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**Echevarria McCalla Raymer etc. v. Bradley Cole  
SC05-564**

>> THE NEXT MATTER ON OUR DOCKET THIS MORNING IS THE CASE OF ECHEVARRIA ET AL VERSUS BRADLEY COLE ET AL.  
>> I WOULD AS WE BEGIN REMIND THE COUNSEL THAT THE COURT HAS THOROUGHLY STUDIED THE BRIEFS IN THE MATTER. AND AT TIMES WE'RE QUITE INQUISITIVE.  
SO I WOULD URGE YOU TO USE YOUR TIME JUDICIOUSLY SO AS YOU WALK AWAY YOU WILL FEEL AS YOU'VE BEEN ABLE TO PRESENT YOUR ENTIRE ARGUE.  
>> MAY IT PLEASE THE COURT. I'M JOHN BERANEK REPRESENTING THE PETITIONER, ATTORNEY ECHEVARRIA AND THE ECHEVARRIA LAW FIRM. I OF COURSE HAVE LOOKED AT THE CALENDAR. AND THE COURT'S ONE-WEEK DOCKET. OF THIS BEING THE LAST DAY OF IT. IS CERTAINLY AN AMAZING CASELOAD. I'M CERTAINLY GLAD YOU HAVE GOTTEN THROUGH TO THE LAST DAY.  
MR. BERANEK, CAN YOU FIRST BRIEFLY ADDRESS THE ISSUE OF CONFLICT, THE OPINION IN THIS CASE CERTAINLY CAN BE INTERPRETED AS BEING LIMITED TO THE PARTICULAR STATUTE AT ISSUE HERE AND SAYING THAT THE LITIGATION PRIVILEGE DOESN'T APPLY TO THAT STATUTE.  
IF WE INTERPRET IT IN THAT WAY THERE WOULD BE NO CONFLICT WITH THE 3rd DVA DECISION WHICH INTERPRETING

BRIEFLY AT THIS A VERY  
DIFFERENT STATUTE.  
CAN YOU ADDRESS THAT.

>> YES, SIR.

OF COURSE, WE CONTEND THAT  
THERE IS A CONFLICT BETWEEN  
THE THIRD AND THE FIRST ON  
THIS SIMPLE ISSUE -- IT'S  
NOT SIMPLE.

ON THE ISSUE OF  
WHETHER -- WHETHER YOU MAY  
APPLY THE JUDICIAL IMMUNITY  
RULE OR DOCTRINE TO  
STATUTORY CAUSES OF ACTION.  
AND THE FIRST SAID THAT YOU  
MAY NOT APPLY IT AND THEY  
DID SAY IN -- OR TO THESE  
STATUTES THEY DID NOT SAY IT  
MAY BE APPLIED TO OTHER  
STATUTES.

AND SIMILARLY THE THIRD  
DISTRICT DID NOT SAY  
ANYTHING MORE THAN THE RULE  
DOES APPLY TO STATUTORY  
ANTITRUST CASES.

AND I WISH THERE WAS MORE I  
CAN SAY, BUT, OBVIOUSLY,  
THIS COURT HAS READ THE TWO  
DECISIONS SIDE BY SIDE THE  
CLEARLY LAWYERS AND JUDGES  
IN READING THESE TWO  
DECISIONS SIDE BY SIDE WOULD  
BE PER FLEX -- PERPLEXED.  
WOULD BE CONFUSED.

THEY WOULD NOT KNOW WHETHER  
TO APPLY IT OR NOT APPLY IT  
TO STATUTORY CASES.

AND WE THINK THAT THE FIRST  
DISTRICT'S OPINION IS  
OVERBROAD AND IT'S THE  
MISAPPLICATION OF ALL OF THE  
LAW FROM THIS COURT AND  
OTHER FLORIDA COURTS ON THE  
JUDICIAL IMMUNITY RULE.

IF WE ACCEPT THE PROPOSITION  
THAT THERE IS A CONFLICT AND  
WE ISSUE THE DECISION IN  
THIS CASE, WHY ISN'T THE  
POSITION THAT REALLY WAS SET  
FORTH IN THE CASE BY THE  
SECOND FEDERAL CIRCUIT, THE  
LOGICAL POSITION THAT SHOULD  
COME OUT OF THIS.

AND THAT IS THAT IF THERE IS

SOMETHING THAT IS DONE  
DURING THE COURSE OF  
LITIGATION AFTER A COMPLAINT  
IS FILED THAT THE JUDICIAL  
IMMUNITY APPLIES, BUT PRIOR  
TO THAT TIME AS I UNDERSTAND  
THESE WERE LETTERS PRIOR TO  
THE ACTUAL FILING OF THE  
FORECLOSURE.

THAT'S CORRECT, JUSTICE  
WELLS.

>> JUDICIAL IMMUNITY

A -- DOESN'T APPLY.

AND THAT WOULD BE CONSISTENT,  
REALLY WITH FRIDACICH AND  
REALLY WHAT WAS SAID IN THE  
JUDICIAL IMMUNITY CASE  
WRITTEN BY JUSTICE OVERTON.  
THAT USED IT OVER THE COURSE  
OF LITIGATION.

>> JUSTICE WELL, I MEAN,  
FIRST OF ALL, WE DO HAVE  
OTHER LAW, OTHER CASE LAWS  
IN THE STATE OF FLORIDA  
SAYING THAT THIS PRIVILEGE,  
THIS IMMUNITY APPLIES TO  
MATTERS THAT ARE PRELIMINARY  
TO LITIGATION AND OF COURSE  
THAT'S THE -- THAT'S THE  
BURTON vs. SALBERG.

WE DON'T HAVE A CASE OUT OF  
THIS COURT.

>> NO, SIR NOT THAT  
SPECIFICALLY ADDRESSES THAT.  
BUT WE DO HAVE THAT CASE AND  
WE ALSO HAVE -- WE ALSO  
HAVE -- INDEED THE OPINION  
OF THE FIRST DISTRICT HERE  
WHICH SAID THIS WAS A LETTER  
WRITTEN IN RESPONSE TO THE  
CLIENT -- OR IN RESPONSE TO  
THE DEBTORS DEMAND OR  
REQUEST FROM -- THIS WAS A  
LETTER WRITTEN BY THE LAW  
FIRM AT THE OUTSET -- .

>> THANKS.

BUT MY CONCERN IS THAT IT  
MAKES SOME SENSE TO ME THAT  
THERE SHOULD BE A PROTECTION  
FOR WHAT IS SAID IN  
PREDISPOSITION, CONFERENCES  
AND -- PREDEPPSITION  
CONFERENCES AND IN THE  
COURSE OF CALLING WITNESSES

TO THE STAND AND THINGS THAT HAPPEN DURING LITIGATION. BUT IT STRETCHES IT IT SEEMS TO ME TO GIVE LAWYERS THIS BLANKET PROTECTION FROM A REMEDY THAT IS OUT THERE AND FOR EVERYONE ELSE AGAINST EVERYONE ELSE THAT COMMITS THIS TYPE OF FRAUD OR COMMITS A VIOLATION OF A STATUTE THAT IS -- FOR THE PROTECTION OF CONSUMERS.

>> JUSTICE, WE THINK THAT IN THESE CIRCUMSTANCES, OF COURSE, THE FIRST DISTRICT NEVER GOT TO ANY OF THE ISSUES THAT YOU ARE HAVE JUST BROUGHT UP.

I MEAN, THEY SIMPLY SAID THAT THE PRINCIPLE, THE DOCTRINE HAS NO APPLICATION, PERIOD.

SO THEY DIDN'T GET TO THE QUESTION OF WAS IT A PRELIMINARY STEP THAT WAS REQUIRED FOR THIS LITIGATION TO START.

IN OTHER WORDS.

>> SO JUST TO FOLLOW-UP ON THAT.

YOU THEN ADVOCATING FOR AN EQUAL APPLICATION OF THE JUDICIAL IMMUNITY OR LITIGATION PRIVILEGE WHETHER IT'S A STATUTORY CAUSE OF ACTION OR A COMMON LAW CAUSE OF ACTION.

>> THAT IS -- YES, THAT'S MY POSITION.

>> THEN MY QUESTION IS AND IS WHAT WAS THE TRIAL COURT'S PROVISIO THAT REQUIRES THAT PEOPLE WOULD ONLY BE IN THE CLASS IF THE PAYMENT RESULTED -- DID NOT RESULT IN A MORTGAGE FORECLOSURE. WOULD IT MATTER

WHETHER -- SHOULD IT EITHER BE IN OR OUT ACCORDING TO YOUR UNDERSTANDING OF THE LIT TKPWEUGS PRIVILEGE?

>> JUSTICE

PARIENTE -- LITIGATION PRIVILEGE.

>> JUSTICE PARENT I HAVE TO ADMIT IT'S DIFFERENT TO GRASP THE JUDGE'S RULING ON THAT SUBJECT.

WHAT HE WAS TRYING TO DO F -- WAS AVOID THE APPLICATION OF THE IMMUNITY RULE AND HE SAID SO THERE WAS ANOTHER CASE, A FEDERAL DISTRICT JUDGE CASE BY JUDGE HURLY.

NOT JUDGE HURLY BY JUNK HEUFRPBGEL THAT ALSO INVOLVED A MORTGAGE FORECLOSURE CASE. HE CONCLUDED THAT IF A ACTUAL FORECLOSURE JUDGMENT HAD BEEN ISSUED THE JUDICIAL IMMUNITY RULE WOULD APPLY BUT IF A JUDGMENT HAD NOT BEEN ISSUED IT WOULD NOT APPLY.

>> THE -- IS IT YOUR POSITION THAT PRESUIT LETTERS DEMAND LETTERS THAT ATTORNEYS WRITE BEFORE THE INSTITUTION OF LITIGATION ARE COVERED BY JUDICIAL IMMUNITY?

>> IN THIS CIRCUMSTANCE, YES.

ABSOLUTELY.

THIS WAS A CIRCUMSTANCE WHERE MR. ECHEVARRIA WAS HIRED BY THE BANK TO FORECLOSE THE MORTGAGE.N`P@CD0%%--FORECLOSE THE MORTGAGE.

HE -- THE -- MR. COLE, HIMSELF A FORMER BANK VICE-PRESIDENT CALLED THE BANK AND SAID MY MORTGAGE IS IN DEFAULT, I WANT TO AVOID THE FORECLOSURE COMPLAINT THAT'S COMING, WHAT DO I DO?

SEND ME THE NUMBERS.

THEY SAID CALL OUR LAWYER.

HE CALLED THE FIRM, TALKED TO A PARALEGAL.

THE NEXT DAY THE PARALEGAL GOT THE LETTER OUT.

UNFORTUNATELY, THE LETTER DID CONTAIN SOME MISTAKES, AND WE HAVE ALL THIS BIG ISSUE ABOUT IN-HOUSE COSTS, BUT FROM THE STANDPOINT OF WAS THIS A

PRELIMINARY STEP THAT SHOULD BE WITHIN THE PRIVILEGE.

>> SO THEN YOUR POG WOULD BE THAT THIS -- POSITION WOULD BE THAT THIS WHOLE ACTION SHOULD BE DISMISSED BECAUSE ALL THESE LETTERS WERE ALL PRELIMINARY TO MORTGAGE FORECLOSURE ACTIONS, IS THAT YOUR POSITION?

>> JUSTICE PARIENTE, I DON'T KNOW ON EVERY OTHER LETTER. THIS IS A CLASS ACTION AND THERE COULD CONCEIVABLY BE SOME THAT ARE NOT, BUT THIS ONE WAS.

>> WHAT WOULD BE THE DISTINGUISHING ASPECT, IF YOU CLAIM THAT LETTERS THAT ARE PRELIMINARY TO A MORTGAGE FORECLOSURE ACTION ARE IMMUNE FROM -- THAT THEY'RE COVERED BY THE PRIVILEGE, THEN FOLLOWING YOUR POSITION, IT WOULD BE THIS CLASS ACT, THE WHOLE CAUSE OF ACTION SHOULD BE DISMISSED.

>> YES, IT WOULD BE.

>> WOULD THAT APPLY TO IF THE LETTER HAD BEEN SENT, WOULD THAT POSITION ALSO APPLY IF THAT SAME LETTER, INSTEAD OF HAVING BEEN SENT BY AN ATTORNEY, HAD BEEN SENT BY THE BANK?

AND IF NOT, WHY NOT, BECAUSE THERE IS SOME WITNESS PRIVILEGE.

>> YES, THERE CERTAINLY IS.

THE JEW DECIAL IMMUNITY RULE HEY PLYS, AND IT PROTECTS THE JUDGE IN THE CASE.

IT PROTECTS THE PARTIES IN THE CASE.

AND IT PROTECTS THE LAWYERS IN THE CASE.

AND SO CLEARLY, IF THE BANK HAD SIMPLY WRITTEN THIS LETTER, IT WOULD HAVE ALSO BEEN -- IF THEY HAD WRITTEN IT AT THE DIRECT REQUEST AND DEMAND OF THE DEBTOR.

I MEAN, THE DEBTOR CALLS UP AND SAYS I'M IN DEFAULT, PLEASE SEND ME THE NUMBERS, AN THEY HE DO.

I MEAN, TO BE FRANK, AT THAT POINT, I GUESS THAT'S REALLY A LITTLE FURTHER AWAY FROM BEING THE FIRST STEP IN LITIGATION, SO

PERHAPS I MISSPOKE THERE, JUDGE.

>> WELL, THEN, MR. COLE, WOULD HE FALL IN TO THAT CATEGORY? HE'S REALLY TRYING TO RESOLVE HIS CASE, SO WE'RE NOT IN A CASE WHICH IS ONE THAT'S POSSIBLY GOING TO GO TO LITIGATION. HE WANTS TO PAY THE MONEY AND GET OUT OF THIS, SO WHY ISN'T HE -- AND PEOPLE SIMILARLY SITUATED TO HIM IN A DIFFERENT SITUATION.

>> IT APPLIES TO HIM, BECAUSE THIS -- THIS WAS THE FIRST STEP IN THE MORTGAGE FORECHOSE YOU'RE CASE.

IN OTHER WORDS, THE LAWYER WAS HIRED TO FORECLOSE THE MORTGAGE. THAT IS WHAT HE WAS DOING.

WHEN HE WAS -- WHEN THERE WAS A DEMAND MADE BY THE DEBTOR, THE LAWYER HAD TO GIVE HIM THE NUMBERS, AND IF HE DIDN'T -- HE COULD PAY IT OFF, WHICH IS OF COURSE WHAT HE DID, AND THEN THEY GOT IN VARIOUS ARGUMENTS ABOUT VARIOUS NUMBERS, AND SOME OF THE NUMBERS ARE WRONG, YOU KNOW, WE -- AND ECHEVARRIA MCCALLA ABSOLUTELY ADMITTED THAT.

THE MORTGAGE FOES!!!!!!!!!!!! FOR CLOSURE CASE HADN'T HEN BEEN FILED WHEN HE HE SENT IT OUT.

>> WOULD YOUR POSITION BE DIFFERENT IF THE ATTORNEYS WERE THERE REALLY TO SEE HOW MUCH MONEY THEY COULD COLLECT, HOW MANY PEOPLE THEY COULD GET TO ACTUALLY MAKE GOOD ON THEIR MORTGAGES AS OPPOSED TO FORECLOSE ON THEIR MORTGAGE?

>> DO YOU UNDERSTAND THE QUESTION?

REALLY, NOT TO BRING LAWSUITS, IF AT ALL POSSIBLE, BUT TO GET AS MUCH MONEY ON THESE MORTGAGES AS THEY COULD.

>> WELL, --

>> DOES THAT MAKE A DIFFERENCE?

>> WELL, I THINK IT DOES.

OR IT CERTAINLY COULD MAKE A DIFFERENCE.

HE FORECLOSED HIS MORTGAGE,

THAT'S WHAT HIS LAW FIRM DOES,  
AND HE HAS A RATHER MODERN  
PRACTICE, WHERE HE HAS IN-HOUSE  
PEOPLE DOING THE TITLE WORK.  
WHICH HE BILLS AS A COST, BUT IF  
WHAT YOU'RE TALKING ABOUT IS A  
LAWYER THAT'S REALLY ACTING LIKE  
A BILL COLLECTOR THAT GOES OUT  
AND WRITES DUNNING LETTERS, JUST  
TRYING TO COME UP WITH SOME  
MONEY, BUT THAT'S NOT WHAT THE  
BANK WAS AFTER HERE AND THAT'S  
NOT WHAT ECHEVARRIA MCCALLA WAS  
AFTER.

ONCE THESE THINGS GO INTO  
DEFAULT, THEY WANT THEIR MONEY  
OR THEY WANT -- THEY WANT ALL OF  
THEIR MONEY, AND THEY WOULD  
ACCELERATE THE NOTE, AND GO  
FORWARD WITH IT, AND THAT'S WHAT  
WAS GOING TO HAPPEN WITHIN 24  
DAYS, WHICH WAS THE DUE DATE ON  
THIS LETTER.

>> CAN I ASK YOU SOMETHING ABOUT  
THE PARAMETERS OF THE PRIVILEGE?  
IT SEEMS TO ME THAT THE REASON  
FOR THE PRIVILEGE IS TO HAVE  
FREE FLOW OF COMMUNICATION IN  
LITIGATION, AND YOU DON'T WANT  
PEOPLE NOT SAYING SOMETHING OR  
NOT PROVIDING THE WHOLE TRUTH,  
BECAUSE THEY'RE AFRAID OF BEING  
SUED.

AND THE FACT THAT WE HAVE A  
JUDGE NOW THAT CAN IMPOSE  
CONTEMPT POW WEFERS, CASES HAVE  
SAID -- POWERS.

ONE OF THE REASONS YOU HAVE A  
JUDGE THAT CAN IMPOSE CONTEMPT  
POWERS.

THE PROBLEM I SEE WITH YOUR  
ARGUMENT HERE IS YOU ONLY HAVE  
CONTEMPT POWERS ONCE A COMPLAINT  
IS FILED.

BEFORE THAT, JUDGES!!!!!!!!!!!!!! JUDGE IS NOWHERE TO  
BE SEEN.

SO WHY ISN'T THE BRIGHT MIND  
RULE FOR LITIGATION ONLY APPLIES  
ONCE LITIGATION IS COMMENCED  
WHICH IS UPON FILING OF THE  
COMPLAINT.

>> AND JUSTICE CANTERO, AGAIN,  
BECAUSE THIS WAS A NECESSARY  
STEP BEFORE THE COMPLAINT WAS

FILED.

>> BUT WHEN YOU SAY THAT, WHAT DO YOU MEAN, NECESSARY STEP?

I MEAN, IS IT ABSOLUTELY ESSENTIAL THAT THIS LETTER GO OUT BEFORE YOU FILE A MORTGAGE FORECHOSE YOU'RE ACTION?

>> NO, OF COURSE, YOU CAN FILE A MORTGAGE FORECLOSURE ACTION, BUT IF THE DEBTOR, IF THE DEBTOR MAKES CONTACT AND SAYS, I WANT TO PAY SOMETHING, SEND ME A REINSTATEMENT LETTER, I MEAN, UNDER THE MORTGAGE, HE HAS A RIGHT TO REINSTATEMENT UNDER CERTAIN CONDITIONS.

AND IF HE ASKS FOR THE REINSTATEMENT NUMBERS, THE BANK, THROUGH ITS ATTORNEY, WHO'S HIRED TO FORECLOSE THE MORTGAGE, HAS TO GIVE IT TO HIM.

>> MR. BERANEK, YOU ARE INTO YOUR REBUTTAL.

I WOULD LIKE YOU TO ANSWER, WHEN YOU COME BACK, JUSTICE CANTERO'S AND JUSTICE WELLS' QUESTION DIRECTED TO THE PHILOSOPHICAL BASIS, SHOULD ATTORNEYS OCCUPY A SPECIAL STATUS, WHICH IS WHAT THEY WERE INQUIRING ABOUT. I'M NOT SURE YOU GOT A CHANCE TO ANSWER THAT.

>>>LY CERTAINLY DO IT IF I HAVE TIME ON REBUTTAL.

>> MR. TURNER.

>> I WANT TO ADDRESS TWO POINT WHICH IS ABOUT THIS STATUTE. UNDERSTAND THE UNIQUENESS OF THIS STATUTE, AND WHY THIS STATUTE DOES APPLY TO ATTORNEYS AND ATTORNEYS IN LITIGATION AND I ALSO WANT TO DISCUSS THE ISSUE OF WHETHER THIS REINSTATEMENT LETTER IS IN FACT SUBJECT TO PRIVILEGE IF IT WERE APPLICABLE. LET ME START WITH THE LAST POINT.

THIS IS A REINSTATEMENT LETTER, IT IS NOT A STATEMENT -- A A STATEMENT RELEVANT TO THE LITIGATION TO ADVANCE THE PROSECUTION OF THE CASE.

THIS CASE INVOLVES A MIS!!!!!!

MISREPRESENTATION REGARDING THE

DEBTOR'S RIGHT TO BRING THE MORTGAGE CURRENT BY AN ATTORNEY MAKING FALSE STATEMENTS FOR HIS OWN BENEFIT.

>> WELL IS IT YOUR POSITION THAT BECAUSE THIS IS A STATUTORY CAUSE OF ACTION THAT EVEN IN THOSE INSTANCES IN WHICH A COMPLAINT HAS BEEN FILED THAT JUDICIAL IMMUNITY DOES NOT APPLY?

>> FIRST AFTER YOU!!!!!!!!!! ALL, WE'RE DEALING WITH LITIGATION.

THIS STATUTE APPLIES TO ANYTHING IN LITIGATION.

THE UNITED STATES SUPREME COURT DECIDED THAT WITH A COMPANION FEDERAL ACT.

THIS STATUTE, I'LL START WITH THE STATUTE FIRST, THE STATUTE DESIGN IS DESIGNED AND PROTECTS INDIVIDUAL CONSUMER DEBTORS IN PERSONAL, FAMILY, OR HOUSEHOLD TRANSACTIONS.

IT PROTECT PEOPLE THAT ARE EASILY PREYED UPON, THAT CAN'T AFFORD LITIGATION, THAT CAN'T BE IN LITIGATION, THEY CAN'T AFFORD LAWYERS TO PROTECT THEM, AND WHAT THE STATUTE DOES IS SET UP A SPECIAL PROTECTION BY PEOPLE WHO ARE COLLECTING DEBTS IN ANY CAPACITY TO BE CAREFUL, TO FILTER THESE THINGS, SO THEY ONLY SEEK WHAT IS BONAFIDE, WHAT THEY BELIEVE IS BONAFIDE AND ACTUALLY OWED, AND THAT IS WHY THIS STATUTE AND THE UNITED STATES SUPREME COURT HAS INTERPRETED THIS SAME FEDERAL STATUTE, APPLIES EVEN IN LITIGATION.

WAY AT THE END, BECAUSE WE DON'T REALLY HAVE TO GET TO THIS QUESTION OF FORCE FOR THE MANY REASONS Y'ALL HAVE OBSERVED ALREADY, BUT EVEN IF WE GET TO THE END, THE UNITED STATES SUPREME COURT HAS SAID THE FEDERAL STATUTE, FAIR DEBT COLLECTION ACT, WHICH IS A COMPANION TYPE STATUTE, APPLIES HERE TO THIS SITUATION IN DEALING WITH LETTERS, IN THE

COMPLAINT OR LETTERS DEALING WITH PAYMENT.

SO IT IS A SITUATION WHERE THE STATUTE IS DESIGNED TO PROTECT THE VERY THING THAT IS GOING ON HERE.

>> ONE WAY TO READ THE D.C.A.'S DECISION IS VERY BROAD, AND THAT IS THAT THE D.C.A. MAY HAVE SUGGESTED, WELL, THAT IS A COMMON LAW PRIVILEGE AND IT APPLIES TO COMMON LAW CAUSE OF ACTIONS, DOESN'T APPLY TO STATUTE.

>> IF THE STATUTE INTENDS TO COVER OR NOT TO INCORPORATE THE --

>> THAT'S MY QUESTION.

ARE YOU ARGUING FOR A BROAD LIMITATION ON THE PRIVILEGE THAT SAYS IT JUST APPLIES TO COMMON LAW ACTIONS OR ARE YOU ARGUING AS TO STATUTORY CAUSES OF ACTION, IT DEPENDS ON THE WORDING OF THE STATUTE?

>> YES, THE LATTER.

>> BUT THE PROBLEM THERE IS, ADDRESS THE STATEMENT THAT THE FIRST DISTRICT USED WHICH IS FURTHERMORE, AS A SEPARATION OF POWERS MATTER, A JUDICIALLY CREATED POLICY SUCH AS THE JUDICIAL IMMUNITY RIEWM MUST NOT BE USED TO LIMIT THE APPLICATION OF A LEGISLATE I HAVELY CAUSE OF ACTION.

>> NO, IT SAYS IN THIS STATUTE.

>> NO IT DOESN'T.

NOT THE PHRASE SHE READ, IT DOES NOT SAY THAT.

>> THE COURT'S HOLDING IS THAT IT SAYS THIS STATUTE.

>> YOUR POSITION IS NOT THAT IT'S A STATUTORY CAUSE OF ACTION PER SE, JUDICIAL IMMUNITY, LITIGATION PRIVILEGE DOESN'T APPLY AND IF IT'S COMMON LAW, CAUSE OF ACTION --

>> THERE ARE STATUTES THAT YOU WOULD INTERPRET TO NOT HAVE REPEALED OR NOT HAVE FAILED TO INCORPORATE THIS POSITION.

I THINK IF WE LOOK TO THE COMPO TECH CASE, THE OPINION BY

JUSTICE QUINN IS EXACTLY DEALING WITH THE SITUATION. YOU HAVE A STATUTE THERE DEALING WITH ANY PERSON FOR ANY VIOLATION HAND THE COURT HELD, THIS COURT UNANIMOUSLY HELD THAT A JUDICIALLY CREATED ECONOMIC LOSS RULE WOULD NOT LIMIT A STATUTORY ACTION FOR BUILDING CODE VIOLATION AND YOU HELD THAT THE COURT APPROVED SEVERAL D.C.A.'S OPINIONS TO THE SAME EFFECT DEALING WITH OTHER STATUTES, INCLUDING THE STATUTE HERE, AND WHEN JUSTICE QUINCE WROTE THAT IF THE COURTS LIMIT OR ABROGATE SUCH LEGISLATIVE ENACTMENTS THROUGH JUDICIAL POLICIES, SEPARATION OF POWERS ISSUES ARE CREATED AND THE TENSION MUST BE RESOLVED IN FAVOR OF THE LEGISLATURE'S RIGHT TO ACT.

>> I WAS, IN MY ZEAL TO READ THAT SENTENCE, I CUT JUSTICE CANTERO OFF FROM HIS QUESTION.

>> NO, YOU WERE ANSWERING MY QUESTION AS TO WHETHER YOU THOUGHT IT APPLIED TO ALL CAUSES OF ACTION --

>> THE DECISION BELOW HERE ADOPTED THE SAME REASONING AS COMPU TECH, THE FIRST DISTRICT COURT DECISION.

>> THAT WAS AN ECONOMIC LOSS RULE CASE.

IT'S A COMPLETELY DIFFERENT ANIMAL WHEN WE'RE TRYING TO INTERPRET LEGISLATIVE INTENT.

>> IT IS ANALOGOUS, BECAUSE YOU HAVE A JUDICIALLY CREATED RULE, AND WHAT COMPU TECH HELD, USING THE SAME LOGIC THAT THE COURT BELOW HERE HELD, WAS THE JUDICIALLY CREATED RULE IS NOT PART OF THE STATUTE.

THAT THE STATUTE OVERRIDES THE ECONOMIC LOSS RULE.

IN OTHER WORDS, YOU'RE SUPPOSED TO BE ABLE TO -- SUPPOSED TO BE ABLE TO RECOVER DAMAGES UNDER THE STATUTE.

EVEN THOUGH IT WOULD VIOLATE ECONOMIC LOSS.

>> LET ME TAKE YOU BACK TO YOUR STATEMENT ABOUT THE U.S. SUPREME COURT'S RULING.

WHICH CASE ARE YOU REFERRING TO?

>> THE JAY!!!!!!!!!! JACOBS HENS CASE.

>> THE COURT CAME DOWN ON THE SHIED OF FINDING THAT THERE WAS, UNDER THIS -- UNDER THE CONSUMER STATUTE, THE -- NO IMPLIED LITIGATION IMMUNITY.

>> YES, SIR.

THAT IS RIGHT.

>> BUT DID THEY DO THAT UNDER FEDERAL LAW OR DID THEY DO THAT -- AN ONE, DOES ERIE LAW APPLY TO THE LITIGATION IMMUNITY, OR DOES IT NOT?

>> WE'RE DEALING WITH THE FEDERAL ACT, BUT THE FEDERAL ACT --

>> I UNDERSTAND THAT, BUT THE 1199!! 11th CIRCUIT WAS DEALING WITH THE FEDERAL ACT IN JACKSON AND THEY APPLIED ERIE.

>> I DON'T BELIEVE THEY APPLIED IT IN THIS CIRCUMSTANCE.

>> THEY DID UNDER THAT STATUTE, UNDER THE CIVIL RIGHT.

>> NO, THE CIVIL RIGHTS ACT, THAT HAS -- THAT IS A -- THE PRIVILEGES THERE ARE DIFFERENT. THIS STATUTE, THIS PARTICULAR STATUTE IS DESIGNED TO PROTECT DEBTORS.

THIS STATUTE WOULD HAVE NO MEANING FOR US TO GET AROUND IT.

>> SO IS YOUR ARGUMENT THAT IT'S A PREEMPTION?

>> MY ARGUMENT IS THE FEDERAL STATUTE, THE FEDERAL DEBT COLLECTION ACT, WHICH BY THE WAY OUR STATUTE SAYS SHOULD CONTROL IF IT IS MORE PRO!!!!!!!!!! PROTECTIVE, OUR STATUTE EVEN SAYS THAT, TRYING TO BE SURE THAT CONSUMERS ARE PROTECTED.

MY POSITION IS IT CERTAINLY SHOULD BE INTERPRETED SIMILARLY, AND THE ACT -- IN FACT, OUR ACT IS BROADER THAN THE FEDERAL ACT. IT IS CLEAR, ANY PERSON IS COVERED.

IT IS INTENDED --

>> WHAT I'M TRYING TO GET TO, IS

ARE -- IS THIS COURT BOUND TO APPLY THAT UNITED STATES SUPREME COURT DESIGNIFICANT?

>> YOU'RE NOT BOUND TO APPLY IT IN THIS PARTICULAR CASE BUT THE POINT IS WHAT WOULD BE THE POINT FOLLOWING IN THE -- WHEN THIS STATUTE SAYS WE LOOK TO THE FEDERAL.

IT WOULD MAKE NO SENSE TO HAVE INCOMPATIBLE STATUTES.

YOU'D SIMPLY BE DRIVING PEOPLE TO FEDERAL COURT FOR DEBTORS TO GET THE PROTECTION THAT THE STATE INTENDED TO AFFORD AND THE LEGISLATIVE HISTORY SHOWS IT WAS AFFORDING.

LET ME TURN TO THE OTHER QUESTION ABOUT THE ISSUE OF IS THIS HEN POTENTIALLY COVERED, BECAUSE I WANT TO SPEND A FEW MINUTES ON THAT.

AS I WAS SAYING, I BELIEVE THIS CASE RELATES TO THE MORTGAGE, NOT TO THE LITIGATION.

THE REIN STATEMENT LETTER -- REINSTATEMENT LETTER IS A RIGHT GRIRCH BY THE MORTGAGE AND -- GIVEN BIT MORTGAGE AND IT IS IRRELEVANT TO THE LITIGATION.

IT COULD HAPPEN BEFORE, DURING, OR AFTER THE LITIGATION.

IT CAN -- IN FACT, YOU CAN REINSTATE ANY TIME UP TO FIVE DAYS BEFORE JUDGMENT.

IT WILL -- IT RISES AND SPRINGS FROM THE MORTGAGE.

IT IS NOT NECESSARY.

MANY DEBTORS DON'T EVER REQUEST REINSTATEMENT, BUT REINSTATEMENT IS SIMILAR TO A PAYOFF REQUEST.

IF, FOR EXAMPLE, IF WE HAD SOLD -- IF WE'RE IN LITIGATION,

IF I'M IN LITIGATION AS A DEBTOR, A CONSUMER DEBTOR, NOT AN INVESTMENT DEBTOR, BUT IF I'M IN LITIGATION AND I WANT TO PAY OFF MY MORTGAGE BECAUSE I'M GOING TO SELL MY HOUSE AND I REQUEST AND CALL UP THE BANK AND SAY WHAT IS THE PAYOFF AMOUNT AND THE BANK SAYS, WELL THIS IS IN LITIGATION, YOU HAVE TO GET THE ATTORNEY, AND THE ATTORNEY

STACKS UP CHARGES AGAINST ME,  
AND I PAYOFF AN ILLEGAL CHARGE  
IN THAT CLOSING, THAT HAS  
NOTHING TO DO WITH THIS  
LITIGATION.

>> WELL, IS IT YOUR POSITION  
THAT THE CUTOFF SHOULD BE THE  
FILING OF THE COMPLAINT?

>> NO, SIR.

THERE IS NO CUTOFF.

THE CUTOFF IS -- FIRST OF ALL,  
THERE'S NO CUTOFF UNDER THE  
STATUTE, BUT IF THERE WERE, IF  
WE HAD A LITIGATION PRIVILEGE,  
IT WOULDN'T APPLY TO A  
REINSTATEMENT LETTER, WHICH DOES  
NOT RELATE TO THE LIT!!!!!!! LITIGATION.

IT DOES NOT RELATE TO THE  
LITIGATION, NOR DOES IT ADVANCE  
THE PROSECUTION OF THE CASE,  
BOTH OF WHICH ARE THE FOUNDATION  
OF THE PRIVILEGE.

>> BUT UNDER JUSTICE WELLS'  
QUESTION, ONCE THERE'S A  
COMPLAINT FILED, THEN A  
REINSTATEMENT LETTER CERTAINLY  
WOULD RELATE TO THAT LITIGATION.

>> I DISAGREE.

HAS NO RELATION TO THE LET GAGES.  
IT MAY STOP THE LITIGATION, IT  
MAY MOOT THE ALL RIGHT!!!!!!!!!!!!!!!!!!!! LITIGATION, BUT  
THAT'S NOT A CONSEQUENCE OF THE  
LETTER, JUST AS A MAYOFF OF THAT  
LOAN IN A CLOSING BY SEPARATE  
SALE WOULD MOVE THE LITIGATION,  
BUT IT HAS NOTHING TO DO WITH  
ADVANCING THE LITIGATION AND IT  
DOESN'T ARISE FROM THE  
LITIGATION.

>> LET'S GO BACK IF YOU COULD,  
YOU'RE NOT SAYING --

>> I'M GETTING EXCITING.

>>

>> IT'S A VERY EXCITING CASE.

>> I'M TRYING TO MAKE IT UP FOR  
YOU.

>> YOU'RE NOT SAYING THAT IN THE  
COURSE OF THIS LITIGATION, IF  
YOU, STEVEN TURNER, IN A  
DEPOSITION, STARTS TO SAY  
SOMETHING ABOUT ANOTHER ATTORNEY  
OR WHATEVER, IN THE COURSE OF  
LITIGATION OR BEFORE A JUDGE,  
THAT BECAUSE OF OF THE STATUTORY

CAUSE OF ACTION THAT SOMEHOW EVERYTHING THEN IS OUTSIDE THE LITIGATION PRIVILEGE?

>> I'M NOT TRYING TO SAY THAT. WHAT I'M TRYING TO SAY IS THIS STATUTE, IN THIS CASE, IF YOU MISREPRESENT THE DEBT IN LITIGATION, YOU WOULD BE SUBJECT TO THIS STATUTE.

BECAUSE THE DEBTORS HAVE NO PROTECTION.

THEY DON'T --

>> WHAT IF THERE'S ANSWERS TO INTERROGATORIES, ARE YOU SAYING THAT ANSWERS TO INTERROGATORIES ALSO, IF THEY HE COULD BE THE BASIS --

>> YES, MA'AM, UNDER THIS STATUTE.

>> I GUESS THE QUESTION I HAVE FOR YOU IS YOU DON'T NEED TO GO THAT BROAD AND WE DON'T NEED TO GO THAT BROAD IN THIS CASE.

>> EXACTLY.

THAT IS EXACTLY RIGHT.

>> BECAUSE NOW -- WOULD YOU TAKE THE POSITION THAT A DEMAND LETTER IN A PERSONAL INJURY CASE BEFORE THE LAWSUIT WAS FILED IS SUBJECT TO THE JUDICIAL IMMUNITY LITIGATION PRIVILEGE OR NOT?

>> IF IT -- IN OTHER WORDS, NOT CONSIDERING THIS STATUTE, JUST THE GENERAL QUESTION.

>> I'M TRYING TO UNDERSTAND WHERE THE STATUTE FITS IN AND ALSO THE PARAMETERS OF THE PRIVILEGE.

>> I DON'T KNOW WHETHER THE DEMAND LETTER, I DON'T KNOW IF YOU'RE TALKING ABOUT TO AN INSURANCE COMPANY TYPE THING. I MEAN, I DON'T GET THE ANALOGY HERE.

THIS REINSTATEMENT LETTER --

>> TRYING TO SETTLE A DISPUTE, THAT'S THE ANALOGY.

>> I DON'T THINK -- I DON'T BELIEVE THEE RELATED --

>> I THINK WHAT YOU'RE SAYING HERE, THIS IS A UNIQUE CONTEXT IN WHICH THE LEGISLATURE ATTEMPTED TO ADDRESS ABUSIVE COLLECTION PRACTICES, DEBT

COLLECTION PRACTICES, SO THEY PUT PARAMETERS UPON WHAT ACTIVITY DEBTORS -- OR EXCUSE ME, PREDATORS AND THEIR COLLECTORS CAN USE TO TRY TO ENFORCE THE DEBT OR COLLECT THE DEBT.

>> WITH JUST CAUSE AND WITH JUST REASON, DEBTORS ARE NOT LIKE CORPORATE -- I MEAN, IF THIS WAS OUR FIGHT, YOU CAN PROTECT YOURSELF, BUT IT'S A BIG DEAL FOR A HOMEOWNER, AND HAS NOT BEEN ABLE TO FIGHT LITIGATION.

>> MR. TURNER, LET ME ASK THIS QUESTION.

WE HAVE EVEN -- WE HAVE EVEN DISCIPLINED A LAWYER FOR ASSERTING THE PROTECTIONS OF A STATUTE ON A DEBT COLLECTION, STATUTORY PROVISION, WHEN HE ATTEMPTED TO HEY CERTIFICATE THOSE IN LIT -- ASSERT THOSE IN LITIGATION, SO YOU SEEM TO BE SAYING THAT IF YOU HAVE STATUTORY RIGHTS AND PROTECTED RIGHT IN THE DEBT COLLECTION CONTEXT, THAT YOU CAN ASSERT THOSE WITHIN THE LITIGATION, BECAUSE EVEN THE REPET!!!!!!!!!!!! REPETITIVE DEPOSITIONS FOR EXAMPLE, VIOLATE THE STATUTE TECHNICALLY.

>> I'M NOT SURE OF THAT.

>> YOU SEEM TO BE ARGUING THOUGH FOR A VERY BROAD PRINCIPLE.

>> I'M FOCUSING ON WHAT THE DENT COLLECTOR HERE DID AND I KNOW THIS IS A VIOLATION OF THE STATUTE.

WHEN YOU HAVE A DEBT AN YOU INFLATE THAT DEBT OR YOU MISSTATE THAT DEBT AN YOU KNOW THAT THAT'S WRONG, AND THAT IS A VIOLATION, AND THE WHOLE POINT IS, -- OF THE STATUTE AND THE WHOLE POINT HERE IS TO PROTECT PEOPLE, TO NOT MAKE THEM HAVE TO LITIGATION.

>> THE ACT HAS OTHER PRO VTIONS, CORRECT?

IT HAS OTHER PROTECTIONS AS WELL.

>> IT DOES.

>> SO WHY DOES THIS ONE SEPARATE

OUT TO BE FREETED DIFFERENTLY THAN -- TREATED DIFFERENTLY THAN OTHER PROTECTIONS THAT MAY BE WITHIN THE STATUTE?

>> I GUESS I DON'T KNOW WHAT PROTECTION WE'RE TALKING ABOUT.

>> IT HAS CERTAIN THINGS WITH REGARD TO CONTACT WITH THE DEBTOR, THOSE KINDS OF THINGS. DOES IT HAVE THAT KIND OF PROTECTION?

>> IT PROBABLY DOES, I'M NOT AN EXPERT ON THAT.

>> AND WE HAVE SANCTIONED, WE HAVE DISCIPLINED A LAWYER FOR ASSERTING THOSE PROTECTIONS, SAYING IT'S FRIVOLOUS, TO ASSERT THOSE IN LITIGATION.

NOW YOU'RE STANDING HERE BEFORE US SAYING YES IT APPLIES, NOT ONLY TO THE PRELITIGATION, BUT APPLIES DURING THE LITIGATION, TO INTERROGATORIES AND OTHER THINGS.

I'M TROUBLED WITH THAT.

>> YOUR HONOR THE SUPREME COURT OF THE YOU NATES IN A UNANIMOUS OPINION HELD THE FEDERAL ACT WHICH ACCOMPLISHES THE SAME WORDING, NOT QUITE AS BROAD BY THE WAY, IT WAS APPLIED, SO IT'S NOT MR. TURNER HERE SAYING THAT. IT'S THE NINE JUSTICES OF THE UNITED STATES SUPREME COURT SAYING THERE'S NOTHING WRONG IN THAT PARTICULAR CASE, IT WAS A SETTLEMENT LETTER, DURING THE LITIGATION.

YOU'RE NOT SUPPOSED TO MISLEAD DEBTORS, PERIOD.

NOW, IF YOU DO IT BY GOOD FAITH ERROR, THAT'S FINE, THAT'S A DEFENSE UNDER THE STATUTE. THERE'S NO ISSUE HERE OF GOOD FAITH ERROR.

>> LET ME GET BACK TO WHERE I WAS CONCERNED.

WITH THE FIRST DISTRICT OPINION. I'M CONCERNED THAT SOMEONE READING THIS OPINION IS GOING TO THINK THAT PRESUIT LETTERS, DEMAND LETTERS, ARE COVERED BY THE LITIGATION PRIVILEGE WHEN I DON'T SEE ANY CASE THAT HAS HELD

THAT, AND SO WE'VE CREATED THIS DISTINCTION.

YOU WANT US TO TALK ABOUT THE STATUTORY CAUSE OF ACTION.

BUT I'M GOING BACK AND SAYING THAT I DON'T SEE ANYTHING IN THE POLICY OF THE LITIGATION PRIVILEGE OR JUDICIAL IMMUNITY, WHATEVER YOU CALL IT, THAT WOULD PROTECT LETTERS WRITTEN BEFORE LITIGATION BEGINS.

NOW THAT MAY NOT HELP YOU IN ANOTHER CASE, BUT THAT IS CLEAN HAND THAT HELPS YOU FOR THIS CASE, BECAUSE IT DOESN'T DISTINGUISH THEN IF ULTIMATELY THE MORTGAGE IS FORECLOSED OR NOT.

IT'S THAT THAT IS NOT PROTECTED UNDER ANY -- FOR ANY POLICY REASON, LAWYERS ARE NOT PROTECTED IN THOSE INDICATIONS.

>> I'M FOCUSING ON THIS STATUTE AND THIS LETTER, AND THIS LETTER IS A REINSTATEMENT LETTER AND AS I SAID, IT DOES NOT RELATE, IT DOES NOT ARISE OUT OF A LITIGATION, IT IS A RIGHT GIVEN BY THE MORTGAGE TO ANY DEBTOR, JUST AS A PAYOFF RIGHT WOULD BE. SO I KNOW I SHOULD BE PROTECTED AND NOT HAVING A KNOWING CHARGE MISREPRESENTED AGAINST ME.

>> WE'VE THROWN AROUND THE TERM HERE DEBT COLLECTING AND I BELIEVE THAT CASE, THE HEINZ CASE FROM THE UNITED STATES SUPREME COURT MAY HAVE USED THAT CASE TOO BUT MR. BERANEK SEEMS TO SAY THIS WAS NOT A PART OF ANY DEBT COLLECTION.

THESE ATTORNEYS WERE HIRED TO FORECLOSE ON MORTGAGES, AND THEREFORE IT'S DIFFERENT FROM BEING IN A DEBT COLLECTING SITUATION.

>> THE DEBT COLLECTORS IS A TERM UNDER THE FEDERAL ACT AND THAT'S WHY THAT TERM IS USED.

WE HAVE THE TERM ANY PERSON IN HOUR STATUTE.

IN FACT, THE STATUTE CLEARLY SHOWS IT'S APPLICABLE TO LAWYERS, BECAUSE LAWYERS ARE NOT

UNDER HOUR STATUTE, DEBT COLLECTORS THAT HAVE TO GET LIE ACCEPTED, BUT ANY PERSON IS SUBJECT TO VIOLATION THIS TACK AND IT'S CLEAR THAT LAWYERS ARE NOT EXEMPT FROM THE DEFINITION OF ANY PERSON.

SO IT'S NOT JUST A SITUATION, AND BY THE WAVE, WE DON'T HAVE HERE, AN ACTION, A CHARGE WITH A LAWYER REPRESENTING HIS CLIENT. WHAT WE HAVE IS A LAWYER MAKING A STATEMENT ABOUT THE DEBT TO EVER ADVISE HIS OWN PERSON. THE DEBTOR CANNOT -- IS NOT ENOUGH, THAT YOU DISCIPLINE HIM. THAT YOU CALL HIM OF BEFORE THE BOARD.

THIS PARTICULAR DEBTOR IF YOU LOOK IN YOUR ANNALS WAS REPRIMANDED BY THE BOARD. THAT'S NOT ENOUGH.

WHEN THE STATUTE SAYS YOU HAVE A PENALTY, A STATUTORY PENALTY SET BY LAW WHEN YOU MAKE THESE MISREPRESENTATIONS, THE WHOLE POINT OF THIS IS TO DISCOURAGE PEOPLE FROM TELLING DEBTORS WHAT THE DEBT IS, KEEPING THEM FROM MAKING PAYOFFS THAT THEY SHOULD BE ABLE TO PAY OFOFF OR WHEN THEY DO PAY OFF, HAVING TO GO BACK AND FIGURE OUT WHAT IT IS AND HIRE LAWYERS THAT THEY CAN'T AFFORD.

THAT'S THE WHOLE PURPOSE OF THIS STATUTE.

MAKE THESE PEOPLE WHO MAKE -- DEAL WITH THESE PEOPLE, DEAL WITH DEBTORS --

>> I COULD AGREE WITH YOU ON THAT PRESUIT, BUT I'M HAVING A REAL STRUGGLE WITH HOW WE, WITHOUT RECEIPTING FROM -- RECEDE FRG WHAT THIS COURT SAID, IN THE 11 CASE, THAT WHERE WE SAID ANY ACT DURING THE COURSE OF LITIGATION, WE DIDN'T SAY ANY ACT DURING THE COURSE OF A PARTICULAR TYPE OF LITIGATION. WE SAID ANY ACT DURING THE COURSE OF LIT GAGE.

AND -- LITIGATION AND IF WE DON'T ADHERE, MY CONCERN IS THE

CHILLING EFFECT THAT IT HAS ON THE -- WHAT IS DONE DURING THE COURSE OF TRYING A LAWSUIT.

>> WELL, CERTAIN, CAN I ANSWER YOUR QUESTION FRANKLY?

YOU'RE NOT THE LEGISLATURE AND YOU CAN CREATE A JUDICIAL PRIVILEGE FOR COMMON LAW, BECAUSE THAT'S UNDER YOUR CONTROL, BUT CASE AFTER CASE AFTER CASE HAS SAID, INCLUDING THE UNITED STATES SUPREME COURT AND THIS BODY, DEALING WITH JUDICIALLY CREATED RULES --

>> BUT THE LEGISLATURE HAS NOT COME ALONG AND SAID THAT THE 11 CASE IS NOT THE LAW OF FLORIDA.

>> BUT THEY HAVE PASSED A STATUTE AND THE STATUTE OVERRIDES COMMON LAW PRIVILEGES UNLESS FOR SOME REASON --

>> MR. TURNER, NOW YOU SEEM TO BE ARGUING FOR A MUCH BROADER APPLICATION THAN AT THE BEGINNING.

AT THE BEGINNING YOU SAID IT'S JUST THIS STATUTE AND NOW YOU'RE SAYING WHENEVER IT'S A STATUTORY CAUSE OF ACTION THE LITIGATION PRIVILEGE DOESN'T APPLY.

>> I APOLOGIZE IF I GAVE YOU THAT IMPRESSION.

>> IT'S ALWAYS THE LEGISLATURE. IF IT'S A STATUTORY CAUSE OF ACTION, WE'RE NOT THE LEGISLATURE, THE LEGISLATURE DEVELOPED IT.

>> BUT SIR, YOU HAVE TO INTERPRET THE STATUTE TO SEE IF THE LEGISLATURE WAS TRYING TO BE BROAD ENOUGH TO INCLUDE LAWYERS AND TO INCLUDE THIS SITUATION AND THIS CLEAR IS ONE OF THOSE INSTANCES WHERE THEY ARE.

>> MR. TURNER, WITH OUR ASSISTANCE, YOU HAVE EXTENDED WAY BEYOND YOUR TIME.

>> I'M SORRY.

I RECEIVE THE RED LIGHT SHOWS I'M OVER.

>> IF YOU WANT TO BRING YOUR ARGUMENT TO A CONCLUSION, PLEASE DO SO.

>> YOU POINTED OUT THAT WE DON'T

HAVE TO REACH THE QUESTION HERE  
BECAUSE WE'RE DEALING WITH A  
REINSTATEMENT LETTER HE, A  
PAYOFF TYPE SITUATION, DOES NOT  
RELATE TO LITIGATION, IT DOES  
NOT ADVANCE THE LITIGATION, BUT  
EVEN IF YOU DO, YOU HAVE A  
STATUTE THAT CLEARLY INTENDS TO  
ENCOMPASS ANY MISREPRESENTATION.

>> THANK YOU.

MR. BERANEK.

>> I HAVE --

>> YOU HAVE FOUR MINUTES, A  
LITTLE BIT MORE.

>> THE QUESTION, THE LAWYERS  
REALLY HAVE A SPECIAL  
PROTECTION.

NO, THEY DON'T.

THE JUDICIAL IMMUNITY DOCTRINE  
WHICH CAME STARTED IN THE 1500'S  
IN ENGLISH COMMON LAW, AND WAS  
ADOPTED BY THE STATE OF FLORIDA  
AS STATUTE, WE ADOPTED THE  
COMMON LAW, ALL THAT COMMON LAW,  
SO IT'S REALLY A STATUTE HERE.

IT PROTECTS, IT GIVES A  
PRIVILEGE, OR AN IMMUNITY TO  
JUDGES, LAWYERS, LITIGANTS AND  
WITNESSES.

IF THIS CASE STANDS, THEN THE  
JUDGE IN THIS CASE -- I MEAN,  
THE CIRCUIT JUDGE IN THIS CASE  
HAS NO IMMUNITY.

>> WELL, WE RECEDED FROM ANGE  
WHICH SAID THE PRIVILEGE  
INCLUDES STATEMENTS NECESSARILY  
PRELIMINARY TO LITIGATION, AND  
APPARENTLY IN THE CASE, WE WENT  
TO MORE OF A CASE BY CASE  
APPROACH.

BEFORE LITIGATION COMMENCES,  
THERE IS NO JUDGE.

SO UNDER WHAT CIRCUMSTANCES  
SHOULD A PRIVILEGE APPLY TO  
PRELITIGATION STATEMENTS, IF  
ANY?

>> WELL, I WANT TO ADDRESS THE  
CASE, BUT HERE WE'RE TALKING  
ABOUT THE JUDGE IN THE  
UNDERLYING LITIGATION.  
IN OTHER WORDS, THAT'S WHO IS  
PROTECTED BY THIS PRIVILEGE.  
THAT WOULD BE BUBBA SMITH, THE  
JUDGE IN THE UNDERLYING HIT

GAGES.

-- LITIGATION.

NOT THE JUDGES OUT OF THE FIRST DISTRICT.

>> I'M TALKING ABOUT WAY BEFORE JUDGE SMITH BECAME INVOLVED. WHEN THE LETTER WAS WRITTEN, THERE WAS NO JUDGE INVOLVED.

>> NO, OF COURSE NOT.

OF COURSE NOT.

>> AND THAT'S WHY I'M HAVING PROBLEMS SEEING HOW THE JUDGE SMITH DECIDED THAT IF THE END RESULT WASN'T A MORTGAGE FORECLOSURE, I MEAN, IT JUST SEEMS TO ME THAT HE MADE IT -- THAT DISTINCTION IS NOT A MEANINGFUL DISCONTINUING FOR THE APPLICATION OF THE LITIGATION PRIVILEGE, JUDICIAL IMMUNITY RULE.

YOU AGREE WITH THAT.

>> JUSTICE PARIENTE, I AGREE WITH THAT.

IN OTHER WORDS, I THINK JUDGE SMITH WAS WRONG ON THAT, BUT HE MADE THAT RULING IN THE SUMMARY JUDGMENT AND I HAVEN'T BEEN ABLE TO HEY PEEL THE SUMMARY JUDGMENT YET.

I FILED CERTIORARI ON IT, THE JUDGE SAID NO, WE DON'T HAVE JURISDICTION, WE WON'T HEAR IT. I WOULD LOVE TO BE ABLE TO MAKE THOSE HARING IEWMENTS TO YOU.

>> I THOUGHT HE MADE IT IN THE ORDER CERTIFYING THE CLASS.

>> HE PULLED THAT RULING INTO HIS CLASS CERTIFICATION ORDER, YES, HE DID.

>> SO YOU COULD APPEAL THAT DETERMINATION ON HEY PEEL FROM THE CHAS CERTIFICATION.

>> I TRIED.

THE FIRST CHOSE NOT TO HEAR IT AND WOULDN'T LET ME.

IN ANY EVENT, YOU HAD A NUMBER OF QUESTIONS.

SOMEONE ASKED ARE WE BOPPED BY ERIE HERE, AND THEY MOST CERTAINLY ARE.

JACKSON V. BELL SOUTH ABSOLUTELY SAYS YES WE'RE BOUND BY ERIE AND WE HAVE TO APPLY FLORIDA LAW ON

THIS SUBJECT.

CASE LAW IN PRESUIT LETTERS,  
THAT'S MENTIONED IN BOCCA  
INVESTORS, WHICH IS THE CONFLICT  
CASE, AND YOU HAVE TO GET  
DOWN -- THEY DIDN'T PUT IT IN  
THE MAJORITY OPINION, BUTS IT  
MOST CERTAINLY IN THIS  
CONCURRING OPINIONS, WHICH SAYS  
THAT -- AND THIS IS THE TAILEND  
OF THE CONCURRING OPINION, THE  
PRESUIT COMMUNICATION WERE  
COMMUNITY CATIONS BETWEEN THE  
PLAINTIFF CONDOMINIUM OWNERS,  
POTENTIAL PLAINTIFFS, AND  
COUNSEL.

I CONCUR WITH THE MAJORITY  
OPINION THAT THOSE  
COMMUNICATIONS ARE PROTECTED BY  
THE LITIGATION --LY!!!! BY THE 11  
LITIGATION PRIVILEGE.

THAT'S AT THE VIV BOTTOM OF THE  
CONCURRING OPINION IN POT ASH.

>> THAT'S ANOTHER CONFLICT ISSUE  
WITH BOTH HOW BROAD IT IS.

>> YES.

>> WELL BEING THAT'S NOT A  
CONFLICT ISSUE BECAUSE THAT WAS  
JUST IN THE CONCURRING OPINION,  
CORRECT?

>> THAT WAS NOT THE CONFLICT  
ISSUE THAT I ASSERTED, THAT'S  
TRUE, BUT IN THE OPINION OF --

>> IT MAY BE AN ISSUE WE NEED TO  
DEAL WITH.

>> THAT'S WHAT I MEANT.

IT SOUNDS LIKE THE COURTS ARE  
SOMEWHAT CONFUSED ON THE  
PARAMETERS HERE.

>> AND IF -- SO THERE IS AT  
LEAST A TINY BIT OF LAW ON  
PRESUIT COMMUNICATION AND THERE  
IS ALSO THE BARTON CASE, TALKING  
ABOUT PRELIMINARY MATTERS AND IF  
IT'S PRELIMINARY, THAT MEANS  
IT'S BEFORE YOU FILE THE COMAINT  
AND THIS -- THIS -- THERE WOULD  
HAVE NEVER BEEN THIS LETTER IF  
THE MORTGAGOR HADN'T DEMANDED  
IT, AND WHAT THEY DO IS THEY --  
IF THE MORTGAGOR DEMANDS A  
REINSTATEMENT LETTER, THEY SEND  
THEM A REINSTATEMENT LETTER AND  
IF THEY THEN DON'T RESPOND TO

THE COMPLAINT, THE MORTGAGE COMPLAINT, THEY TAKE A DEFAULT AND TAKE THAT SAME LETTER, PUT IT -- MAKE IT AN AFFIDAVIT AND FILE IT.

>> MR. BERANEK WITH OUR HELP AND ASSISTANCE, HUGH EXHAUSTED YOUR TIME AS WELL SO WE THANK BOTH OF YOU FOR ADDRESSING THIS PROBLEM FOR US.

WE'LL TAKE THIS CASE UNDER ADVISEMENT