

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Speedway Superamerica LLC v. Erma DuPont

SC06-1617

>> ALL RISE.

THE SUPREME COURT IS IN RECESS.

>> ALL RISE, PLEASE.

THE FLORIDA SUPREME COURT IS BACK IN SESSION.

>> GOOD MORNING.

>> GOOD MORNING.

PLEASE BE SEATED.

IN THIS CASE -- THE NEXT CASE ON THE CALENDAR THIS MORNING IS SPEEDWAY SUPERAMERICA vs. DUPONT.

THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT MY NAME THE SUSAN NORTON WITH MY IS MY PARTNER BRIAN GOGY.

THE COURT IN THE OPINION DIDN'T CONSIDER THE OBJECTIVE FACTOR WHEN ANALYZING WHETHER OR NOT THE CONDUCT COMPLAINED OF WAS SUFFICIENTLY.

>> THAT'S NOT THE BASIS FOR THE CERTIFIED QUESTION WAS IT.

>> NO, YOUR HONOR.

>> COULD YOU ADDRESS THE CERTIFIED QUESTION, PLEASE.

AND I'VE GOT SOS CONCERNS.

AS I WON'T THROUGH AND READ THE TRANSCRIPT THE JURY WAS INSTRUCTED NOT ALONG THE MERCURY MOTOR THEORIES AT ALL BUT WAS INSTRUCTED FOR THE PUNITIVE DAMAGE ELEMENT THAT THEY WOULD -- WERE REQUIRED TO SIGN -- TO FIND THAT YOUR CLIENT ENGAGED IN WILLFUL WONT IN THE HIGHER STANDARD AS A BASIS FOR HIGHER DAMAGES.

I LOOK AT INLOGTORY VERDICT FORM AND THE JURY FOUND YOUR CLIENT CORPORATE DIRECT

PUNITIVE CONDUCT.

AM I MISREADING THE
INSTRUCTIONS OF THE VERDICT
FORM?

>> NO, YOUR HONOR.

WE'RE NOT HERE TO SET ASIDE
OR THAT THE INSTRUCTION WAS
WRONG.

WE ARE HERE BECAUSE IT NEVER
SHOULD HAVE GONE TO THE
JURY.

>> WE'RE HERE ON THE
CERTIFIED QUESTION.

>> YES, SIR.

>> AND THAT'S WHAT WE'RE
TRYING TO GET TO IS THAT
THIS QUESTION SEEMS TO HAVE
COME FROM LEFT FIELD THAT
WAS NEVER PART OF THE CASE.
WAS THIS PART OF THE TRIAL
DISCUSSION?

>> MERCURY?

>> NO.

NOT AT ALL PART OF THIS.

>> NO, YOUR HONOR.

THAT'S MINE -- THIS IS LAST
THING YOU WANT TO HEAR WHEN
YOU GET UP HERE IS WHY WE
TOOK THE CASE.

I WAS ONE OF THE ONES THAT
VOTED TO TAKE CAN CASE.

I'M NOT SURE I WAS AWARE THE
INSTRUCTION WAS GIVEN.

I UNDERSTAND IT THAT THE
DEFENSE REQUEST AS TO THIS
HIGHER BURDEN AND MERCURY
MOTORS, THAT IS PATTERN ON
THE 11th CIRCUIT THAT
REQUIRES A FINDING OF
WILLFUL, INTENTIONAL OR
CALLUS AND RECKLESS
DISREGARD.

SO THIS FIFTH DISTRICT
DIDN'T EVEN PASS ON THE
QUESTION THAT THEY CERTIFIED
SINCE YOU RECEIVED NOT A
MERCURY MOTORS INSTRUCTION
ON PUNITIVE DAMAGES, BUT THE
11th CIRCUIT FEDERAL
STANDARD.

>> YES, YOUR HONOR AND WE
ALSO RAISED THAT IN THE
JNOB.
HEARING.

>> MY QUESTION ABOUT THIS CERTIFIED QUESTION IS: WHY DID DCA EVEN ASK IT? BECAUSE IT DIDN'T SEEM TO MAKE A DIFFERENCE TO THEIR OWN DECISION.

IT SEEMS LIKE THEY SAID UNDER EITHER STANDARD THE PLAINTIFF STILL WON.

>> YES, YOUR HONOR. THEY DID.

AND WE BELIEVE THAT'S ABSOLUTELY THE WRONG APPLICATION OF THE LAW.

>> BUT IT WOULDN'T MAKE ANY --

>> THE ANSWER TO THE CERTIFIED QUESTION WOULDN'T MAKE A DIFFERENCE TO THE RESULT ACCORDING TO THE DCA.

>> NO, YOUR HONOR.

THIS COURT DOES HAVE JURISDICTION ONCE IT ACCEPTS THE CERTIFIED QUESTION TO LOOK AT THE WHOLE ISSUE. AND OBVIOUSLY WE DO CONTENT -- CONTENT THIS CASE IS NOT SUBJECT TO PUNITIVE DAMAGES.

>> I DON'T UNDERSTAND THIS. IF SUBJECT -- IS THE INSTRUCTION THAT YOU REQUESTED FROM THE 11th CIRCUIT IN COMPLIANCE WITH COLESTEAD.

NO IT'S NOT.

>> DID YOU ASK FOR A DIFFERENT INSTRUCTION.

>> NO, YOUR HONOR.

AT THE JNOV WE RAISED THE COLESTED DEFENSE.

WE SAID IT SHOULDN'T HAVE GONE TO THE JURY UNDER MENDOZA.

>> IS THERE ANYTHING IN THE OPINION BELOW THE FIFTH DCA THAT IS IN DIRECT AND EXPRESS CONFLICT WITH REGARD TO THE STANDARD OR -- FOR REVIEWING A JNOV OR A DV IN A CIVIL CASE THAT WOULD CAUSE THIS COURT TO HAVE JURISDICTION?

DID THE FIFTH DISTRICT NOT

FOLLOW THE RULES ON ITS ANALYSIS OF THE DIRECTED VERDICT REQUEST OR THE JUDGMENT NOTWITHSTANDING THE VERDICT REQUEST?

>> YOUR HONOR, THE DECISION IS IN DIRECT CONFLICT WITH THE FLORIDA SUPREME COURT'S INSTRUCTIONS THAT THE STATE COURTS -- THAT THE FLORIDA CIVIL RIGHT ACT IS PATENTED AFTER TITLE 7 AND THE LEGISLATIVE HISTORY THERE OF.

SO YES IT IS IN CONFLICT WITH THAT.

BECAUSE THE FIFTH DCA TOTALLY IGNORED THE OBJECTIVE FACTOR AND RELIED ON THE SUBJECTIVE PERCEPTION OF THE PLAINTIFF AND THAT'S CONTRARY TO MENDOZA AND CONTRARY TO THE INSTRUCTION IN THIS COURT IN BIRD AND WOODEN TO FOLLOW-UP.

YOU ARE STILL ARGUING THE HOSTILE WORK ENVIRONMENT THAT WE DON'T GET HERE BECAUSE THERE WAS NO EVIDENCE TO SUPPORT THAT?

>> YES, YOUR HONOR.

>> AND I GUESS WE'RE STILL CONCERNED ABOUT CERTIFIED QUESTION, WHICH IS HOW THIS CASE CAME TO THIS COURT. AND WHETHER OR NOT AN ANSWER TO THAT CERTIFIED QUESTION WOULD REALLY BE OF ANY ASSISTANCE IN THIS CASE.

>> WELL, YOUR HONOR, THE FIFTH DCA ALSO IS IN CONFLICT WITH THE LAW AS IT APPLIES UNDER COALSTED WHICH ADDRESSES THE PUNITIVE DAMAGES.

BECAUSE THE COURT THERE FIFTH DCA HELD THAT IF THIS MERE NEGLIGENCE IT CAN -- THE QUESTION OF PUNITIVE DAMAGES CAN GO TO THE KRURY.

THAT'S NOT THE ANY FEDERAL LAW OR STATE LAW.

>> THE U.S. SUPREME COURT

CASE.

>> YES, YOUR HONOR.

>> THERE IS NO WAY WE CAN HAVE CONFLICT.

>> WITH THE ACCEPTANCE OF THAT PRECEDENT AND ITS APPLICATION, YOUR HONOR.

>> WHERE DID THEY SAY, THEY SAID UNDER MERCURY MOTORS THAT MERE NEGLIGENCE COULD BE AVASIVE FOR IMPOSING PUNITIVE DAMAGES.

AGAIN, IN THE CASE,, THE INSTRUCTION THAT WAS GIVEN DIDN'T ALLOW AN IMPOSITION OF PUNTIVE DAMAGES ON YOUR CLIENT, BASED ON MERE NEGLIGENCE.

THE JURY HAD TO MAKE A FINDING, DIDN'T MAKE A FINDING THAT YOUR CLIENT ACTED WILLFULLY, INTENTIONALLY OR WITH CALLOUS AN RECKLESS INDIFFERENCE TO THE PLAINTIFF'S RIGHTS.

>> YES, YOUR HONOR.

>> SO WHERE IN THE OPINION DO THEY SAY THAT, THAT THIS IS ONLY, THAT ONLY USED TO BE A FINDING OF NEGLIGENCE?

>> THEY DON'T, YOUR HONOR. IT IS THE CONFLICT ARISES OUT OF THE FAILURE TO GO, TO ALLOW IT TO GO THOUGH JURY. THEY DO NOT SAY THAT.

>> WOULD YOU PROCEED WITH YOUR ARGUMENT.

THINK WE PROBED THIS.

>> THANK YOU, YOUR HONOR. WE CONTEND THAT THE OPINION IS COMPLETELY ERRONEOUS IN THAT IT DOES NOT ANALYZE WHETHER THE CONDUCT WAS SUFFICIENTLY SEVERE AN PERSUASIVE BECAUSE IT IGNORED COMB PLETLY THE OBJECTIVE PRONG OF THE TWO STANDARD TEST, IN OTHER WORDS, THE CONDUCT COMPLAINED OF MUST NOT ONLY BE SUBJECTIVELY PERCEIVED AS BEING SEVERE AN PER VASEIVE TO THE PLAINTIFF, BUT HAS TO

MEET THE REASONABLE PERSON
STANDARD, THINK OBJECTIVE
STANDARD, BY THE COURT
COMPLETELY IGNORING THE
OBJECTIVE STANDARD, IT IS
EVERY SINGLE CASE OF SEX UM
HARASSMENT OR NATIONAL
HARASSMENT ORATION
HARASSMENT WHAT
AUTOMATICALLY GO TO THE JURY
BECAUSE WHAT IT ALLOWS IS
THERE IS NO BASSLINE AS
REQUIRED BY MENDOZA FOR TO
ESTABLISHED WHETHER OR NOT
IT MEETS THE LEVEL OF
CONDUCT SUFFICIENT FOR THIS
JUST BEING IMPOSED AS SEE
VIALITY STANDARD.

>> IT DOES INVOLVE LOOKING
WHAT THE CONDUCT IS?

>> YES, YOUR HONOR.

>> WE DO HAVE CONDUCT OF
TOUCHING BODILY PARTS AND
THOSE KIND OF THINGS.

>> YES, YOUR HONOR.

>> THE THROWING OF THINGS IN
ANGER, I GUESS THAT WAS
PROBABLY SEPARATED OUT,
WASN'T IT?

BUT IF WE HAVE CIRCUMSTANCES,
IS THE LAW SO RIDGED THAT IF
A MALE FONDLES AN TOUCHES
INAPPROPRIATELY FEMALES AND
THAT IS REPORTED AND THIS
GUESS ON AND ON AND THEN IN
THE ONLY IS IT REPORTED BUT
THEN THEY FORCE THAT FEMALE
BACK AGAIN INTO THAT
SITUATION AND TELL HER SHE
IS GOING TO BE FIRED IF SHE
LEAVES, AS UNDERSTAND THE
RECORD, FOR THAT ONE
OCCASION, THAT THAT DOES NOT
GIVE A JURY, THAT THAT IS
NOT A JURY QUESTION IN YOUR
VIEW?

WHAT DOES IT REALLY TAKE
THEN EVER HAVE A QUESTION OF
FACT IN THESE KIND OF CASES?

>> YOUR HONOR, IT IS WHETHER
OR NOT THE CONDUCT WAS BASED
ON HER SEX OR RELATED TO HER
GENDER.

THERE IS NO EVIDENCE, THERE

IS NO OBJECTIVE EVIDENCE
HERE WHATSOEVER, HE EVER
ASKED OF SEXUAL FAVORS.
>> I THOUGHT THIS RECORD
TALKED ABOUT THAT THAT WAS
THE TOP UK OF CONVERSATION
OF WHAT HE WOULD LIKE TO DO
TO HER AND THAT SEXUAL
COMMENTS AND THE TOUCHING, I
MEAN, AGAIN, ARE YOU
SUGGESTING THAT THIS
TOUCHING WAS JUST COMMON
PARTS THAT WERE TOUCHED THAT
MEN TOUCH ONE ANOTHER IN
THAT WAY?

>> NO, YOUR HONOR, NOT AT
ALL.

THERE IS NO SEXUAL CONDUCT
ON THIS.

IN OTHER WORDS, THEY
OCCURRED WHEN SHE WAS
STANDING BEHIND THE COUNTER.
DID HE NOT ASK HER OUT.

ALL HE SAID WAS, YOU WOULD
LOOK HOT AS A BIKER.

YOU LOOK HOT IN A VEST.

CUE BE A BIKER CHICK.

>> HOW ABOUT THE TOUCHING?
THE TOUCHING WAS BRUSHING
FIRE.

IT ALSO OBJECTIVE PERSON
STANDARD WITH A REASONABLE
PERSON FOUND THAT.

>> YOU KNOW, THAT IS THE
ONE, I THINK, YOU HAVE A
HARD TIME WHETHER I I AM
LOOKING AT THIS AS
OBJECTIVELY AS JUSTICE ON
THE COURT AS A FEMALE SAYING
THINGS LIKE LOOKING GOOD AS
A BIKER CHICK, LOOKING HOT,
COME MENING ABOUT SEX LIFE,
THAT HE NEEDED A GIRLFRIEND,
CRUDE COMMENCE HE MADE IN
HER PRESENCE CALLING HER A
DUMB BLOND, A STUPID BITCH,
TOUCHING HER, PATTING HER ON
BT TOUKS, TO ME, IS NOT
SIMPLY A OF SOMEBODY BEING A
NICE GUY.

THOSE ARE SEXUAL TYPES OF
COMMENTS AND ACTIVITIES AND
OBJECTIVELY AND YOU WOULD
ASK US TO WRITE AN OPINION

TO SAY SOMEBODY DOING THAT IS NOT CONSTITUTE SEXUAL HARASSMENT.

>> YOUR HONOR, THE BRUSHING HAPPENED ONCE.

THE PAT HAPPENED ONCE.

THERE IS ONLY ONE COMMENT MADE AS TO THE BIKER CHICK.

THERE IS ONLY ONE COMMENT MADE AS TO THE VEST.

>> WELL, NOW, YOU ARE GETTING INTO PERVASIVE AND SEVERE.

>> FIRST SAID THIS WOULD NOT EVEN QUALIFY AS BEING SEXUAL IN NATURE.

>> IT DOES NOT -- KRB THERE IS NO REQUEST, THAT IS NOT ARISE TO THE LEVEL OF CONDUCT THAT WOULD BE SUFFICIENTLY SEVERE AN PERVASIVE.

IN OTHER WORDS, THE CONDUCT ITSELF IS NOT ON ITS FACE BLATANTLY SEXUAL AND THERE IS NO, UM,, THERE IS NO TIE-IN TO IT, IN TERMS OF REQUEST FOR SEX.

>> YOUR ARGUMENT SEEMS TO BE THAT YOU HAVE TO ASK FOR SEX OR DO SOMETHING LIKE THAT IN ORDER FOR THESE KINDS OF ACTIVITIES TO BE OF A SEXUAL NATURE.

IS THAT WHAT YOU ARE TELLING US?

>> NO, YOUR HONOR, YOU DON'T MEAN TO SAY THAT.

WHAT AIM SAYING IS HERE, IF YOU LOOK AT THE CONDUCT, IT US ONLY FROM HER SUBJECTED PERCEPTION, SHE SPECULATES IT IS BECAUSE HE WAS AFTER HER.

SHE SPECULATES THAT IT WAS BECAUSE SHE DIDN'T RESPOND TO WHATEVER.

>> HOW DO YOU SPECULATE WHEN SOMEONE CALLS YOU A DUMB BLOND.

HOW DO YOU SPECULATE WHEN SOMEONE IS RUBBING YOUR SHOULDERS AN YOUR NECK. THAT IS NOT SPECULATION.

>> YOUR HONOR, THE CASE DUMB
BLOND, WISE VERSUS
COCA-COLA, CALLING SWAN DUMB
BLOND IS NOT RELATED.

>> AREN'T YOU REALLY ASKING
US TO RETRY THE CASE THAT IS
TO RECONSIDER ALL OF THIS
EVIDENCE AND COME TO A
DIFFERENT OUTCOME?

>> NO, YOUR HONOR, I AM ASKING
THAT THIS COURT LOOK AT THE
DECISION MENDOZA WHICH IS
THE FEDERAL LAW AND THAT
THIS COURT HAS SAID, THE
FLORIDA CIVIL RIGHTS ACT IS
PATTERNED AFTER IT.

THIS CONDUCTS A MATTER OF
LAW DOES NOT RISE TO THE
LEVEL OF ANYTHING, THIS IS A
COWORKER, THAT IS WHAT I AM
ASKING, THAT WE USE THE SAME

--

>> YOU ARE ASKING US TO
CONCLUDE THAT THIS IS ALL
JUST INNOCENT CONDUCT, JUST
ORDINARY, WHETHER OR NOT
THIS PARTICULAR PLAINTIFF
HAD BEEN A MALE, FOR
INSTANCE, THE SAME CONDUCT
WOULD HAVE GONE ON, IF IT
WAS A BLOND MALE, THAT ALL
OF THIS WOULD HAVE BEEN THE
SAME CONDUCT, THAT IS WHAT
YOU ARE SAYING?

>> NO, YOUR HONOR, I AM
SAYING, WHILE THIS GUY IS
OBVIOUSLY A JERBLING, I AM
SAYING, AS A MATTER OF LAW,
IT DOES NOT RISE TO THE
LEVEL SUFFICIENTLY ABUSIVE
TO SATISFY THE SEVERE AN
PERVASIVE HOSTILE WORK
ENVIRONMENT.

>> AT SOME POINT, DOESN'T
THAT BECOME A QUESTION OF
FACT?

THAT IS THAT, THAT SOMEBODY
HAS TO MAKE A DETERMINATION
AS TO JUST WHEN DOES IT TRY
THE LEVEL, ORDINARILY, THAT
IS WHEN YOU STARTED OUT YOUR
ARGUMENT HERE NOT ON THE
CERTIFIED QUESTION, BUT
WHETHER OR NOT A JUDGMENT

SHOULD HAVE BEEN ENTERED FOR YOUR CLIENT AS MATTER OF LAW, IN REALITY, IF YOU CONSIDER THESE THINGS ALTOGETHER AND TAKE THE INFERENCES MOST VARIABLE TO THE PLAINTIFF, DON'T WE HAVE ENOUGH TO GET TO A FACT FINDER AS TO WHETHER OR NOT IT CONSTITUTED SEXUAL HARASSMENT?

>> NO, YOUR HONOR, I DON'T BELIEVE WE DO.

THE JURY WAS CORRECTLY CHARGED, THAT IS RIGHT?

>> YES, WE ARE NOT CONTESTING THE CHARGE AT ALL.

IN FACT, THE THEY RECOGNIZE IN THE FOOTNOTE THAT WAS THIS APPLIED UNDER FEDERAL LAW THAT IT WOULD NOT SATISFY THE STANDARD AND WHAT I AM SAYING IS THAT IN MATTER OF FACT, THIS COURT HAS SAID, WE ARE PATTERNING AND INTERN OPERATING THE FLORIDA CIVIL RIGHTS ACT AFTER TITLE 7 UNLESS IT SAID OTHERWISE.

>> YOU ARE RUNNING OUT OF TIME.

CAN YOU ADDRESS YOUR ARGUMENT THAT SHOULD HAVE BEEN GRANTED DIRECT VERDICT ON THE PUNITIVE DAMAGES CLAIM AND AS FAR AS THE EMPLOYER'S REMEDIAL MEASURES?

>> YES, YOUR HONOR.

>> CAN YOU ADDRESS?

>> YES, ABSOLUTELY, YOUR HONOR.

IN TERMS OF THE EMPLOYER'S REMED WHY IT MATTERS, THE STANDARD IS WHETHER OR NOT IT IS REASONABLY CALCULATED TO A SET CHANGE, WE ARE NOT REQUIRED THE INDIVIDUAL. THE COURT REFERS TO THE 8 OR 9 WEEKS THAT SHE WAS SUBJECT TO THIS, THE -- IT WAS 8 OR 9 WEEKS; HOWEVER, THE TOUCHING OF THE BUTTOCKS THE

FIRST TIME, THE TOUCHING THE BUTTOCKS THE SECOND TIME DID NOT OCCUR UNTIL AFTER SHE TOLD ROSEMARY RUBEN, YOU HAVE INCIDENT HAPPENING IN APRIL, BETWEEN MARCH 13th AND MAY 29th, MISS DUPONT ONLY WORKED WITH THE ACCUSED, THE HARASSER THREE HOURS ON APRIL 12th BY HERSELF AND THEN SHE DID NOT WORK ANY OTHER TIME WITH HIM BETWEEN THAT TIME PERIOD.

>> THE EVIDENCE ON THAT WAS THAT THERE WERE NOT ENOUGH EMPLOYEES TO GO AROUND SO THERE WERE TIMES WHEN THEY HAD TO WORK IN SHIFT, I GUESS, AND HAD TO OVERLAP?

>> IN FACT, THE DEFENDANT'S EXHIBIT ONE IS THE ACTUAL TIME RECORDS THAT INDIVIDUALS WERE PAID FROM AND, YES, IT DOES SHOW A TIME PERIOD OF 8 TO 9 WEEKS, BUT IT ALSO SHOWS THAT ONLY ON APRIL 12th FROM THE 22nd UNTIL THE END WAS SHE ASSIGNED THREE HOURS ALONG WITH HIM.

>> BECAUSE LINDA A COWORKER ALSO HAD TO HAVE HER SCHEDULE CHANGE SO SHE DID NOT HAVE TO WORK.

>> YOUR HONOR, LINDA FORD STATES WHEN SHE TOLD MR. GELBERT SHE WANTED TO CHANGE HER SCHEDULE.

>> FOR THE SAME REASON?

>> SHE TOLD HER, I ALREADY CHANGED ONE.

SHE STHATED TO BE ERMA. ERMA OCCURRED FIRST, MISS DUPONT OCCURRED FIRST BEFORE MISS FORD.

>> SO THE TESTIMONY THAT GELBERT CHANGED FORD'S SCHEDULE WORKING BEFORE DUPONT'S WAS CHANGED.

>> THAT IS NOT SUPPORTED BY THE RECORD, YOUR HONOR.

>> WHERE US THE EVIDENCE AS TO WHETHER HE WAN COUNSELED AT ALL ABOUT HIS BEHAVIOR?

>> PAGE 441 AND IT IS UNREBUTED, MR. GEL BERT, ON PAGE 390, MR. GELBERT HE TALKED TO JOE, HE SAID YOU ARE TALL, YOU ARE INTIMIDATING YOU CAN'T DO THAT.

GO GOTH BACK OFF, YOU CAN'T INTIMIDATE.

>> FORGET ABOUT IN TIMNATING, WHAT ABOUT CALLING HER A DUMB BLOND,SOME OTHER NAMES HE CALLED HER, PATTING HER ON THE BUTTOCKS, THE COUNSEL ABOUT THAT?

>> HE SAID HE COUNSELED HIM YOUR HONOR.

>> I AM A LITTLE CONCERNED ABOUT THE STATEMENT YOU SEEM TO BE ASSERTING THAT THE DCA RECOGNIZED THAT IT IS BECAUSE EXPRESSING THE OPINION THE DISTRICT COURT SAYS, THERE ARE CASES THAT MAY SUPPORT YOUR VIEW, BUT THERE ARE OTHER CASES THAT REACH THE OPPOSITE RESULT AND WHICH HAVE FOUND THAT A PRIME MA FACIA CASE WAS ESTABLISHED ON SIMILAR OR EVEN LESSER FACTUAL BASIS. IS THAT MISSTATEMENT OF THE LAW?

>> YOUR HONOR, THE CASES THEY CITED REDISTINGUISHED IN OUR BRIEF AND THEY ALMOST WITHOUT EXCEPTION DEALT WITH A SUPERVISOR.

THE CONDUCT LEVEL AND THE EMOTIONAL IMPACT OF A SUPERVISOR AS OPPOSED TO A COWORKER.

>> THAT IS DIF ARE IN ISSUE THAN THE CONDUCT ITSELF, THOUGH, ISN'T YOU? IT IS STILL THE SAME CONDUCT.

THE ISSUE OF WHETHER OR NOT WHO DOES ITS IS NOT A QUESTION OF WHETHER OR NOT IT IS HOSTILE WORK ENVIRONMENT US IS IT?

>> YES, SIR.

I THINK A CONDUCT BY SUPERVISOR CAN HAVE MORE EMOTIONAL, MORE ABUSIVE; HOWEVER, THERE IS NO CASE THAT WE FOUND OR THAT IS CITED BY THE DCA THAT HAS THIS LEVEL AND, IN FACT, WAS HELD TO BE WITH RUSSELL, IT IS TO TOTALLY DIFFERENT CASE AND THERE DEMANDS, PENIS INTO THE BACK OF THE WOMAN AND REPEATED SEVERAL TIMES. IT IS MUCH MORE'S GREGOUS.
>> YOU ARE ABOUT OUT OF YOUR TIME.

DO YOU WANT TO SAVE A LITTLE BIT?

>> THANK YOU.

>>> MAY IT PLEASE THE COURT WAYNE ALLEN REPRESENTING ERMA DUPONT.

119S WOULD LIKE TO ADDRESS THE QUESTION OF THE CERTIFIED QUESTION BECAUSE THE DCA CLEARLY SAID IT DOES NOT APPLY TO THIS CASE.

THEY WERE ASK CERTIFIED QUESTION TO FUTURE CASE, NOT AN EXPERT ON CERTIFIED QUESTION, SO I DON'T KNOW WHETHER IT WAS PROPER OR NOT, BUT THEY CLEARLY SAY IT DOES NOT APPLY TO THE CASE, SO HOWEVER THE COURT MAY RULE ON, THAT I DON'T THINK IT SHOULD EFFECT THE DECISION IN FAVOR OF THE CLIENT, THE COURT SHOULD AFFIRM IT.

>> NOW THE MERCURY MOTORS KIND OF CONCEPT WAS NOT REALLY DISCUSSED OR ARGUED OR ANYTHING ON THE PROCESS?

>> IT WAS NOT BROUGHT UP AT ALL?

>> BY ANYBODY?

>> THE JURY INSTRUCTION THAT WAS GIVEN WAS THE 11th CIRCUIT PATTERN JURY INSTRUCTION AND THE PETITIONER WAS THE PARTY THAT REQUESTED IT.

>> DID YOU TRY ARGUE FOR A LESSER INSTRUCTION?

>> I BELIEVED THE MERCURY MOTORS CASE FIRST OF ALL THE LAW IN FLORIDA AND IT IS THE APPROPRIATE JURY INSTRUCTION TO USE IN FUTURE CASES, AND THE REASON I SAY THAT.

>> NO.

I AM NOT ASKING WHAT YOU BELIEVE NOW ABOUT THE FUTURE.

YOU WANT TO THE AT THE TIME THAT THE PETITION NER SUBMITTED THE JURY INSTRUCTION BASED ON THE FEDERAL LAW, DID YOU PROPOSE AN ALTERNATIVE INSTRUCTION BASED ON MERCURY MOTORS? WE DID PROPOSE ONE.

I CAN'T HONESTLY SAY IT WAS BASED ON MARK RY MOTORS, AND IN THE CONFERENCE WITH THE JUDGE ON JURY INSTRUCTIONS, HE LIKED THEIR, HE DIDN'T LIKE OURS.

>> WELL, GO BACK TO THE RECORD, WAS IT DISCUSSED, WELL, THIS IS THE FEDERAL LAW, BUNDER --

>> TO MY RECOLLECTION, YOUR HONOR, IT WAS NOT.

>> WAS IT DISCUSSED ON THE DISTRICT?

IT WONDERED TO THE 5th DISSTRUCK'S OPINION.

>> I THINK THAT WAS AN ISSUE RAISED BY ONE OF THE JUDGES ON THE 5th.

I DON'T THINK IT IS PART OF THE RECORD ANYWHERE AT THE TRIAL.

>> ORN THE BRIEFS?

>> OR IN THE BRIEFS?

>> NO, DEFINITELY NOT IN THE BRIEFS.

>> ON THE 5th DISTRICT.

>> IT CAME UP AT ALL?

>> I DON'T RECALL IT BEING RAISED AT ALL.

>> INITIAL PAG DECISION PANEL DECISION.

>> THAT IS CORE EBB RECT, YOUR HONOR.

>> SO THERE WAS NOT A REARGUE.

>> I DON'T EVER IT BEING ARGUED.

>> SO A DECISION OUT OF THE COURT WITHOUT A REARGUE.

>> THAT IS CORRECT.

I DON'T WANT TO BEAT A DEAD HORSE, BUT IT WOULD SEEM TO ME, WE CAN GO BACK AND LOOK, AFTER YOU LOST ON THE ORIGINAL PANEL, YOU MIGHT HAVE ARGUED AL TEMPTIVELY THAT -- ALTERNATIVELY THAT THIS MEETS THE STANDARD OF MERCURY MOTOR HEERS, DID YOU MATE THAT ARGUE.

I WOULD THINK YOU WOULD WANT.

>> MORE CONCERNED WITH SAVING THE JURY VERDICT THAN WORRYING ABOUT PUNITIVE DAMAGES TO BE HONEST WITH YOU AND I DIDN'T EVEN RAISE THE ISSUE.

SO --

>> YOU KNOW, I THINK THAT BOTH OF YOU ARE IN STRANGE POSTURES, YOU ARE SAY, WELL, GEE, I WOULD LIKE TO YOU ANSWER THIS, I AM OKAY, BECAUSE I AM UNDER THE HIGHER STANDARD, BUT THEN SAY FOR THE FUTURE, WE SHOULD HAVE THE LOWER STANDARD, I MEAN, IT SEEMS THAT WE WOULD BE ENGAGING IN ADVISORY DECISION MAKING.

>> IS IT SAFE TO SAY, YOU WOULD NOT BE DISAPPOINTED IF WE DISCHARGED JURISDICTION HERE?

>> NO, I WOULD NOT.

>> I HAVE TO FOR MYSELF PERSONALLY, MY CLIENT CERTAINLY, I WOULD HAVE NO PROBLEM WITH THAT.

>> WHAT IS GOING ON, AS FAR AS IN CASES IN FLORIDA, UNDER THE FLORIDA CIVIL RIGHTS ACT, YOU KNOW, IS THERE AROUND THE STATE, YOU KNOW, I GUESS IT WILL END UP DEVELOP DOING IN ANOTHER WAY, ARE OTHER JUDGES USING THE MERCURY MOTOR'S PUNITIVE

DAMAGE INSTRUCTION FOR THESE
KIND OF CASES?

EYE HONESTLY DO NOT KNOW.
>> WE DON'T HAVE ANY CASES
OUT THERE WHICH EXPRESSLY
ADOPT OR REJECT MERCURY
MOTORS?

>> I AM NOT AWARE OF ANY.
THEY ARE VERY SENSITIVE TO
THIS COURT'S DECISION ABOUT
THE FLORIDA CIVIL RIGHT ACT
BEING PATTERNED AFTER THE
FLORIDA LAW.

I WOULD RESPECTFULLY
DISAGREE WITH THE MENDOZA
CASE, FIRST OF ALL, IF THIS
COURT READ, IT PROBABLY
ALREADY HAVE OR WILL, I URGE
TO YOU READ JUDGE MARKET'S
DEDLANT CASE ABOUT A IN A
SERIES OF CASES AFTER THAT,
THE -- SORRY, THE CIRCUIT IS
GOING CLARIFY THEIR DECISION
IN THE MENDOZA CASE.

>> I HAVE READ THAT CASE.
THE FACTS DO SEEM TO BE MORE
EGREGIOUS THAN MENDOZA.
I THINK OUR FACTS ARE
CERTAINLY MORE EGREGIOUS
THAN MENDOZA, BUT, ALSO, IF
ONE LOOKED AT PRIDE, THE
ATLANTIC NEWSPAPER, JOHNSON
BOOKER T. WASHINGTON AND I
WROTE SEVERAL DIAGRAM, YOU
MAY WANT TO DO THIS, FOR
VIOLENCE, SEXUAL DEMEANING
COMMENTARY TO THE PLAINTIFF,
UNWELCOMED TOUCHING, GENERAL
SEXUAL COMMENTS OF VULGAR
TY, OUR CASE HAS ALL OF
THOSE.

>> IF -- WHAT IS YOUR
POSITION ABOUT LOOK AT
PERVASIVE AND SEVERE, IF YOU
HAVE GOT KIND OF COMMENTS AN
TOUCHING THAT WE REFERRED TO
INITIALLY, BUT THEN, YOU
JUST HAVE, THIS IS LIKE, I
GUESS, 2 TO 300-POUND BIG
GUY, THAT IS JUST A
GENERALLY OBNOXIOUS, CRUDE
PERSON THAT MOST COWORKERS
WOULD FIND TO BE OFFENSIVE.
WHAT IS -- HOW IS THAT UNDER

THE CASE LAW, IS THAT, AS LONG -- THAT IS TO BE CAST ASIDE?

OR IS THAT CONSIDERED WITH THE OTHER CONDUCT?

>> ONE READS THE CASE LAW INCLUDING SUPREME COURT CASE, THAT IS SOMETHING THAT SEEMS TO GET LOST IN ALL OF THESE DISCUSSIONS THAT THE PARTIES ARGUING THE CASES AN QUITE OF CONTINUE THE JUDGE IS LOOKING AT THEM DON'T LOOK AT THE U.S. SUPREME COURT CASES AND IT IS CLEAR THAT IN A NUMBER OF CASES THAT THE RULING HAS BEEN AND IT NEEDS TO BE FILED BY THE 11th CIRCUIT AS WELL AS THIS COURT PATTERNED AFTER THE FEDERAL LAW, DO YOU LOOK AT THE TOLL TA TALLY TY OF THE FACTS AND THE CIRCUMSTANCE, YOU CAN'T DO THIS ANALYZE ONE FACT OUT OF CONTEXT. THAT IS WHAT HAPPENS IN MENDOZA, THAT IS WHAT THE DCA OPINION DOES AN IT JUST MAKES NO SENSE AT ALL. YOU KNOW?

>> ON THE ISSUE OF PUNITIVE DAMAGES, HOW DO WE HAVE WILLFUL CONDUCT ON THE PART OF EMPLOYER WHEN THEY HAD POSTED UP THE SEXUAL HARASSMENT POLICY ON THE BOARD AT THE APPOINTMENT PLACE INTHEY COUNSELED CORYELL, THEY MADE SURE AS MUCH AS POSSIBLE, THEY WERE SEPARATED UNTIL THE ON THE SAME SHIFT, WHETHER THEY COULD HAVE DONE MER OR NOT, HOW DOES THAT EVIDENCE, WILLFUL CONDUCT ON THE PART OF THE EMPLOYER?

>> I MAY SHARE THE BACKGROUND.

I AM FORMER COUNCIL COMMITTEE, AND WHEN YOU COUNSEL SOMEBODY, FIRST OF ALL, YOU DOCUMENT IT, IT IS CLEAR FROM THE RECORD, THE COUNSELING WAS, HE WAS TOLD

--

YOU ARGUE THEY DID NOT DO ENOUGH?

YOU SAID THEY SHOULD HAVE DONE MORE?

TO ME, YOU CAN CORRECT ME, BUT TO ME, IT IS DIFFERENT TO SAY, THEY COULD HAVE DONE MORE, ON THAT SAY THE EMPLOYER ENGAGED IN WILLFUL CONDUCT WHEN THEY DID A LOT.

>>> I AM SORRY?

>> I DIDN'T QUITE FINISH WITH MY ANSWER.

WE HAVE THE FACT THAT HE WAS NOT PROPERLY COUNSELED.

NUMBER ONE,.

NUMBER TWO, THE WILLFUL CONDUCT GOES BACK TO THE REPORTING INITIALLY OF THE CENTRAL HARASSMENT, ROSY RUBEN WHO CLEARLY WAS SUPERVISOR UNDER THE DESINGS FLORIDA, AND THE FACT THAT SHE IS A MEMBER OF

MANAGEMENT CHARGED, A ACCORDING TO TESTIMONY, THE RESPONSIBILITY OF REPORTING SEXUAL HARASSMENT, DID NOT INVESTIGATE IT, DID NOT REPORT IT UP THE LINE, THEN, WHEN IT WAS REPORTED TO THE NEXT LEVEL OF SUPERVISOR, MISS BRESSNER WHO WAS A STORE MANAGER, JUST HAPPENED TO BE ACTING IN THAT STORE AT THAT TIME, BUT A LONG TIME WORKER.

SHE DID NOT TAKE ANY ACTION TO REPORT IT TO A DISTRICT MANAGER AND THAT DISTRICT MANAGER WHO TESTIFIED THAT PART OF HER PRIOR WORK WAS HUMAN RESOURCES TOOK NO ACTION.

THEY WAITED UNTIL

MR. GELBERT GETS BACK FROM A TRAINING PROGRAM HE WAS ON TO EVEN DISCUSS IT WITH HIM SO WE HAVE MY CLIENT BEING SUBJECTED TO APPROXIMATELY SEVEN WEEKS OF THIS SEXUAL HARASSMENT BECAUSE THE PROPER MANAGER, THE

SUPERVISOR, THE MANAGEMENT CHAIN, DID NOT DO THEIR DUTY, UNER THEIR OWN POLICY.

AND COUNSEL IN THESE CASES REPRESENTING EMPLOYERS LIKE TO PUT LABELS ON THINGS AND SAY, AND THEY GET TO THE ARGUMENT ABOUT GOOD FAITH, THAT IS WHERE IT COMES IN.

WE HAVE A POLICY, THEREFORE, LET US OFF SCOTT PRE.

WE PUT A WRITTEN POLICY OUT THERE.

POSTED IT IN THE BULLETIN BOARD, THAT IS IT.

WE ARE NOT LIABLE ANYMORE. OBVIOUSLY, THAT CAN NOT BE THE LAW.

THEY HAVE TO PROPERLY IMPLEMENT THE POLICY.

>> WELL, THE BULLETIN BOARD DID HAVE THE POLICY THAT WAS POSTED UP THERE HAD A NAME AND A NUMBER TO CALL IF THERE WAS SEXUAL HARASSMENT?

>> MY CLIENT SAID SHE NEVER SAW THE POLICY.

WE DON'T DISAGREE THAT IT WAS THERE, NOBODY ACTUALLY TESTIFIED THAT IT WAS THERE. THEY SAID IT PROBABLY WAS THERE.

MY CLIENT TESTIFIED BECAUSE SHE HAD WORKED IN OTHER PLACE, SHE WAS GENERALLY FAMILIAR WHAT GOES ON IN THE WORL.

CLEARLY, THE COMPANY HAD A POLICY.

>> I THOUGHT THE TESTIMONY WAS THAT THE POLICY WAS POSTED ON THE BOARD LOCATED IN A CONSPICUOUS AREA WHERE MISS DUPONT WOULD REGULARLY GO?

>> WE -- WAS NOT AN ISSUE IN THE CASE WHETHER SHE WAS AWARE OR NOT OF THE POLICY.

>> BUT MY QUESTION IS, SHE NEVER CALLED.

SHE MAY HAVE SEEN IT.

MY QUESTION IS, SHE -- DID SHE EVER CALL THE NAME AND NUMB BERTHA WAS POSTED THERE

ON THE BOARD?

>> YOUR HONOR, THE POLICY WHICH IS EXHIBIT, EXHIBIT 4 ON THE CASE, THE POLICY SAYS THAT IT NEEDS TO BE REPORTED TO HUMAN RESOURCES OR YOUR SUPERVISOR.

SHE REPORTED IT TO THREE SUPERVISORS.

SHE WAS NOT REQUIRED TO CALL SOME 1-800-NUMBER SOMETHING LIKE THAT.

IT WAS SUFFICIENT UNDER THE POLICY TO REPORT IT TO THE SUPERVISOR, BUT SHE REPORTED IT TO THE THREE, EVENTUALLY FOUR SUPERVISORS.

>> DO YOU USE THE FACT THAT THEY SAY THEY TOOK REMEDIAL ACTION BY TRANSFERRING HER TO ANOTHER SHIFT, THE SHIFT THEY TRANSFERRED HER TO WAS PROBABLY THE WORST SHIFT CUE HAVE OR AT LEAST THEY SAY SO.

THE GRAVEYARD SHIFT.

DID YOU THUSE ANING A.

TO THE JURY, YOU KNOW, SOMEONE COMPLAIN, WE'LL HELP YOU OUT, WE'LL PUT YOU ON THE SHIFT WHERE YOU WON'T BE EVER SEEN OR HEARD FROM AGAIN?

WAS THAT USED OR NOT USED?

>> I DID ARGUE THAT.

>> DO YOU, I MEAN, HERE AGAIN, BECAUSE WE'RE TALKING ABOUT SUFFICIENCY, FOR THE JURY, THAT IS SOMETHING TO CONSIDER THAT IS WHAT ACTION THEY TOOK THAT THEY PUT HER ON A LESS-DESIRABLE SHIFT?

>> THAT GETS INTO THE WHOLE QUESTION OF LIABILITY, BUT ALSO ON THE PUNITIVE DAMAGES ISSUE.

THE ACTION THEY TOOK WAS PENALIZING THE EMPLOYEE AN, YES, WAS SHE ASKED?

DID SHE FIGHT ABOUT IT?

DID SHE SCREAM AND HOLER?

>> NO, SHE DIDN'T.

SHE JUST WANTED TO BE LEFT ALONE.

THAT WAS THE SITUATION SHE WAS IN.

BUT EVERYBODY INVOLVED KNEW THAT WAS THE LEAST DESIRABLE SHIFT AN UNFORTUNATELY WHEN THAT HAPPENS, THE MESSAGE GETS OUT TO ALL OF THE OTHER EMPLOYEE, TOO, GO AHEAD AND COME PLAIN ABOUT SEXUAL HARM, WE'LL MOVE TO YOU THE 11:00 TO 7:00 SHIFT.

>> THERE HAS BEEN DISCUSSION ABOUT FLORIDA LAW MATCHING WITH FEDERAL LAW.

IT DOESN'T REALLY MATCH ON PUNITIVE DAMAGE ISSUE, DOES IT?

BECAUSE THE FEDERAL LAW SPECIFICALLY STATES THE STANDARD, DOES IT NOT?

>> YES.

>> FLORIDA'S STATUTE ON PUNITIVE DAMAGE DOES NOT USE THAT STANDARD, DOES IT?

>> THAT IS CORRECT.

>> CERTAINLY, IF WE ARE LOOKING AT THIS FROM THE STATUTORY CONSTRUCTION, IF WE'RE ADOPTING IT, WE COULD CERTAINLY ADOPT IT WORD FOR WORD VER BAT IF THAT WERE THE CRITERIA?

>> THAT WAS THE INTENT.

>> SO ACTUALLY THE ARGUMENT FOLLOWED THE FEDERAL LAW SHOWS THERE IS A DIFFERENCE, SO WE USED THAT AS THE PRISM THEN MAYBE WILLFUL IS NOT EVEN THOUGH IT MAY LEAD TO A DIFFERENT CONCLUSION THAT THAT WOULD NOT BE THE RESULT IN PLOR DAR.

>> AND IN MY CONCERN THERE, WHICH I DON'T KNOW THE ANSWER TO, BUT IS WHEN THIS COURT AND OTHER CASES HAS TALKED ABOUT THE FLORIDA PATTERN BEING AFTER THE FEDERAL ACT SHOULD BE LOOKED ACT IS WHY THE LEGISLATURE EVEN PASS THE FLORIDA ACT? THEY COULD HAVE INCORPORATED AND SAID WE HAVE TITLE 7, WE DON'T NEED ACT.

>> BUT CLEARLY THE PUNITIVE DAMAGE.

>> THEY HAD AN INTENT TO GIVE A LEVEL OF PROTECTION TO FLORIDA RESIDENTS THAT MAY NOT HAVE BEEN INTENDED UNDER THE FEDERAL LAW PARTICULARLY THE WAY THE CASES HAVE BEEN.

>> AND THIS PROVISION ON PUNITIVE DAMAGES.

>> THE PUNITIVE DAMAGES PROVISION IS NOT THE SAME BETWEEN THE TWO.

VIE TWO QUESTIONS:

WHAT ABOUT THE CO EMPLOY YES CO-EMPLOYEE, THERE SEEMS TO BE A DISPUTE ABOUT WHETHER CO EMPLOYEE COMPLAINED ABOUT THE SAME PERSON?

>> SHE ABSOLUTELY COMPLAINED ABOUT IT.

SHE WAS THE SECOND EMPLOYEE WHO HAD MAJOR PROBLEMS WITH CORYELL, HIS PHYSICAL TOUCHING OF HER WAS MUCH MORE SEVERE THAN MISS DUPONTS.

>> WAS THAT AGAIN, WHEN DID THAT OCCUR IN THE COMPLAINING BY THAT PERSON VERSUS THE PERSON IN THE CASE?

>> WELL, STANDING HERE RIGHT NOW, I DO NOT HAVE A RECOLLECTION.

I THOUGHT IT WAS PRIOR TO OR ABOUT THE SAME TIME AS MRS. DUPONT MAKING HER COMPLAINT.

I DID NOT UNDERSTAND, I DON'T RECALL, ON THE RECORD, THAT IT WAS AFTER.

>> AGAIN, AS WE LOOK BACK, IS THAT SOMETHING YOU RELIED ON AS FAR AS THE LIABILITY OF THE EMPLOYER IN THE CASE? OR NOT?

>> WELL, CERTAINLY, YOU HAVE -- THIS IS, FIRST OF ALL, THIS CASE IS MUCH MORE EGREGIOUS THAN MENDOZA, MANY OF THE OTHER CASES CITED, BUT ON THAT POINT, YOU HAVE

TWO EMPLOY YES, COMPLAINING ABOUT THE SEXUAL HARASSER, YOU HAVE VIDEO CAMERAS IN THE STORE, FOUR OF THEM, WHICH ARE GOING THE ENTIRE 24 HOURS A DAY.

>> THAT WAS ACTUALLY MY OTHER QUESTION.

YOUR VIDEO CAMERA, YOU MENTIONED THAT ON THE BRIEF.

>> YES.

>> WERE THOSE INTRODUCED INTO EVIDENCE?

WAS THERE ANY EVIDENCE THAT ANYONE ACTUALLY WATCHING SAID THIS IS MR. CORYELL HA-HA RAS MISS DUPONT.

THEY LOOK AT SOME.

WITH IT KIND OF INTERESTING.

IF YOU ARE LOOKING AT THEM FOR CRIMES.

>> MOST RESPECTFULLY, YOU ARE THOUGH IT OUT THERE, BUT THAT ALONE, IF WE WERE WRITING AN OPINION SAID WHETHER IT WAS VIDEO CAMERAS, THAT DOESN'T REALLY SAY ANYTHING ABOUT THE EMPLOYER MAYBE COULD HAVE CONSTRIFKT KNOWLEDGE BUT THE PURPOSES OF PUNITIVE DAMAGE THE VIDEOTAPES ARE NOT RELEVANT, ARE THEY?

>> WELL, UNFORTUNATELY, WHEN WE TRY TO GET THOSE VIDEOTAPES AND DISCOVERY, WE WERE TOLD THEY HAD BEEN DESTROYED.

>> SO THE ANSWER I THEY ARE NOT RELEVANT?

>> NO, THEY ARE NOT A MAJOR ISSUE IN THE CASE.

I MEAN, THE I THINK THEY ARE IMPORTANT.

THE TOTALITY OF THE FACTS BUT THEY WERE NOT A MAY ISSUE ON THE CASE.

>> WHAT CORRECTRECTION ACTION WAS TAKEN FROM CORYELL OTHER THAN THE MINOR.

>> THE CORRECTIVE ACTION OF THIS EMPLOYER, YOUR HONOR, HE WAS RECK HENDED FOR

POSITION IN MANAGE AM.
THAT WAS THEIR ACTION.
>> HE WAS APPARENTLY TOLD
THAT TO DO SOMETHING WITH
MISS DUE UPON.

I AM NOT SURE WE HAVE
SPECIFICATION OF WHAT.
HE WAS RECOMMENDED FOR
MANAGEMENT POSITION.

>> THANK YOU VERY MUCH.

>> OKAY.

THANK YOU.

REBUTTAL?

YOU HAVE A COUPLE MINUTES.
THE SUPREME COURT IMPOSED AN
EMPLOYER MAY NOT BE VIE
VARIOUSLY LIABLE OF MANAGERIAL
AGE GENS IF THOSE DECISIONS
ARE CONTRARY TO THE
EMPLOYER'S GOOD-FAITH
EFFORTS TO COMPLY WITH TITLE
7.

AND SHE DID CALL THE 1-800-
NUMBER TON THE FRIDAY SHE
QUIT.

SHE DID KNOW ABOUT IT.
TESTIFIED SHE HAD GIVEN THE
NUMBER AND SHE HAD IT
POSTED.

>> DID JURY GET INSTRUCTION
IF THEY ACTED IN GOOD FAITH
THEY WOULD NOT BE LIABILITY
FOR PUNITIVE DAMAGES?

DID YOU REQUEST A CALL FOR
THAT IN SFLUX

>> WE RAISED ON THE GNOB, I
DON'T, I DON'T THINK IT WAS
DONE AT THE CHARGE
CONFERENCE, BUT IT WAS RAIDS
JNOV, GOOD FAITH DEFENSE.

THANK YOU.

>> THANK YOU VERY MUCH.

WE'LL TAKE THIS CASE
UNDERADVISEMENT, THANK YOU
VERY MUCH.