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Florida Department of Environmental Protection v. Contractpoint Florida Parks

SC07-1131

ALL RISE, O YEA O YEA O YEA, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION, ALL THOSE HAVING BUSINESS BEFORE THIS COURT DRAW NIGH, GAVE TENSION, YE SHALL BE HEARD GOD SAVE THE UNITED STATES GREAT STATE OF FLORIDA AND THIS HONORABLE COURT., .
GOOD MORNING.

GOOD MORNING. LADIES AND GENTLEMEN THE FLORIDA SUPREME COURT PLEASE BE SEATED., .
GOOD MORNING, FRIENDS WJTS TO THE FLORIDA SUPREME COURT THE ORAL ARGUMENT A CALENDAR FOR FRIDAY DECEMBER 7TH THE CASE WE HAVE, FIRST ON THE CALENDAR, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, VERSUS, CONTRACTPOINT O. READINESS READY TO PROCESS INTO THANK YOU PLAY MAY IT PLEASE THE COURT THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION. THIS CASE, IS ONE OF FIRST IMPRESSION IMPRESSION, AND IT CONCERNS THE MEETING AND APPLICATION OF SECTION 11.066 FLORIDA STATUTES STATUTES, AND WHETHER DESPITE PLAIN LANGUAGE A COURT MAY ORDER AN AGENCY TO PAY A JUDGMENT IN CONTRACT IN ABSENCE OF PREPARATION INTO COULD YOU GIVE US -- APPROPRIATION INTO IN TERMS OF CONTEXT OF THE CASE WANT TO MAKE SURE WE ARE CLEAR ON UNCONTESTED FACTS A VALID BINDING CONTRACT, DEPED THAT AUTHORITY TO ENTER; CORRECT?
CORRECT.

AND THEN, THERE WAS CORDING TO THE PARTIES A A BREACH BY THE DEP WHICH WENT TO TRIAL -- A JUDGMENT FOR THE BREACH OF CONTRACT WAS ENTERED, THAT JUDGMENT WAS NEVER APPEALED; IS THAT CORRECT?
THAT IS CORRECT.

WHEN WAS THE FIRST TIME THAT THE ASSERTION THAT THE JUDGMENT ALTHOUGH THEY THERE WAS NO IMMUNITY FROM SUIT, THAT THERE WAS NO OBLIGATION TO PAY THE JUDGMENT ABSENT A SPECIFIC APPROPRIATION FOR THAT JUDGMENT BY THE LEGISLATURE LEGISLATURE? YOUR HONOR, I THINK THAT MAY HAVE COME UP IN THE CONTEXT OF THE -- OF THE LITIGATION LITIGATION, BUT THERE WAS NOT AS I RECALL, A RULING ON IT.
WAS IT RACED AN A AFFIRMATIVE DEFENSE A ADMONITION TO LIMIT JUDGMENT THAT IS WHOA I'M ASKING THAT WOULD BE OF RECORD.

NO -- THE RECORD OF THE CONTRACT ACTION IS NOT BEFORE THE COURT, AFTER JUDGMENT WAS ENTERED THERE WAS NO APPEAL, CONTRACTPOINT REQUESTED PAYMENT, THE DEPARTMENT SAID WE HAVE NO APPROPRIATION TO PAY THE JUDGMENT, CONTRACTPOINT THEN FILED ITS MAN DAMOUS ACTION -- MANDAMUS ACTION, AND THE -- THE DEPARTMENT OF -- ASSERTED THAT AS A DEFENSE THAT IT HAD NO APPROPRIATION INTO LET ME ASK YOU THIS, THIS STATUTE, ON THE BOOKS, 16 YEARS.
THAT IS CORRECT.

AND DURING THIS 16-YEAR PERIOD AT LEAST IT HADN'T BOTHERED ME SINCE I'VE BEEN ON THIS COURT, BECAUSE I HAVEN'T SEEN THIS PARTICULAR CASE OUTSIDE THE CAMPINGAR-- CANKAR OPINION WASN'T AN IN ISSUE THE CITRUS CANKAR FACED CASE PER SE HOW HAVE THESE MATTERS A BEEN HANDLED, WHERE THERE IS A JUDGMENT THAT IS -- AGAINST THE STATE, IN DURING THIS 16-YEAR PERIOD, UP UNTIL THIS HAS BEEN RAISED IN THIS CASE.
WELL, AS I SAID, THIS IS A CASE OF FIRST IMPRESSION, AND I DON'T KNOW AND IT IS NOT IN THE RECORD O JUST HOW AGENCIES HAVE HANDLED JUDGMENTS IN CONTRACT, I THINK THAT THEY

ARE FEW AND FAR BETWEEN. AND CERTAINLY, THERE IS NO IN EVIDENCE THE RECORD THAT JUDGMENTS ARE NOT BEING PAID.

LET ME ASK YOU -- THIS, HOW DO YOU -- HOW DOES THE STATE ENVISION THAT THIS WILL GO FORWARD IF WE HELD THAT THE STATUTE PREVENT THERE BEING A A PAYMENT OF A CLAIM WHICH HAS GONE ALL THE WAY TO JUDGMENT? OR IS IT THE DEPARTMENT -- IS IT YOUR POSITIONING THAT THE CASE SHOULDN'T BE BROUGHT IN COURT AT ALL? OR HOW IS THIS SUPPOSED TO WORK? THAT IS OUR POSITION. THE WAY IT IS SUPPOSED TO WORK THAT IS IF THERE IS A FINAL JUDGMENT IN A CONTRACT ACTION, THEN THERE HAS TO BE AN APPROPRIATION TO PAY THAT JUDGMENT.

YOU FILE A CLAIM STILL.

THE JUDGMENT HOLDER CAN GO TO THE LEGISLATURE, AND REQUEST FROM WHOEVER THEY THINK APPROPRIATE.

ON THAT ISSUE I JUST WANT TO MAKE SURE WHAT YOU ARE SAYING IS THAT NOT THE OBLIGATION OF DEP TO SEE THAT WHETHER THIS JUDGMENT HAS BEEN ENTERED, THAT THEY HAVE EITHER APPROPRIATION MONEY FOR IT, OR FOR THEM TO SEEK APPROPRIATION -- IT IS UP TO THE JUDGMENT CREDITOR WHERE THERE HAS BEEN NO DEFENSE FILED TO THE CONTRACT ACTION? TO ACTUALLY AFFIRMATIVELY SEEK APPROPRIATION FROM THE LEGISLATURE LEGISLATURE? WITH DEP STANDING -- THAT THE IDEA THE CREDITOR GOES TO THE LEGISLATURE, AND ASKS FOR A SPECIFIC APPROPRIATION AS OPPOSED TO ON THE AGENCY TO ACTUALLY SHOW WE HAVE NO MONEY FOR THIS, WE WENT TO THE LEGISLATURE, YOU KNOW, AND WE ARE IT IS OUR AFFIRMATIVE OBLIGATION?

WELL, IN FACT, AND AGAIN WE ARE -- FROM THE RECORD -- BUT DEPARTMENT DID REPORT THE JUDGMENT TO THE LEGISLATURE LEGISLATURE. THAT IS ONE WAY TO DO IT. CERTAINLY, THE JUDGMENT HOLDER CAN GO TO THE LEGISLATURE LEGISLATURE, AND YOU KNOW, EXERCISE WHATEVER AUTHORITY THEY HAVE.

THE PROBLEM THAT I AM HAVING HERE PAN AMKA, AND -- PAN-AMERICAN PAN-AMERICAN, CASES TO THE PRESENT HAVE BEEN PRETTY CONSISTENT TO SAY THAT THERE HAS BEEN WHEN YOU ENTER INTO A VALID EXPRESS CONTRACT THE AGENCY HAS AUTHORITY ENTER IT IS WAIVER OF SOVEREIGN IMMUNITY THERE IS 17 PAGE CONTRACT ALL SORTS OF CONDITIONS IN THERE, IF THE STATE STATE HAS DECIDED THEY WANT TO THE ARBITRATE THE MATTER THAT COULD BE IN THERE IF THE STATE WANTED TO SAY, THAT THE DAMAGES ARE LIQUIDATED LIQUIDATED, THAT COULD BE IN THERE, THERE IS OTHER STATUTES THAT TALK ABOUT SETTLEMENT AUTHORITY AND WHEN YOU SAY IT IS A CASE OF FIRST IMPRESSION CASE OF FIRST IMPRESSION IS TO THE RECORD A A LACK OF RECORD SHOWS IT IS THIS HAS NEVER BEEN RAISED BEFORE BY THE STATE, AS AN INTENT TO AVOID A VALID JUDGMENT IN THAT CONTEXT YOU SAY FIRST IMPRESSION WE ARE SULLING WITH WE HAVE ALL CASES SINCE 1991 NOT ONE OF THEM IN THE CONTEXT OF A CONTRACT ACTION MENTIONS SO IT HELP US WITH THAT -- THAT IDEA THAT -- THAT -- FIRST IMPRESSION THAT NO PAEMENT APPELLANT COURT CONSTRUED THIS THIS. TO YOUR KNOWLEDGE NEVER RAISED AS A DEFENSE TO PAYING A JUDGMENT.

IN SOME OTHER ACTION.

SOME OTHER BREACH OF CONTRACT ACTION.

NO, BECAUSE I WOULD ASSUME THAT TO THE EXTENT OTHER JUDGMENTS WERE ENTERED THAT THEY WERE PAID, HE GO TO THROUGH THE CLAIMS PROCESS, OR BECAUSE THE AGENCY REQUESTED AND GOT AN APPROPRIATION FOR IT.

IS THIS SECTION, THAT YOU NOW CLAIM PRECLUDES THE AGENCY FROM PAYING THIS JUDGMENT BECAUSE THERE IS NOT MONEY ACTUALLY APPROPRIATED IS THIS DISCLOSED TO THE PERSON YOU ARE CONTRACTING WITH? I MEAN IS THIS A PART OF -- DO YOU TELL THEM, LOOK, THERE IS A STATUTE HERE, THAT SAYS -- IF WE GET INTO TROUBLE, AND YOU GET A LEGITIMIZE AGAINST US -- A JUDGMENT BEGINS A US YOU HAVE GO TO LEGISLATURE AND GET MONEY.

FIRST OF ALL AS MATTER OF LAW LAW, I DON'T WISH TO SOUND OVERLY TECHNICAL BUT CONTRACTS ARE ENTERED INTO AND ARE DEEMED TO INCORPORATE THE LAW OF THE STATE INCLUDING STATUTORY LAW --

YOU DON'T SEE THAT AS A PROBLEM CONTRACTING WITH SOMEONE MIERNGS WOULDN'T THIS I MEAN WOULDN'T THIS STATE REQUIRE YOU TO DISCLOSE THIS KIND OF PROVISION?

THIS -- THIS CONTRACT -- THERE WAS NEVER AN APPROPRIATION TO BE MADE FOR THIS CONTRACT, BECAUSE CONTRACT WAS NOT ENTITLED TO MONEY IT WAS CONCESSION AGREEMENT WHEREBY THEY WERE BUILD CABINS THEY WOULD HAVE RIGHT TO OPERATE CERTAIN CONCESSION FROM THOSE WHICH THEY WOULD GET MONEY, OVER AN EXTENDED PERIOD OF TIME SO THAT THERE WERE SOME PROVISIONS THAT THE STATE HAD TO ABIDE BY, OTHERWISE THERE WOULD BE NO BREACH OF CONTRACT HERE, WOULD THERE I? THERE WERE CONTRACT PROVISIONS THAT THE STATE HAD TO ABIDE BY; CORRECT? THERE WERE VARIOUS PROVISIONS, WHY HE IS THAT OBVIOUSLY OBLIGATED THE STATE TO DO CERTAIN THINGS. THAT WHAT WAS MEASURE OF THE DAMAGES.

SIX --
KNOW THE AMOUNT BUT WHAT WAS THAT FOR?

THAT -- AS I RECALL, WAS FOR VARIOUS EXPENSES, THAT CONTRACTPOINT HAD INCURRED IN ATTEMPTING TO GET THE CABIN INITIATIVE GOING, IT NEVER SUCCEEDED IN DOING THAT, THERE WAS A DISPUTE AS TO WHETHER IT -- THE DEPARTMENT -- TERMINATED THE CONTRACT, OR NOT, OR JUST -- WHAT HAPPENED. BUT THE JURY FOUND THAT -- THAT THEY WE KNOW TITLED TO CERTAIN AMOUNT OF AMOUNT FOR VARIOUS EXPENSES THEY HAD -- EXPECTATION ON THOSE THE CONTRACT.

NO, NO FOR. AS I RECALL -- IT WAS EXPENSES EXPENDED IN --
THEY MADE CERTAIN YOU KNOW THEY HAD TRAVEL EXPENSES THEY HAD, VARIOUS EXPENSES IT IS YOUR POSITION THE DEPARTMENT WOULD NOT HAVE BEEN -- HAD SOUGHT APPROPRIATION FROM THOSE THE LEGISLATURE FOR ITS PORTIONS OF THIS CONTRACT BECAUSE THERE WAS REALLY JUST A A -- PERCENTAGE OF THE CONCESSION CONCESSIONS.

RIGHT, THERE WAS NEVER ANY MONEY TO BE PAID CONTRACTPOINT -- UNDER THIS CONTRACT. THE WHOLE POINT OF CONTRACTS DURING A PERIOD OF TIME ENCOURAGEMENT TO ENTER INTO WHEN THERE I CALL PRIVATIZING SO THE GOVERNMENT INSTEAD OF DOING THESE THEMSELVES WOULD ENCOURAGE PRIVATE ENTITIES TO CONTRACT WITH IT TO DO WHAT IT WOULD DO, BUT, ISN'T I MEAN THAT IS WHY WE'VE GOT THIS SITUATION, HERE.

WELL, THAT IS TRUE, AND HERE -- HERE IS HERE IS THE PROBLEM WITH THAT AND I THINK THE CONTRACT OF THIS NATURE YOU GET INTO WHEN A CONTRACT IS -- IS BREACHED OR CAN'T GO FORWARD, YOU CAN HAVE TREMENDOUS DAMAGE CLAIMS FOR LOST PROFITS, I MEAN IN THE TENS OR HUNDREDS MILLIONS OF DOLLARS.

BUT.
ACTUALLY, THE MATTER OF WHETHER IS THERE WAS A CONTRACT NOT A CONTRACT, WHETHER THERE WERE DAMAGES OR NOT DAMAGES, THAT HAS BEEN DETERMINED BY THE COURT, AND NOT APPEALED, I MEAN THAT IS MATTER THAT IS NOT REALLY, TO BE SCRUTINIZED HERE THE QUESTION IS WHETHER REALLY, BOILS DOWN AS FAR AS I CAN SEE, TO WHETHER THERE IS AN EFFECTIVE BASIS UPON WHICH THERE CAN BE AN EXECUTION OF THE JUDGMENT AGAINST THE STATE. DOESN'T THAT I MEAN THAT IS THE ISSUE NOT GOING BACK AND LOOKING BEHIND -- WERE QUILL EXACTLY THAT IS THE O WELL EXACTLY WHAT STATUS ADDRESS.

WE GO TO CERTIFIED QUESTION IN PAN-AMERICAN WHEN STATE AGENCY IMPROPERLY RESCINDS EXPRESS EXCOULD YOU TORY CONTRACT WITH PRIVATE VENDOR SUFFERED A LOSS OF PROFIT AS A CONSEQUENCE MADE THE STATE INVOKE SOVEREIGN IMMUNITY TO BAR TO ACTION, NOW, WE ARE TO ASSUME, THAT WE GO BACK TO A STATUTE THAT IS NOT DOESN'T -- IS IN -- THE CHAPTER ON THE SLA -- CHAPTER ON LEGISLATURE NOT A CHAPTER ON THE AUTHORITY OF DEP TO ENTER CONTRACTS, AND IT TALKS ABOUT THIS CONCEPT OF THAT YOU HAVE GOT TO GET AN PREPARATION FOR A JUDGMENT. IN TERMS OF YOU SAY THAT THAT PARTICULAR SECTION IS CLEAR ON ITS FACE, BUT DON'T WE HAVE TO READ IT IN CONTEXT WITH ALL THE OTHER SUBPARTS SUBPARTS, AS WELL AS WHERE IT IS PLACED WITHIN THE FRAMEWORK OF THE CHAPTER TO SEE WHETHER IT CLEARLY AND UNEQUIVOCALLY SAYS ALTHOUGH, YOU HAVE WE DON'T HAVE IMMUNITY FROM SUIT, WE HAVE IMMUNITY FROM PAYMENT, BECAUSE THAT IS EXACTLY -- WHAT IS BEING ASSERTED BY THE STATE.
THAT IS CORRECT.

AND YOU CAN SUE US GET ALL THESE DAMAGES WE ARE JUST NOT GOING TO PAY, MY CONCERN IS WHETHER SOMETHING COULD BE DONE BY THE STATE THAT WOULD FOR EXAMPLE

SAY, IN ACTIONS FOR CONTRACT, THAT THE DAMAGES -- NO PARTY SHALL BE ABLE TO RECOVER YOU BEENED -- JUDGMENT IN COMPETENCE OF A MILLION DOLLARS WITHOUT GOING THROUGH THE CLAIMS PROCESS, I THINK, WE LOOKED TO -- IS THAT CONSTITUTIONAL LIMIT -- THERE CAN BE NO LOSS OF PROFIT IN CLAIMS FOR YOU KNOW, THOSE ARE TWO ALL BE THINGS THAT I THINK THE LEGISLATURE COULD CONSIDER, AND --

I THINK THAT IS WHAT IT DID HERE, BUT IT SIMPLY DID NOT PLACE A LIMIT ON RECOVERY BEFORE YOU GO TO THE CLAIMS PROCESS, I MEAN IT COULD HAVE ENACTED A STATUTE THAT SAID YOU KNOW, COMPARABLE TO 768.28 WITH LIMITATION ON TORTS THEY WOULD HAVE IMPOSED A LIMITATION ON CONTRACT PAYMENTS, OF WHATEVER, 50 OR 100,000 DOLLARS, SO IF BUT YOU THINK THEY DID IT AND THAT IS WHERE THE PROBLEM COMES IN IN TERMS OF STATUTORY CONSTRUCTION, I -- WITH THAT NOT THAT THERE WAS 22 YEARS OF LAW BUT PAN-AMERICAN HAD BEEN IN EXISTENCE FOR SEVEN YEARS AT THE TIME. AND IF WE THOUGHT THAT THE INTENTION WAS TO OVERTURN PAN-AMERICAN AND SAY THERE IS NO ABILITY TO EXECUTE ON A JUDGMENT BY COMPELLING PAYMENT THAT THEY WOULD DO IT IN A CLEAR UNEQUIVOCAL WAY IN A STATUTE THAT IS -- WAS -- WAS -- PART OF SOME OF THE CONTRACTING STATUTES THAT GIVE --

THERE IS NO -- GENERAL CHAPTER ON CONTRACT LAW. IT IS KIND OF SCATTERED AROUND IN VARIOUS STATUTES. BUT I THINK -- I THINK YOU HAVE TO LOOK AT THE CONTEXT IN WHICH THE STATUTE WAS -- ENACTED ENACTED, IT FOLLOWED THE CITRUS CANKER LITIGATION IN THE LATE 80S, DURING THAT TIME THE STATE WAS FACED WITH -- JUDGMENTS, THAT THAT WERE YOU -- SOUGHT TO BE ENFORCED THROUGH MANDAMUS ACTIONS ATTEMPTS TO EXECUTE ON STATE PROPERTY THERE WAS DES INTERRUPTION OF STATE FINANCE POTENTIALLY BECAUSE OF THE LIABILITY, AND THIS IS THE LEGISLATURE'S ASSERTION THAT YOU CANNOT DO THOSE THINGS -- YOU CANNOT CANNOT --

SO THEREFORE, AND WE LOOK AT SECTION TWO, WHICH SAYS THE STATE EACH SAY IT AGENCY EXERCISING INHERENT POLICE POWER TO PROTECT PUB HEALTH SAFETY AND WELFARE WHY WOULDN'T IT BE APPROPRIATE TO READ SUBSECTION 2 AND 3 TOGETHER, TO SAY THAT IF THERE WAS ANY INTENTION IN THIS STATUTE IT WAS TO LIMIT ACTIONS WHICH WERE BROUGHT PURSUIT TO THE -- PURSUANT -- AGAINST THE STATE WHEN EXERCISING POLICE POWER.

LET ME RESPOND.

I THOUGHT YOU SAID THAT WAS CONTEXT IT CAME AFTER THE CANKER CASE.

IT DID, BUT THE CANKER LITIGATION LITIGATION, THE COURTS FOUND THAT THERE HAD BEEN A TAKING OF PROPERTY, AND CONSTITUTIONALLY CONSTITUTIONALLY, FAIR AND WHAT WORDS ARE FAIR FULL AND JUST COMPENSATION WAS DUE THAT IS A CONSTITUTIONAL OBLIGATION. WE HAVE HERE A CONTRACTUAL OBLIGATION THE LEGISLATURE IN THEORY AS IN TORTS COULD SAY WE ARE NOT PAYING ANY WE ARE REINSTALLING SOVERIGN IMMUNITY YOU CAN'T SUE YOU CAN'T JET A JUDGMENT -- YOU CAN'T GETTING ANYTHING THAT IS NOT WHAT THEY DID. THEY HAD SIMPLY PUT THE BRAKES ON WHAT WAS GOING ON, IN THE CANKER LITIGATION WITH PERSONS TRYING TO ENFORCE LEGITIMIZES FOR WHICH THERE -- -- JUDGMENTS FOR NO APPROPRIATION APPROPRIATION.

HOW DO RECONCILE WITH SECTION 76828 -- DO PLAVZ WHO OBTAIN A JUDGMENT NOW HAVE TO OBTAIN APPROPRIATION APPROPRIATIONS EVEN FOR THE HUNDRED THOUSAND DOLLARS THEY ARE ALLOWED UNDER THAT STATUTE.

NO BECAUSE THAT IS A SPECIFIC STATUTE AND I THINK THE SPECIFIC CONTROL -- YOU ARE READING OF THIS WOULD BE ANY JUDGMENT AND WHAT IT SAYS.

WELL.

-- THE PLAIN LANGUAGE -- IT SAYS, REQUIRED TO PAY MONEY DAMAGES UNDER JUDGMENT OF ANY COURT, EXCEPT PURSUANT TO APPROPRIATION MADE BY.

THE RISK MANAGEMENT TRUST FUND WHICH TAKES CARE OF COURT LEGITIMIZES IS FUNDED BY APPROPRIATION -- JUDGMENTS THERE ARE SPECIFIC LAWS ON THAT, THIS IS MORE GENERAL, AND, I DON'T YOU KNOW, MAYBE THE ONLY THING IT APPLIES TO IS CONTRACT ACTIONS ACTIONS, AND ACTIONS THAT AROSE FOR EXAMPLE OUT OF CITRUS CANKER SITUATION WHERE THERE WAS A CONSTITUTIONAL FWLOIGS PAY -- OBLIGATION TO PAY, THE LEGISLATURE COULD IMPOSE A LIMIT, ON THE ABILITY.

THEY COULD DO THEY MIGHT BE ABLE TO DO THOSE THINGS, THE QUESTION IS IS WHEN YOU HAVE A STATUTE THAT IS NOT EVEN HIGHLIGHTED AND IS UNBE KNOWNS THE TO YOU KNOW, THE COURTS, APPARENTLY, TO ANYBODY LITIGATING THESE MATTERS, AND THEN YOU ENTER INTO AN EXPRESS CONTRACT, WHICH LOOKS LIKE A BINDING CONTRACT, TO ME, EVEN IF THIS MIGHT APPLY, THE EXPRESS CONTRACT THEN TRUMPS IT WOULD IT HAVE TO STATE NO YOUR LIMITED, ANT DON'T YOU THAT SEEMS TO ME THAT WAS WHAT JUSTICE QUINCE WAS SAYING, THAT WITHOUT A CLEAR INDICATION THAT THIS IS -- EVEN THE TITLE OF IT DOESN'T EVEN SIGNAL WHAT IT WAS DOING.

I THINK IT -- IT DOES, THE TITLE SAYS, SUIT SEEK MONETARY DAMAGES AGAINST THE IS THAT IT OR ITS A AGENCIES AGENCIES, PAYMENT OF JUDGMENTS APPROPRIATIONS REQUIRED I DON'T THINK IT COULD HAVE BEEN CLEARER.

IF YOU CAN ANSWER HIS QUESTION VERY DIRECTLY YOU ARE RUNNING OUT OF YOUR TIME. RUNNING OUT OF TIME HERE, CAN YOU TELL ME WHAT YOU KNOW OF ANY DIRECTIVES THAT WENT OUT TO ANY EXECUTIVE BRANCH, AGENCIES AFTER THE PASSAGE OF THIS LAW? YOUR HONOR I'M NOT AWARE OF ANY.

IN OTHER WORDS YOU ARE OUT IN AWARE.

I'M NOT AWARE ANY OF.

HAVE YOU SEARCHED FOR SUCH DIRECTIVES.

I HAVE NOT.

WOULDN'T THAT BE LOGICAL THAT YOU WOULD THAT IS IF A STATUTE LIKE THIS WAS PASSED AND IT HAD THIS HUGE IMPACT ON ALL OF THE AGENCIES OF THE STATE THAT SURELY SOMEBODY WOULD HAVE TOLD ALL THE HEADS OF ALL THESE AGENCIES ABOUT THIS IMPORTANT LAW. YOU HAVE NOT EVEN SEARCHED FOR THAT?

WE HAVE NOT, BECAUSE -- QUITE FRANKLY I DON'T THINK WE EVER THOUGHT THAT THERE WERE ANY, I MEAN IT IS NOT THE -- THE PRACTICE YOU KNOW TO OF THE LEGISLATURE TO -- SEND OUT RECORDS --

-- FIRST TIME YOU TALKED ABOUT A CASE OF FIRST IMPRESSION THIS IS THE FIRST TIME THIS STATUTE HAS BEEN UNION ADVOCATED UNION ADVOCATED.

I BELIEVE -- INVOKED.

I BELIEVE SO P.,, .

MAY IT PLEASE THE COURT, I REPRESENT CONTRACTPOINT FLORIDA PARKS, LET ME RESPOND, JUSTICE TO YOUR QUESTION, MY LAW GIRLFIRM DINED NOTHING BUTH PUBLIC CONTRACTING LAW, AND WE HAVE DONE IT FOR 20 PLUS YEARS, I HAVE NEVER HEARD OF THIS STATUTE IT HAS NEVER BEEN RAISED RAISED, PRIOR TO THIS LITIGATION LITIGATION.

LET'S GO BACK TO THE TEST FUNDAMENTAL PRINCIPAL HAPPENS ACROSS DIFFERENT AREAS REGULATED WHATEVER THE STATUTE IS, THAT IT BECOMES PARTS OF THAT CONTRACT, AND YOU DON'T HAVE TO RESTATE THE STATUTE, IN ANY CONTRACT.

I DON'T DISAGREE WITH THAT THE POINT I WAS MAKING IS THE STATE AGENCIES, ROUTINELY, PAY LEGITIMIZES AND -- PAY YOU JUDGMENTS DO NOT PAYS THIS ISSUE IT WAS SUGGESTED JUDGMENTS FEW AND FAR BETWEEN NOT ACCURATE IT HAPPENS ROUTINELY.

DO YOU SEE THIS CASE INVOLVING INVOLVING, A DISTINGUISHING FACTOR BETWEEN DOLLARS THAT WERE ANTICIPATED WOULD COME FROM REVENUES GENERATESED BY THE ACTIVITY AND ACTIVITIES THAT WOULD BE CONDUCTED BY THE GOVERNMENT ITSELF, THOSE IS THAT A DISTINCTION DOES THAT HAVE ANYTHING TO DO WITH THIS AT ALL INTO I THINK NOT FOR TWO REASONS, ONE IS THAT THE PAN-AM CASE, WAS JUST LIKE THIS, IT WAS CONCESSION AGREEMENT, THE SECOND ONE IS DEP HAD AN ALLOCATION FOR THE CAP CABIN INITIATIVE A CHOICE OF PUBLIC PRIVATE CORRESPOND DO IT THEMSELVES ULTIMATELY THEY DID IT THEMSELVES. AFTER THE BREACH OF CONTRACT CONTRACT.

WELL, THE PROBLEM AS I SEE PAN-AM WASN'T JUST LIKE THIS BECAUSE THIS A CASE ABOUT ENFORCEMENT OF THE JUDGMENT. PAN-AM WAS A CASE IS TO WHETHER SOVEREIGN IMMUNITY WAS RAISED SOS THAT YOU COULD BRING AN ACTION IN THE COURT. IN MY CONCERN -- IS THAT I DON'T KNOW OF ANY INSTANCE, IN WHICH THE COURT HAS HELD OR COULD HOLD THAT THERE COULD BE A REQUIREMENT UPON THE LEGISLATURE TO APPROPRIATE MONEY FOR ANY SPECIFIC PURPOSE. AND DO YOU THINK THE COURT COULD DO THAT?

PHRASED THAT WAY I WOULD SAY NO.

IF THIS WERE 100 MILLION DOLLAR JUDGMENT, RATHER THAN 600,000 DOLLAR JUDGMENT, IT SEEMS TO ME THAT WE WOULD SOMEONE CAME AND SAID YOU GOT TO MANDAMUS THE PAYMENT OF THIS MONEY, THAT RUNNING INTO THIS STATUTE, WHICH YOU GOT TO ADMIT IS VERY CLEAR, THEN I THINK IT REALLY PRESENTS A DILEMMA I DON'T KNOW WHY THE STATE WOULD WANT TO DO THAT BUT, TO PUT ON THIS THE BOOKS -- I WOULD WITH ALL DUE RESPECT TAKE EXCEPTION TO THE STATEMENT THAT THE STATUTE IS VERY CLEAR, LET ME -- WELL -- -- GIVE ME A CHANCE.

IT IS SO BROAD THAT IT IS VERY CLEAR THAT IT WIPES OUT EVERYTHING.

IF YOU --

THE ON PARABLE SECTIONSGS SAY A CLAIMS BILL REQUIRED IF NOT OTHERWISE APPROPRIATION MADE BY LAW TO PAY THE JUDGMENT THAT IS ALSO A DEFENSE TO WRIT OF MANDAMUS PHRASE AS DEFINED IN CONSTITUTION BY THE WAY WAS IN EFFECT BEFORE PAN-AM TOBACCO WAS DECIDED, I THINK YOU CAN THREAD -- WHICH SUBSESSION.

BOTH 3 AND 4. HAVE THE LANGUAGE, IN IT, NO APPROPRIATION MADE BY LAW TO PAY THE JUDGMENT.

THERE ARE NO COMEAS IN THAT PHRASE YOU CAN READ THAT TO SAY THAT THERE IS NO APPROPRIATION APPROPRIATION, MADE BY LAW, IN OTHER WORDS, THEY DON'T HAVE THE MONEY. NOT THAT IT HAS TO BE AN APPROPRIATION SPECIFICALLY TO PAY THE JUDGMENT, AND I THINK THAT IS THE FAIR READ OF THE STATUTE.

WELL, MY TLAIN WES -- IS BECAUSE, IT -- IT SEEMS TO ME THAT WHERE IT SAYS TO ENFORCE A JUDGMENT FOR MONETARY DAMAGES AGAINST THE STATE THE SO HE WILL REMEDY OF THE JUDGMENT CREDITOR IS PETITIONED THE LEGISLATURE ARE THAT THAT READS TO ME LIKE WHAT THE LEGISLATURE IS SAYING IS THAT WE ARE GOING TO HAVE HAVE -- THE LAST WORD AS TO THE APPROPRIATION OF MONEY. AND THAT YOU KNOW, YOU COURTS CAN ADJUDICATE THESE DETERMINE HOW MUCH IS -- MUCH LIKE WHAT HAPPENS IN THE TORT CLAIMS AREA FOR JUDGMENTS ABOVE 100,000 DOLLARS ISN'T IT?

WELL, I THINK YOU HAVE GOT GO ON TO SAY THOUGH THAT I DON'TS SAY IF THERE IS NOT OTHERWISE BEEN AN APPROPRIATION MADE BY LAW. AND I HAVE COME BACK TO MY POINT THAT I THINK THAT REQUIRES THERE TO BE MONEY IN THE BANK. AN APPROPRIATION MADE BY LAW. YOU KNOW, THAT THE --

-- THE JUDGMENT THEY DON'T THINK SPECIFICALLY HAS TO BE FOR THE JUDGMENT I DON'T THINK THE LEGISLATURE HAS TO SAY DEP HERE IS 600,000 DOLLARS TO PAY CONTRACTPOINT CONTRACTPOINT, IN IN THIS CASE SAID 9 1/2 MILLION.

SO --

AGAIN, LET ME UNDERSTAND BECAUSE I'M NOT SURE I I'M CLEAR ON WHAT YOU ARE SAYING, IS UNCLEAR -- IS THAT YOU ARE SAYING THAT TO PAY MONETARY DAMAGES UNDER JUDGMENT OF ANY COURT EXCEPT PURSUANT TO APPROPRIATION MADE BY LAW THAT IS THE EDGE WAY THAT MONEY CAN BE PAID IS BY, THERE BEING APPROPRIATIONS SO IT IS HE CERTAINLY ESSENTIALLY MEANING NOTHING.

THERE COULD BE MEANING TO IT FOR EXAMPLE HUNDRED MILLION DOLLARS CAPITAL COULD BE A JUDGMENT THERE WAS NO MONEY IN THE BANK NO APPROPRIATION --

HOW MUCH MONEY I MEAN WHOSE BANK DOES IT HAVE TO BE DEP BANK ACCOUNT OR THE STATE TREASURY? OR DOES IT HAVE HAVE TO BANKRUPT THE YOU KNOW, I MEAN -- I MAYBEMAYBE THE IDEA BECAUSE YOU ARE SAYING THAT CREATES AMBIGUITY, THAT THE STATE BETTER BE CLEAR WHAT IT SWENDZ TO GOINTENDS TO DO IN CONTRACT MATTERS RATHER THAN US GUESS AT IT.

EXACTLY RIGHT, YOU CAN NIGHT ADOPT DEP POSITION HERE, WITHOUT REVERSING PAN KAM TOBACCO. BECAUSE PAN KAM TOBACCO SAID A CLAIMS KILL IS NOT SUFFICIENT CONSIDERATION FOR CONTRACT.

YOUR ENTERINGSTRERPGS, INTERPRETATION IF EGG NEEDED TEN NEW TRUCKS IN ORDER TO CONTINUE WHATEVER IT DOES, AND THEY PUT IN A BUDGET REQUEST FOR WHAT THEY

ESTIMATED THE COST OF THE TEN NEW TRUCKS AND THEIR BUDGET WAS APPROVED WHICH INCLUDED THE REQUEST FOR THE TEN NEW TRUCKS, AND THEN THEY CONTRACTED AFTERWARDS WITH A LOCAL TRUCK DEALER FOR THE TEN NEW TRUCKS AND THE TRUCK DEALER PROVIDED THE TRUCKS AND WITHBUT DIDN'T RECEIVE PAYMENT THE AGENCY GOT INTO SOME FINANCIAL TROUBLE AND SO THEY ENDED UP WITH A DEFICIT THAT YEAR THAT IS THEY DIDN'T HAVE MONEY TO PAY FOR THE TRUCKS BECAUSE THEY USED IT FOR SOMETHING ELSE, AND, SO NOW THAT IN THE TRUCK DEALER OF COURSE IS SAYING I WANT MY MONEY. AND HE SUES THE AGENCY, AND GETS A JUDGMENT AND NOW THE STATE COMES AND INVOKES A STATUTE. IS IT YOUR POSITION THAT BECAUSE THE MONEY WAS APPROPRIATED FOR THE TRUCKS TO BEGIN WITH THAT YOU DON'T HAVE TO HAVE A LEGISLATURE MAKE ANOTHER APPROPRIATION UNDER THIS STATUTE? IS THAT --

IT IS.

I HAVE WALKED THROUGH YOUR INTERPRETATION OF THE STATUTE?

IT IS, AND IT IS CONSISTENT WITH THE -- FLAK VERSUS GRAHAM CASE THE COUNTY COURT JUDGE

--

YOU ARE NOT SAYING THAT MONEY DOESN'T HAVE TO BE PREPT PREPTED, YOU ARE SAYING AS LONG AS THE MONEY WAS APPROPRIATED ON THE FRONT END -- THAT THAT IS SUFFICIENT THAT YOU DON'T GO -- SPECIFICALLY GET APPROPRIATION FROM THE LEGISLATURE EVERY TIME A JUDGMENT IS ENTERED AGAINST --

I MISUNDERSTOOD YOUR QUESTION.

OKAY.

I WOULD SUGGEST THAT THERE IS TWO WAYS YOU CAN DECIDE THIS CASE, BASED ON THAT QUESTION, THE NARROW DECISION WOULD BE THERE WAS A APPROPRIATION HERE FOR THE CABIN'S INITIATIVE WHICH THE DEPARTMENT COULD HAVE USED FOR THIS PURPOSE. THE BROADER INTERPRETATION WOULD BE AS LONG AS DEP HAS AN APPROPRIATION OF FUNDS TO OPERATE THEY HAVE TO USE THOSE FUNDS TO PAY JUDGMENTS WHEN THEY BREACH CONTRACTS I PREFER THE LATTER BUT I THINK YOU COULD MAKE EITHER DECISION DECISION.

CAN I ASK A QUESTION WITH REGARD TO THIS AREA OF LIMITATIONS UPON ACTIONS AGAINST THE GOVERNMENT. THERE IS A FUNDAMENTAL PRINCIPAL THAT IS NOT SOMETHING THAT IS WAIVEABLE, IN LITIGATION SOVEREIGN IMMUNITY IT IS AN THAT ISSUE CAN BE RAISED EVEN ON APPEAL IT HAS NEVER BEEN RAISED BEFORE.

RIGHT.

BUT ONCE THE JUDGMENT IS ULTIMATELY ENTERED, CAN THAT BE COLLATERALLY REFUSED ASSERT THIS IN COLLATERAL FASHION THERE IS A PROCEDURAL WAY AROUND NOT AROUND BUT IN DEALING WITH THIS AS I THINK YOU HAVE HEARD IN INSTANCES WE EXPECT TO SEE ON THE FACE OF THE BLEEDINGS WHETHER A COURT WAS WITHOUT THOSE JURISDICTION JURISDICTION, THAT IS REALLY WHAT THIS SAYING IS A COURT IS WITHOUT JURISDICTION TO ENTER A JUDGMENT, ALSO IN I GUESS ESTABLISHED THAT THERE IS AN APPROPRIATION, ON WHAT WHATEVER THAT MAY BE.

TO BE FAIR, IN RESPONSE, I DID DO THE TRIAL, AND IT WAS RAISED NOT AS AFFIRMATIVE DEFENSE BUT IT WAS RAISED A YEAR OR SO INTO THE MATTER.

HOW?

BY AFFIRMATIVE --.

IT WAS RAISED BY MOTION OF SOME KIND I DON'T REMEMBER EXACTLY HOW FAIRWAYSED. LITTED GAITED.

-- YES, JUDGE CLARK MADE THE DETERMINATION IT WAS PREMATURE PREMATURE.

A SO NOT RULED ON MERITS THEN.

I'M SORRY.

THERE IS NO RULING ON THE MERITS OF IT.

THERE WAS NOT A RULING ON THE MERITS.

IF YOU CAN -- AS ONE OF THE BRIEFS WAS TALKING ABOUT IN I KNOW THAT YOU THOUGHT ABOUT, THE FACT THAT IN THE MONEY THAT IS APPROPRIATED LIKE TO THE COURT, AT THE END OF EACH YEAR, YOU USE IT OR LOSE IT, SO TO SPEAK, I MEAN YOU -- IT REVERTS TO LIKE THE FLAK CASE IT -- FLCK CASE GOES INTO TREASURY TREASURY, AND, THEN, YOU KNOW, YOU HAVE

INSTANCES LIKE WE'VE GOT GOING ON RIGHT NOW, WHERE THE STATE IS IN A SHORTFALL, POSITION, BUT, IT WOULD SEEM TO ME THAT YOU NECESSARILY GET TO A POINT IN WHICH THE MANDAMUS WOULD TO GET A PAYMENT WOULD NOT GO TO THE AGENCIES, BUT WOULD HAVE GO TO THE STATE COMPTROLLER, WOULD IT NOT? IT WOULD HAVE TO GO TO WHO HAS GOT THE STATE CONTROL OF THE STATE TREASURY IN GENERAL.

YOU KNOW, WE WHEN WE NIFL BROUGHT MANDAMUS ACTION WE NAMED COMPTROLLER CFO THEY MOVED TO DISMISS OCEANSON THE GROUNDS THEY HAD O NO MINUTE IS ISTERIAL DUTY TO ACT UNTIL THEY TO GET WHATEVER APPROPRIATE PAPERWORK FROM THE DEPARTMENT, THAT IS -- KIND OF ALL I KNOW ABOUT THAT INTERGOVERNMENT PAPERWORK PAPERWORK, BUT, IF YOUR POINT THAT IS THE DEPARTMENT WAS IS OUT OF MONEY.

THEY DON'T HAVE MONEY INTO THEY DON'T HAVE ANY MONEY.

THEY DON'T HAVE ANY MONEY THAT WAS APPROPRIATED IN JUSTICE ANSTEAD'S INSTANCE UNLESS THEY SPEND IT DURING DURING --

I WOULD SUGGEST I'M SORRY I WOULD SUGGEST UNDER FLACK CASE YOU THEN WOULD HAVE A RIGHT TO SEEK PAYMENT FROM ANY MONEY IN THE STATE TREASURY TREASURY.

IS YOUR ARGUMENT THAT IF WE INTERPRET THE STATUTE THE WAY THE STATE WANTS THE CONTRACTS ARE ILLUSORY.

CONTRACTS NO OF YOU MUTUALITY INVESTIGATION. YOU CAN'T READ PAN KAM ANY OTHER WAY INTO ISN'T THE ALTERNATIVE INTERPRETATION THAT THE REMEDY FOR A STATE'S PRO PORTED BREACH OF CONTRACT IS SPECIFIC PERFORMANCE NOT MONETARY DAMAGES DAMAGES?

WELL THERE IS -- I CAN'T SAY I THOUGHT IT THROUGH THAT WAY BUT I CAN SEE WHERE THERE ARE INSTANCES WHERE SPECIFIC PERFORMANCE WOULD BE A REMEDY, BUT, FOR EXAMPLE IF YOU HAVE A BREACH OF A -- OF A CONTRACT SIMPLY TO PAY MONEY, OR YOU HAVE A BREACH OF A CONSTRUCTION CONTRACT WHICH I'M MOST FAMILIAR WITH WHERE THERE IS ADDITIONAL COMPENSATION REQUIRED BECAUSE OF SOME PLAN OR UTILITY CONFLICT SOMETHING DAVENLGZ ARE ALWAYS REMEDY DAMAGES ALWAYS REMEDY I SUPPOSE YOU COULD -- YOU COULD FASHION IT AS REQUIRING YOU SPECIFICALLY TO PAY WHAT YOUR DUE UNDER THE CONTRACT, BUT I'M NOT SURE THAT IS THE DISTINCTION WITH A DIFFERENCE.

I THINK JUSTICE, THE QUESTION WOULD BE, IS ITS REALLY.

IF THERE IS ANOTHER WAY TO GET ENFORCEMENT WHICH WOULD BE TO SAY THEY ARE NOT SAYING THEY ARE IMMUNE FROM SUIT TO SAY THEY ARE REQUIRED TO PERFORM UNDER THE CONTRACT WHICH WOULD BE, AND AGAIN, TO ME WOULD PROBABLY HAVE HOOD THERE BE RAISED PREJUDGMENT, NO THAT YOU NEED YOU ARE NOT GOING TO BE ABLE TO ENFORCE THIS JUDGMENT SO YOU WANT TO COMPEL THEM TO PERFORM THAT IS TO LET YOU GO AHEAD, AND YOU KNOW, HAVE THIS CONCESSION AGREEMENT, I MEAN, THEREFORE, I MEAN, THAT THE IDEA THAT YOU INTERPRET IT THAT WE CAN'T HAVE 11066 BE THE LAW BECAUSE OTHERWISE ALL CONTRACTS WOULD BE ILLUSORY IF THERE WOULD BE ANOTHER REMEDY REMEDY, THEN THEY WOULDN'T BE ILLUSORY.

IT IS HARD FOR ME TO -- CONSIDER THAT EVERY SITUATION THOUGH WOULD HAVE AN ALTERNATIVE REMEDY, BECAUSE TRADITIONAL TYPICALLY, THE BREACH OF CONTRACT REMEDY IS MONEY DAMAGES DAMAGES, I MEAN SPECIFIC PERFORMANCE IS AN EXCEPTION, WE'VE GOT A SITUATION, IN THIS CASE, WHERE THE DEPARTMENT DEP, SPECIFICALLY ACCORDING TO THE JURY SAID YOU ARE TERMINATED. AND SO WHAT WERE WE TO DO IN THAT SITUATION THEY DIDN'T WANT TO DEAL WITH US? ANY FURTHER, WE SEEMED TO HAVE NO OPTION BUT TO SEEK OUR DAMAGES, WHICH IS TRADITIONAL WHAT YOU WOULD RECOVERER IN THAT BREACH OF CONTRACT.

WHAT OPTIONS DO YOU HAVE TO SEEK PAYMENT FROM THE LEGISLATURE LEGISLATURE? HAVE YOU DONE IT? MY POINT IS.

NO.

YOU ARE ENTITLED TO JUDGMENT FOR DOLLAR AMOUNT -- THE QUESTION YOU ARE ASKING IS PAYMENT HOW DO WE DO WE FORCE PAYMENT? OR DO YOU SEEK TO PURSUE PAYMENT FROM THE LEGISLATURE FIRST?

WELL, I THINK UNDER CLEAR LANGUAGE OF PAN-AM TOBACCO THAT ABILITY TO I'M NOT PRECISE PRECISELY ANSWERING YOUR QUESTION I KNOW BUT THAT ABILITY TO SEEKS PAYMENT FROM IS

THE LEGISLATURE IS NOT SUFFICIENT TO MAKE CONTRACT VALID I DON'T THINK IT IS TANT NOUNT THE COURT ORDERING LEGISLATURE TO DO SOMETHING IF YOU DON'T UPHOLD THE AG OR THE DEP'S POSITION, I MEAN ALL YOU ARE DOING IS SAYING THE STATE ENTERS INTO A CONTRACT, PAN-AM STATE ENTERS INTO CONTRACT THEY ARE RESPONSIBLE FOR ONES QUESTIONSES IF THEY BREACH CONTRACT THEY ARE RESPONSIBLE FOR THE CONSEQUENCE OF THE BREACH ME TO LEGISLATURE GAVE THEM POWER TO --

MY PROBLEM -- THE QUESTION THAT IS LEFT IN MY MIND, IS WHAT IS THE REMEDY. FOR THAT. I MEAN -- MANDAMUS IS -- ARE THERE OTHER INSTANCES, IN WHICH MANDAMUS IS USED TO REQUIRE A PAYMENT BY STATE? AGENCY? OTHER THAN IN A CONTRACT SITUATION?

I'M SURE THERE ARE.

BUT THE WHOLE POINT OF -- OF THE ARTICLE IN 1919 THAT STEVE TURNER WROTE WAS TRYING TO -- 1991, TRYING TO SCRATCHES OUT SOMES METHOD BY WHICH PAN-AMxD COULD BE A JUDGMENT UNDER PAN KOOM BE ENFORCED ENFORCED, AND YOU CAMEHE CAME UP WITH MANDAMUS IDEA OR THEY DID, I'M SURE OTHER PEOPLE HAD IT, BUT I DON'T THINK YOU COULD LEVY AGAINST THE STATE.

NOW CAN'T.

WHY --

KNOW OF NO OTHER --

I WONDER WHAT PROVISION UNDER WHAT PROVISION ARE YOU PREVENTED FROM LEVYING AGAINST THE STATE?

WELL, THE 11066 HAS IT --

FOR THAT ONLY ENGAGED BEFORE 1991 COULD YOU LEVY AGAINST THE STATE.

NO.

WHY WAS THAT.

I WISH I COULD ANSWER THAT QUESTION

I DON'T THINK --

THERE ARE CASES I DON'T KNOW THERE WAS ANY STATUTE ON THE BOOK. BECAUSE I'M LATELY CONCERNED ABOUT THE REMEDY OF MANDAMUS MANDAMUS, YOU COULD HAVE SIMPLY HAVE FILED A MOTION TO ENFORCE THE MANDATE SINCE JUDGMENT WAS FINAL RATHER THAN CALLING IT SOMETHING ABOUT MANDAMUSING LEGISLATURE TO PAY RATHER THAN ENFORCING VALIDATION OF THE COURT A WHEN I WHICH HAS NOT BEEN CONTESTED MAYBE THAT IS PSYCHOLOGICAL THING HERE BUT A MORE BENIGN WAY APPROACHING THESE THINGS, AGAIN, IF WE WERE IN HERE WITH 100 MILLION DOLLARS\$100 MILLION JUDGMENT WE MIGHT HAVE SOME OTHER ISSUES ISSUES, SO WHAT -- DID YOU THINK ABOUT THAT AS AN ALTERNATIVE REMEDY -- MOTION TO ENFORCE THE MANDATE?

I GUESS SIMPLE ANSWER NO.

I GUESS -- THE OTHER --

YOU CAN FILE A MOTION.

ISN'T THAT WHAT MANDAMUS IS ENFORCING JUDGMENT, CIRCULAR.

PERHAPS IT DOES -- THE --

SO YOU ARE SAYING, THAT PARTS OF 11066 APPLY TO CONTRACT ACTS BUT OTHER PARTS DO NOT. NO I WASN'T SUGGESTING THAT, I WAS IN RESPONSE TO THE QUESTION, I KNOW THAT THERE ARE THERE ARE A NUMBER OF INSTANCES, A NUMBER OF PLACES WHERE, YOU CAN TURN FOR THE PROPOSITION THAT YOU CAN'T LEVY AGAINST A STATE PROPERTY THAT WAS JUST THE FIRST -- THAT CAME TO MIND.

YEAH UNDER SUBSECTION 5.

THAT IS ONE, YES.

DO YOU THINK THAT THE STATE KNOWING THIS IS SAY THAT WE UPHOLD THE FIRST DISTRICT, THAT NEXT TIME A CONTRACT COMES UP THAT THEY COULD IN FACT.

I DAMAGES OVER A MILLION DOLLARS OTHER THAN SEEKING AN APPROPRIATION? THE REMEDY IS WE WILL HAVE AND BY ARE ABYTRATION, PUT ALL SORTS OF PROTECTIONS TO PREVENT THE HOSHLT THAT WE ARE THINK -- HORRIBLE THAT WE ARE THINK BEING HUNDRED MILLION DOLLARS OR HUNDRED BILLION DOLLAR JUDGMENT.

WE LITIGATE WITH DOT ALL THE TIME, AND THEIR STANDARD SPECIFICATIONS ARE IF YOU WILL

OF THOSE SORTS OF LIMITATIONS LIMITATIONS, CONSEQUENTIAL DAMAGES LOSS BIEBDZING CLAIMS CLAIMS, LOSS PROFITS OTHER JOBS, THERE IS A LAUNDRY LIST THAT HAVE, YES, YOU CAN CONTRACT AWAY A PORTION OF THE RIFFING.

WHAT POINT DOES IT MAKE THE CONTRACT ILLUSORY?

WELL, THERE HAS TO BE THERE HAS TO BE A REMEDY, I MEAN, WHAT YOU DON'T THE RISK DON'T YOU CONTRACT AWAY IS THE RISK OF BREACH. SO IF TERMS OF CONTRACT.

HERE IS THE THING YOU HAVEN'T CONTRACTED THAT AWAY, THE STATUTE DOESN'T SAY YOU ARE NOT GOING TO GET YOUR MONEY, ALL IT SAYS IS IT NEEDS AN APPROPRIATION FROM THE LEGISLATURE. UVENT GOT APPROPRIATION FROM THE LEGISLATURE, AND THE LEGISLATURE HASN'T DENIED SO IT WE DON'T KNOW THAT IT IS ILLUSORY AT THIS POINTS INTO THIS COURT SAID THAT IS NOT GOOD ENOUGH IN PAN KAMPAN AM TOBACCOU CAPTAIN READ PAN-AM TOBACCO TO SAY LEGISLATIVE GRACE IS SUFFICIENT.

IS THAT WAS BEFORE STATUTE WAS ENACTED WANS -- WASN'T IT?

BEFORE BUT TRIED 200 SOMETHING TIMES IN 20 YEARS.

THE NOT IN INTERPRETING WE HAVEN'T INTERPAT THE TIMED.

THIS STATUTE NEVER INTERPAT THE TIMED TONALO ONLY TIME CITED IN JUSTICE PARIENTE PARIENTE'SDITION IN CITRUS CANCKER CASE IT DID NOT APPEAR TO BE CONSEQUENTIAL TO THE DECISION. IN THAT CASE.

YOU ARE BEYOND YOUR TIME JUST -- ONE LAST QUESTION.

WHAT DO YOU DO IN THE CASE OF A MAVERICK AGENCY HEAD THAT HAS GRANDIOSE IDEAS AND FOR INSTANCE, MY TRUCK EXAMPLE DECIDES THAT HE IS GOING TO STOCK THE AGENCY YOU KNOW WITH STATE OF THE ART -- VEHICLES THAT YOU KNOW COST TEN TIMES WHAT THE AVERAGE UTILITARIAN VEHICLE WOULD, AND HE REALLY IS GOING TO RELY ON THE FACT THAT HE IS GOING TO PUT AN APPROPRIATION IN NEXT YEAR TO PAY THE DIFFERENCE BUT HE IS GOING TO GO AHEAD AND BUY THEM, AND THEN HE SORT OF YOU KNOW, THE LEGISLATURE SORT OF STUCK -- ZBOES AHEAD AND -- HE GOES AHEAD CONTRACTS HAS VERY EXPENSIVE VEHICLES DELIVERED BUT HE DIDN'T HAVE THE MONEY FROM THE LEGISLATURE IN THE PREVIOUS BUDGET, AND HE IS COUNTSING ON DOING IT THE NEXT TIME AROUND A. OF COURSE, THE NEXT TIME AROUND THE LEGISLATUREIVE COMMITTEE SAYS THIS OUTRAGEOUS THEY DON'T APPROVE, THE TRUCK DEALER SUES, BREACH OF CONTRACT, WHAT HAPPENS IN THAT CASE INTO UNFORTUNATELY YOU MAY SEE THAT CASE NOT WITH TRUCKS BUT WITH DESIGN BUILD FINANCE ROAD CONSTRUCTION PROJECTS DOT IS LAYING THE CONTRACTOR FINANCING 8 OR 9 HUNDRED MILLION DOLLARS I SUGGEST CONTRACTS HAVE TO HAVE LANGUAGE OF STATUTE SUBJECT TO APPROPRIATION ON ANNUAL BASIS, IN THAT INSTANCE, I THINK THAT THE CONTRACTING PARTY MAY BE BUYING RISK OF NOT BEING AN APPROPRIATION THE NEXT YEAR.

IN OTHER WORDS, THE TRUCK DEALER ASSUMED THE RISK OF WHETHER THAT MONEY HAD BEEN APPROPRIATE IN THE PREVIOUS YEAR'S BUDGET.

AND THE LANGUAGE, WOULD BE IN THE CONTRACT SAYING ANYTHING AFTER THE YEAR -- FIRST YEAR SUBJECT TO APPROPRIATION APPROPRIATION, IT MUST BE IN EVERY STATE CONTRACT.

THAT IS IN FACT PART OF ALL -- CONTRACTS.

REQUIRED BY STATUTE. YES WITH OUR HELP YOU HAVE GONE WAY O YOIFR TIME I THINK WEND NO APOLOGY NECESSARY WE ARE TRYING TO UNDERSTAND THE PROBLEM WE THANK YOU FOR THE ARGUMENT SO IF THANK YOU.,, .

KOURNS ONE THING KEEPS REVERBERATING THE ELEPHANT IN THE ROOM ME TO QUESTION THAT IS REALLY NOT ASKED, IF WE ADOPT THE STATE'S POSITION, ON THIS, WHERE DOES IT TAKE THE STATE? I MEAN, THIS IS AN AMAZING IMPACT SO IF -- HOLDER LIKE THE LEGISLATURE.

I'M TALKING ABOUT WHERE DOES IT TAKE US AS A PRACTICAL MATTER IF THIS INTERPRETATION THERE MUST BE COMMON SENSE IN STATUTES.

AND DOES THAT TAKE US SOME PLACE THAT -- REALLY IS JUST A CRAZY PLACE TO BE IS THAT THE STATE HAS NO BURDEN NEVER GOING TO GET ANYBODY TO ENTER CONTRACT WITH THE STATE, IF THERE IS NO REMEDY TO THESE THINGS

I DON'T AGREE WITH THAT AT ALL, AND I THINK.

TELL COMLE TELL ME WHY.

I THINK PAN-AM TOBACCO CASE CITED FOR MORE THAN --

THAT CASE GAVE A PERSON WHO CONTRACTS WITH THE STATE THE RIGHT TO SUE THE STATE, IN CONTRACT, IT DID NOT GUARANTEE, THAT THERE WOULD BE AN APPROPRIATION TO PAY ANY JUDGMENT, THE CASE JUST DOES NOT EVEN ADDRESS THAT, AND THIS GOES TO YOU KNOW, THE CORE POWER OF THE LEGISLATURE LEGISLATURE, THERE ARE AT LEAST FIVE PROVISIONS OF THE STATE CONSTITUTION, THAT ARE PERTINENT HERE THAT THEY GIVE THE LEGISLATURE THE EXCLUSIVE AUTHORITY OVER APPROPRIATION AS THE INCLUSIVE EXCLUSIVE AUTHORITY TO DECIDE WHETHER WHAT EXTENT SOVEREIGN IMMUNITY.

THERE ARE BRANCH AGENCIES THAT PAY JUDGMENTS WITHOUT GOING BACK TO THE LEGISLATURE LEGISLATURE, FOR A SPECIFIC AUTHORIZATION TO PAY THAT JUDGMENT IN VIOLATION OF THIS STATUTE?

I THINK THERE MAY BE YES. YOU TOLD ME THAT ROUTINELY, JUDGMENTS ARE PAID WITHOUT DOING THIS, AND --

NO.

I'M OF COURSE TROUBLE UNDERSTANDING IF THIS IS THE FIRST TIME THAT THERE HAS BEEN A REFUSAL A, SEEMS TO ME THAT ALL OF THESE EG AGENCIES HEADS WOULD BE IN VIOLATION OF THE STATUTE IF THEY DON'T GO BACK --

NO I DID NOT DID NOT INTEND TO LEAVE YOU WITH THAT IMPRESSION WHAT I INTENDED TO SAY APPARENTLY JUDGMENTS ARE BEING PAID SOMEHOW NOW WHETHER THAT IS BY AGENCIES GOING TO THE LEGISLATURE LEGISLATURE, AND REQUESTING APPROPRIATIONS OR THE JUDGMENT HOLD DHOORG SAME THING, I DON'T KNOW, THE FACT IS THIS HASN'T COME UP, THAT IS THAT WAS MY POINT, AND I WAS THERE --

INSTANCE WHEN THE AGENCY HAS GONE BACK TO THE LEGISLATURE WITH THE JUDGMENT AND SAID WE WANT SPECIFIC AUTHORIZATION TO PAY THIS, HAVE YOU ARE YOU AWARE OF ANY INSTANCE, WHERE THAT HAS HAPPENED INTO I'M NOT AWARE OF AN INSTANCE IN WHICH THAT HAS HAPPENED BUT I'M NOT AWARE OF ONE, YOU KNOW THAT AGENCIES DON'T DO THAT I JUST DON'T KNOW THAT IS VERY SPAY. RSE RECORD.

WHAT WOULD -- SPARSE RECORD.

WHAT WOULD HAPPEN IF THE COMPANY CONTRACTPOINT WENT TO THE LEGISLATURE AND SAID WE HAVE THIS 600,000 DOLLAR JUDGMENT THAT WE WANT YOU TO PAY, AND THE LEGISLATURE SAYS, WELL, THIS IS THE HARD BUDGET YEAR, AND WE WILL GIVE YOU 100,000 DOLLARS, IS THAT THE END OF THE MATTER?

NO, NOT NECESSARILY, I THINK THE I THINK THE LEGISLATURE COULD DO THAT, BUT I THINK THE UNDER THE STATUTE THE PERSON HAS RIGHT GO THROUGH THE CLAIMS PROCESS, OR COME BACK THE NEXT YEAR.

COME BACK UNTIL YOU COULD GET YOUR 600,000 DOLLARS? ARE

RIGHT AND I KNOW THAT SOUNDS MAYBE A LITTLE BIT IN FAIR LOOK AT 768.28, THERE IS A LIMIT ON DAMAGES IN TORT OF 200,000 DOLLARS, I MEAN, THE STATE MAYBE RESPONSIBLE FOR SOME NEGLIGENT ACTION THAT YOU KNOW, RESULTS IN -- DEATH OF MANY PEOPLE.

IN AFFIRMATIVELY, GOING OUT AND ASKING SOMEONE TO DO SOMETHING ON THEIR BEHALF, CONTRACTING WITH THEM TO DO IT AND THEN SAYING OOPS, WE ARE SORRY, WE DON'T HAVE ANY MONEY, TO PAY YOU, EVEN THOUGH WE. THERE WAS -- NEVER ANY MONEY TO BEGIN WITH THERE WAS NEVER APPROPRIATION, FOR THIS CONTRACT.

WELL.

THEY ASSUMED THAT RISK.

LET ME GIVE YOU AN OPPORTUNITY TO BRING YOUR ARGUMENT TO A CONCLUSION YOU ARE WAY OVER TIME, AND JUST IF YOU WILL JUST YOUR REBUTTAL JUST AT A MINUTE.

WELL.

POINT YOU WANT TO MAKE.

ALL RIGHT, I THINK THAT THIS GOES THE CORE CONSTITUTIONAL AUTHORITY OF THE LEGISLATURE OVER APPROPRIATIONS APPROPRIATIONS. THE LEGISLATURE CAN APPROPRIATE MONEY FOR THIS, THE -- THERE IS NOT ANY REAL DIFFERENCE BETWEEN THE SITUATION NOW, AND BEFORE, THE STATUTE WAS ENACTED BECAUSE UNDER PAN-AM TOBACCO ALL HE HAD WAS RIGHT TO SUE NO GUARANTEE OF PAYMENT THAT IS THE WAY IT IS NOW REMEDIES ARE THE SAME.

THANK YOU VERY MUCH WE APPRECIATE THE ARGUMENTS ON THIS VERY INTERESTING MATTER.
COURT WILL TAKE THE CASE UNDER ADVISEMENTS AND STAND IN RECESS.