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Sandra Frosti v. La Verne Creel

SC07-122

FINAL CASE ON

,
>> 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,
GIVE ATTENTION, AND YOU
SHALL BE HEARD.

GOD SAVE THE UNITED STATES,
THE 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.

WELCOME TO THE FLORIDA
SUPREME COURT AND THE ORAL
ARGUMENT CALENDAR FOR
TUESDAY, DECEMBER 4th.

THE FIRST CASE THIS MORNING
IS FROSTI v. CREEL.

READY TO PROCEED?

JUSTICE ANSTEAD REMINDED ME
IT'S AN APPROPRIATE CASE FOR
A COOL MORN, -- MORNING.

SO.

>> AND FOR CHRISTMAS, SO.

>> MAY IT PLEASE THE COURT.

I'M WILLIAM CAP TOW I
REPRESENT SANDRA FROSTI THE
PETITIONER HERE AND THE
PLAINTIFF IN THE UNDERLYING
ACTION.

WE ARE HERE TODAY ON
CONFLICT BETWEEN OUR CASE
AND A CASE FROM THE FIFTH
DISTRICT COURT OF APPEALS,
MILLS v. MARTINEZ.

THE TRIAL COURT IN OUR CASE
AND THE APPELLATE COURT IN

OUR CASE DENIED MY CLIENT'S PLAINTIFF'S MOTIONS FOR ATTORNEY FEES BASED APAWN WHAT THE COURT POSES TO BE A PREMATURE FILING OF THE FILINGS FOR SETTLEMENT.

>> YOU ARE ARGUING -- OVER HERE.

YOU ARE ARGUING BOTH THAT THE FILING WAS NOT PREMATURE AND THAT EVEN IF IT WAS, THE SANCTIONS SHOULD NOT BE TOTALLY DISREGARDING THE ATTORNEYS' FEES?

>> YES.

WELL, ESSENTIALLY WHAT I'M ARGUING IS --

>> AS FAR AS THE PREMATURITY, IT SEEMS LIKE THE, YOUR ENTITLEMENT TO ATTORNEYS' FEES DOESN'T ACCRUE UNTIL THE JUDGMENT, AND I BELIEVE YOU FILED IT AFTER THE VERDICT, IS THAT CORRECT?

>> THE PROPOSALS WERE FILED AFTER THE VERDICT.

>> RIGHT.

>> THE, THE MOTION FOR ATTORNEYS' FEES, AND COSTS, THAT'S ONE OF THE CAUTIONARY NOTES I WANT TO MAKE AND POINTS THAT I WANT TO MAKE IS THAT THIS ISN'T A 1.525 CASE.

IT'S ONLY BASED UPON THE PREMATURE FILING OF THE PROPOSALS.

WE DID FILE A TIMELY MOTION FOR ATTORNEY FEES AND COSTS AFTER THE JUDGMENT WAS ENTERED IN AN APPROPRIATE TIME.

>> RIGHT.

I'M ALLUDING TO THE STATUTE 76879 AND THE RULE THAT SAYS THAT THE OFFER SHALL NOT BE FILED UNLESS IT IS ACCEPTED OR UNLESS FILING IS NECESSARY TO ENFORCE THE PROVISIONS OF THIS SECTION.

>> AND RIGHT.

>> IT SEEMS TO ME, IT WOULD NOT BE NECESSARY TO ENFORCE THE PROVISIONS UNLESS

THEY'RE FILED IN CONJUNCTION WITH A MOTION FOR ATTORNEYS' FEES AND YOUR ENTITLEMENT TO FEES WOULD NOT ACCRUE UNTIL THE JUDGMENT.

>> AND, I GUESS WE HAVE TO LOOK AT WHERE WE CAME FROM FROM THE ROOTS OF 1442 AND 7679 CAME FROM.

THEY CAME FROM FEDERAL RULE 68.

FEDERAL RULE 68 HAS A PROVISION IN IT THAT TALKS ABOUT THE ADMISSIBILITY IN PROCEEDING TO ENFORCE SANCTIONS.

LIKEWISE, OUR RULE IN STATUTE BOTH HAVE THAT SAME KIND OF PROVISION CONTAINED IN THEM, BUT ADDITIONALLY THEY HAD THIS OTHER PROVISION AND IT'S A FILING REQUIREMENT OR -- IT RELATES TO FILING OF OF THE PROPOSAL FOR SETTLEMENT.

I THINK IN MY BRIEF AND WHAT I WANT TO ARGUE NOW IS THAT PART OF WHAT WE HAVE TO DEAL WITH WITH REGARD TO THE FILING OF THE PROPOSALS AND THE ENFORCEMENT PROCESS IS THAT WE NEED TO START WITH NOTICE TO THE OTHER SIDE.

STOCKMAN v. DOWNS CLEARLY --

>> WE'RE TALKING ABOUT FILING HERE, NOT SERVICE AND IT SEEMS LIKE THE STATUTE AND THE RULE CONTEMPLATE TWO DIFFERENT TIMES.

YOU SERVE IT WHENEVER YOU WANT TO SERVE IT AFTER I THINK 90 DAYS AFTER THE COMPLAINT IS FILED, BUT YOU ONLY FILE IT IF AND WHEN IT BECOMES NECESSARY IT BECOMES NECESSARY TO ENFORCE THE PROVISIONS OF THIS SECTION SO IT FILES IT TWO SEPARATE TIMES.

>> RIGHT AND WE DIDN'T FILE IT UNTIL AFTER THE RETURN OF THE JURY VERDICT.

>> I UNDERSTAND.

>> PARDEN?

>> I UNDERSTAND BUT EVEN AT THAT POINT IT WASN'T PREMATURE.

WHY DID YOU NEED TO FILE IT AFTER THE VERDICT.

>> WELL, IT WAS FOUNDATION UPON WHICH THE MOTION FOR ATTORNEY FEES AND COSTS WOULD BE BASED.

>> WERE YOU ENTITLED TO ATTORNEYS' FESES AFTER THE VERDICT?

>> WELL, I WOULD ARGUE YES, AND I WOULD ARGUE THAT THE PRIOR RULE AND THE RULE THAT'S IN PLACE NOW AND THE 2001 VERSION OF THE RULE, THESE PARTICULAR SECTIONS ALL RELATE TO, THEY'RE ACTUALLY IDENTICAL.

THESE PROVISIONS OF THE RULE HAD NOT CHANGED.

IN 2000, IN THE PRIOR TO 2001 VERSION OF THE RULE, WE HAD TO DO ALL OF THESE THINGS WITHIN 30 DAYS OF THE ENTRY OF THE JUDGMENT, ALTHOUGH THE REASONABLE TIME STANDARD WAS IN PLACE, THE RULE REQUIRED THAT THEY BE DONE WITHIN 30 DAYS OF THE, OF THE JURY VERDICT AT THAT POINT IN TIME.

IT WASN'T TOO EARLY THEN TO DO T. I DON'T BELIEVE IT'S TOO EARLY NOW.

YOU'RE WALKING -- TALKING ABOUT THE MOTION FOR ATTORNEYS' FEES.

>> NO, I AM TALKING ABOUT SETTLEMENT.

>> WHY WAS IT NECESSARY INENFORCE THE TERMS OF THIS SECTION TO FILE THE OFFER AFTER THE VERDICT INSTEAD OF AFTER THE JUDGMENT, WHY IS THAT NECESSARY?

>> THAT'S WHY THERE'S A DEPARTURE, THAT'S WHY I'M TALKING ABOUT TWO DIFFERENT THINGS, ENFORCEMENT AND SANCTION.

SECTION G AND SECTION I OF THE 1.442 SPEAK TO THE ISSUE

OF SANCTION.

FILING IS, IS ADDRESSED

REALLY IN SECTION D.

WHY ARE THERE -- AND THAT'S

WHY I WAS ALLUDING TO

SECTION 68.

WHY DO WE HAVE THIS

ADDITIONAL SECTION?

IS THERE SOME COMPELLING

REASON FOR THIS PARTICULAR

SECTION?

AND I ARGUE THAT THE ONLY

LOGICAL REASON WOULD BE TO

PREVENT THE FINDER OF FACT

FROM UNDERSTANDING WHAT THE

SETTLEMENT OFFERS WERE AND

HOW THAT MIGHT -- WHAT

RAMIFICATIONS THAT MIGHT

HAVE IN A JURY TRIAL ACTION,

I DON'T KNOW.

WHAT RAMIFICATIONS THAT

WOULD HAVE WHETHER YOU HAVE

A JUDGMENT OR NOT YOU ARE

UNDERTAKING TO ENFORCE THE

THE PROPOSAL FOR SETTLEMENT

AND SANCTIONS IS A DIFFERENT,

A DIFFERENT ISSUE.

YOU NEED A JUDGMENT IN ORDER

TO GET SANCTIONS.

YOU NEED A JUDGMENT IN ORDER

TO ADDUCE WHAT THE, QUOTE,

JUDGMENT OBTAINED IS IN THE

ACTION.

SO HOW DO WE SCARE YOUR

ARGUMENT HERE WITH YOUR

PREVIOUS CASES WHERE WE'VE

GONE DOWN THE ROAD OF SAYING

THAT BOTH THE STATUTE AND

THE RULE CONCERNING

ATTORNEYS' FEES ARE IN

DEROGATION OF A COMMON LAW

AND THEREFORE NEEDS TO BE

STRICTLY CONSTRUED?

WE STRICTLY CONTRUE THIS

PARTICULAR STATUTE AND RULE

IT SEEMS TO ME THAT YOU HAVE

TO FILE YOUR PROPOSAL AFTER

THE JUDGMENT AS OPPOSED TO

AFTER THE VERDICT SO HOW DO

WE OR FOR LACK OF A BETTER

WORD, GET AROUND THIS

PREVIOUS CASE LAW?

WHICH TALK ABOUT STRICTLY

CONSTRUING THESE STATUTES

AND RULES.

>> WELL, I DON'T THINK YOU HAVE TO GET AROUND THAT PARTICULAR CASE LAW. BECAUSE ONE OF THE PROBLEMS THAT WE HAVE WITH THIS PARTICULAR PROVISION WITH THE WORD NECESSARY, WITH THE WITH THE ENTIRE PROVISION, WHEN IT IS NECESSARY TO FILE FOR ENFORCEMENT AND SANCTION?

YOU DON'T NECESSARILY NEED A JUDGMENT TO START THE PROCESS.

EVEN WITH A VERDICT YOU COULD HAVE A REMITER OR ANY KIND OF THINGS THAT HAPPEN PRIOR TO THE ACTUAL ENTRY OF THE JUDGMENT, SO WAS IT, I GUESS, WE REALLY DO HAVE TO DECIDE WAS IT NECESSARY AT THAT POINT.

>> AND,, AND IT GOES, I GUESS THE REASON THAT I'M SAYING IT, THAT IT, THAT IT IS NECESSARY, IT GOES ONE TO THE ISSUE OF NOTICE.

I THINK IN IF YOU'LL BEAR WITH ME FOR A MOMENT.

AND A 1.525 CASE, THE COURT SAID, THIS COURT SAID IT IS NO LONGER ENOUGH FOR THE PARTIES TO PLEAD THE BASIS FOR, FOR FEES IN A PRETRIAL PLEADINGS.

AND THAT'S REFERRING TO DIAZ v. BROWN AND STOCKMAN, THE STOCKMAN CASE.

THE ISSUE OF FILING THE PROPOSAL FOR SETTLEMENT IS THE EARLIEST JUNCTURE THAT WE HAVE THAT WE CAN PROVIDE NOTICE TO THE OTHER SIDE OF OUR CLAIM.

AND THAT'S REALLY WHAT IT IS.

IT'S A DUE PROCESS KIND OF AN ISSUE, AND THAT'S WHEN IT BECOMES NECESSARY TO FILE THE PROPOSAL.

>> I THINK YOU ARE CONFUSING THE FILING OF THE OFFER WITH THE FILING OF THE MOTION FOR

ATTORNEYS' FEES.

THE NOTICE IS PROVIDED BY
THE MOTION FOR ATTORNEYS'
FEES.

YOU'VE SERVED THE OFFER LONG
BEFORE THIS TIME, SO YOU'RE
NOT GIVING THE PARTY ANYMORE
NOTICE OF THE OFFER THAN YOU
ALREADY HAVE.

IT'S THE NOTICE THAT YOU'RE
GOING TO BE SEEKING
ATTORNEYS' FEES PURSUANT TO
THAT OFFER THAT I THINK
YOU'RE REFERRING TO WHEN YOU
SAY NOTICE TO THE OTHER
PARTY, AND THAT'S PROVIDED
BY FILE AGMOTION FOR
ATTORNEYS' FEES.

>> WE CAN'T PLEAD UNDER
76859 OR 1442, WE CAN'T
PLEAD THAT ISSUE.

IT'S INCUMBENT UPON US TO
PROVIDE THAT NOTICE OF OUR
INTENT TO ENFORCE AS SOON AS
POSSIBLE.

IF --

>> ISN'T THE NOTICE THE
MOTION FOR ATTORNEYS' FEES?
WHY CAN'T YOU JUST FILE THE
MOTION FOR ATTORNEYS' FEES
WITHOUT FILING THE PROPOSAL?
YOU SAY THAT YOU'RE DOING IT
PURSUANT TO A PROPOSAL YOU
HAD SERVED.

>> AND WE'RE LOOKING AT A
VERY COMPRESSED TIMELINE.
WHEN IS THAT APPROPRIATE?
AND, AND IS IT NOT
APPROPRIATE AFTER THE RETURN
OF THE JURY VERDICT?
IS NOT NECESSARY AT THAT
POINT IN TIME?

>> THAT'S MY, JUST, IF YOU
CAN ANSWER MY QUESTION,
WHICH IS AFTER THE VERDICT,
WHY COULDN'T YOU HAVE FILE
ADMOTION FOR ATTORNEYS' FEES
WITHOUT FILING THE PROPOSAL
FOR SETTLEMENT IS SIMPLY
STATING IN THE MOTION FOR
ATTORNEYS' FEES THAT YOU HAD
PREVIOUSLY SERVE ADPROPOSAL
FOR SETTLEMENT ON X DATE AND
THAT PROPOSAL WAS REFUSED?

>> WELL, WE DID THAT HERE WITHIN SEVERAL DAYS OF -- WE FILE ADMOTION FOR ATTORNEY FEES WITHIN SEVERAL DAYS OF FILING THE PROPOSAL.

IT'S A SHORT INTERVAL IN TIME, AND THE, THE, IF YOU DON'T PLEAD IT IN YOUR PLEADINGS, THEN WHAT BASIS DO YOU HAVE TO DO IT? AND THAT'S WHY THE FILING WAS NECESSARY.

>> MAYBE YOU COULD, COULD ADDRESS THE SECOND ASPECT, I'M ACTUALLY WITH YOU ON THE FIRST ASPECT.

I WAS NOT EVEN SURE WHAT THIS CASE WAS ABOUT BECAUSE I REALLY COULDN'T BELIEVE AFTER A VERDICT THAT FILING A NOTICE, I MEAN A PROPOSAL WOULD MAKE A DIFFERENCE BUT LET'S GET TO THE SECOND PART OF THIS, WHICH IS THAT WHAT, WHY, WHAT'S THE BASIS FOR SAYING THERE SHOULD BE -- TEXAS BE STRICKEN VERSUS -- IT SHOULD BE STRICKEN VERSUS THE MOTION FOR ATTORNEYS' FEES SHOULD NOT BE GRANTED? YOU WANT TO ADDRESS THAT ISSUE?

>> WELL, THE BASIS --

>> WHAT I'M SAYING, IN OTHER WORDS YOU COULD SAY WELL THE REMEDY IF IT'S A PREMATURE FILE STRIKE IT FROM THE RECORD BECAUSE I GUESS THE HARM THAT WAS SOUGHT TO BE ADDRESSICIDE NOT PERHAPS IN THE MEDIA THAT \$1 MILLION OFFER OF SETTLEMENT. IF THAT'S WHAT IT MIGHT'VE BEEN.

SO WHAT IS -- WHY IS IT, WE ARE STRICTLY ENFORCING THIS, WHY IS A PROPER REMEDY NOT TO SAY THEREFORE IT'S A DEFICIENT MOTION FOR ATTORNEYS' FEES BECAUSE THE NOTICE WAS FILED PREMATURELY?

OR I GUESS THE OTHER QUESTION I HAVE IS WOULD

ANYTHING HAVE PRESENTED --
PREVENTED YOU FROM REFILEING
IT AFTER THE JUDGMENT WAS
ENTERED.

>> WELL, WE DID BOTH,
ACTUALLYISM WE TO -- WE FILE
ADMOTION TO ATTORNEY FEES
PRIOR TO THE ENTRY OF
JUDGEMENT AND WITHIN 30 DAYS
OF THE ENTRY OF THE
JUDGEMENT.

>> BUT WHAT I'M ASKING YOU
IS AFTER THE JUDGMENT WAS
FILED AND IT WAS CLEAR THEY
WERE SAYING YOU FILED IT TOO
EARLY COULD YOU THEN HAVE
SAID WELL NOW I'LL REFILE
TSTRIKE THE EARLIER ONE AND,
I'LL --

>> WELL, WHAT WE DID
ACTUALLY WAS WHAT JUSTICE
CANTERO BASICALLY INDICATED,
WE, WE ADMITTED IT AS THE
RULE REQUIRES, WE ADMITTED
IT INTO EVIDENCE AT THE
HEARING ON THE MOTION FOR
ATTORNEY FEES AND COSTS.

>> SO DID YOU EVER, DID
ANYONE ARGUE THAT YOU ARGUE
THAT THAT THEN CURED ANY
PROBLEM WITH THE PREMATURE
FILING?

>> WELL, I DON'T BELIEVE IT
WAS A PREMATURE FILING, AND
THAT'S --

>> WELL, ASSUMING IT IS,
ASSUMING IT IS, DID ANYONE
ARGUE THAT BY YOU OFFERING
IT IN EVIDENCE AT THAT TIME
THEREFORE THE, THERE IT WAS
REALLY NO HARM IN THE
SITUATION SO NO NEED FOR THE
SANCTION IF NOT GRANTING
YOUR ATTORNEYS' FEES?

>> CERTAINLY THAT'S WHAT WE
ARGUED.

OUR POSITION S IS CLEAR,
THAT'S WHY WE FILED IT.
WITHIN THE PRECEPTS OF THE
RULE, THE RULE SPECIFICALLY
REQUIRES THAT IT BE ADMIT
UNDER TO EVIDENCE AT THAT
TIME.

AND THAT'S WHY I BELIEVE THE

FILING REQUIREMENT IS COMPLETELY SEPARATE FROM THE ADMISSION INTO EVIDENCE REQUIREMENT.

LET ME GO BACK TO JUSTICE QUINCE'S QUESTION ON OTHER CASES, ON HILLIER.

THE AS I UNDERSTAND YOUR ARGUMENT, THAT CASES HAVE LANGUAGE IN THE RULE THAT HAVE A SPECIFIC REQUIREMENT LIKE THERE'S A SPECIFIC REQUIREMENT TO MAKE AN OFFER FOR EACH PARTY, AND WE ENFORCED THAT REQUIREMENT. AND FOR 30 DAYS.

WHEREAS IN THIS INSTANCE, IS IT YOUR ARGUMENT THAT THE WORD NECESSARY IS AMBIGUOUS?

>> I THINK WHAT IT IS IS THAT IT'S VAGUE.

>> WELL, VAGUE AND AMBIGUITY ARE FAIRLY SIMILAR.

>> THEY, THEY ARE SIMILAR CONCEPTS BUT THEY HAVE DIFFERENT FORCE AND EFFECT IN THE LAW.

BUT I TEND TO AGREE THAT, IT, IT'S A SUBJECTIVE STANDARD. IT'S NOT A CLEAR DEFINITIVE STANDARD.

IT'S NOT LATER THAN 45 DAYS AND NOT EARLIER THAN 45 DAYS FROM THE COMMENCEMENT. IT IS NOT --

>> WHAT IS YOUR VIEWS TO THE REASON THE LEGISLATURE PUT THAT IN THE STATUTE?

>> WELL, THE ONLY REASON THAT I CAN, I CAN BELIEVE THAT THAT PUT IT IN WAS TO PREVENT THE FINDER OF FACT FROM FINDING OUT ABOUT SETTLEMENT OFFERS.

THERE COULD BE NO OTHER PURPOSE FOR WHATSOEVER AND AGAIN IT DOES NOT APPEAR IN THE FEDERAL RULE, AND IN A JURY TRIAL ACTION I CAN'T IMAGINE THAT THERE WAS PANY HARM WHATSOEVER.

IT'S CLEARLY, AND IF, IF IT WAS A MATERIAL MATTER, A SANCTION WOULD'VE BEEN

INCLUDED DEFINITE TERMS
WOULD'VE BEEN INCLUDED,
SHALL NOT BE FILED IN,
UNLESS, AND IT, AT THIS
PARTICULAR THING HAPPENED OR
SHALL NOT BE FILED UNLESS A
JUDGMENT HAS BEEN ENTERED OR,
YOU KNOW, WHY DO WE HAVE THE
PROVISION AT ALL?

IT DOESN'T MAKE ANY SENSE TO
HAVE A SEPARATE SECTION THAT
TALKS ABOUT FILING AND A
SEPARATE SECTION THAT TALKS
ABOUT SANCTION.

ADMITTING IT INTO EVIDENCE
FOR SANCTION.

>> SO I TAKE IT YOU AGREE
WITH JUSTICE WELLS THAT IT
WAS AMBIGUOUS.

>> YEAH, I DO AGREE.

>> OKAY.

>> WOULD YOU DISTINGUISH
THEN THE CASES WHERE
SOMEBODY HAS ACTUALLY FILED
IT FOR OTHER REASONS, YOU
KNOW, EARLIER ON, THAT IS IN
THE TWO CASES THAT THE
SECOND DISTRICT ACTUALLY
DECIDES ON, THOSE WERE FILED
FOR OTHER REASONS, NOT,
YOURS IS, YOU SAID, LISTEN,
THAT'S THE FIRST STEP I GOT
MY VERDICT, I'M GOING TO
FILE MY OFFER NOW TO LET
EVERYONE KNOW THAT I'M
SEEKING ATTORNEYS' FEES.

DO YOU SEE A REASON
POLICIWISE OR ANYTHING IN
THE STATUTE OR THE RULE THAT
WOULD HAVE US DISTINGUISH,
SCPUN YOU KNOW, AND HAVE A
SANCTION OR SOMETHING FOR --
YOU KNOW, FOR SOMETHING
WHERE IT IS FILED AT THE
TIME THAT THE OFFER IS MADE?

>> I, I SEE NO FOUNDATION,
IN, IN IN THE RULE OR THE
STATUTE THAT WOULD CREATE
ANY KIND OF PENALTY FOR
DOING T. I THINK THE --

>> AT THAT POINT, IT'S
CERTAINLY NOT NECESSARY.
IN OTHER WORDS, THE CASES
THAT, THE CASES, CLOTURE.

>> CLOTURE.

>> AND THEY ARE SHORTLY AFTER THE OFFER WAS MADE BECAUSE THE ATTORNEY SAID, WELL, I JUST WASN'T CONFIDENT THAT THAT PERSON, THAT THE LAWYER WOULD ACTUALLY ADMIT TO HAVING RECEIVED IT OR SOMETHING OF THAT NATURE.

>> RIGHT.

>> DO YOU SEE THAT AS BEING, A SEPARATE SITUATION OR WOULD YOU SAY THE BLANKET RULE IT REALLY DOESN'T MATTER.

IT CAN BE FILED AT ANY TIME UNDER ANY CIRCUMSTANCE WITHOUT ANY SANCTION OR PENALTY?

>> IT, IT CLEARLY IS A SEPARATE SITUATION.

-- SITUATION.

AT THAT POINT IN TIME IN ALL THE CASES, CLOTURE, BROWNING, AND EVEN IN MILLS, THE PARTIES CONCEDED THAT IT WAS PREMATURE BECAUSE THE TIME HAD NOT EXPIRED.

THE 30 DAYS HAD, HAD NOT ELAPSED AT THAT POINT IN TIME.

IN ORDER FOR, IN ORDER FOR ENFORCEMENT TO EVEN BE A POSSIBLE OPTION.

AT THAT POINT IN TIME, THEY BASE CLAY --, IN EACH OF THOSE CASES, THEY BASICALLY CONCEDED THAT IT WAS PREMATURE.

>> YOU ARE RUN NOTHING TO YOUR REBUTTAL TIME I WANT YOU TO BE ABLE TO SAVE YOUR TIME, WHATEVER YOU WANT TO USE.

JUST BE AWARE.

>> IT SAYS 2:48 REMAINING?

>> JUSTICE BELL HAS A QUESTION.

>> YEAH, YOU HAVE A QUESTION.

>> IF HE WANTS TO RESERVE HIS TIME, THAT'S FINE.

>> NO, PLEASE.

>> IS IT YOUR POSITION THEN
AT AT WHAT POINT WOULD IT BE
PREMATURE AND SUBJECT TO THE
SANCTIONS IN THIS CASE THE?
DO YOU AGREE OR DISAGREE
THAT FILING IT BEFORE
VERDICT IS INAPPROPRIATE?

>> I DO AGREE THAT IN A JURY
TRIAL, FILING IT BEFORE
VERDICT IS INAPPROPRIATE.
BUT I THINK THERE'S
FOUNDATION IN THE LAW
BECAUSE 76879 SECTION 1 IS,
IS A BIT CONFUSING.
IT, IT RESOLVES THE, THE
ISSUE LATER ON IN THE RULE
BUT IF YOU LOOK -- OR IN THE
STATUTE -- BECAUSE IT SAYS
IF A PLAINTIFF FILES A
DEMAND FOR JUDGMENT, WHICH
IS NOT ACCEPTED BY THE
DEFENDANT WITHIN 30 DAYS,
AND THE PLAINTIFF RECOVERS
THE JUDGMENT IN THE AMOUNT
OF AT LEAST 25 PERCENT
GREATER THAN THE OFFER SHE
OR HE SHALL BE ENTITLED TO
RECOVER A REASONABLE COSTS
AND ATTORNEY FEES INCURRED
FROM THE DATE OF FILING OF
THE DEMAND.

THAT FOUNDATION IN THAT
STATUTE FROM THE DATE OF
FILING, NOT THE DATE OF
SERVICE.

NOW, LATER ON IN THE STATUTE
AND IN THE RULE TSPEAKS TO
THE DATE OF SERVICE.
BUT THE FOUNDATION WOULD BE
THAT YOU, THAT AFTER THE
PROPOSAL EXPIRES THEN YOU
SHOULD BE ABLE TO BASED UPON
THIS SECTION FILE THE
PROPOSAL BECAUSE THAT STARTS
THE CLOCK.

>> BUT, BUT, GO AHEAD.
NEVER MIND.

LET ME LET YOU RESERVE YOUR
TIME.

>> THANK YOU.

>> MR. CHIEF JUSTICE,
MEMBERS OF THE COURT.

GOOD MORNING.

MAY IT PLEASE THE COURT.

MY NAME IS SCOT SAMIS.
I REPRESENT THE RESPONDENT
LA VERNE CREEL.
I JUST WANT TO START BY
TALKING ABOUT THE
FUNDAMENTAL QUESTION.
THE QUESTION IS IS IT
NECESSARY TO FILE A PROPOSAL
FOR SETTLEMENT PRIOR TO
FINAL JUDGMENT.

>> LET'S -- I THINK WHEN YOU
SEE A COURT IS STRUGGLING
WITH IS REALLY REALLY, VERY,
VERY HARSH KIND OF REMEDY,
EVEN IF, YOU KNOW, THE,
EVERYTHING'S OVER.

ALL YOU GOT TO DO IS NOW WE
ARE GOING TO CALCULATE AND
SEE WHAT JUDGMENT IS ENTERED,
AND I THINK THE TENOR OF THE
QUESTIONS ARE COMING OUT,
WHY, WHY IS THAT THE, THE
REMEDY?

WHY IS THAT THE SANCTION?
WHY WOULD IT NOT JUST BE TO
STRIKE IT FROM THE FILE OR
RATHER THAN SAY, YOU KNOW,
GO TO GREAT LENGTHS TO
FOLLOW THIS RULE ALL THE WAY
THROUGH, MAN.

WE DOT OUR IS AND WE CROSS
OUR TS AND YET WE GET TO THE
END AND ALL OF A SUDDEN, SO
WHERE IN THE RULE DOES IT
SAY THAT THIS OUGHT TO BE
THE SANCTION OR WHY OUGHT
THAT BE, OUGHT THAT BE THE
SANCTION?

>> WELL, I THINK THAT
EVERYBODY IN, IN THE
COURTROOM WHO'S DEALT WITH
THIS ISSUE KNOWS THAT THERE
HAS BEEN A LOT OF DISPARATE
RULINGS THAT HAVE COME OUT
OF THE DCAs OVER THE YEARS,
AND THE ONE MESSAGE THAT HAS
COME FROM THIS COURT LOUD
AND CAREER AND CONSISTENTLY
FOR OVER A DECADE STARTING
THROUGH HILLIER, THROUGH
LAN, AND CAMPBELL DECISION
IS IF YOU DON'T DOT ALL THE
IS AND CROSS ALL THE TS.

>> BUT ISN'T JUSTICE WELLS

CORRECT ON THAT.

HE IS SAYING THOSE ARE ALL THINGS LIKE WHO YOU GIVE IT TO, THE TIME YOU HAVE TO GIVE IT, AND ISN'T THIS REALLY A DIFFERENT CATEGORY AFTER EVERYTHING'S OVER? I MEAN, THAT'S THE, THE GIST I'M GATHERING FROM HIS QUESTION.

>> NOT AT ALL, AND I THINK THE CAMPBELL CASE IS PROBABLY THE BEST ILLUSTRATION, AND CAMPBELL YOU HAVE A REQUIREMENT. IN THE STATUTE THAT SAYS YOU WILL IDENTIFY THE LAW. AND IF YOU DON'T IDENTIFY THE LAW, YOU DON'T GET FEES. NOW LET'S COMPARE THAT TO THIS SITUATION.

THERE IS A DIRECT STATEMENT IN HERE WHICH SAYS YOU SHALL NOT FILE THIS UNTIL IT IS NECESSARY.

NOW --

>> WHAT -- BUT THE PROBLEM THAT I HAVE IS THAT NECESSARY IN, IS VERY DIFFERENT IN A LOT OF DIFFERENT CONTEXTS. AND SO UNLIKE THOSE OTHER CASES, IN WHICH YOU HAVE A CLEAR EXPLICIT DIRECTION WHICH THIS COURT DETERMINED WAS IT HAD TO BE FOLLOWED BECAUSE THAT WOULD MAKE THE PLAYING FIELD EVEN FOR EVERYBODY BUT HERE YOU HAVE SOMETHING THAT IS AMBIGUOUS AS TO WHAT NECESSARY MEANS. AND SO HOW IN THAT INSTANCE IS IT FAIR TO THE LAWYERS TO, TO SAY THAT WE'RE GOING TO STRICTLY CONSTRUE AND ENFORCE SOMETHING THAT'S AMBIGUOUS?

>> WELL, THAT'S EXACTLY WHEN STRICT CONSTRUCTION IS REQUIRED.

IF YOU -- FIRST OF ALL, I CAN THE WORD -- THE WORD NECESSARY CAN BE AMBIGUOUS IN CERTAIN CONTEXTS BUT HERE

WHEN CLEARLY THE, THE BENCHMARK FOR HAVING EVEN A RIGHT TO GO FOR FEES IS A FINAL JUDGMENT, THAT CREATES THE, THE MOMENT OF NECESSITY.

AND THE REASON I THINK IT, IT'S REASONABLE TO, TO, TO PRESUME THAT THE LEGISLATURE WHEN IT PUT THIS ADDITIONAL PROVISION IN THERE, IT SAYS IT'S NOT, IT'S NOT SUPPOSED TO COME INTO EVIDENCE.

WE UNDERSTAND THAT BUT THEY GO THE EXTRA STEP AND SAY WE DON'T WANT THESE IN THE COURT FILE.

>> BUT IT SEEMS TO ME THAT WHEN ALL OF THIS CAME DOWN, OF COURSE, WE DIDN'T HAVE THIS PROBLEM BEFORE THE LEGISLATURE SET UP THE 25% LOTTERY TYPE OF, OF LEGAL FEES.

WHEN THAT WAS DONE, IT SEEMS TO ME THAT THE LEGISLATURE WAS CONCERNED ABOUT THE FACT THAT THIS WAS SOMETHING NEW AND YOU DIDN'T AND THERE WAS A GREAT DEAL OF CONCERN ABOUT WHETHER IT WAS GOING TO GET PUBLISHED.

AND WHETHER IT WOULD, THE JURY WAS GOING TO FIND OUT ABOUT IT.

AND SO THAT SEEMS TO ME TO BE THE REASON THAT THAT GOT IN THE STATUTE.

BUT WHY ISN'T THAT, I MEAN THAT THE LEGISLATURE DIDN'T PUT A SANCTION WITH IT.

AND WHY ISN'T IT THE, MAKE THE MOST SENSE TO SAY THAT AFTER THE FACT FINDER, WHICH THE CONCERN IS THAT ONLY THE FACT FINDER KNOW WHAT THE OFFER OF JUDGMENT IS, AFTER THE FACT FINDER LIQUIDATES THE AMOUNT OF DAMAGES, AND WE'RE GETTING TO A POINT WHERE WE'RE GOING TO HAVE TO FILE A MOTION AND UNDERSTAND THAT THIS BUSINESS ABOUT THE JUDGMENT AND THE VERDICT

DIFFERENCE, BUT AFTER THE,
THE UMENTS AMOUNT'S
LIQUIDATED, THEN FILE THE
OFFER OF JUDGMENT SO THAT
THE, YOU CAN THEN FILE, HAVE
IT PART OF THE MOTION AND
ALL OF THAT CAN BE
CONSIDERED BY THE COURT.
OTHERWISE, YOU END UP WITH
AN INSTANCE IN WHICH YOU
HAVE TWO JUDGMENTS, A
JUDGMENT FINAL JUDGMENT AND
THEN A JUDGMENT FOR
ATTORNEYS' FEES.

IT SEEMS TO ME IT WOULD BE A
WHOLE LOT BETTER FOR
APPELLATE PURPOSES JUST TO
HAVE ONE JUDGMENT.

>> WELL, I THINK THE TWO-STEP
PROCESS WORKS FOR ATTORNEYS'
FEES IN A LOT OF CASES, BUT
I THINK THAT YOU CAN'T
IGNORE THE FACT THAT THE
LEGISLATURE FOR WHATEVER
REASON PUT IT IN.

THE ONLY OTHER REASON I CAN
THINK OF IS JUSTICE QUINCE
TALKED ABOUT THE POSSIBILITY
THAT AFTER A VERDICT, YOU
COULD HAVE A REMITER OR A
MOTION FOR A NEW TRIAL AND
THAT THERE MIGHT, IT NEVER,
THE JUDGMENT DOESN'T GETS
ISSUED AND I GET THE --
GUESS THE OTHER ISSUE OF IT
IS PRESS ASPECT AND NOT TO
HAVE A PROPOSAL FOR
SETTLEMENT IN THE COURT
FILE.

THE OJ WAS FILE AFRD THE
VERDICT.

THERE WAS NO MOTION FILED
AFTER THE PROPOSE.

>> LET ME ASK YOU, THE
INTERPLAY OF WHEN YOU FILE
NOW FOR ATTORNEYS' FEES AND
I THINK WE ARE GETTING AT
SOMETHING AS TO WHETHER THE
LEGISLATURE, WHAT THEY
INTENDED AND MAYBE
SPECULATED A LITTLE BIT AND
MAYBE INTERPRET NECESSARY.
IF UNDER THE RULE AS MENDED
1.525 YOU CAN FILE YOUR

MOTION NOT, WE NOW SAY NOT
LATER THAN, SO IT WOULD BE
PERFECTLY PERMISSIBLE,
CERTAINLY AFTER THE VERDICT
TO SAY NOW I'M GOING TO BE
SEEKING ATTORNEYS' FEES
PURSUANT TO THE OFFER OF
JUDGMENT STAFFUTE AND --
STATUTE AND I WOULD SUSPECT
IT WOULD ALSO BE PERFECTLY
APPROPRIATE TO INCLUDE
EVERYTHING ABOUT WHY AND
INCLUDE THE, INCLUDE THE
NOTICE, AND I THINK WHAT
JUSTICE WELLS IS SAYING,
WHICH IS THAT AT THAT POINT
THE JUDGE HAS EVERYTHING
BEFORE HIM OR HER AT THE
TIME THE JUDGMENT'S BEING
INWR ANSWERED.

I CAN'T -- I'M TRYING TO
UNDERSTAND AGAIN WHERE THE
NECESSARY LANGUAGE
TRANSLATES INTO IT MUST ONLY
BE AFTER A JUDGMENT IS
ENTERED, THAT'S NUMBER ONE,
AND THEN TWO, RELATED TO HOW
THE SANCTION CAN BE, WHERE
IT'S NOT LIFTED -- LISTED IN
THE STATUTE AND YOU SAY WEIR
SUPPOSED TO DO A STRUCT
CONSTRUCTION OF THE STATUTE
STRIKING, ESSENTIALLY
STRIKING THE MOTION FOR
ATTORNEYS' FEES AND NOT
ALLOWING ATTORNEYS' FEE SOS
SO THAT'S A TWO-PART THING.
WHY NOW SHOULD HE FILE WITH
THE MOTION FOR ATTORNEYS'
FEES WHICH COULD BE DONE AT
ANY TIME EVEN BEFORE A
JUDGMENT, AND TWO, WHY WOULD,
IF THE STATUTE DOESN'T
PROVIDE FOR THE SANCTION
BEING, STRIKING IT FROM THE
RECORD AND NOT ALLOWING
ATTORNEYS' FEES, WHY WOULD
BE IMPOSE THAT AS A
SANCTION.

>> WELL, IT'S CERTAINLY IS
NOT NECESSARY.
IT IS, IT IS NOT NECESSARY
WHEN YOU DON'T EVEN HAVE THE
RIGHT TO GET THE FEES

BECAUSE IF THE TRIGGER IS THE FINAL JUDGMENT, YOU DON'T EVEN HAVE A RIGHT TO FEES.

>> WELL, IN THIS CASE, WHAT, WHAT POST-TRIAL MOTIONS WERE FILED?

>> MOTION FOR A NEW TRIAL, I BELIEVE.

>> MOTION FOR NEW TRIAL HAD BEEN FILED.

>> YES.

>> IN THIS CASE?

>> YES, AND IT WAS PENDING WHEN THE PROPOSAL WAS FILED.

>> OKAY.

>> OKAY.

>> WELL, GETTING BACK TO THE SECOND PART OF JUSTICE PARIENTE'S QUESTION, YOU ALLUDED TO CAMPBELL AND HOW WE HAVE STRICTLY CONSTRUED THE STATUTE.

IT SEEMS THAT EVEN IN CAMPBELL, WE WERE TRYING TO RECONCILE THE PURPOSE BEHIND ALL OF THESE REQUIREMENTS. AND IN CAMPBELL THE REQUIREMENT OF CITING THE STATUTE WAS TO PUT THE OTHER SIDE ON NOTICE THAT IF THERE WAS, THEY WERE GETTING THIS OFFER AND IF THERE WAS A JUDGMENT RECOVERED THAT WAS, LET'S SAY GREATER THAN 25% OF THAT OFFER, THEN THEY WERE GOING TO BE LIABLE FOR ATTORNEYS' FEES AFTER THE DATE OF SERVICE OF THE MOTION.

SO CITING THE STATUTES SERVED A VERY IMPORTANT AND SPECIFIC PURPOSE OF MAKING SURE THAT THE OTHER SIDE KNOWS EXACTLY WHAT THE STATUTE SAYS AND WHAT THEIR POTENTIAL LIABILITY FOR ATTORNEYS' FEES IS.

I'M NOT SURE THAT THE PURPOSE BEHIND THIS REQUIREMENT IN THE STATUTE IS NECESSARILY SERVED BY SAYING NOW YOU DON'T GET ATTORNEYS' FEES AT ALL.

IT SEEMS LIKE THERE MAY BE A
LESS DRUCONIAN REMEDY EVEN
IF YOU'RE CORRECT THAT THE
FILING OF THE OFFER WAS
PREMATURE.

AND THAT GOES BACK TO THE
CHIEF JUSTICE'S QUESTION IS
WHY SHOULD THE REMEDY HERE
JUST BE ELIMINATION OF ANY
ATTORNEYS' FEES WHATSOEVER.
ISN'T THERE A LESSER
SANCTION THAT CAN BE
IMPOSED?

>> WELL, IF THERE WERE, IT
CERTAINLY WOULD'VE BEEN
IMPOSED IN CAMPBELL.
IN CAMPBELL YOU HAD 1.422
CITED WHICH CLEARLY MAKES
THIS A CASE FOR SETTLEMENT
AND THE FACT THAT THE
SETTLEMENT WAS LEFT OUT WAS
ENOUGH TO FORFEIT THE FEES.
THE SANCTION FROM EVERY
SINGLE --

>> WASN'T THAT BECAUSE IT
WAS CONSIDERED NOT TO BE A
VALID PROPOSAL THEN?
WASN'T THAT THE BASIS?

>> CORRECT.

>> BUT HERE, I THINK WHAT
JUSTICE CANTERO IS
SUGGESTING IS THAT IF BE
ASSUME UP TO THAT POINT
THERE WAS A VALID SOMETHING
AVALID PROPOSAL, A VALID
OFFER AND IS THERE SOMETHING
THAT CAN BE GO BACK AND
REMOVE IT I THINK IS THE
TENOR OF HIS QUESTION.

>> WELL, I THINK, IF THE, IF
THE, IF THE PENALTY IS
DRUDONIAN, THEN I THINK THE
REMEDY IN CAMPBELL WOULD SAY
WELL WHY DON'T YOU REFILE IT
AND PUT IN 768.79.
THE POINT OF THESE CASES.

>> THAT WAS AVAILABLE IN
CAMPBELL?

>> SURE, THEY COULD'VE DONE
THAT, RIGHT.

>> RIGHT, AND MAYBE THEY
COULD'VE DONE IT HERE, BUT
THAT DIDN'T -- THE
CORRECTION DIDN'T HAPPEN

HERE EITHER.

>> WELL, LET'S GO BACK TO WHETHER THEY DID OR NOT AND I SEE AGAIN, ALTHOUGH I DON'T GO ALONG WITH CAMPBELL BUT AT SOME POINT WE THINK WHAT ARE WE SERVING WHEN WE DO IT BUT THERE IS A VERY CLEAR DISTINCTION IN MY MIND ABOUT WHETHER THE OFFER IS VALID AND YOU CAN'T VALIDATE IT OFFER AFTER THE FACT BY SAYING NOW I'LL FILE ANOTHER OFFER AND EVEN IF THE OFFER WAS FILED PREMATURETY, BECAUSE IT -- PRUMERTURETY BECAUSE IT WASN'T FILED UNTIL AFTER THE JUDGMENT IT IS CORRECT THAT IN THIS CASE WHEN THE MOTION FOR ATTORNEYS' FEES WAS HEARD THAT THE OFFER WAS THEN PUT INTO EVIDENCE?

>> I THINK IT HAPPENED AT THE HEARING.

BUT IT WAS, IT ALREADY EXISTED, IT DIDN'T HAPPEN IN THE 30 OF THE DAY WINDOW WHERE IT'S SUPPOSED TO HAPPEN.

IT WAS FILED PREMATURETY BEFORE THE FINAL JUDGEMENT AND AND THEN I THINK IT WAS PRESENTED AT THE HEARING.

>> A MOTION MADE BY THE OFFER WIN 30 DAYS BUT WHAT I AM SAYING IS THAT THE POINT YOU ARE LITIGATING WHETHER HE HAD THE RIGHT TO ATTORNEYS' FEES THAT OFFER GOES IN, HOW DOES ANYTHING IN THE STATUTE NOT PREVENT THE JUDGE THEN FROM AWARDING ATTORNEYS' FEES?

IN OTHER WORDS, IT DOESN'T MATTER IF IT WAS FILED PREMATURETY.

IT'S NOW IN EVIDENCE AND WHAT THE JUDGE NEEDS IN ORDER TO MAKE A DETERMINATION IS AS TO WHETHER THE PERSON'S ENTITLED TO ATTORNEYS' FEES IS BEFORE THE JUDGE.

>> THAT'S ABSOLUTELY TRUE,
YOUR HONOR.

BUT THE, BUT THE, THE
RULINGS THAT HAVE COME OUT
OF THIS COURT AND WHAT THIS
COURT HAS SPENT THE LAST 12
YEARS DOING AND SAYING TO
THE DCA --

>> WELL YOU ARE SAYING, WE
KNOW WHAT WE HAVE WRITTEN
BUT THEY ALL HAVE TO DO WITH
WHETHER THE OFFER ITSELF IS
VALID.

>> CORRECT.

BUT WHETHER OR NOT INOFFER
IS VALID OR WHETHER OR NOT
THE ENTITLEMENT TO FEES
ARISICIZE DID THE LAWYERS
BELOW -- ARISES IS DID THE
LAWYERS BELOW FOLLOW ALL THE
PROVISIONS OF --

>> WHAT IF THERE IS A CASE
WHERE THE OFFER IS NOT FILED
WITH THE COURT AT ANY TIME.
IT'S NOT FILED IN A
TRADITIONAL SENSE BUT IT IS
THEN OFFER UNDER TO EVIDENCE
AT THE TIME THE -- OFFERED
INTO EVIDENCE AT THE TIME
THE MOTION FOR ATTORNEYS'
FEES IS HEARD.

WOULD YOU SAY THEN IT IS TOO
LATE TO NOW HAVE -- EVEN
THOUGH THE MOTION IS CLEARLY
IDENTIFIED WITH JUSTICE
CANTERO SAID IT COULD
IDENTIFY THAT IT WAS THE
OFFER WAS MADE IT WAS NOT
ACCEPTED IT WAS A MISAMOUNT.
WOULD THEN THAT BE TOO LATE?
IN OTHER WORDS, IT WAS NOT
FILED AT ALL WITH THE COURT
AT A SEPARATE PLEADING BUT
AT THE HEARING IT IS OFFERED
INTO EVIDENCE?

>> WELL, I THINK IF IT'S
OFFER UNDER TO EVIDENCE AND
ACCEPT UNDER TO EVIDENCE
THEN I THINK IT BECOMES PART
OF THE COURT FILING.

I DON'T THINK --

>> BUT DIDN'T THAT HAPPEN
HERE?

>> YES.

>> ALL RIGHT.

SO, THEN WHAT'S, WHAT'S THE PROBLEM?

>> THE PROBLEM IS THAT THET THE RULE WAS VIOLATED. THE RULE THAT SAYS YOU SHALL NOT -- IT SAYS SHALL. YOU SHALL NOT FILE THIS UNTIL NECESSARY.

>> AND WHY IS -- WHAT SAYS THE SANCTION IS. WHERE IS THE THING THAT SAYS AND IF IT'S FILED PREMATURELY!!ILY YOU NEVER CAN GET ATTORNEYS' FEES?

>> THAT HAS BEEN THE SANCTION THROUGHOUT. YOU TYPICALLY --

>> YOU DON'T CONCEDE A DIFFERENCE THAT SOMETHING THAT GOES TO THE VULIDITY TO THE OFFER AND SOMETHING THAT HAPPENS AFTER THE FACT?

>> NO BECAUSE EACH IS AFTER THE STATUTE.

INTITEMMENT.

ENTITLEMENT OF THE FEE ARISES FROM THE STATUTE. ALL THE Is MUST BE DOTTED, ALL THE Ts MUST BE CROSSED IN ORDER TO GIVE RISE TO THE FEE ENTITLEMENT --

>> STRIKE THE, OFFER OF PROPOSAL AT THE TIME THAT, IF IT'S FILED PREMATURELY, WHY ISN'T STRIKING IT JUST THE APPROPRIATE THING TO DO? RATHER THAN SAY YOU'RE NOT ENTITLED TO ATTORNEYS' FEES?

>> BECAUSE, BECAUSE THEN THE RULE HAS, HAS NO EFFECT.

>> BUT, YOU SEE IT, IT REALLY GOES BACK TO YOUR AGREEMENT THAT IF NOTHING HAD BEEN FILED AND HE WAS IN COURT WITH HIS MOTION FOR ATTORNEYS' FEES, AND THEN OFFERS THE OFFER OF JUNG JUDGMENT AS PROOF OF WHAT IS IN THE PROGRESSION FOR -- MOTION FOR ATTORNEYS' FEES, THAT WOULD'VE BEEN PERFECTLY FINE.

SO BY STRIKING IT, WHEN IT'S

PREMATURE, YOU'RE BACK TO THE SAME POSITION.

>> BUT YOU, BUT YOU'VE ALREADY VIOLATED THE STATUTE, AND IF WE ARE GOING TO STRICTLY CONSTRUE THESE STATUTES AND SAY THAT ANY, THAT A VIOLATION OF THE STATUTE CAN FOREGUT-FOOT YOUR RIGHT TO FEES THE CONSTRUCTION -- FORFEIT YOUR RIGHT TO FEES AN AWARD OF FEES IS IN DEROGATION OF THE COMMON LAW.

IF THERE IS -- IF YOU DO IS NOT FOLLOW THE EDICT OF THE STATUTE THAT CREATES THE ENTITLEMENT TO FEES THEN YOU FORFEIT THE RIGHT TO FEES.

>> LET ME ASK THE QUESTION. IF IT HAD BEEN FILED MORE THAN TEN DAYS AFTER THE VERDICT AND THERE WERE NO MOTIONS FOR NEW TRIAL, WOULD YOU BE ARGUING THE SAME THING?

>> I WOULD. I WOULD BECAUSE I THINK THAT YOU HAVE TO FOLLOW THE LETTER OF 768.79 AND 768.79 SETS FINAL JUDGMENT IS THE BENCHMARK THEN DOING IT BEFORE IS A VIOLATION.

>> WHAT IS THE POINT OF THAT STATUTE AGAIN?

>> PARDON ME?

>> I MEAN WHAT IS THE PURPOSE, WHAT PUBLIC POLICY IS BEING SERVED BY THAT?

>> I THINK THE, IT'S TWO-FOLD.

I THINK JUSTICE PARIENTE ANTICIPATED ONE IS THAT WHEN THINGS GO INTO THE COURT FILE IF IT'S A HIGH PROFILE CASE THEY HAVE A CHANCE TO BE DISSEMINATED TO THE PRES, THIS PART ARKANSAS -- PARTY OFFERED A SETTLEMENT TO THE CASE.

THE OTHER ONE IS THAT WHEN THE JUDGE IS LOOKING AT POST-TRIAL MOTIONS THAT THERE ISN'T AN OFFER OF

JUDGMENT EN THERE WELL I'M
LOOKING AT REMITER OR
SOMETHING LIKE THAT.

>> BUT IN THIS CASE -- THAT
DOESN'T FILE MY CASE.
NO POST-TRIAL MOTIONS,
YOU'RE WAITING FOR THE FILES
TO BE ENTERED.

THEN THE PROPOSAL OF MOTIONS
ARE FILED UNDER YOUR
ARGUMENT BECAUSE THE
JUDGMENT HAS BEEN ENTERED
THE HARSH SANCTION IS DENIAL
OF THE FEES.

IS THAT CORRECT?

>> CORRECT.

AND,.

>> HOW DOES THAT MEET ANY OF
THE RATIONALES THAT YOU JUST
SPOKE TO IN.

>> WELL, WHAT I AM TRYING TO
DO IS TO, GUESS ESSENTIALLY
WHY THE LEGISLATURE PUT IT
IN THERE AND I THINK THAT'S
AN ALTERNATE REASON.

YOU KNOW, ONE REASON IS IT
SHOULDN'T BE IN THERE --

>> WHAT THEY SAID IS UNLESS
NECESSARY, NOT UNTIL
NECESSARY.

THE SANCTION IS IT SHALL NOT
BE FILED UNTIL NECESSARY.
UNLESS IT'S NECESSARY AND YOU
AGREE IT'S NECESSARY TO FILE
THE MOTION AND THE PROPOSAL
IN ORDER TO BE ENTITLED TO
THE FEES, RIGHT?

>> CORRECT.

THE WORD EVENTS.

ALL THESE HAPPEN IN A TIME
LIEU SO YOU DON'T, YOU DON'T
HAVE TO FILE IT UNTIL YOU
HAVE THE ENTITLEMENT.
IT'S LIKE SAYING YOU CAN'T
TAKE --

>> IT DOESN'T SAY UNTIL
ENTITLED.

>> WELL, IT SAYS UNLESS.
UNLESS NECESSARY.

WELL IT'S NOT NECESSARY
CLEARLY UNTIL YOU'RE INTITLED
LDT.

I MEAN, THE WORD WOULD HAVE
NO MEANING IF, IF WE

INTERPRET IT THAT WAY, THEN YOU GET TO FILE IT WHENEVER YOU WANT.

I MEAN, THEN, THEN EVEN VERDICT DOESN'T MATTER BECAUSE NOW WE ARE JUST GOING TO COMPLETELY IGNORE IT.

>> UNLESS YOU CONSIDER THE PURPOSE AND THE GENERAL RULE OF 1.010 OF INTERPRETING THE CIVIL RULES IS THAT RULES ARE TO BE CONSTRUED TO SECURE THE JUST -- INEXPENSIVE DETERMINATION AND ISN'T IN THAT CIRCUMSTANCE I HAVE GIVEN YOU THAT JUST BE AN INEXTENSIVE DETERMINATION IS THAT IF THE VERDICT'S BEEN ISSUED THERE'S NO POST-TRIAL MOTIONS AND YOU FILE IT EVEN BEFORE THE JUDGMENT BEING ENTERED THEN THERE'S NO HARM?

>> BUT I THINK YOU STILL HAVE TO HAVE THE STRICT CONSTRUCTION BECAUSE IT APPEARS IN THE STATUTE AND NOT JUST THE RULE. THE STATUTE HAS TO BE STRICTLY CONSTRUED BECAUSE THE STATUTE GIVES ENTITLEMENT. IF YOU ARE GOING TO NECESSARILY GUESS WHY THESE PROVISIONS ARE IN THERE, REALLY WE SHOULDN'T BE GUESSING.

THE REVISION IS THERE, THE REQUIREMENT IS THERE. IF YOU DON'T MEAN THE ENVISION, IN DEROGATION OF THE COMMON LAW DOES NOT ARISE.

>> YOU KNOW I GUESS WHAT BOTHARDS MERE IS A LOT OF WHAT WAS DONE WITH THE OFFER OF JUDGMENT.

WHEN YOU SAY WE SHOULDN'T BE GUESSING ABOUT THE LEGISLATURE I CAN UNDERSTAND THAT WE MIGHT NOT GUESS ABOUT THE LEGISLATURE BUT IT

SEEMS TO ME WE OUGHT TO KNOW
WHY WE PUT IT IN OUR OWN
RULE UNLESS WE WERE JUST
MIMICKING WHAT THE
LEGISLATURE SAID.

SO WE'RE -- THERE'S SEVEN OF
US SAYING -- TO EXACTLY WHY
IT'S IN THE RULE BUT -- IT
BEATS US WHY IT WAS IN THE
RULE BUT IF IT'S IN THE RULE
AND HAS SOME SPECIFIC
PURPOSE MAYBE BUT SOME --
PUT SOME SANCTION WITH IT.
SO WHAT IS, WHAT'S YOUR
ANSWER TO THAT?

>> WELL, I'LL CONFESS THAT I
DON'T KNOW THE ORDER.

I DON'T KNOW IF THE RULE
MIMICKED THE STATUTE OR IF
IT WAS THE OTHER WAY.

I PRESUME THE RULE MIMICKED
THE STATUTE AND I THINK
THAT'S PROBABLY WHAT IT WAS.

THERE WAS -- BECAUSE THERE
USED TO BE TWO STATUTES.

USED TO BE 45 STATUTE AND I
THINK THE RULE TRACK TO A
LARGE EXTENT THE FIVE
REQUIREMENTS THAT APPEAR IN
THE STATUTE AS WELL.

THE OFFER OF JUDGMENT
STATUTE AND PROPOSAL OF
JUDGMENT SETTLEMENT FOR RULE
WERE DESIGN TO.

IF WE WERE TO UPHOLD
THE SECOND DISTRICT THAT WE
HAVE ACTUALLY DONE SOMETHING
TO FOSTER THE POLICY OF
ENCOURAGING SETTLEMENT?

>> I THINK IT'S A BARRIER TO
IT AT ALL.

ALL THIS, ALL THAT THIS
DECISION WOULD BE IS JUST
LIKE CAMPBELL.

FOLLOW THE RULE.

PEOPLE WILL STILL MAKE
PROPOSALS, STILL WILL ACCEPT
THEM OR REJECT THEM BASED ON
125% JUDGMENT AND ALL YOU'RE
SAYING IS FOLLOW THE RULE.

FILE THE PROPOSAL FOR
SETTLEMENT AFTER FINAL
JUDGMENT.

AND EVERYTHING IS FINE.

AND EVERYTHING IS FINE.
I SEE THAT I'M RUNNING OUT
OF TIME.
I WANTED TO TALK ABOUT THE
SECOND ISSUE.
I WOULD URGE THE COURT TO
LOOK AT THE SECOND ISSUE
ABOUT THRESHOLD BECAUSE OF
THE SPLIT.
PUNITIVE AND COMPENSATORY,
BUT I SEE I'M OUT OF TIME
AND I DON'T HAVE AN
OPPORTUNITY TO --
>> THAT ISSUE WAS NOT RAISED
IN THE TRIAL COURT AS TO THE
HOW MUCH WAS OFFERED?
>> YES, IT WAS, YOUR HONOR.
THE, THE SPLIT BETWEEN
COMPENSATORY WAS, WAS AN
ALTERNATE ARGUMENT BOTH AT
THE TRIAL COURT LEVEL AND AT
THE APPELLATE LEVEL.
IT APPEARS IN THE RECORD NE
MEMORANDUM OF LAW.
THANK YOU.

>> ALL RIGHT.
>> THE RULE'S SIMPLY NOT
CLEAR.
THE RULE IS VAGUE.
THE RULE IS AMBIGUOUS.
THE RULE DOESN'T PUT THE
PRACTITIONER ON NOTICE.
>> LET ME ASK YOU SOMETHING.
IF WE DECIDE THAT YOU DID
FILE THIS PREMATURELY BUT WE
ALSO DECIDE THAT THE REMEDY
SHOULDN'T NESSARL BE
STRIKING OF ALL ATTORNEYS'
FEES, WHAT LESSER REMEDY
WOULD YOU ENVISION, WHAT
OTHER SANCTION COULD BE
IMPOSED FOR THE PREMATURE
FILING OF THE OFFER OF
JUDGMENT?
>> WELL, I THINK THAT
STRIKING IT FROM THE RECORD
WOULD, WOULD POTENTIALLY BE
THE, FROM THE, THE DOCKET
WOULD POTENTIALLY BE THE
REMEDY.
BUT THAT REMEDY HAS BEEN,
THAT PROBLEM HAS BEEN CURED
BY THE ADMISSION OF IT INTO
THE RECORD.

IN THE PROCEEDING TO STRIKE
IT MOTION FOR ATTORNEYS'
FEES AND COSTS BUT I DON'T
CONCEDE IT WAS PREMATURE TO
FILE T. THERE'S NOTHING IN
THE RULE THAT SAYS YOU NEED
TO HAVE THE JUDGMENT IN
ORDER TO, TO FILE THE
PROPOSAL FOR SETTLEMENT.
IT SIMPLY BECOMES NECESSARY
TO START THE PROCESS TO
INDICATE TO THE OTHER SIDE
THAT YOUR --

>> IS THERE ANY ARGUMENT --
>> WAS THERE ANY ARGUMENT
THAT YOUR MOTION FOR
ATTORNEYS' FEES POST VERDICT
BUT PRE-JUDGMENT WAS
UNTIMELY FOR SOME REASON?
>> JUST YOUR GENERAL MOTION
FOR ATTORNEYS' FEE 1234S.
>> WHICH WAS UNTIMELY?
>> THAT THEY WERE UNTIMELY,
THEY WERE TOO EARLY, THAT
YOUR MOTION FOR ATTORNEYS'
FEES WAS TOO EARLY, TOO
SOON.

JUST THE PLOSION FOR FEES.
FORGET ABOUT THE PROPOSALS.
>> THE TRIAL COURT --
ALLUDED, DIDN'T SAY TOO SOON
THEY JUST SAID IT WAS
PREMATURE?

STHOO THE FIRST ONE.
>> THE FIRST ONE WAS
PREMATURE.

>> SO THE RULE SUPPORTS WHAT
THE TRIAL JUDGE WAS TALKING
ABOUT WITH REGARD TO THAT?
>> WE, WE, RULE 1.525 SPEAKS
TO IT BUT NONE OF THE CASE
LAW INDICATES THAT THERE'S
ANY TOO SOON FOR FILING THE
PROPOSAL.

ESPECIALLY IF YOU'VE DONE IT
WITHIN THE 30 DAYS THAT'S
REQUIRED BY THE RULE.

>> WITH OUR ASSISTANCE,
YOU'VE USED ALL OF YOUR
TIME.

I THANK YOU VERY MUCH.
WE'LL FAKE YOUR CASE UNDER
ADVISEMENT.

THANK YOU VERY MUCH.

YOU'VE ENLIGHTENED USEN YOUR
POSITIONS.