOULD, YOU KNOW, TAKE EVERYONE OUT OF THAT.
WHAT'S YOUR -- I ASSUME YOU ADHERE TO THAT'S YOU, BUT WHAT COURT I GUESS BEST EXPLAINS THAT INTERPRETATION OF THE STATUTE?
>> THE SEMINOLE COURT THAT BEST EXPLAINS IT IS COHEN VERSUS AMERICAN GENERAL OUT OF THE NORTHERN DISTRICT IN 2003, FOLLOWED BY THE WISCONSIN SUPREME COURT PETERSON VERSUS VOLKSWAGEN AN FINALLY THE MAGO COURT VERSUS MERCEDES-BENZ IN ARIZONA.
AND THE ANALYSIS FROM THE COHEN COURT I THINK IS PARTICULARLY POIGNANT.
WHAT THE COURT SAYS IS THAT IF WE'RE LOOKING TO WHAT SOMEONE IS GOING TO DO DOWN THE LINE, IF WE'RE GOING TO LOOK TO THE ULTIMATE RESALE OF THE VEHICLE, YOU'RE GOING TO EXCLUDE NOT JUST LESSEES, YOU'RE GOING TO EXCLUDE PURCHASERS AS WELL.
BECAUSE WHEN PEOPLE BUY AUTOMOBILES, THEY ARE INTENDING DOWN THE ROAD, THEY'RE GOING TO SELL THEM.
THEY ARE NOT GOING TO DRIVE THE VEHICLE INTO THE GROUND.
THEY ARE GOING TO SELL THEM.
CARS ARE A BAD INVESTMENT, THEY DEPRECIATE.
WE KNOW FROM THE FACE OF THIS LEASE AGREEMENT THAT THIS

PARTICULAR VEHICLE IS GOING TO DEPRECIATE BY APPROXIMATELY ONE-THIRD OF THE VALUE THREE YEARS LATER.
PEOPLE ULTIMATE LIVE ARE GOING TO RESELL VEHICLES, EVERYONE IS GOING TO DO IT BUT YOU HAVE TO LOOK TO THE REASON WHY THE CAR WAS PURCHASED IN THE FIRST PLACE AND THE ACTUAL REASON WAS TO FACILITATE A LEASE.
WE HAVE TO EVIDENCE TO THE CONTRARY.
>> PLEASE BRING YOUR ARGUMENT TO A CONCLUSION.
>> I BELIEVE THAT IN LIGHT OF THE WELL PLEAD ALLEGATIONS IN THIS CASE, THAT THIS COURT SHOULD FIND AS A MATTER OF LAW THAT WE HAVE SATISFIED OUR BURDEN OF STATING A CAUSE OF ACTION.
JUST AS THE WISCONSIN SUPREME COURT NOTED IN THE PETERSON CASE AND JUST AS THE APPELLATE COURT DID HERE IN, WE WOULD ASK THIS COURT TO AFFIRM.
>> THANK YOU.
MS. LUMISH, REBUTTAL.
>> BRIEFLY.
IN RESPONSE TO JUSTICE QUINCE'S QUESTION, I BELIEVE THE PLAINTIFF SAID THAT IF THE ONLY SALE WAS TO A DEALER, THEN HIS ARGUMENT IS WE DON'T NEED TO MEET THE WRITTEN WARRANTY.
THAT'S JUST INCORRECT AS A MATTER OF LAW.
AS THE PARROT COURT HELD AND THEY WENT THROUGH THE ANALYSIS AND REALLY THE FIRST COURT TO HAVE GONE THROUGH THE ANALYSIS IN DETAIL, IF YOU LOOK AT THE DEFINITION OF WRITTEN WARRANTY, IT REQUIRES AN AFFIRMATION MADE IN CONNECTION WITH THE SALE OF A CONSUMER PRODUCT, WHICH WRITTEN AFFIRMATION PROMISE OR UNDERTAKING BECOMES PART OF THE BASIS OF THE BUYER BETWEEN A SUPPLIER -- BASIS OF THE BARGAINING, I'M SORRY, BETWEEN A SUPPLIER AND BUYER FOR PURPOSES OTHER THAN RESALE OF THE

PRODUCT.
IT MAKES VERY CLEAR IN SEVERAL DIFFERENT PLACES THAT IT'S REFERRING -- THAT YOU HAVE THOUGH -- WHAT THE WARRANTY IS.
>> VOLCKER DIDN'T HOLD THAT WAY.
>> VOLCKER DID NOT HOLD THAT WAY.
IN THE VOLCKER CASE --
>> AND NEITHER DID MESA FROM THE THIRD DISTRICT.
>> RIGHT.
THE PROBLEM WITH BOTH OF THOSE CASES IS THEY IGNORED THAT THE WRITTEN WARRANTY IS PART OF THE CAUSE OF ACTION IF YOU GO BACK TO 2310.
IN ADDITION TO THAT, WHEN YOU LOOK AT THE DEFINITION OF A CONSUMER, THE CATEGORY THREE CONSUMER, IT TALKS SPECIFICALLY ABOUT SUCH WARRANTY WHICH CLEARLY REFERS BACK TO --
>> WAIT A MINUTE.
YOU HAVEN'T QUOTE!!!!!!!!!!!! QUOTED THE ENTIRE PROVISION.
IT SAYS SUCH WARRANTY OR UNDER APPLICABLE STATE LAW.
>> CORRECT.
IT STARTS WITH SUCH WARRANTY OR UNDER STATE LAW, BUT EITHER WAY, TO ENFORCE AGAINST THE WARRANTOR THE WARRANTOR IS SOMEONE WHO ISSUES A WRITTEN WARRANTY AS DEFINED BY THE ACT.
>> I THINK YOU AGREED AT THE BEGINNING OF THE ARGUMENT THAT THE PLAINTIFF WOULD BE ENTITLED UNDER THE LEMON LAW UNDER THE ACTION.
SO THAT SEEMS TO REALLY -- WE CAN END THE DEBATE, THE ARGUMENT WHERE WE STARTED AT THE BEGINNING, WHICH IF YOU'RE ENTITLED TO SUE UNDER THE LEMON LAW, THEN YOU'VE COMPLIED WITH CATEGORY THREE.
>> NO, BECAUSE -- I DISAGREE WITH THAT BECAUSE WHAT IT SAYS IS THE TERMS OF SUCH WARRANTY OR UNDER STATE LAW AND IT CONTINUES TO ENFORCE AGAINST THE WARRANTOR, SO EVEN IF IT'S UNDER STATE LAW, YOU'RE STILL

ENFORCING AGAINST THE WARRANTOR,
WHO IS THE PERSON WHO ISSUES THE
WRITTEN WARRANTY, THE
OBLIGATIONS OF THAT WARRANTY,.
>> AND THAT'S EXACT MY WHAT
YOU'RE DOING IN THE LEMON LAW.
YOU'RE ENFORCING AGAINST THE
WARRANTOR THE TERMS OF THE
WARRANTY.
>> EXCEPT IN THIS CONTEXT AND I
WOULD URGE THE COURT TO LOOK AT
THE PARROT CASE, THE COURT IN
THAT CASE THE COURT GOES THROUGH
THIS HEYNAL CIES AND EXPLAINS
THAT WHEN IT REFERS FOR EXAMPLE
TO THE OBLIGATIONS OF THE
WARRANTY, IT'S GOT TO BE
REFERRING BACK TO THE SAME
WRITTEN WARRANTY.
AND THE WONT POINT THAT THE
PARITY COURT DIDN'T MAKE THAT I
WOULD ADD TO THAT IS, THE PART
OF THE CAUSE OF ACTION IS THAT
IT HAS TO BE A CAUSE OF ACTION
ON THE WRITTEN WARRANTY, AND THE
WRITTEN WARRANTY IS A DEFINED
TERM.
SO EVEN BEFORE YOU GET TO THE
TERM CONSUMER AND THE DEFINITION
OF CONSUMER, YOU HAVE TO LOOK AT
THE CAUSE OF ACTION.
>> JUSTICE PARIENTE HAS A
QUESTION.
>> YOU START!!!!!!!!!!!! STARTED OUT AT THE GUNG
AND SAID THAT ONLY THE DEALER
HAD PURCHASED IT.
THAT'S AT THE TIME THAT THE
LEASE WENT INTO EFFECT?
BECAUSE THE LEASE WAS BETWEEN
THE LEASING COMPANY AND
MS. CERASANI, CORRECT?
>> NO, THAT'S INCORRECT.
THE LESSOR ON THE LEASE, IT SAYS
LESSOR DEALER CROWN HONDA.
>> WHAT ABOUT THE TRANSFER IN
THE LEASE?
HE ADDRESSED A VERY SPECIFIC
CLAUSE AND WHAT IS THE RESPONSE
TO THAT SIMULTANEOUS TRANSFER?
>> WELL, WHAT I BELIEVE HE'S
REFERRING TO IS THERE IS A NAME
OF AN ASSIGNEE LISTED ON THERE
WHICH IS HONDA LEASE TRUST WHICH
IS NOT THE ENTITY THEY SAY IT

WAS SOLD TO, BUT THERE IS
NOTHING IN THIS LEASE THAT SAYS
THAT THAT -- THAT THAT
ASSIGNMENT EVER OCCURRED.
AND MORE THAN THAT, IT'S NOT A
SALE.
HE COULD NOT POINT TO ANYTHING
IN HERE THAT DEMONSTRATED A SALE
FROM CROWN HONDA TO ANY ENTITY.
WHAT HE'S RELYING UPON IS AN
ASSIGNMENT, WHICH TAKES ME RIGHT
BACK TO WHERE I STARTED FROM, IS
YOU HAVE TO HAVE A WARRANTY
THAT'S MADE IN CONNECTION WITH A
SALE AND THERE IS NO SALE THERE.
>> THANK YOU.
GO AHEAD.
>> JUST YOU KEEP ON REFERRING
TO -- WE WERE SUPPLIED LAST WEEK
WITH MAGO, WHICH IS AN
INTERPRETATION OF PARROT.
AND THAT COURT SAID THAT THEY
DECIDED A QUALIFYING SALE MUST
ONLY OCCUR SOMETIME WITHIN THE
SEQUENCE OF EVENTS THAT
ULTIMATELY PLACES THE CONSUMER
PRODUCT WITH THE CONSUMER.
YOU DISAGREE WITH HOW MAGO IS
INTERPRETING ITS OWN SUPREME
COURT?
>> THE MAGO COURT WAS
INTERPRETING IT IN THE CONTEXT
OF A DIFFERENT SALE AND THAT'S
CRITICALLY IMPORTANT.
THE MAGO COURT WAS A SALE FROM A
LESSOR TO A FINANCING COMPANY.
THERE IS NO CASE THAT HAS HELD
IN THE CONTEXT OF A
MANUFACTURER-DEALER SALE THAT
THOSE TERMS WERE MET, IN OTHER
WORDS, ALL OF CASES THAT THE
PLAINTIFF RELIES UPON
PETERSON --
>> YOU THINK MAGO IS CORRECT
BECAUSE OF THE TRANCE ACT IN
THAT CASE?
>> POSSIBLY BECAUSE OF THE
TRANSACTION IN THAT CASE AND THE
WARRANTY IN THAT CASE,.
>> WHICH BRINGS ME BACK TO WHAT
I ASKED, WHICH IS THAT THIS
SEEMS LIKE COULDN'T BE WHAT
CONGRESS INTENDED, ALL OF THESE
PEOPLE, ARE LONG-TERM LESSEES,

THEY HALL ARE GETTING INSURANCE,
THEY HALL HAVE HAVING THE
RESPONSIBILITIES OF THESE
VEHICLES, AND FOR ONE COMPANY TO
DO IT IN ONE WAY AND THE OTHER
THE OTHER WAY AND GET THE
BENEFIT OF THE MAGSON WARRANTY
ACT SEEMS A LITTLE BIT STRAINED,
BUT --
>> AND PART OF THE RESPONSE TO
THAT IS THE COMMENTS THAT YOU
MADE EARLIER.
IF THEY WANT IT HAD TO APPLY TO
LEASES THEY WOULD HAVE AND
IMPORTANTLY THE ACT DOES NOT
APPLY TO EVERY KIND OF WARRANTY,
IT DOESN'T APPLY TO AN TORL
WARRANTY.
THERE'S PLENTY OF THINGS IT
DIDN'T APPLY TO.
IT WAS JUST SAYING IF IT'S -- IF
YOU'RE GOING TO HAVE A WARRANTY,
HERE ARE CERTAIN THINGS, SO IT
WASN'T AN ALL INCLUSIVE ACT.
>> THANK YOU.
YOU'VE USED UP YOUR TIME.
WE THANK YOU FOR THE ARGUMENTS,
THESE HAVE BEEN MOST
ENLIGHTENING FOR BOTH PARTIES.
THANK YOU VERY MUCH