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Anthony K. Russell v. State of Florida

SC06-335

THE NEXT CASE ON OUR CALENDAR THIS MORNING IS RUSSELL VERSUS STATE. ARE YOU READY TO PROCEED?

MAY IT PLEASE THE COURT, GOOD MORNING, MY NAME IS NATE MORGUE MAN, I'M AN ASSISTANT PUBLIC DEFENDER, I REPRESENT MR. RUSSELL. MR. RUSSELL WAS CHARGED WITH ALLEGEDLY COMMITTED A VIOLATION OF PROBATION BY COMMITTING AN AGGRAVATED BATTERY UPON HIS GIRLFRIEND. THE EVIDENCE SUPPORTING FINDINGS INCLUDED THE HEARSAY STATEMENT OF THE GIRLFRIEND AND THE INJURY ON HER NECK THAT.

CAN YOU EXPLAIN THE CONFLICT ISSUE YOU AGREE THAT HEARSAY, OTHER THAN CRAWFORD, IS ALLOWED, HAS BEEN ALLOWED IN A PROBATION REVOCATION PROCEEDING?

YES YOUR HONOR.

SO IS IT A QUESTION -- BUT THE HEARSAY ALONE CANNOT FORM THE BASIS FOR THE VIOLATION? THAT'S BEEN OUR POSITION.

SO IS THE ISSUE -- WHAT IS THE ADEQUACY OF THE CORROBORATION AS TO WHETHER A VIOLATION OCCURRED?

THAT'S CORRECT.

SO WHEN A POLICE OFFICER OBSERVED INJURIES TO A PERSON, WHO GIVES THE STATEMENT AT THE SAME TIME THAT THE POLICE OFFICER IS -- HAS OBSERVED THE INJURIES, OR ANYTHING ELSE CORROBORATING THAT SOMETHING OCCURRED, ISN'T IT -- HOW AS A RULE OF LAW DO WE DECIDE WHAT IS CORROBORATING AND WHAT IS NOT CORROBORATING?

IT'S CORROBORATING THAT THE SECOND AND THE FOURTH D.C.A.'S AND OUR POSITION IS THAT IT'S ALL HEARSAY.

SO THE OBSERVATION OF THE POLICE OFFICER OF AN INJURY, HOW IS THAT HEARSAY? SHE POINTED IT OUT TO HIM.

HEARSAY IF ADMISSIBLE, IS USUALLY ADMISSIBLE IN SUBSTANTIVE EVIDENCE, NOT JUST -- THAT'S TRUE. BUT WHY SHOULDN'T THAT -- [INAUDIBLE]

WOULD YOU PULL THE MICROPHONE UP PLEASE? THERE YOU GO. THANK YOU.

WHY SHOULDN'T THAT COMBINED WITH THE OBSERVATIONS OF THE OFFICER BE SUFFICIENT TO PROVE A VIOLATION IN A PARTICULAR CASE? IT MAY NOT BE SUFFICIENT ALL THE TIME, BUT IT'S UP TO THE JUDGE TO DETERMINE IN THE PARTICULAR CIRCUMSTANCES OF THE CASE WHETHER THE OBSERVATION OF THE OFFICER ARE CONSISTENT WITH THE STATEMENT OF THE VICTIM, USUALLY THE VICTIM, WHY SHOULDN'T IT BE UP TO THE JUDGE IN THAT PARTICULAR CASE TO DETERMINE WHETHER THAT'S SUFFICIENT OR NOT?

WELL, BECAUSE IF YOU DON'T ACCEPT IT, IT'S HEARSAY. IT'S DIRECT EVIDENCE, WHICH IS WHAT THE -- BUT IT'S DIRECT EVIDENCE OF AN INJURY. IT'S NOT DIRECT EVIDENCE OF WHO IMPOSED OR INFLICTED THE INJURY. THAT'S THE PROBLEM.

GOING BACK TO CORROBORATE, NOT HER POINT IN SAYING THIS IS BLOOD, THE DEFENDANT DID TO ME, BUT THE OBSERVATION BY THE POLICE OFFICER OF THE INJURY IS NOT HEARSAY.

ALL RIGHT. FOR PURPOSES OF DISCUSSION, I'LL ACCEPT THAT. MY POSITION IS IT'S HEARSAY.

IF THE POLICE OFFICER COMES IN AND SEES A ROOM IN DISARRAY, SEES PICTURES BROKEN, SEE THINGS STREWN, THAT'S HEARSAY?

IT'S CORROBORATING EVIDENCE.

AND THAT'S WHAT I'M ASKING THAT'S A RULE OF LAW. JUST TO MAKE SURE, THIS IS VERY CONFUSING, WE'RE NOT TALKING ABOUT HEARSAY THAT WAS PRECRAWFORD COMES IN HAS AN

EXCITED UTTERANCE, WE'RE TALKING ABOUT PLAIN OLD HEARSAY, BUT IN A CRIMINAL CASE, WOULDN'T COME IN, LUKE SOMEONE JUST SAYING MY BOYFRIEND HIT ME LAST NIGHT. RIGHT.

IS ALLOWED TO COME IN IN A PROBATION REVOCATION HEARING IF ONLY IT DOESN'T FORM THE WHOLE BASIS. IF IT WAS COMING IN AS SUBSTANTIVE AS IT IS, EXCITED UTTERANCE, WE WOULDN'T BE TALKING ABOUT THIS POSITION, WOULD YOU AGREE WITH THAT?

YES.

SO WE'RE TALKING ABOUT TRUE HEARSAY, WHICH IS NOT ALLOWED IN A CRIMINAL CASE OR ANY OTHER NORMAL CASES, BUT WHAT IS THE RULE OF LAW ABOUT HOW MUCH CORROBORATION DOES THERE HAVE TO BE OF THE OTHERWISE ADMISSIBLE HEARSAY?

WELL IT DEPENDS ON WHICH DISTRICT COURT OF APPEALS YOU LOOK TO, BECAUSE THIS COURT HAS NOT SET DOWN A RULE OF LAW IN THIS GIVEN CIRCUMSTANCES.

THE FOURTH IS SAYING THAT OBSERVATIONS OF A POLICE OFFICER ARE NOT SUFFICIENTLY CORROBORATING OF THE PURE HEARSAY STATEMENT, IS THAT WHAT --

YES, THE 4TH AND 2ND ARE SAYING IT IS NOT -- ONLY INJURY CORROBORATING THE HEARSAY STATEMENT OF THE VICTIM IS IT SUFFICIENT. [INAUDIBLE]

THIS IS PROPOSED THIS COURT ADOPT THAT RULE OF LAW.

WHAT ELSE WOULD YOU NEED?

THEY WOULD NEED ADDITIONAL CORROBORATING EVIDENCE, -- ADDITIONAL CORROBORATING EVIDENCE, AN EXAMPLE WOULD BE IF PEOPLE WERE OUT, LIVED IN THE ISOLATED AREA AND THERE WERE JUST THE TWO OF THEM, AND DEPUTY IS CONFRONTED WITH THIS SITUATION, THAT WOULD PROBABLY BE ENOUGH TO CORROBORATE THAT THERE WAS A BATTERY THAT TOOK PLACE.

BUT DOESN'T THAT -- I MEAN, IT SEEMS TO ME THAT JUSTICE PARIENTE IS GETTING TO A POINT THAT BOTHERS ME, AND THAT IS, THIS REALLY IS A FACT INTENSIVE DETERMINATION, BECAUSE -- THEN YOU GET TO WHETHER THE PERSON LIVES A HALF A MILE FROM THE NEIGHBOR OR 100 YARDS FROM A NEIGHBOR, AND THEN IT DOESN'T BECOME A RULE OF LAW. WE'RE DEALING WITH THE TOTALITY OF THE CIRCUMSTANCES IN INDIVIDUAL CASES, AND THAT'S THE REASON I HAVE A HARD TIME AS TO WHETHER THERE IS CONFLICT ON THAT ISSUE.

I AGREE 100% THAT IT'S FACT INTENSIVE. I THINK THERE'S CONFLICT BECAUSE THE 5TH DISTRICT CAME OUT AND SAID PRETTY DIRECTLY THAT THE HEAR SAFE PLUS OBSERVATION OF AN INJURY IS SUFFICIENT. I THINK THAT'S -- ALMOST A DIRECT QUOTE AND 4TH AND 2ND D.C.A. SAID THE OPPOSITE.

I'M READING BLAIR IN 2001.

I DIDN'T NECESSARILY CONFLICT ON BLAIR.

WHILE THE VICTIM'S PHYSICAL APPEARANCE AND THE RESIDENCE SUGGESTED TO THE DEPUTY A STRUGGLE HAD OCCURRED, THE DEPUTY'S OBSERVATIONS COULD NOT CONNECT BLAIR TO THE ALLEGED BATTERY. IS THAT WHAT THE CONFLICT IS, THERE IS, THAT THERE HAS TO BE SOMETHING THAT THE POLICE OFFICER OBSERVED, THAT CONNECTS THE DEFENDANT WITH THE BATTERY?

I HAVE TO BE VERY BLUNT. I HAVE A HARD TIME EXPRESSING WHAT THE CONFLICT IS, BECAUSE --

I APPRECIATE, I'M NOT SURE BLUNT, YOU'RE BEING CANDID AND I APPRECIATE THAT.

OK. CORRECT?

RIGHT.

THAT THEY VIOLATED THAT DUTY.

CORRECT.

AND AS A LEGAL CAUSE OF THAT BREACH WHAT HAPPENED?

THEY INJURED THE INTENDED BENEFICIARY.

INJURED HER BY WHAT? IN WHAT WAYS?

BY DEPRIVING HIM OF THE ACTION OF THE FIRST.

SO IT DOESN'T MATTER THAT WHEN MRS. HOROWITZ OR MR. HOROWITZ, I AM SORRY, MR. , MR. HOROWITZ WENT TO SEE THE DOCTOR THAT HE WONDERED OR ACQUIRED AS TO WHETHER THE DOCTOR WAS STAFF PRIVILEGED OR RELIED ANYWAY TO THE HOSPITAL MAKING SURE THE

DOCTOR WAS FUNCTIONALLY RESPONSIBILITY. IT MATTERS NOT AT ALL?

THE PLAINTIFF NEGLIGENCE DOESN'T DEPEND ON RELIANCE, IT DEPENDS ON DUTY. THERE IS A DUTY TO MAINTAIN FINANCIAL RESPONSE. THE DUTY CERTAINLY EXTENDS TO THE INTENDED BENEFICIARY, THIS STATUTE IS DESIGNED TO PROTECT THE PATIENT.

IN ANY CASE LAW FROM ANY PART OF THIS COUNTRY THAT WOULD RECOGNIZE THIS KIND OF A COMMON LAW DUTY NOT THAT IS THAT THE HOSPITAL'S LIABILITY FOR THE NEGLIGENCE IN WHAT THE DOCTOR, BUT LIABLE BECAUSE THE DOCTOR WAS NOT FINANCIALLY RESPONSIBLE? THERE IS NO CASE IN WHICH A COMMON LAW DUTY OF THIS KIND, I BELIEVE HAS BEEN CREATED. THAT IS WHAT BEAM SAID. THERE IS NO STATE IN WHICH THERE IS A STATUTE REQUIRING FINANCIAL RESPONSIBILITY UPON WHICH A CLAIM CAN BE BASED.

IN THE HOSPITAL AS CONDITION OF THE STAFF PRIVILEGES IN THE HOSPITAL. WHAT I AM TRYING TO SAY IS THE NEXUS OF WHEN THEY ARE NORTH,, IN THIS CASE, WHEN YOU ARE NOT EVEN IN THE HOSPITAL, WHERE THERE IS NO ALLEGATIONS OF RELIANCE BY THE PATIENT ON, YOU KNOW, WELL, I PICK THIS DOCTOR BECAUSE THIS DOCTOR WAS STAFFED PRIVILEGE AT PLANTATION HOSPITAL. I PICK GOING TO PLANTATION HOSPITAL BECAUSE I AM ASSUMING THAT ALL OF THE DOCTORS THAT GO THERE ARE, WILL HAVE A CERTAIN AMOUNT -- I MEAN SOMETHING OF THAT NATURE THAT MIGHT BE COMMON LAW KIND OF ALLEGATION.

LET ME PUT THINK IT WAY -- FIRST, LET'S START HERE. THE STATUTE MAKES NO DISTINCTION IN REQUIRING FINANCIAL RESPONSIBILITY BETWEEN THE DOCTOR'S PRACTICE. POINT BANK BLANK. THESE THINGS INTERACT. THIS WOMAN HAD TESTS AT THE HOSPITAL. SHE WAS THEN TREATED AT THE HOSPITAL. SHE WAS BEING TREATED BY STAFF PHYSICIAN. NOW, I AM NOT SURE WHETHER THERE WAS RELIANCE OR NOT, BUT TO THE EXTENT THAT THE HOSPITAL HAD A DUTY WHICH EXTENDED TO HER AND UNDER TRADITIONAL ELEMENTS, COMMON LAW ELEMENTS OF NEGLIGENCE, YOUR HONOR, IF YOU AGREE WITH ME, THAT THE HOSPITAL HAD A DUTY AND THERE IS JUST NO OTHER WAY TO READ THIS STATUTE TO MAKE ANY SENSE, BECAUSE NOBODY ELSE -- I GOT TO SNEAK THIS IN -- THE STATE CAN'T POLICE IT. THE PATIENT CAN'T POLICE IT. THEN, THERE IS A DUTY TO ENSURE, IS SHE WITHIN THE FORESEEABLE SCOPE OF SUCH A DUTY? OF COURSE.

LET'S GO BACK TO WHO ELSE. THAT IS ONE OF THE ARGUMENT, THOUSAND CREATE A PRIVATE CAUSE OF ACTION, WHATEVER YOU WANT TO CALL IT, BECAUSE NO ONE ELSE COULD POLICE THIS. I THOUGHT THAT, THAT IS THE 458.320, ONLY IN TERMS OF WHAT THE DOCTOR SHOULD DO. ISN'T IT THE DEPARTMENT OF HEALTH THAT IF THEY, IF THE INSURANCE COMPANY NO LONGER WRITES FOR THAT DOCTOR, DOESN'T THE INSURANCE COMPANY NOTIFY THE DEPARTMENT OF HEALTH AND -- JUST THE LICENSEER.

BUT THAT IS HOW, IF THEY DON'T, IF THEY KNOW LONGER HAVE THOSE, THE INSURANCE, IT IS, IN FACT, THAT THEY MAY NOT BE -- THEY MAY NOT HAVE THEIR LICENSE RENEWED? CORRECT.

WELL, THAT IS PRETTY GOOD WAY TO POLICE WHETHER SOMEBODY IS OR IS NOT FINANCIALLY RESPONSIBILITY.

DIFFERENT NUMBERS.

AS YOU ANSWER YOUR QUESTION, I REMIND YOU ARE IN INTO REBUTTAL.

AND CERTAINLY CAN'T RUN AROUND CHECKING EVERY STAFF PHYSICIAN'S APPOINTMENT RENEWAL AN MAINTENANCE, ONLY HOSPITALS CAN DO THAT, NOW, IF THE HOSPITAL SHOULD KEEP INFORMED OF THE DOCTOR'S LICENSE OR STATUS, THAT MAY BE, THAT MAY BE PART OF THE PROBLEM. BUT THERE IS NO WAY HOSPITALS OR PATIENTS CAN POLICE THIS AND THERE IS NO OTHER WAY TO READ THIS STATUTE HAN TO IMPOSE SUCH A DUTY.

MR. ENGLAND?

MAY IT PLEASE THE COURT ARTHUR ENGLAND ON BEHALF OF PLANTATION GENERAL. UNTIL THE ARGUMENT TODAY AFTER READING THE BRIEFS AND THE RECORD, I THOUGHT THIS WAS QUITE DIFFERENT CASE. I THOUGHT THAT THEY WERE, THE HOROWITZS TIED UP IN KNOT, BY, THAT I DON'T MEAN THE KIND THAT SAILORS USE. I MEAN THESE KNOTS. THE HOROWITZ ACKNOWLEDGED YOU IN THEIR BRIEF COMMON LAW CAUSE OF ACTION FOR THE RECOVERY THEY SEEK TAKING NO COMPLAINT ABOUT THE DECISION WHATSOEVER. THE HOROWITZ

ADMITTED THAT SECTION 458-320 IS NOT AN EXPRESSED CREATION OF A PRIVATE BECAUSE OF ACTION. THEY DID NOT ADDRESS THIS COURT'S EXPRESSED STATEMENT IN MURPHY, THAT IS THE PRIMARY FACTOR CONSIDERED BY THE COURT AS LEGISLATIVE INTENT AND THAT IS IT IS NOT ENOUGH THAT THE STATUTE "WAS CREATED TO MERELY ENSURE THE SAFETY AND THE WELFARE OF THE PUBLIC" THEY DID NOT DISPUTE THE REQUIREMENT IN FLORIDA PHYSICIAN'S UNION, WHICH SUGGESTS THE HOSPITALS ARE INTENDED NOT TO BE INSURERS AND DIDN'T IDENTIFY ANY LEGISLATIVE HISTORY.

ARE YOU REFERRING TO A CASE? I AM SORRY, THE LAST STATEMENT?

THEY HAVE TO HAVE A STRONG INDICATION OF LEGISLATIVE INTENT THEY FIND NO FAULT WITH THAT. THEY DID NOT IDENTIFY ANY LEGISLATIVE HISTORY FOR YOU. SUGGESTING THE INSURANCE THEORY THEY ARE NOW SUGGESTING. THEY DID NOT CHALLENGE THE ANALYSIS OF SECTION 45325 SUB BY EITHER THE 4th DISTRICT IN THE CASE, THE CAREFUL STATUTORY ANALYSIS OR BY JUDGE GREEN AND HER IN THE MERCY HOSPITAL.

MR. ENGLAND, IN REGARD TO YOUR OPPOSITION, THAT THE HOSPITALS ARE THE ONLY, THE ONLY ENTITY THAT REALLY HAS ANY MEANS OF ENFORCEMENT, DOES THAT HAVE A PLACE IN THIS DISCUSSION AT ALL AND IF NOT WHY NOT. IF SO, WHY SO?

THREE-PART QUESTION. WELL, NO.

NO PLACE AT ALL?

NO, OF COURSE NOT.

WHY NOT?

THE STATUTE IS VERY CLEAR.

IN CONSIDERATION OF, THAT IS THE ONLY PLACE THAT IT CAN BE ENFORCED.

YES.

CAN BE MONITORED, WHATEVER THE WORD YOU WANT TO USE. WHY DOES THAT NOT HAVE A PLACE?

BECAUSE UPON LICENSE, A PHYSICIAN HAS TO DEMONSTRATE FINANCIAL RESPONSIBILITY. THAT IS THE STATUTORY SCHEME. IT IS DEMONSTRATED AT THE DEPARTMENT OF HEALTH AND THE BOARD OF MEDICINE. CONTINUING DUTY AND ANY CHANGE, IN THE INSURANCE HAVE TO BE NOTIFIED. IF THOSE INSTITUTIONS WHICH NOTIFY THE HOSPITAL THAT THESE LICENSES ARE GRANTED. WHAT DOES THE HOSPITAL HAVE UNDER THE STATUTE? THIS STATUTE WAS EXPRESS AND EXQUISITE AS TO WHAT THE HOSPITALS HAVE. IT PROVIDES, AND I BELIEVE IT IS SUBSECTION 460, THAT A HOSPITAL HAS A DUTY, IT IS SET THAT YOU WAY, FOR CONFIDENCE OF THE PHYSICIAN, AND RISK MANAGEMENT, AND IT GOES ON TO SAY, THAT A FAILURE TO ENSURE THAT DUTY MAKE THEM LIABLE, BUT IT IS THOSE DUTY, YOUR HONOR, NOT FINANCIAL RESPONSIBILITY, THIS STATUTE PUTS FINANCIAL RESPONSIBILITY SQUARELY ON THE PHYSICIAN. LET ME ASK YOU THIS. WE HAVE ANOTHER CASE PENDING HERE. THAT CONSIDERS THE INNER PLAY BETWEEN WHETHER STATUTE CREATE AS PRIVATE RIGHT OF ACTION, WHETHER VIOLATION OF A STATUTE, IF THERE IS NO RIGHT OF ACTION CAN CONSTITUTE EVIDENCE OF -- CAN YOU EXPLAIN TO ME THE INNER PLAY IN THOSE TWO CONCEPTS, IT SEEMS LIKE IT IS VERY TRICKY UNDER MURPHY WHETHER SOMETHING CREATE AS PRIVATE RIGHT OF ACTION DEFERRED BY LEGISLATIVE INTENT, THEN WE HAVE THE WHOLE LINE OF CASES THAT SAY, WELL, A VIOLATION OF STATUTE CAN CONSTITUTE EVIDENCE OF NEGLIGENCE, WHETHER IT IS NEGLIGENCE OR NOT IS ANOTHER ISSUE. BUT SIMPLY VIOLATION OF A STATUTE CAN BE EVIDENCE OF IT. I WILL BE HONEST WITH YOU, YOUR HONOR, I DIDN'T BECOME PREPARED TO DO THAT BECAUSE PIT IS NOT CITED IN ANY BRIEF IN THE CASE. THIS IS A WHOLE NEW THEORY THAT CAME UPON JOEL STANDING UP HERE.

AS PRACTICING LAWYER, I WOULD PREFER TO STAY IN THE CASE, YOUR HONOR, OF WHAT I KNOW ABOUT THE RECORD. THANK YOU FOR THE COMPLIMENT.

LET ME GO BACK TO SOMETHING YOU SAID. YOU MENTIONED AND, OF COURSE, THE BRIEF IS DISCUSSED, THE COURSE OF ACTION THAT SET FORTH IN 756.110 WHICH IS THE ONE THAT LIABILITY FOR A FAILURE TO EXPRESS DUE CARE IN FULFILLING ONE OF OR TWO OF THESE DUTY. THAT IS WHAT YOU ARE REFERRING TO?

YES, YOUR HONOR.

THE DUTIES HAVE TO DO WITH THE COMPREHENSIVE RISK MANAGEMENT PROGRAM.

CONFIDENCE OF STAFF.

ALL RIGHT. NOW, THE QUESTION THAT I HAVE ABOUT THAT IS THAT YOU ARE -- WE HAVE TO GOT ASSUME THAT THE CONFIDENCE REFERS TO MEDICAL CONFIDENCE AS TO OPPOSED TO FINANCIAL CONFIDENCE. CORRECT?

YES.

ALL RIGHT.

NOW, ON THE OTHER HAND, IF YOU LOOK AT THE PURPOSE OF 458 IN 301 WHICH IS WHERE THE FINANCIAL RESPONSE REQUIREMENTS ARE SET OUT, IT SAYS THE PRIMARY LEGISLATIVE PURPOSE IN THIS CHAPTER WHICH WOULD BE 458 TO ENSURE THAT EVERY PHYSICIAN PRACTICING IN THE STATE MEETS MINIMUM REQUIREMENTS FOR SAFE PRACTICE. LEGISLATIVE INTENT PHYSICIANS FALL BELOW MINIMUM COMPETENCY OR OTHERWISE PRESENT A DANGER SHOULD BE PROHIBITED FROM PRACTICING IN THE STATE.

IT DOESN'T SAY A THING ABOUT FINANCIAL RESPONSIBILITY.

AT THE SAME CHAPTER THAT 458.320 IS WHICH IS FINANCIAL RESPONSIBILITY.

YOUR HONOR, THAT IS WHY PUT THE ENTIRE STATUTE AS MY APPENDIX. YES, THE STATUTE SAID FINANCIAL RESPONSIBILITY. YES, IT PUT IN THE 100,000 AND 250,000 DOLLAR REQUIREMENT ON PHYSICIANS TO CAR RITE. NOTHING IN THE INTRODUCTION YOU JUST READ, THE WHEREAS CLAUSE, SUGGEST AS RESPONSIBILITY, EITHER FINANCIAL RESPONSIBILITY, EVEN OF A PHYSICIAN, LET ALONE FOR THE HOSPITALS WHICH ARE GIVEN RESPONSIBILITIES AN LIABILITY. THE STATUTE IS CONSTRUCTED TO CREATE DISCIPLINARY CONSEQUENCE, IF YOU WILL, A REGULAR TORY STATUTE, FOR PHYSICIANS WHO DO NOT COMPLY WITH A LOT OF THINGS INCLUDING FINANCIAL DISCLOSURE AND JUSTICE QUINCE, I HAVE TO SAY, I KNOW THAT WAS A STATEMENT MADE IN THE HAST OF DISCUSSION, BUT THERE IS NOTHING IN THIS STATUTE, THAT SAYS THERE IS A FINANCIAL RESPONSIBILITY OF THE HOSPITALS FOR THE PHYSICIANS. IT JUST DOESN'T SAY THAT. IT SAYS WHAT THEIR CONSEQUENCES ARE FOR NOT POLICING RISK MANAGEMENT AND CONFIDENCE, BUT NOT AS IT DOES HAVE CONSEQUENCE FOR LOSS OF FINANCIAL RESPONSIBILITY FOR THE HOSPITAL, ONLY FOR THE PHYSICIANS. THEN, I WANT TO TAKE YOU TO ONE STEP FURTHER BECAUSE THIS CLAIM IS BASED ON A TWO- STEP PROCESS. THIS CLAIM IS NOT JUST THAT THE DOCTOR DIDN'T CARRY THE INSURANCE, THIS CLAIM, AND THE ARGUMENT MADE, AT LEAST IN THE BRIEF, I DON'T KNOW WHAT WE'LL HEAR LATER, THIS CLAIM IS PREDICATED ON OBLIGATION FOR UNSATISFIED JUDGMENT WHICH GETS TO THE NEXT LEVEL, WHAT IS THAT LEVEL? WELL, THAT IS YEARS DOWN THE ROAD, THAT HAS NOTHING TO DO WITH CARRYING INSURANCE AND THE FACTS OF THIS CASE BEAR THAT OUT. DR. 'S MALPRACTICE TOOK PLACE IN JANUARY 1996. A LAWSUIT WAS FILED AGAINST HIM IN 1997. A FINAL JUDGMENT IN DECEMBER 17th, '99, GET! HE HAD LOST THE LICENSE TO PRACTICE MEDICINE ON JANUARY 31st, '98, THE YEAR BEFORE. SO OBVIOUSLY, THE HOSPITAL WAS NO LONGER, HE WAS NO LONGER ON THE STAFF. HIS CAUSE OF ACTION AGAINST THE HOSPITAL OCCURRED ACCORDING TO THE CASES ON WHICH THEY RELY ON JANUARY 16th, 2000. WHEN A FINAL JUDGMENT FOR DOCTOR AGAINST THE DOCTOR BECAME FINAL ON THE EXPERTS RAISING OF THE 3-DAY APPEAL PERIOD. A SUIT WAS NOT FILED AGAINST THE HOSPITAL UNTIL FEBRUARY 5 OF 2001 AND A WHERE IT OF EXECUTION RETURNED ON SATISFIED ON MAY 9th, 2001. YOU TELL ME HOW IT IS POSSIBLE FOR A HOSPITAL TO HAVE ANY MAINTENANCE OF CONTROL, RESPONSIBILITY, STAFF PRIVILEGE, FINANCIAL RESPONSIBILITY A OWN THING AND THIS IS FIVE, MORE THAN FIVE YEARS AFTER THE ALLEGED OCCURRENCE WITH ALL THAT INTERVENED. STATUTE HAS AN IMPOSSIBILITY BUILT IN IF THEIR THEORIES CORRECT. WELL, ISN'T, I MEAN, AGAIN, I THINK THAT, I WOULD ASSUME THEY WOULD AGREE THAT THE LIABILITY CAN NOT BE FOR WHAT OCCURRED IN SUBSEQUENT TO THE TIME THAT HE WAS IN -- THAT THE MALPRACTICE OCCURRED. WELL, LET'S GO BACK TO WHAT THEY STIPULATED. YOU BELIEVE PERWIN SAID SOMETHING ELSE THAT WAS NOT CONSISTENT WITH THE RECORD. THE STIPULATION OF THE CASE OF THE SUMMARY JUDGMENT WAS THE ONLY NEGLIGENCE WAS IN DOCTOR'S OFFICE. THAT EVERYTHING THAT HAPPENED IN THE HOSPITAL HAD NOTHING TO DO WITH HER INJURY. NOW, HE SAID THERE WAS INTERACTION. NO, NO, NO. THE NEGLIGENCE WAS COMPLETED. ACCORDING TO THE STIPULATION ON WHICH THIS CASE IS BASED AT THE TIME OF THE INJURY IN THE PRIVATE OFFICE.

BUT THAT, BUT THE ISSUE IS, AT THAT POINT, IS WHETHER HE, THE DOCTOR DID OR DID NOT HAVE

--

IT IS.

OF COURSE. EYE MEAN, THAT IS WHAT -- ASSUMING WE WENT FURTHER, SAID THERE IS SOME CAUSE OF ACTION.

DO YOU KNOW, YOUR HONOR, AS WE STAND HERE TODAY, WE DON'T KNOW IF HE DID OR DIDN'T. WE HAVE NO IDEA BECAUSE THIS ALL CAME UP WITH THEIR SOLUTE FIVE YEARS LATER PUTTING IN FRONT OF THEM A JUDGMENT AGAINST DR. DREW FROM A TRIAL WHICH HE DIDN'T ATTEND. WE DON'T KNOW IF HE HAD CARRIED INSURANCE THEN, WHETHER HE HAD ESCROW, WHETHER IT LAPSED, WHETHER HE CANCELED THE INSURANCE. WE KNOW NOTHING ABOUT IT.

WE BEING THE HOSPITAL?

WE, THE HOSPITAL.

LET'S GO BACK TO WHAT THE BECAUSE OF ACTION, IF IT EXISTED WOULD BE, IS THAT THE DOCTORS WHO ARE TO BE GRANTED STAFF PRIVILEGES MUST HAVE MORE INSURANCE OR AN INDICATION THAT THEY ARE GOING TO HAVE A LETTER OF A CREDIT THAN THOSE THAT DON'T HAVE STAFF.

ABSOLUTELY. YOU WILL GET THAT OUT OF THE WHEREAS CLAUSE BECAUSE THEY WERE TRYING TO PROTECT THE LOSS OF THE HIGH-RISK, MORE EXPENSIVE PROCEDURES, THEY LIST THESE DOCTORS.

FROM THE HOSPITAL'S POINT OF VIEW, THEY WOULD PREFER TO HAVE FINANCIALLY RESPONSIBILITY PHYSICIANS ON STAFF. I DON'T KNOW IF THEY CARE. WHAT DO THEY CARE? WELL, THEY CARE IN CASE THERE IS AN IN SHOE OF, YOU KNOW, WHO THE DEEP POCKET IS GOING TO BE. DOWN THE? I

IF THEY ARE NOT LIABLE, THEY DON'T CARE. THIS CUTE CAME OUT --

THEY CARE IF UNDER THIS THEORY THEY COULD BE SUED FOR NOT HAVING A MEDICALLY CONFIDENT DOCTOR.

OH, THAT IS CORPORAL NEGLIGENCE. THEY DON'T CLAIM THIS IS THE CORPORATE NEGLIGENCE WRONG CREDENTIAL IN THE CASE.

BUT DOES THE HOSPITAL, BEFORE THEY GRANT STAFF WERE PRIVILEGE, NEED TO CHECK TO SEE IF SOMEBODY HAS GOT INSURANCE OR NOT?

NO, THEY DON'T. I DON'T SEE A STATUTORY OBLIGATION. YOU DON'T KNOW ANYTHING IN THE RECORD THAT SUGGESTS THAT. THE DEPARTMENT OF HEALTH HAS TO. SO DOES THE BOARD OF RENAISSANCE.

THE STAFF PRIVILEGES THAT THEY HAVE TO -- NO, THE CONDITION OF LICENSE, YOUR HONOR. A CONDITION. THEY HAVE MIXED THE TWO BY SAYING, OH, LOOK THERE IS \$250,000 OF HIGHER DOLLAR VOLUME FOR PEOPLE ASSOCIATED WITH THE HOSPITAL. THAT DOESN'T SAY THE HOSPITAL HAS AN OBLIGATION, IT NOWHERE SAYS THAT ANYWHERE IN THE STATUTE.

WELL, LET ME ASK YOU A QUESTION: WAS THE ALLEGATION HERE THAT THE PHYSICIAN AT THE TIME THE INCIDENT OCCURRED DID NOT HAVE THE ASSURANCE?

THERE IS NO ALLEGATION. THE ALLEGATION IS THAT THEY HAVE UNSATISFIED JUDGMENT. COVERAGE?

PARDON ME.

SIMILAR TO AN ARGUMENT OF COVERAGE, THE HOSPITAL IS SUPPOSED TO PROVIDE SOME SORT OF END COVERAGE.

IT HASN'T GOTTEN THAT SOPHISTICATED YET. THEY HAVEN'T TALKED ABOUT WHAT KIND OF POLICY THE DOCTOR HAD A POLICY THEN IT LONG EXPIRED EVEN IF HE HAD THE COVERAGE. THIS SUIT IS BASED ON AN UNSATISFIED JUDGMENT CREATING A DUTY OUT OF THE STATUTE AND FORGET THE COMMON LAW, BECAUSE THAT IS NOT BRIEFED. THAT WAS NOT ON THE TRIAL COURT. I WAS NOT IN THE DISTRICT COURT. IT DOESN'T COME HERE UNTIL THE ARGUMENT TODAY. THERE IS NO COMMON LAW CAUSE OF ACTION DEEMED STAND AGAINST THAT QUERY. IT HAS NEVER BEEN CHALLENGED BY THE HOROWITZS AND THE ALLEGED DUTY ARISES OUT OF THIS STATUTE SOLELY.

MR. ENGLAND, LET ME GET BACK TO THE PART I WAS AT LEAST FOCUSING ON. IT SAYS PHYSICIANS WHO PERFORM SURGERY AND IN AN AMBULATORY SURGICAL CENTER AND AS A CONTINUING CONDITION OF HOSPITAL STAFF PRIVILEGES. THAT IS WHAT THEY ARE RELYING ON.

WHAT SECTION ARE YOU READING?

4583202. THAT IS NOT MIXING. THAT HAS NOTHING TO DO WITH LICENSING.

YOU GOT THE SAME LINE --

A CONTINUING HOSPITAL STAFF PRIVILEGES MUST ALSO ESTABLISH FINANCIAL RESPONSIBILITY. AND ALL THEY ARE SAYING, AND I MAY NOT AGREE WITH IT.

OKAY.

AS FAR AS THE ULTIMATE CONCLUSION, BUT IT IS SAYING THAT IT IS BY, THAT THEY HAVE TO ESTABLISH FINANCIAL RESPONSIBILITY AS A CONTINUING CONDITION OF STAFF PRIVILEGES, THAT IMPLIES THAT IT IS THE HOSPITAL THAT THEY HAVE TO ESTABLISH FINANCIAL RESPONSIBILITY TO.

EXCEPT, YOUR HONOR, THE STATUTE SAYS THEY HAVE TO DEMONSTRATE IT TO THE DEPARTMENT OF HEALTH AND TO THE BOARD OF MEDICINE, BUT LOOK AT SUBSECTION 1 WHICH HAS EXACTLY THE PARALLEL THAT YOU JUST READ. A CONDITIONS OF LICENSING PRIOR TO AS 100,000 FOR PEOPLE WHO ARE NOT STAFF PHYSICIANS. THOSE ARE TWO ON THE SAME POD WHICH IS THE LEGISLATURE WANTED FINANCIAL RESPONSIBILITY.

WELL, I THINK THE BEST HOOK, BUY DON'T KNOW THAT YOU GET THERE. I AM CONCERNED THAT YOU DON'T EVEN RECOGNIZE THE HOSPITALS WOULD HAVE WHETHER THEY HAVE A CAUSE OF ACTION THAT THERE WOULD BE IF THIS IS CONTINUING A CONDITION OF HOSPITALS.

HE KAY.

STAFF PROCEDURES THAT THE HOSPITAL WOULD AT LEAST HAVE SOME DUTY TO INQUIRE IF IT IS PHYSICIANS DO OR DORR NOT COMPLY WITH THIS STATUTE.

THEY HAVE THE INFORMATION BECAUSE IT CAME FROM THE DEPARTMENT OF HEALTH. YOUR HONOR, LET ME BUT 3E QUESTION A DIFFERENT WAY.

TO ME, THE ARE RESPONSIBILITY IN THE PART OF HOSPITALS IF THEY ARE NOT DOING TO ENSURE THAT THOSE ARE STAFF PRIVILEGES CONTINUE TO COMPLY WITH THIS SUBSECTION.

YOUR HONOR, AS JUSTICE OF THIS COURT, I THINK YOU ARE OBLIGATED BY MERCY TO ASK A QUESTION, AS THE STATUTE WHICH IS LEG LA TORY STATUTE, WE DON'T HAVE A DOUBT ABOUT THAT, WE HAVEN'T CONTESTED THAT. DOES A IT EXPRESS THE PRIVATE BECAUSE OF ACTION. THE ANSWER IS NO.

I WAS RESPONDING TO YOU SAYING THE HOSPITAL IS NO WHERE INVOLVED IN THIS SCHEME. I THINK THAT THAT IS AN OVERSTATEMENT OF WHAT EXISTS.

IF I HAVE OVERSTATED OR MISSTATED PLEASE DON'T HOLD IT AGAINST MY CLIENT, I AM SORRY. YOU HAVE TO FIND AN INTENT OF THE LEGISLATURE. I UNDERSTAND WHAT MURPHY SAYS. AI DEGREE WITH YOU. I THINK THAT IS WHY THEY HAVE A TOUGH ROAD. BUY ALSO THINK THIS LANGUAGE. I MAY HAVE OVERSTATED IT. I JOIN JUSTICE QUINCE IN SAYING SOMETHING IN THE HEAT OF THE ARGUE. WE ACCEPT YOUR OVERSTATEMENT. LET'S FINISH.

LET ME JUST MAKE THIS POINT ABOUT THE STATUTE AS A WHOLE. I CAN NOT FIND AND I DOUBT YOU WILL BE ABLE TO FIND AND THEY HAVEN'T SUGGEST ANYWAY TO FIND A DIFFERENCE BETWEEN A STAFF PHYSICIAN WHO HAS \$250,000 IN INSURANCE, \$250,000 IN AN ESCROW, \$2 50U THOUSAND IN A LETTER OF CREDIT ORS AGREED TO PAY \$250,000. AND BE LIABLE IF HE IS NOT TO LOSE HIS LPS. YET, THAT LAST, ON A PARITY, IS EXACTLY WHAT THE THIRD DISTRICT RECENTLY SAID COULD NOT POSSIBLY BE CREATE A CAUSE OF ACTION. IF THERE IS NO DISTINCTION BETWEEN THEM, HOW CAN THE OTHERS?

LET ME ASK YOU THIS: THE COME PLANT ANT ON THE CASE WAS BASED ON NEGLIGENCE AND STRICT LIABILITY, CORRECT?

I DIDN'T SEE THAT ON THE COMPLAINT, YOUR HONOR. I IN HAVEN'T SOON THE COMPLAINT. IT SEEMS FROM THE PETITIONER'S BRIEF THAT THEY SAY IT WAS BASED ON NEGLIGENCE AND STRICT LIABILITY. IT WASN'T BASED ON THE STATUTE.

WELL, IT WAS BASED ON -- THERE WAS TWO-FOUND COMPLAINT. IT WAS -- FIRST STATUTORY BECAUSE OF ACTION. THE SECOND WAS NEGLIGENCE. I DON'T REMEMBER SEEING, I COULD BE WRONG, YOU DON'T REMEMBER. I BELIEVE IT IS ON 153 OF THE RECORD. DON'T REMEMBER SEEING THAT.

AS FAR AS THE NEGLIGENCE ASPECT, HOW DOES THIS PLAY INTO IT? YOU KNOW MURPHY TALKS ABOUT A CIVIL BECAUSE OF ACTION ON THE STATUTE.

RIGHT.

THEY ARE ALLEGE NEGLIGENCE. WERE YOU NEGLIGENT IN NOT KEEPING TRACK OF YOUR LAWYERS. THEN, THEY WOULD HAVE TO PROVE A DUTY AND DUTY AND ALL OF THAT, BUT WHY ISN'T THE FACT THAT THEY DIDN'T COMPLY WITH THE STATUTE SOMETHING THAT IS ADMISSIBLE AS EVIDENCE, DOESN'T NECESSARILY GET THERE YOU, IT DOESN'T PROVE NEGLIGENCE IT MAY NOT PROVE A DUTY.

YOUR HONOR, THAT IS A VERY DIFFERENT CASE THAN THIS CASE. THIS WAS PREVENTED BY BOTH PARTIES ON SUMMARY JUDGMENT ON THE BASIS OF THE STATUTORY THROUGHOUT THE BRIEF, THE ACADEMY BRIEF, MR. PERWIN'S BRIEF IS REFERRED TO AS A STATUTORY BECAUSE OF ACTION. I HAVE TO SAY THIS NOTION OF A COMMON LAW BECAUSE OF ACTION ARISING OUT OF THE DUTY FROM A STATUTE WHICH DOESN'T HAVE A STATUTORY DUTY IS A CURVE BALL THAT CAME AT ORAL ARGUMENT TODAY. NOT IN THE RECORD. I WASN'T IN THE TRIAL COURT. THE DISTRICT COURT DIDN'T HAVE. I LOOK AT WHAT HE SAID AT THE END OF HIS OPINION TO BE PERFECTLY CLEAR, THE LEGISLATURE HAS NO, HAS IMPLIED NO DAMAGE REMEDY, WHETHER IT BE BASED ON STRICT LIABILITY, NEGLIGENCE, CONTRACT, CONTRIBUTION, CRIMINAL PUNISHMENT OR ANY OTHER LEGAL THEORY. THE CREATIVE MINDS OF LAWYERS CAN DIVIDE. HE WASN'T IN ANY DOUBT ABOUT WHAT THE CASE WAS AT THAT LEVEL. YOUR HONOR, I HAVE TO SAY THAT THIS WAS AS IS POINTED OUT A NEGLIGENT ACT IN A PRIVATE OFFICE. IT IS POSSIBLE FOR YOU TO DECIDED THAT CASE ON THAT BASIS BECAUSE QUITE CLEARLY EVERY ONE OF THE ARGUMENTS MADE HERE ARE GEARED TO THE IN HOSPITAL, THE DISTRICT, THE TRIAL JUDGE REFERRED TO, WELL, WHEN THEY GO INTO SURGERY, THEY CAN SAY WHETHER THEY HAVE IT. WELL, LET ME ASK YOU SOMETHING ON THAT ISSUE BECAUSE, I THINK, IF THERE IS AN EXPRESSED DIRECT CONFLICT, THEN, IT IS ONE OF OUR OBLIGATION AS THE COURT TO RESOLVE THE CONFLICT, ARE YOU ARGUING THAT THERE IS NO EXPRESSED AND DIRECT? NO, ON THE CONTRARY. I AM ASKING WHILE WE COULD WIN IT. THE OTHER CASES WERE IN THE HOSPITAL. THE JUDGE FARMER AND HIS CASE DID NOT MAKE THAT DISTINCTION BETWEEN -- AND I WOULD HOPE YOU WOULD RECONCILE THE CONFLICT ON THE BASIS THAT NO CAUSE OF ACTION EXISTS ANY PLACE UPPER THIS STATUTE. NONE IS EXPRESSED. NONE IS IMPLIED. WITHOUT ASSISTANCE, YOU HAVE USED UP YOUR TIME. THANK YOU.

THANK YOU, YOUR HONOR.

> WE HAVE A COUPLE MINUTE, SIR.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT, FIRST, OBVIOUSLY, THE STATUTE DOES MAKE AN EXPLICIT DEMAND ON HOSPITALS. WE THINK ON HOSPITALS BY ESTABLISHING A CONTINUING CONDITION OF HOSPITAL STAFF INDEPENDENT OF ANY CONDITIONS OF LICENSE. YOU KNOW, CAN YOU TELL ME BECAUSE I THOUGHT THAT MR. ENGLAND RAISED AN INTERESTING POINT. THIS BECAUSE OF ACTION DOESN'T APPROVE UNTIL 2000.

RIGHT.

SO WHEN DID THE BREACH OCCUR? ASSUMING YOUR THEORY. IT OCCURRED IN THE FAILURE TO ENSURE FINANCIAL RESPONSIBILITY AS BY THE JUDGMENT AT A TIME WHEN THE DOCTOR WAS ON STAFF. NONE OF THIS -- SO IN 1996?

RIGHT. AT THE TIME. WHILE HE WAS ON STAFF. IF SOMETHING HAPPENS WHERE HE GETS OFF STAFF, THE HOSPITAL'S DUTY ENDS.

LET'S TAKE THE SITUATION WHERE IT IS A CLAIMS-MADE POLICY WHICH MOST OF THEM ARE IN PROFESSIONAL LIABILITY NOW. THAT DOES NOT KICK IN TO PROVIDE ANY COVERAGE UNTIL THE CLAIM IS MADE. THE POLICY MAY HAVE EXPIRED.

ACROSS THE HOOK.

THAT IS THE ANSWER.

IT IS CONFINED BY THE TERMS OF THE STAFF BY THE STAFF PRIVILEGES. IF THE PLAINTIFF DOESN'T GET RECOVERY. THE HOSPITAL IS OFF THE HOOK. IT IS AS SIMPLE AS THAT. IN SOME CASES, THE HOSPITAL WILL OB IN THE HOOK. THE DECISIONS FOUND NO COMMON LAW CAUSE OF ACTION WHEN THERE WAS NO STATUTE. ONCE THERE WAS STATUTE. IT IS ACCEPTED PRINCIPAL, THAT A COMMON LAW CAN BE PREDICATED ON A STATUTORY OBLIGATION.

MY CONCERN WITH THAT ARGUMENT THAT IS EVEN IN YOUR AMICUS BRIEF. WE HAVEN'T REALLY LITIGATED THE CASE AT LEAST IN THE CASE UNDER. I WENT BACK AND LOOKED AT THE BRIEF. IT

IS COMPLETE WITH ASSERTION THERE IS A STATUTORY DUTY WHICH IS THE PREDICATE FOR THE CLAIM. THE THREE DISTRICT COURTS AND THE COUNSEL IS QUITE RIGHT THAT THE DISTRICT COURT DECISION IN THE CASE ABOUT A STATUTORY CAUSE OF ACTION BUT CONFLICTS WITH THREE DECISION WHICH TALK ONLY ABOUT DUTY. YOU KNOW, MR. PERWIN, IT JUST, IT STRIKES, AT LEAST, ME, THAT AS, AGAIN, AS THE EXCELLENT LAWYER THAT YOU ARE, THAT YOU ARE GOING TO PICK YOUR BEST BATTLE HERE. AND IT SEEMS THAT IF YOU -- YOU SAY YOU ARE NOT ABANDONING THE IDEA THAT THIS IS TOTALLY A STATUTORY CAUSE OF ACTION, BUT BY NOT REALLY SAYING THAT MERCY CONTROL, IT SEEMS THAT YOU ARE IMPLYING OR AT LEAST CONCEDED WITH THAT SAYING THAT MERCY WOULDN'T GET WHERE YOU WANT TO GO.

LET ME SAY YOU WHY.

YOU DECIDED THAT WAS NOT YOUR BEST ARGUMENT, THOUGH.

THAT IS NOT THE BEST ARGUMENT, MURPHY APPLIED. JUSTICE ENGLAND CONTINUES TO SAY THERE IS COMPREHENSIVE REGULATORY SCHEME WHICH SOMEHOW PUSHES OUT THIS CLAIM. NO. THERE IS NOTHING IN THIS STATUTE WHICH PROVIDES ANY MECHANISM FOR ENFORCING THIS PARTICULAR PROVISION. THAT IS THE ASSURANCE OF HOSPITAL STAFF PRIVILEGES WHERE I DIFFERENT FROM THE REQUIREMENTS OF LICENSE. NOTHING TO DO WITH THE HIGHER NUMBERS DEALING WITH STAFF PRIVILEGE, NOTHING, THE ONLY LANGUAGE IN THE STATUTE WHICH ENFORCES THIS PROVISION IS CONTINUING CONTINUE OF HOSPITAL STAFF PRIVILEGE, THERE IS WHOLE ARGUMENT ABOUT THIS COMPREHENSIVE REGULATION IS A RED HERRING, NONE OF IT DISCUSSIONS FINANCIAL RESPONSIBILITY AND THE ONLY WAY TO ENFORCE IT IS TO RECOGNIZE AN OBLIGATION BY HOSPITALS SO IF WE ARE GOING TO THE QUESTION WHETHER THERE IS A STATUTORY CLAIM, WE HAVE TO LOOK FOR LEGISLATIVE INTENT. LEGISLATIVE INTENT ESTABLISHED A DUTY AND IT ESTABLISHED NO OTHER MECHANISM OF ENFORCEMENT. HOW CAN THIS STATUTE HAVE ANY MEANS UNLESS IT CREATE AS BECAUSE OF ACTION AT THE INSTANCE OF PATIENT, FOR THE ONES WHO ARE HURT BY ITS VIOLATION. THERE IS NO OTHER WAY TO DO IT. THE STATE CAN'T DO IT. IT CAN NOT POSSIBLY POLICE THE RENEWAL AN INSURANCE OF HOSPITAL STAFF FOR EVERY STAFF. THE PATIENT CAN'T DO IT. IN A STATUTE WHICH SAYS PATIENTS CAN'T MAKE INFORMED DECISIONS. THAT IS A PREAMBLE. ONLY THE DOCTORS CAN DO IT AND FOR THAT REASON, WE RESPECTFULLY SUBMIT THAT THE ORDER THAT THE DISTRICT COURT SHOULD BE REVERSED. THANK YOU VERY MUCH THE ARGUMENTS. THE COURT WILL TAKE ITS MORNING RECESS.

PLEASE RISE.