

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

Scott Corey Kirton v. Jordan Fiels

SC07-1739 | SC07-1741 | SC07-1742

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL WITH CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, AND YOU
SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA,
AND THIS HONORABLE COURT.

>> GOOD MORNING.

>> 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 WEDNESDAY,
JUNE 11th.

THE FIRST CASE ON OUR CALENDAR
TODAY, OUR FIRST CASES ARE
CONSOLIDATED CASES

KIRTON v. FIELDS.

MR.^BARNETT.

>> GOING TO ON BEHALF THE
PETITIONER.

>> THANK YOU.

>> GOOD MORNING, MR.^CHIEF
JUSTICE.

MAY IT PLEASE THE COURT.

MY NAME IS RICHARD LEE BARRETT.

I'M HERE ON BEHALF OF THE
PETITIONER DEAN DYESS.

WE ARE HERE TO ANSWER A VERY
NARROW CERTIFIED QUESTION OF
GREAT PUBLIC IMPORTANCE.

THE QUESTION IS DOES THE PARENT
HAVE THE AUTHORITY TO BIND A
MINOR'S ESTATE BY THE EXECUTION
OF A PRE-INJURY RELEASE.

AND WE'RE LUCKY.

THIS IS REALLY THE PERFECT CASE
TO DECIDE THIS BECAUSE THE
FACTS FOR PURPOSES OF THIS

APPEAL ARE UNDISPUTED.

BOBBY JONES, THE FATHER WHO SIGNED THE RELEASE SIGNED AN AFT SAYING THAT HE UNDERSTOOD THE RELEASE, THAT HE UNDERSTOOD IT RELEASES HIS MINOR CHILD'S ESTATE CLAIMS, AND THAT HE DID SO VOLUNTARILY AND WILLFULLY, SO WE DON'T HAVE A LOT OF FACTS TO CLUTTER UP THAT ISSUE.

THE SECOND THING IS IS WE'RE LUCKY BECAUSE THIS COURT HAS ALREADY DECIDED A LOT OF THE FUNDAMENTAL ISSUES THAT UNDERPIN THIS DECISION WHEN IT DECIDED THE GLOBAL TRAVEL CASE BACK IN 2005.

THE QUESTIONS THAT THE THIS COURT IS GOING TO HAVE TO CONSIDER THAT HAVE ALREADY BEEN ANSWERED BY THE GLOBAL TRAVEL CASE IS NUMBER ONE, THE COURT IN THE GLOBAL TRAVEL CASE SAID THAT THE DECISIONS LIKE THIS OF WHAT ACTIVITIES A PARENT ALLOWS THEIR CHILD -- A CHILD TO PARTICIPATE IN AND WHETHER OR NOT TO SIGN ARBITRATION AGREEMENTS, PRE-INJURY RELEASES, THAT THOSE TYPES OF DECISIONS HAVE CONSTITUTIONAL RAMIFICATIONS.

>> AM I CORRECT THAT WE HAVE NOT DECIDED A, A CASE OVER THE WHOLE LENGTH OF TIME OF THIS COURT THAT HAS HAD TO DO WITH PRE-RELEASES BY -- OF MINORS' CLAIMS.

>> YOU HAVE NOT.

>> AND WHAT -- WHEN WAS THE FIRST DECISION BY THE DISTRICT COURTS ON THIS ISSUE.

>> WELL THE BANEFIELD, DECISION, YOUR HONOR, BUT --

>> THAT WAS IN 1991.

>> RIGHT.

THE FIRST DECISION THE, THE, THE CASE, THE LANCE IRON HORSE CASE OUT OF THE FIFTH DCA WHICH HAS BEEN RECEDED FROM.

AN APPELLATE COURT APPROVED A RELEASE SIGNED BY A PARENT ON BEHALF OF A MINOR?

IS THAT THE ISSUE IN THE LANTZ

CASE?

IT SEEMS TO ME WE HAVE A DIFFERENT CASE REALLY FROM WHAT WAS DECIDED IN LANTZ WAS LANTZ REALLY FOCUSED AS I READ IT ON WHETHER THE LANGUAGE OF THE RELEASE WAS CLEAR AND UNEQUIVOCAL AS OPPOSED TO WHETHER OR NOT A FATHER OR THE PARENT OR GUARDIAN REALLY HAD THE, THE RIGHT TO SIGN THAT RELEASE AND RELEASE THE CHILD'S CLAIM.

ISN'T THAT WHAT THE SITUATION WAS IN LANTZ?

TO ABSOLUTELY IN THE FIFTH DISTRICT COURT IN THE APPELATE CASE IN THE FIFTH DCA MADE THAT POINT THEY SAID IMPLICITLY THEY APPROVE ADMINOR RELEASE IN THE CASE.

THE QUESTION OF -- ISSUE WHETHER THEY WERE TO SIGN A RELEASE.

IT WAS THE FIRST CASE IN ANSWER TO JUSTICE WELLS' QUESTION THAT APPROVE ADMINERER LEASE.

THERE HAVE TWO OTHER OPINIONS OUT.

ONE IS THE APPELATE CASE IN THE FIFTH DCA, AND THE OTHER NOW IN THE COMMERCIAL SETTING.

>> WELL, IN YOUR, IN YOUR, AND I KNOW YOU TOOK A LONG HARD LOOK AT THE RESEARCH IN THIS, AND I AM STRUCK BY THE FACT THAT OTHER THAN THE UNIVERSITY PLAZA CASE, WHERE WE'RE TALKING ABOUT A WAIVER THAT THERE HAS NOT A CASE OR PERHAPS YOU CAN TELL ME IF YOU FOUND A CASE HAVING TO DO WITH AN ADULT PRE RELEASE OF RIGHTS OF CLAIMS FOR NEGLIGENCE.

>> THE THEIS RACING CASE, YOUR HONOR, DECIDED IN THE BRIEF, WHICH INVOLVED A SPRINT CAR RACE WAS A CASE IN WHICH THE COURT INTERPRETED THE LANGUAGE OF THE RELEASE BASICALLY WHETHER THE -- USE OF THE WORD NEGLIGENCE OR OTHERWISE ENCOMPASSED BOTH IN REGULAR NEGLIGENCE AND GROSS

NEGLIGENCE.

>> THAT WAS THE CASE WRITTEN
BYS SUNBURN.

>> CORRECT, YOUR HONOR, IN THAT
CASE IT APPROVED THE RELEASE
AND IN FACT I DON'T BELIEVE
THERE IS ANY DISPUTE IF YOU
READ THE RESPONDENT'S RELEASE I
DON'T THINK WE DISPUTE THE
ISSUE AS TO WHETHER OR NOT
PRE-RELEASES FOR ADULTS ARE
BINDING.

I THINK THAT'S BEEN UNIVERSALLY
ACCEPTED.

NOW THERE ARE THREE CASES IN
OUR BRIEF FROM 35 FROM THE
OTHER STATES WHICH HAVE UPHELD
MINOR RELEASES IN COMMERCIAL
SETTINGS.

>> LET ME GO BACK TO THEN -- I
THINK SO THE PRECEDENT IT
APPEARS RIGHT NOW THAT THE
FIFTH DISTRICT AND THE FOURTH
DISTRICT ARE ACTUALLY IN
CONCERT ON THIS ISSUE -- THAT
IS THEY BOTH AGREE THAT THESE
PRE-INJURY RELEASES FOR
CHILDREN'S CLAIMS ARE, ARE
AGAINST PUBLIC POLICY.
IS THAT CORRECT?

>> THAT'S CORRECT.
ALTHOUGH --

>> WELL, I WANT TO KNOW THIS
BECAUSE I'M STRUGGLING WITH
THIS.

THE OPINION BELOW WENT TO GREAT
LENGTHS TO SAY THAT WE DON'T
WANT TO OVERSTEP OUR GROUNDS
THAT THIS IS A LEGISLATIVE
DECISION.

IF IT'S A LEGISLATIVE DECISION,
THEN WHY ISN'T IT THAT IF IT'S,
SINCE THIS -- THIS FATHER WAS
ONE OF THE GUARDIANS OF THE
CHILD, AND HAD AUTHORITY TO ACT
ON THE CHILD, THEN WHY ISN'T IT
VALID AND BINDING FOR THE
PARENT TO BE ABLE TO MAKE THIS
DECISION ON BEHALF OF HIS
CHILD?

BECAUSE YOU ARE NOT CLAIMING,
AND THERE'S AN UNDERTONE THAT
THE MOTHER REALLY SAID THIS IS
TERRIBLE.

YOU SHOULD NOT BE EXPOSING THIS CHILD TO THIS TYPE OF THING. THAT'S NOT AN ISSUE IN THIS CASE.

>> THAT'S NOT AN ISSUE.

>> SO THE DECISION -- SO I'M TRYING TO -- I'M STRUGGLING, IN YOU ARE CONCEDING PRE-INJURY RELEASES IN THIS STATE ARE NOT AGAINST PUBLIC POLICY WHY IT IS THAT WE WOULD PROCLAIM THAT A PRE-INJURY RELEASES FOR A CHILD IS AGAINST PUBLIC POLICY, ESPECIALLY IN THIS CASE?

YOU SAID THIS IS A PERFECT CASE, BUT HERE YOU REALLY HAVE -- YOU HAVE THE TRAGIC DEATH OF A CHILD, BUT THEREFORE IT'S THE PARENTS THAT ARE REALLY GOING TO GET THE BENEFIT OR NOT BENEFIT BY THE, THE VALIDITY -- YOU KNOW, THE, THE BONDING RELEASE.

SO PLEASE HELP ME WITH THAT BASIC CONCEPT, THAT'S WHAT POLICY ARE WE TRYING TO DO SOMETHING IF THE LEGISLATURE HASN'T ACTED ONE WAY OR ANOTHER?

>> I THINK THE LEGISLATURE HAS ACTED.

>> WELL -- THEY'VE ACTED WITH POST, YOU KNOW, THERE HAS TO BE AN APPROVAL BUT AS MANY OF THE COURTS SAY THIS FATHER AND MOTHER COULD'VE CHOSEN NOT TO BRING LAWSUIT AT ALL, AND THAT WOULD'VE BEEN -- AND IN THIS STATE, IF THEY -- AT THE MINOR SURVIVE, THE MINOR DOESN'T EVEN HAVE THE RIGHT AFTER MINORITY TO BRING THE CASE, SO THE PARENTS CONTROL --

>> ABSOLUTELY.

>> NACLAIM, SO WHAT I UNDERSTAND THERE IS -- THAT 744 THE APPROVAL AFTER FOR, FOR, BUT NOTHING REQUIRES APPROVAL BEFORE.

SO THERE ISN'T -- I MEAN, LISTEN, THERE ISN'T ANY SPECIFIC STATUTE ON THIS ISSUE.

>> IN THE GLOBAL TRAVEL CASE

THIS COURT HELD AT PAGE 400 THAT THOSE STATUTES 741 AND 347 WERE A RESTRICTION ON PARENTAL RIGHTS, NOT AN EXPANSION OF PARENTAL RIGHTS, AND THAT'S IMPORTANT BECAUSE WHAT THE COURT WENT ON TO HOLD THAT SINCE THE LEGISLATURE HAD NOT SPECIFICALLY PRECLUDED PRE-INJURY ARBITRATION CLAUSES FOR CHILDREN, THEN THE COURT -- THEN THAT RIGHT NATURALLY EXISTED.

SIMILARLY, SINCE THE -- SINCE THE LEGISLATURE HAS NOT SPECIFICALLY PROHIBITED PRE-INJURY RELEASES IN COMMERCIAL SETTINGS ON BEHALF OF CHILDREN, THEN UNDER THE CONSTITUTION, ARTICLE 1 SECTION 23, THAT RIGHT EXISTS AND THAT'S COMPLETELY CONSISTENT WITH YOUR GLOBAL TRAVEL CASE BECAUSE UNLESS THE LEGISLATURE PROHIBITS PRE-INJURY RELEASES, THEN THE RIGHT EXISTS UNDER -- >> YOU SAY THE RIGHT EXISTS. HOW DOES THE RIGHT EXIST? WAS THERE A COMMON LAW WAY FOR PARENTS TO WAIVE THIS TYPE OF CLAIM?

72 WELL, UNDER RULE 1210. ONLY THE PARENT OF HIS NATURAL GUARDIAN CAN BRING THE CLAIM. UNDER 95051, IF THE PARENT CHOOSES NOT TO BRING THE CLAIM WHILE THE CHILD IS A MINOR, THE STATUTE OF LIMITATION -- HOLDS. IN EVERY CASE, IN EVERY STATE IN WHICH THEY HAVE STRUCK MINOR RELEASES AND COMMERCIAL SETTINGS, AND EVERY SINGLE ONE CITED BY RESPONDENT AND CITED IN YOUR GLOBAL TRAVEL CASE, IN THOSE STATES, THE STATUTE OF LIMITATIONS DOES NOT TOLL -- DOES NOT RUN UNTIL AFTER THE CHILD REACHES AGE OF MAJORITY. THOSE STATES IN EACH CASE RESERVE FOR THE CHILD THE RIGHT TO FILE SUIT AFTER THEY REACH THE AGE OF MAJORITY. FLORIDA IS UNIQUE IN THAT RESPECT.

FLORIDA DOES NOT.

FLORIDA -- THE WHOLE STATUTORY SCHEME MAKES IT VERY CLEAR THAT IN FLORIDA THE DECISION OF WHETHER OR NOT TO SUBJECT YOUR CHILD TO THE COURT SYSTEM IS THE PARENT'S DECISION.

UNDER ARTICLE 1 SECTION 23, UNDER THE COMMON LAW.

>> WELL, HOW MANY -- YOU ALL BOTH DID, AN EXTENSIVE LOOK AT WHAT HAPPENS IN OTHER STATES AND WHAT HAS HAPPENED IN OTHER STATES.

HOW MANY OTHER STATES HAVE MADE THIS POLICY DECISION ON THE BASIS OF COMMON LAW AND HOW MANY STATES HAVE MADE IT ON THE BASIS OF STATUTE?

>> IF YOU'LL BEAR WITH ME, I THINK I CAN ANSWER THAT QUESTION FOR YOU.

THE STATES THAT APPROVED MINOR RELEASES BY PARENTS ON THE BASIS OF COMMON LAW, CALIFORNIA, MASSACHUSETTS, NORTH DAKOTA, OHIO, AND WISCONSIN.

COLORADO ORIGINALLY, THE COURTS STRUCK MINOR RELEASES IN COMMERCIAL SETTINGS.

BUT THEN THE LEGISLATURE IMMEDIATELY CAME OUT AND SAID THE COURTS HAD MISCONSTRUED PUBLIC POLICY.

>> BUT ON THOSE CASES, WERE THOSE CASES COMMERCIAL BUT I THOUGHT THE MASSACHUSETTS ONE HAD TO DO WITH CHEERLEADING AT THE SCHOOL.

>> WELL, ACTUALLY THERE ARE THREE CASES THAT RULE IN COMMERCIAL SETTINGS. THERE'S THE COLORADO CASE, AND COLORADO HAS RULED ON A COMMERCIAL.

CALIFORNIA HAS RULED ON A COMMERCIAL, IF YOU'LL BEAR WITH ME, I HAVE THOSE DECISIONS RIGHT NOW.

>> IN CALIFORNIA?

BECAUSE THE ONE I AM LOOKING AT, IT WAS A SCHOOL SETTING IN CALIFORNIA, AND --

>> IT'S THE PLATZER --

>> MOST OF US THINK THAT MAYBE,
AT LEAST SOME DIFFERENCE
BETWEEN A COMMERCIAL SETTING
AND A SCHOOL OR COMMUNITY TYPE
SETTING.

>> THAT'S RIGHT.

ALTHOUGH IN -- I DON'T WANT TO
BE PRESUMPTUOUS AND TELL YOU
WHAT YOU MEANT WHEN YOU WROTE
GLOBAL TRAVEL --

>> -- TALKED ABOUT ARBITRATION.
THE ARBITRATION PORTION OF, OF
THAT AGREEMENT, CORRECT.

>> CORRECT.

IN CALIFORNIA, IT'S THE
PLATZER DECISION, AND IT'S
CITED IN MY BRIEF.

IN COLORADO -- IN THE PLATZER
DECISION IN CALIFORNIA TDEALT
WITH THE SITUATION WHERE A
CHILD FELL OFF OF A SKI LIFT
AND WAS INJURED.

IN THE BROOKS CASE OUT OF
COLORADO, WHICH IS ALSO CITED
IN MY BRIEF AMINOR WAS KILLED
IN A SNOW MOBILE TOUR AND IN
THE CLERK DECISION IN
MASSACHUSETTS ACHILD WAS HURT
DURING GYMNASTICS.

ALL THREE OF THOSE ARE
COMMERCIAL CASES, ALL THREE OF
THOSE, THE COURTS UPHELD A MINE
RER LEASE.

>> WELL, THE DECISION FROM
CALIFORNIA ON GROSS NEGLIGENCE
GREATLY -- WENT INTO GREAT
DETAIL ABOUT THE ANALYSIS THAT
CALIFORNIA WOULD USE IN THIS
CONTEXT AND THEY BREAK IT DOWN
REALLY ON THAT 1963 --

>> HOW DO YOU PRONOUNCE IT?

>> RIGHT.

WHICH HAD TO DO WITH THE PUBLIC
INTEREST.

>> THAT'S CORRECT.

IN THE -- IN THAT CASE, YOUR
HONOR, THEY, IT RECOGNIZED
IMMEDIATELY THAT SIMPLE
NEGLIGENCE WAS WAIVED BY THE
RELEASE, BUT THE ISSUE HAD TO
DO WITH, I THINK IT WAS A
SUMMARY JUDGMENT, IF I REMEMBER
CORRECTLY.

AND THEY BASICALLY DENIED THE DEFENDER'S MOTION FOR SUMMARY JUDGMENT SAYING THE ISSUE OF WHETHER OR NOT THERE WAS GROSS NEGLIGENCE --

>> WHAT?

I JUST HAVE --, I SEE YOU'RE ON YOUR REBUTTAL BUT IS YOUR POSITION THAT ALL PRE-INJURY RELEASES FOR BEHALF OF CHILDREN SHOULD BE VALID IN THIS STATE?

>> ABSOLUTELY.

>> BUT IF, I WANT TO GO BACK BECAUSE I HAVE TO TELL YOU WHEN I WAS ASKING SOME OF THE QUESTIONS, I WAS REALLY -- I GOT CONFUSED AT WHICH SIDE YOU WERE ON --

>> NO, I DIDN'T WANT TO ARGUE WITH YOU.

[LAUGHTER]

I WASN'T ROOTING FOR YOU.

>> BECAUSE TO ME ON THE FLIPSIDE, IF THE LEGISLATURE HASN'T SPOKEN, THE CONCEPT OF ALLOWING A FACILITY, THE COMMERCIAL FACILITY TO ESCAPE LIABILITY BY HAVING A PARENT WAIVE THE CHILD'S CLAIMS AND MAYBE IT JUST GOES TO THE WHOLE ISSUE OF PRE-INJURY RELEASES, IF WE ARE THEN TO FOLLOW A COMMON LAW CONCEPT, WHY IS IT THAT WE -- I MEAN, DON'T WE HAVE THE PREROGATIVE THEN, AS A MATTER OF COMMON LAW, TO SAY THAT THIS IS REPUGNANT AS AGAINST THE POLICY OF THE STATE UNTIL THE LEGISLATURE ACTS AND THAT IT IS WE ARE ENCOURAGING CARELESSNESS AND THEN IN THE END ESPECIALLY IF YOU HAVE A DEFENDANT THAT DOESN'T CARRY INSURANCE, THE, THE CONSEQUENCES ARE ON EITHER THE PARENT OR ULTIMATELY THE STATE, SO WHY ISN'T IT A BETTER POLICY TO UNTIL THE LEGISLATURE ALLOWS THEM TO SAY THAT IT IS REPUGNANT TO, YOU KNOW, A PRE-INJURY WAIVER IS REPUGNANT TO THE POLICY OF THE STATE.

>> WELL, CERTAINLY THAT'S ONE WAY TO LOOK AT IT BUT THERE ARE

OTHER POLICIES THAT I THINK WEIGH MORE HEAVILY THE OTHER WAY.

CERTAINLY THE BEST TIME FOR A PARENT TO MAKE A DECISION OF WHETHER TO ALLOW THEIR CHILD TO PARTICIPATE IN THIS ACTIVITY IS WHEN THEY'RE THERE.

THEY CAN SEE THE TRACK, THEY CAN SEE THE JUMPS, THEY CAN SEE WHETHER THERE ARE FLAGMEN THERE OR NOT.

THAT'S WHETHER TO MAKE THE DECISION BUT THE PUBLIC POLICY ENCOURAGED WHEN YOU STRUCK MINOR RELEASES WHEN LET'S FACE IT.

THERE COULD BE UNETHICAL PARENTS OUT.

THERE THIS IS SOMETHING JUDGE ROGUEBY RAISED.

I DON'T WANT TO ENCOURAGE A POLICY THAT WOULD ENCOURAGE UNETHICAL PARENTS TO LITERALLY SEND THEIR CHILDREN OUT INTO DANGEROUS SITUATIONS AND LATER BE ABLE TO PROFIT FROM IT.

MORE IMPORTANTLY, I MEAN, IF THE PARENT SIGNS A PRE-INJURY RELEASE --

>> WE'RE REALLY.

SO THAT'S WHERE THE THING IS. THIS IS A DEATH.

THE IDEA OF A, OF A PARENT PROFITING AND HOPING THAT THEIR CHILD IS?

YARD -- IS INJURED, YOU KNOW, I RESPECT CERTAINLY JUDGE ROBY IS SO PREPOSTEROUS AS TO WHAT IT ENCOURAGES TO ME WHAT, WE SHOULD BE ENCOURAGING IS PLACES THAT ENGAUGE IN THESE KIND OF DANGEROUS ACTIVITIES LIKE ATV OUGHT TO BE REALLY RESTRICTING MINORS FROM PARTICIPATING.

ISN'T THAT A BETTER -- I MEAN, THAT SEEMS TO ME TO BE SOMETHING TO, TO SORT OF SAY I'M NOT GOING TO ALLOW MINORS ON THESE TRACKS BECAUSE THIS IS JUST INHERENTLY DANGEROUS STUFF.

WE'RE JUST ASKING FOR INJURIES.

>> YOUR HONOR, I RACE.

MY SONS RACE.

THE FOOTBALL FIELDS ARE FILLED
WITH KIDS THAT ARE --

>> WAIT A MINUTE.

LET'S TALK ABOUT -- YOU KNOW,
YOU'RE USING EXAMPLES NOW THAT,
YOU'RE ASKING FOR LIMITLESS
RULE.

HOW ABOUT, I MEAN, IN SOME
PARTS OF THIS COUNTRY, PEOPLE
JUMP AFFOFF OF BRIDGES WITH
PARACHUTES AND IT'S HIGHLY
DANGEROUS.

SO YOU'RE ASKING FOR A RULE
THOUGH THAT WOULD APPLY TO
THAT, FOR THE THRILL SEEKER
THAT WANTS TO CLIMB INTO A, A
PEN FULL OF POISONOUS SNAKES
AND PLAY WITH THEM.

YOU'RE ASKING FOR A LIMITLESS
RULE IT SEEMS.

THERE ARE NO LIMITS.

ATV OR PLAYING MINIATURE GOLF
MAY BE ONE THICK, BUT YOU ARE
SAYING A BLANKT RULE THAT THESE
THINGS ARE WAIVEABLE.

I MEAN, THAT'S -- ARE YOU NOT?

>> I AM ASKING FOR YOU TO ALLOW
THE PARENT TO MAKE THAT
DECISION.

>> TO MAKE THAT DECISION NO
MATTER HOW DANGEROUS IT IS.
AND LET ME ASK YOU THIS.

IF PARENTS MAKE THOSE KINDS OF
DECISIONS AND PLACE THEIR
CHILDRENT THAT -- IN THAT KIND
OF RISK ARE, THEY SUBJECT TO
TERMINATION OF PARENTAL RIGHTS
UNDER OUR FLORIDA STATUTES WITH
REGARD TO ABUSE OF OUR
CHILDREN, LET THEM JUST DO WHAT
THEY WANT TO DO.

IT'S NOT A QUESTION OF EVIL
PARENTS.

IT'S -- THERE'S SOME -- THEY
DON'T GIVE YOU A MANUEL WHEN
YOU HAVE A BABY AND SOMETIMES
THERE ARE SOME PARENTS THAT
JUST DON'T MAKE THE RIGHT
DECISIONS AND ARE WE TO PERMIT
THAT TO JUST WILLY-NILLY JUST
NO MATTER WHAT YOU WANT JUST GO
AHEAD AND SIGN IT AND THEN IT'S

WAIVED?

THAT'S THE RULE THAT YOU WOULD LIKE?

>> ABSOLUTELY NOT.

WE HAVE THE RULES THAT DEFINE CULPABLE NEGLIGENCE.

I WOULD SUGGEST TO YOU THAT THE PARENT PUTS THEIR CHILD IN A PIT WITH POISONOUS SNAKES, THAT CHILD SHOULD HAVE THEIR PARENTAL RIGHTS RESTRICTIONS.

>> SO THIS PERSON WOULD BE SUBJECT TO CRIMINAL PENALTIES FOR SIGNING THIS RELEASE.

IS THAT WHAT YOU ARE SUBJECTING?

>> I WOULD SUBJECT THE RELEASE WOULD BE A VOIDABLE CONTRACT. CERTAINLY YOU CAN TAKE THIS OUT TO THE ABSURD RESULT.

>> THAT'S WHAT YOU'RE ASKING FOR.

YOU'RE ASKING FOR A LIMITLESS RULE.

>> I AM SAYING ANYTHING THAT IS A LAWFUL ACTIVITY FOR CHILDREN, PARENTS SHOULD MAKE THE DECISION.

>> WELL, THERE ARE MANY, MANY DANGEROUS THINGS THAT ARE TERRIBLY DANGEROUS THAT ARE LAWFUL.

SO YOU'RE, YOU'RE LINE IS THEN THAT MAKES YOU UNDERSTAND UNLAWFUL.

THEN PARENTS CAN WAIVE ANYTHING FOR, FOR ANY CHILD NO MATTER HOW YOUNG, HOW TEND, NO MATTER WHAT AGE.

>> UNLESS IT'S UNLAWFUL -- PUT IT THIS WAY.

WHETHER YOU ALLOW PARENTS TO SIGN PRE-INJURY ESTRELEASERS, PARENTS STILL HAVE THE AUTHORITY TO ALLOW THEIR CHILDREN TO ENGAGE IN ACTIVITIES.

ALL THAT WE'RE TALKING ABOUT IS THE STATUTORY SCHEME OF FLORIDA HAS POSITED INTO PARENTS THE SOLE DISCRETION OF WHETHER TO FILE A LAWSUIT POST-INJURY. NOBODY ELSE CAN MAKE THAT DECISION SO WHY SHOULD WE MAKE

A DISTINCTION PRE-INJURY.
THE PARENT IS THE ONE THAT
MAKES THE DECISION.
IT'S ALWAYS BEEN THE ONE THAT
MAKES THE DECISION.

>> WELL, LET ME GIVE YOU A
PRACTICAL EXAMPLE.
LET'S SAY A FAMILY IN PENSACOLA
GOING TO ORLANDO FOR VACATION
WITH THEIR FIVE KIDS A. KIDS
WANT TO GO TO A WATER PARK.
THEY'RE ALL EXCITED ABOUT T.
THEY GO TO THE WATER PARK.
THEY PAY THEIR TICKET.
THEY'RE HANDING A WAIVE AND
RELEASE FORM.

ALL RIGHT.
WHAT IS THE PUBLIC POLICY TO
EXEMPT THAT WATER PARK FROM ANY
LIABILITY FOR NEGLIGENCE IN NAT
CIRCUMSTANCE?

-- IN THAT CIRCUMSTANCE?
AND YOU'RE SAYING THAT A
PARENT'S GOING TO LOOK AT THEIR
KIDS, THEY'VE BEEN TALKING
ABOUT THIS TRIP FOR THREE
MONTHS AND MAKE A REASONED,
RATIONAL DECISION AND SAY, NO
KIDS, I DON'T WANT TO SIGN THIS
WAIVER.

OF ANY SIMPLE NEGLIGENCE SO
WE'RE GOING TO GO AND DO
SOMETHING ELSE.

>> I THINK THAT IS THE PARENT'S
RESPONSIBILITY.

I CAN --

>> AND YOU THINK THAT SHOULD BE
THE PUBLIC POLICY THAT THE
WATER PARK SHOULD BE WAIVED OF
ALL SIMPLE NEGLIGENT LIABILITY
IN THAT CIRCUMSTANCE?

>> YEAH, AND I THINK THAT THE
MARKETPLACE WILL WEED OUT
COMPANIES THAT -- PUT IT THIS
WAY.

IF PARENTS REFUSE TO GO INTO
THOSE FACILITIES BECAUSE THEY
HAVE TO SIGN RELEASES, THOSE
FACILITIES WILL NO LONGER
REQUIRE RELEASES.

THE RELEASES AT LEAST FROM
PERSONAL EXPERIENCE OR AT LEAST
MORE ACTS IN THESE INHERENTLY
DANGEROUS ACTIVITIES BECAUSE

WHAT CAUSES -- WHAT BREAKS
THESE COMPANIES IS NOT THE
AWARDS THAT ARE GOING IN COURT
BECAUSE PEOPLE DON'T WIN THOSE
CASES.

IT'S THE LEGAL FEES.

IT'S THE LEGAL FEES THAT ARE
KILLING THESE MOP AND POP --
MOM AND POP OPERATIONS THAT ARE
PROVIDING THESE OPPORTUNITIES

--

>> WE HAVE ANY -- DO WE HAVE
ANY EVIDENCE OF THAT.

WASHINGTON HAS TAKEN THE
OPPOSITE TACK AS COLORADO S.
THERE EVIDENCE IN WASHINGTON
THAT ALL THE SKI RESORTS ARE
CLOSED DOWN AND WHITEWATER
RAFTING AND KAYAKING IS CLOSED
DOWN?

>> NOTHING ON THE RECORD.
I HAVE ANECDOTAL EVIDENCE, BUT
THAT'S NOT IN THE RECORD.

>> I THINK I'VE GOT 25 SECONDS,
YOUR HONOR.

>> I THINK YOU'VE GONE OVER.
YOU'RE WELL OVER YOUR TIME BUT
WE WILL GIVE YOU A COUPLE OF
MINUTES FOR REBUTTAL.

>> THANK YOU VERY MUCH.

>> GOOD MORNING.

BART ROCKENBACH ON BEHALF OF
THE RESPONDENT FIELDS.

>> OKAY, NOW YOU'RE
REPRESENTING THE PARENTS?

>> YES.

>> ALL RIGHT.

>> PARENT.

>> OR PARENT.

OR JUST THE MOTHER.

>> JUST THE MOTHER.

>> I REPRESENT THE ESTATE BUT
THE MOTHER'S THE, THE SURVIVOR.

>> WE DIDN'T REALLY GET INTO
THIS OR TRISTE I DIDN'T.

WHAT IS THE CLAIM OF NEGLIGENCE
AGAINST THIS.

IF YOU WERE ALLOWED TO PROCEED?
WHAT ARE YOU CLAIMING THEY
NEGLIGENTLY DID WRONG?

>> THE NEGLIGENCE CLAIMS WE
HAVE AN EXPERT WHO TESTIFIED IN
THE AFFIDAVIT THAT THE FACILITY
DID NOT DESIGN THE TRACK

CORRECTLY, THAT IT DID NOT HAVE THE PROPER FLAGGING PERSONNEL THERE, AND THAT IT ALLOWED CRISTFER JONES TO RIDE HIS 350 CCATV, WHICH IS 150 CCs BIGGER, MORE POWERFUL THAN IS ALLOWED BY THE SANCTIONING AUTHORITY.

>> I GUESS THE IDEA IS NOBODY HAS MADE THIS SANCTIONING AUTHORITY -- A LOT OF US HAVE HAD KIDS, GRANDKIDS. YOU GO TO AN AMUSEMENT PARK, SO THERE IS A RESTRICTION THEY PUT ON.

IN YOUR CLAIM THERE IS NO DISTINCTION BETWEEN -- SAY SOMETHING -- LISTEN, THIS WAS A RISK YOU COULDN'T FORESEE, WHICH IS THEY SHOULD JUST --, THIS IS NOT APPROPRIATE FOR A CHILD TO PARTICIPATE IN, HAVING, BEING ON A MOTORCYCLE, GREAT SO WE ARE NOT DISTINGUISHING THE NATURE OF THE CLAIM, I GUESS.

WE ARE JUST EITHER HERE SAYING IT'S ALL OUT OR NONE OF IT IS OUT IS THAT CORRECT?

>> THAT IS CORRECT.

>> AND THIS ISN'T A CASE, I KNOW THERE ARE SOME BOXING CASES WHERE THE ISSUE IS WHETHER THE -- YOU KNOW SOMETHING WAS BEYOND THE SCOPE OF WHAT WAS FORESEEABLE. YOU KNOW, WHICH MIGHT BE THAT SOMEBODY SAYS HEY YOU CAN JUMP OUT OF A PLANE AND THEN YOU SUE THE PERSON FOR, YOU KNOW, ALLOWING YOU TO JUMP OUT OF THE PLANE.

THERE'S NO CLAIM THERE. SO THERE IS NONE OF THIS DISTINCTION ABOUT THE SCOPE OF WHAT WOULD BE COVERED BY A RELEASE AND WHAT SHOULDN'T PROPERLY BE COVERED BY A RELEASE?

>> NO.

THIS CASE IS AT LEAST FROM THE RESPONDENT'S PERSPECTIVE, ENTIRELY A QUESTION OF WHETHER THE PARENT HAS THE AUTHORITY TO

SIGN THE RELEASE REGARDLESS OF WHAT IT SAYS.

>> YEAH, WELL, LET ME EXPLORE THAT.

YOU KNOW, I AM CERTAINLY CONCERNED ABOUT THESE ADHESION CONTRACTS AND DOWN IN MY NECK OF THE WOODS, YOU'VE GOT SPACE MOUNTAIN AND UNIVERSAL AND YOU'VE GOT A LOT OF LARGE, YOU GOT A LOT OF SMALL WET N WILD, ALL OF THOSE TYPES OF ATTRACTIONS.

BUT WHAT CONCERNS ME IS THAT WE'VE COME A ALONG HERE FOR 160 YEARS WITHOUT DEVELOPING ANY COMMON LAW.

APPARENTLY.

THAT SAYS THESE TYPES OF RELEASERIZE AGAINST THE COMMON LAW.

-- RELEASES ARE AGAINST THE COLIN -- COMMON LAW AND WHAT I AM CONCERNED ABOUT IS WHY WITH ALL OF THE TYPE THING THAT JUSTICE PARIENTE BROUGHT UP, AS TO SETTING TYPE OF PARAMETERS AND DISTINCTIONS AND DRAWING, THE REGULATION, WHY ISN'T THAT SOMETHING THAT REALLY IS BETTER LEFT TO THE LEGISLATIVE BRANCH?

AND THE AGENCIES THAT ADMINISTER AFFAIRS AND RECREATION AND ALL OF THAT TO, TO, TO GUARD.

>> WHEN YOU SAY IT, DO YOU MEAN THE INVALIDATION OF THESE CONTRACTS --

>> IF YOU'RE GOING TO MAKE A CONTRACT, OR IF YOU ARE GOING TO REGULATE SOMETHING TO WHERE IT IS GOING TO BE SO THAT YOU CAN, ARE EXPOSED TO LIABILITY BECAUSE OF THE DESIGN OF YOUR TRACK.

THEN YOU ARE NOT GOING TO LOW THERE BE A PRE-INJURY RELEASE OF LIABILITY.

WHY ISN'T IT BETTER FOR IT AS TO HAPPEN IN COLORADO FOR THE COLORADO -- FOR THE LEGISLATURE, WHICH CAN COME, OBVIOUSLY, ALONG BEHIND US, IF

WE CAME IN YOUR DIRECTION, AND DEAL WITH THE RULE SO THAT THEY COULD TAKE VARIOUS MATNERS TO CONSIDERATION IN ADOPT AGSTATUTE?

IF THIS COURT WAS TO RECOGNIZE THE COMMON LAW DOES NOT ALLOW A PARENT OR DOES NOT AUTHORIZE A PARENT TO SIGN A PRE-INJURY RELEASE ON BEHALF OF A MINOR, THEN WE WOULD UNDOUBTEDLY HAVE THE SAME SITUATION THAT WE HAD IN COLORADO IN WHICH THE LEGISLATURE WOULD THEN TAKE ITS POLICY RULE -- POLICYMAKING RULE AND DECIDE WHAT THE SCOPE OF THIS SHOULD BE.

THEY COULD CREATE A RIGHT ON BEHALF OF THE PARENT BUT THEY COULD ALSO CREATE AN ADMINISTRATION THAT WOULD OVERSEE IN THIS CASE, RACE TRACKS, AND HAVE INSPECTIONS AND HAVE CERTAIN REGULATIONS TO MAKE SURE THAT IT'S SAFE.

>> BUT YOU'RE NOT SAYING THAT THIS IS, THIS IS A LAWFUL ACTIVITY, CORRECT? THAT THIS ATV RACING.

>> IT IS LAWFUL.

>> AND THIS CHILD WAS 15 AT THE TIME?

>> 14.

>> 14.

IT -- YOU'RE NOT SAYING THAT THE PARENT DIDN'T HAVE THE AUTHORITY TO ALLOW THE CHILD TO PARTICIPATE IN THIS.

>> THAT IS CORRECT.

>> OKAY.

AND IT WASN'T SOMETHING WHERE IT WOULD BE A DIFFERENT IF THEY DID IT AND THEY GOT THE CHILD TO SIGN BECAUSE THAT WOULDN'T BE VALID SO THEY RECOGNIZE THEY HAVE TO HAVE A PARENT THERE FOR, FOR WHATEVER -- TO SIGN THE RELEASE.

AGAIN I AM STRUGGING WITH THIS.

I DON'T LIKE RELEASES ONE BIT.

I HAVE TO TELL YOU MY VISCERAL REACTION TO AGAINST -- IS

AGAINST THEM BUT I LOOK TO SAY,
WELL YOU SAID, WHAT'S THE
COMMON LAW, WHAT'S THE PUBLIC
POLICY, THE JUDGE BELOW THE
FOURTH DISTRICT SAID WELL IT'S
THE LEGISLATURE TO SET THE
POLICY BUT ISN'T IT THE, THAT
WAY, WHICH IS THAT WE SAY WELL
THERE IS NOTHING THAT SAYS
AUTHORIZE PARENTS TO ALLOW
PARENTS TO SIGN THESE RELEASES.

WE ALLOW IT IN MEDICAL CARE AND
INSURANCE AND ALL THESE SCHOOL
ACTIVITIES, SO WHY ARE WE GOING
TO CARVE OUT SOMETHING FOR
COMMERCIAL ACTIVITIES BECAUSE
WE THINK THOSE, YOU KNOW, THERE
ARE SOME DIFFERENT POLICIES
THERE.

WITHOUT ANY THERE'S NO BRANDEIS
BRIEF HERE TO TELL ABOUT ALL OF
THESE DIFFERENT POLICIES SO WE
WOULD KNOW WHAT'S COMPETING.

>> THE I THINK WE DO KNOW WHAT
POLICIES ARE COMPETING, BUT
FIRST I WANT TO ADDRESS THE,
THE ISSUE OF THE COMMON LAW.
IN MY RESEARCH I WAS UNABLE TO
FIND ANY COMMON LAW AUTHORITY
GIVING THE PARENTS THE RIGHT TO
DO THIS.

WHAT I DID FIND, AND IT'S CITED
IN THE BRIEF, IS THAT THE
COMMON LAW DOES NOT --
PROHIBITS PARENTS FROM SIGNING
AWAY CAUSES OF ACTION OF THE --
THAT THE MINOR HAS AFTER,
AFTERWARDS.

THEY CAN'T SETTLE CLAIMS.
AND I WOULD TAKE DISPUTE WITH
WHAT MR. BARRETT SAID 7404.31
OPERATES AS A RESTRICTION OF
PARENTS' AUTHORITY.
THAT IS INCORRECT.

744.301 IS A GRANTING OF
PARENTAL AUTHORITY TO SIGN
RELEASES OR TO, TO WAIVE
CLAIMS, SETTLE CASES.

>> BUT WE RECOGNIZE -- -- WE
RECOGNIZED VERY EXTENSIVE.
PARENTAL RIGHTS AS A
CONSTITUTIONAL RIGHT IN THIS
STATE.

I MEAN,, THE WHOLE, PARENTAL NOTICE.

I MEAN IT'S CLEARLY ESTABLISHED THAT PARENTS HAVE A RIGHT TO PRIVACY AND THAT'S GOING TO TRUMP PARENT VISITATION AND SO SEEMS TO ME THAT THAT'S WE'VE GOT TO WRESTLE WITH IN THIS MIX IS WHAT WE'VE SAID.

>> IN PADGETT v. HRS AND THE U.S. SUPREME COURT CASE IN PRINTS v. MASSACHUSETTS.

BOTH OF THOSE CASES INVOLVE CONSTITUTIONAL RIGHTS AND THE RIGHT OF PRIVACY.

THE CONSTITUTIONAL RIGHT IN PRINCE WAS FREEDOM OF RELIGION AND THE PARENTS' RIGHT TO RAISE THE CHILDREN.

IN BOTH THOSE CASES, THE COURTS SAID THAT THE PARENTS PATRIAE FUNCTION TRUMPS THE CONSTITUTIONAL RIGHTS OF THE PARENTS TO RAISE THEIR CHILDREN OR TO PRACTICE RELIGION.

>> SO THAT'S A POLICY.

THAT'S THE COMPETING POLICY WE ARE DEALING WITH.

THAT IS THE RIGHT OF PARENTS,.

>> YES TO RAISE THEIR CHILDREN VERSUS THE STATE'S INTEREST IN PROTECTING CHILDREN, IS THAT RIGHT?

>> THAT IS CORRECT.

>> BUT IF THE STATE HAS AN INTEREST IN PROTECTING CHILDREN, THEN WHY DOESN'T THE STATE COME IN AND SAY WELL ATV RACING IS JUST TOO DARN, YOU KNOW, DANGEROUS.

WE'RE NOT GOING TO ALLOW CHILDREN TO PARTICIPATE.

THAT'S THE -- YOU KNOW, THE IDEA THAT YOU'RE GOING TO ALLOW A CHILD TO ENGAUGE IN WHAT IS AN INHERENTLY DANGEROUS ACTIVITY AND THEN JUST GO, WELL, NOW WE'RE JUST, ALLOW THEM TO DO BUT IT WE ARE NOT GOING TO PUT RESTRICTIONS ON THEIR RIGHT TO SUE IS THE IT PART I HAPPEN HAVING TROUBLE WITH IN THIS CASE.

WE ARE STILL DEALING WITH THIS CASE.

WHAT THE MOTHER IS GOING TO BE SUING FOR THE LOSS OF HER COMPANIONSHIP.

WE'RE NOT EVEN -- I MEAN THIS COMES TO US THIS WAY.

BUT THIS IS A WRONGFUL DEATH CASE.

WE DON'T HAVE A SITUATION IF THIS POOR CHILD, WHO?

TED OF DYING IS A QUADRIPLEGIC YOU WOULD BE SAYING WELL JEEZ NOW WE HAVE GOT -- THE STATE IS PAYING THE MEDICAL BILLS SO THERE IS THE STATE'S INTEREST BUT WHERE IS THE STATE INTEREST IN WHETHER THE PARENT GETS TO SUE FOR THE CHILD'S INJURY.

IT SHOULD BE THE FIRST PART, WHICH IS THE STATE SHOULD HAVE AN INTEREST IN ALLOWING CHILDREN TO ENGAGE IN CERTAIN INHERENTLY DANGEROUS ACTIVITIES.

>> I HAVE SO MANY THINGS I WANT TO RESPOND TO, I CAN'T EVEN BEGIN.

I'M GOING TO EXPLODE.

>> OKAY.

GO AHEAD.

>> OKAY.

NINETY-FIRST OF ALL, IN, IN -- FIRST OF ALL, IN PRINCE, THE COURT RECOGNIZED THAT SOCIETY'S INTEREST IS TO KEEP -- TO CONTINUE IS THAT WE NEED TO HAVE CHILDREN WHO ARE -- WE PROTECT OUR CHILDREN.

SO THEY GROW UP AND THEY BECOME MEMBERS OF SOCIETY.

IF SOCIETY DOESN'T PROTECT ITS CHILDREN, THEN SOCIETY IS DOOMED.

NOW IF THE STATE COULD COME IN AND SAY ATV RACING IS WRONG. CHILDREN SHOULDN'T BE ALLOWED TO DO IT.

WE'RE GOING TO MAKE IT ILLEGAL.

ALL RIGHT?

BUT NOW THE STATE CANNOT CONCEIVABLY DO THAT WITH EVERY

DANGEROUS THING WE COME UP.
OUR CONSTITUTION OUR FOUNDING
FATHERS STARTED THIS COUNTRY
WITH THE BASIC IDEA THAT THE
PEEP ARE FREE TO DO ABSOLUTELY
ANYTHING THEY WANT UNLESS THE
GOVERNMENT SAYS NO YOU CAN'T DO
THAT.

SO WE ARE STUCK WITH THAT.

WE ARE STUCK WITH THAT.

PEOPLE CAN DO ATV RACING.

MY PERSONAL OPINION IS ATV
RACING IS A TERRIBLE THING BUT
THAT DOESN'T MATTER.

OTHER PEOPLE HAVE A DIFFERENT
PERSONAL OPINION.

THEY ARE ALLOWED TO DO IT.

WE'RE NOT --, THE RULE THAT YOU
CREATE IN THIS CASE IS NOT TO
PROTECT SOMEONE'S RIGHT TO GET
MONEY.

THAT THE PARENTS RIGHT HERE,
THE MOTHER'S RIGHT TO GET MONEY
IN THE END.

IT IS THE -- IT IS THE
PROTECTION OF THE CHILD SO THAT
CHRISTOPHER JONES WOULD STILL
BE ALIVE.

>> IF THAT WAS THE CASE, AND
THE -- IF THE, IF THE, MR.^--
WHAT'S -- WHAT'S YOUR CLIENT'S
NAME?

>> CHRISTOPHER JONES.

MR.^FIELDS.

FIELDS IS THE GUARDIAN.

>> IF HE HAD BEEN INJURED AND
HIS PARENTS HAD ELECTED NOT TO
SUE, WE DON'T HAVE SOMETHING
LIKE OTHER STATES HAVE,
CORRECT?

THAT IT WOULD ALLOW THE MINOR
TO THEN BRING THAT CASE WITHIN
A YEAR OR TWO OF, OF HIS
MAJORITY, CORRECT?

>> NO, WE DO NOT.

CHRISTOPHER WAS OLD ENOUGH SO
THAT HE WOULD'VE TURNED 18
BEFORE THE STATUTE OF
LIMITATIONS RAN, SO HE COULD'VE
CONCEIVABLY BROUGHT A LAWSUIT.

BUT ALSO, OTHER PEOPLE COULD
HAVE STEPPED IN.

IF, IF, IF FRIENDS,

RELATIVESERSE SEE THAT A PARENT IS NOT BRINGING A LOT OF -- LAWSUIT AND WE HAVE CHRISTOPHER JONES WHO IS A QUADRIPULIEGIC INSTEAD AND NO ONE IS FILE AGVALID LAWSUIT, THAT LAWSUIT WILL GET FILED.

THEY'LL FIGURE IT OUT.

>> I HAVE A COUPLE OF QUESTIONS YOU'VE TALKED ABOUT LEGISLATION AND MAKING THIS LEGAL BUT IT ISN'T EVEN REGULATED, IS IT?

>> NOT THAT I KNOW OF.

>> BUT THEN ALSO COMING BACK TO THE GLOBAL TRAVEL DECISION,, I MEAN THERE'S A CONSTITUTIONAL RIGHT IN FLORIDA TO ACCESS TO THE COURTS AND HAVEN'T WE ALREADY DECIDED -- THIS COURT'S ALREADY DECIDED THAT PARENTS CAN WAIVE THAT ACCESS TO THE COURTS AND FORESEE ARBITRATION.

>> WELL WHAT THIS COURT DIDN'T -- DIDN'T DECIDE WAS THAT YOU COULD WAIVE THE CAUSE OF ACTION.

YOU SAID WE COULD CHOOSE THE VENUE.

>> WELL AGAIN WE ARE TALKING ABOUT THET FUNDAMENTAL RIGHT TO THE ACCESS TO THE COURTS? DO YOU NOT RECOGNIZE THAT AS A RIGHT IN THE FLORIDA CONSTITUTION.

>> IT IS A RIGHT IN THE FLORIDA CONSTITUTION.

>> IT MAY BE A DIFFERENT ONE BUT IT IS STILL OF A CONSTITUTIONAL LEVEL AND I THINK QUITE IMPORTANT ACCESS TO THE COURTS AND WE'VE ALREADY SAID THAT THAT'S THROUGH GLOBAL TRAVEL THAT YOU CAN, CAN WAIVE THAT FOR A CHILD.

SO IF YOU CAN WAIVE WHERE YOU ARE GOING TO BRING IT, WHEN YOU HAVE A CONSTITUTIONAL RIGHT TO BE IN THE COURTS, THEN YOU KNOW, IT'S DIFFERENT, BUT WHAT'S THE, WHAT'S THE LEGAL SIGNIFICANCE?

>> THE LEGAL SIGNIFICANCE IS THAT WHAT'S MORE OF A PRACTICAL

SIGNIFICANCE, CHANGING THE FORM TO ARBITRATION RATHER THAN A JURY TRIAL DOESN'T DESTROY THE TORT LAW PROTECTIONS THAT --
>> BUT AT THE SAME TIME IT DESTROYS THE PROCEDURAL PROTECTIONS THAT THE COURTS ARE DESIGNED TO FULFILL.

>> RIGHT BUT THIS COURT HAS DECIDED THAT IT CAN, THAT A PARENT CAN MAKE THAT DECISION AND IT MAKES SENSE BECAUSE A PARENT COULD DECIDE THAT THEIR CHILD IS TOO FRAGILE TO GO THROUGH A JURY TRIAL. IT WOULD RATHER ARBITRATION. IT MIGHT BE THEY LIKE THE SPEED OF IT.

>> RESPECTFULLY. THIS SOUNDS LIKE TALKY TALK AROUND THE ISSUE. THERE'S A FUNDAMENTAL CONSTITUTIONAL RIGHT TO GO INTO THE COURT, AND THAT'S TO ME IT'S A FUNDAMENTAL RIGHT, AND THAT'S WHY THE SYSTEM WAS CREATED TO PROTECT ALL FLORIDIANS.

AND YET IF YOU CAN WAIVE THAT, IT JUST DOESN'T SEEM FAR BEHIND IT THAT FOLLOWING RIGHT ALONG IS THAT WHATEVER YOU TAKE INTO THAT FORM CAN BE WAIVED IN A SIMILAR MANNER AND THIS ALL THIS STUFF THAT PARENTS, ALL THEY WANT TO DO ARBITRATION. LET'S FACE IT.

YOU KNOW THESE ARE CONTRACTS, PRE-PRINTED CONTRACTS AND YOU -- YOU DON'T SIGN IT, YOUR CHILD DOESN'T PARTICIPATE. JUSTICE BELL SAID YOU TAKE THEM TO ONE OF THESE PARKS AND THEN YOU'RE OUT OF THERE.

>> BUT THE CHOICE OF ARBITRATION DOES NOT DESTROY THE PROTECTIONS FOR THE CHILDREN.

THE STATE'S PRIMARY FUNCTION IS TO PROTECT CHILDREN. THEY HAVE A PRIMARY RIGHT TO PROTECT THE CHILDREN. CHOOSING ARBITRATION STILL MEANS THAT THE ACTIVITY

PROVIDER IS GOING TO HAVE TO HAVE SAFEGUARDS TO MAKE SURE THEYERANT HELD LIABLE BY ARBITRATORS.

>> LET ME ASK YOU THIS AGAIN. CAN -- DO YOU AGREE THAT A PARENT CAN SIGN A CONSENT FOR ELECTED SURGE -- ELECTIVE SURGERY?

>> YES.
ELECTIVE.
YES.

>> SO GO IN AND HAVE SOME KIND OF FACE LIFT OR WHATEVER TATTOOS OR WHATEVER. AND IS THAT, A COMMON LAW? COME FROM COMMON LAW?

>> NOW ALTHOUGH I WOULDN'T -- I PERSONALLY WOULD NOT TERM THAT A NECESSARY, IT WOULD PROBABLY FALL UNDER THAT SAME CATEGORY AS MEDICAL TREATMENT, AS SOMETHING THAT PARENTS HAVE THE RIGHT TO GET THEIR CHILDREN. IF WE START TRYING TO DICE THE APPLE, TO FIGURE OUT, WELL IS THIS REALLY IMPORTANT? IS IT REALLY NECESSARY, THAT WOULD LEAD TO A, --

>> WHAT I'M CONCERNED ABOUT IS THE CONSISTENCY ON HERE IN RESPECT TO WHAT PARENTS HAVE RIGHTS TO DO, AND IT DOES SEEM TO ME FROM WHAT I READ IN THE CASES AND JUST FROM MY PRACTICAL EXPERIENCE THAT PARENTS DO HAVE THE RIGHT TO SIGN CONSENT FORMS AND -- IN VARIOUS TYPES OF ACTIVITIES AND THE CONSENT AS FAR AS INFORMED CONSENT FOR SURGERY, I THINK HAS BEEN UPHOLD BY THE COURTS.

>> MM-HMM BUT THE CONSENT FORMS, THE PRE-INJURY CONCEPT FORM IS SOMETHING THAT HAS BEEN ALLOWED BECAUSE NO ONE'S EVER QUESTIONED IT.

>> NO, IT'S BEEN -- IT'S A COUPLE OF DISTRICT COURT CASES THAT UPHOLD IT.

>> THEY UPHOLD IT BUT JUST LIKE LANTZ, IT UPHOLDS IT BUT NOBODY QUESTIONS IS, IS THIS RIGHT?

SHOULD THIS BE ALLOWED?

>> I HAVE A QUESTION.

WHEN YOU HAVE THE CONSENT FORM
YOU ARE CONSENTING TO THE
PARTICIPATION OF THE ACTIVITY
BUT I MAY BE WRONG BUT I'M NOT
AWARE IF SOMEBODY CONSENTS TO
SURGERY THAT THERE'S ALSO
INCLUDE ADWAIVER OF SITTAL --
SIMPLE NEGLIGENCE OR GROSS
NEGLIGENCE.

>> I, THEY COULDN'T DO GROSS
NEGLIGENCE.

I HAVE, I HAVE SOME RECENT
CONSENT FORMS THAT TRY TO
CHOOSE ARBITRATION.

>> IN ANY OF THOSE CASES, ARE
PEOPLE WAIVING THE NEGLIGENCE
OF LET'S SAY A MEDICAL --

>> NO, NOT THAT I'M AWARE OF.
NOT THAT I'M AWARE OF.

>> ARE YOU URGING A BLANKET
RULE THAT IS THAT WE DON'T --
THAT WE REJECTED IN SHAY THAT
WE ALLOW -- I MEAN WE SAY NO
PRE-INJURY RELEASES FOR PARENTS
FOR CHILDREN FOR ALL
ACTIVITIES OR JUST COMMERCIAL
ACTIVITIES?

>> READING THE GLOBAL TRAVEL
CASE, I CAN'T FIGURE OUT HOW
THIS WOULD BE ANY LESS
COMPLICATED OR WORKABLE IF WE
HAD THIS -- IF WE HAD A RULE
WHERE COMMERCIAL ACTIVITIES ARE
BAD BUT VOLUNTEER ACTIVITIES
ARE OKAY.

THERE ARE TIMES WHERE THINGS
ARE MIXED.

IT'S PART COMMERCIAL AND PART
VOLUNTEER SO I DON'T KNOW THAT,
THAT IT WOULD BE ANYMORE
WORKABLE.

YOU WOULD HAVE THE SAME
SITUATION WHERE A CHILD ON HIS
WAY TO SCHOOL GETTING INTO AN
ACCIDENT WOULD BE TREATED
DIFFERENTLY THAN A CHILD ON HIS
WAY AWAY FROM SCHOOL TO A
MUSEUM, FIELD TRIP.

THEY WOULD HAVE -- IN ONE
SITUATION HAVE A LAWSUIT AND IN
ANOTHER SITUATION NOT HAVE A
LAWSUIT.

SO THE TWO OF THEM, THOSE TWO SITUATIONS ARE DIFFERENT.

>> WHAT HAPPENS WHEN FOR CHILDREN RIDING SCHOOL BUSES, DID THE SCHOOLS MAKE THE PARENTS SIGN WAIVERS OF LIABILITY IF THEY GET IN AN ACCIDENT?

>> I DON'T KNOW SPECIFICALLY.

>> NONE OF THE CASES HAVE DEALT WITH THAT?

>> NONE OF THE CASES HAVE DEALT WITH THAT.

>> MORE LIKE CHEERLEADING.

>> IT'S EXTRA.

>> BUT THEN WE HAVE STRANGE SITUATIONS WHERE -- IF IT WAS A VOLUNTEER VERY THING LIKE FOOTBALL YOU WOULD HAVE NOABILITY BECAUSE THE PARENTS -- NO LIABILITY BECAUSE THE PARENTS SIGN A RELEASE BUT SLIPPING AND FALLING IN THE HAULWAY AT SCHOOL THERE WOULD BE LIABILITY ON THE PART OF THE SCHOOL.

IT'S STILL A FAILURE TO MAINTAIN PREMISES IF THE FOOTBALL INJURY HAPPENS BECAUSE SOMEBODY STEPS INTO A HOLE ON THE FOOTBALL FIELD AND BREAKS AN ANKLE.

HOW IS THAT ANY DIFFERENT THAN FALLING DOWN ON A SLIPPERY FLOOR IN THE HALLWAY SO THAT, YOU KNOW, YOU KNOW IF YOU HAVE CAUSE OF ACTION IN ONE SITUATION WHY NOT HAVE CAUSE OF ACTION IN THE OTHER SITUATION?

THERE ARE CERTAIN -- THERE ARE CERTAIN RISKS ASSUMED BY PARENTS WHEN THEY SAY I WANT I WANT MY SON TO PLAY FOOTBALL OR WHATEVER SPORT IT IS.

WHATEVER THERE IS BUT WE HAVE TO HAVE THE, THE TORT LAW THERE TO PROTECT THE CHILDREN FROM WHATEVER NEGLIGENCE MIGHT BE BROUGHT ALONG WITH THOSE ACTIVITIES.

AND --

>> WE DON'T REALLY HAVE TO REACH -- DO WE HAVE TO REACH

THAT ISSUE TODAY OF WHETHER OR NOT THIS IS APPLICABLE IN THE COMMERCIAL AND SCHOOLS/COMMUNITY SETTING NORTH DAKOTA TO -- IN ORDER TO, IN ORDER TO UPHELD YOUR POSITION?

>> THIS CASE BRINGS YOU A COMMERCIAL ACTIVITY. APPELATE'S A COMMERCIAL ACTIVITY. KRATHEN IS A SCHOOL FUNCTION I DON'T KNOW BUT CERTAINLY IN THIS CASE IT WOULD BE A COMMERCIAL ACTIVITY THAT YOU WOULD BE DECIDING.

>> DO YOU KNOW IF THE STATES THAT HAVE APPROVED THE PRE-CAUSE OF ACTION WAIVER HAD A STATUTORY SCHEME WITH REGARD TO HOW CLAIMS ARE RESOLVED AND HOW THOSE CALLING IN OF GUARDIANS AND THOSE KINDS OF THINGS AND THOSE THREE CASES THOSE THREE STATES?

>> NO I'LL NOT SURE, JUDGE. I'M SORRY.

>> I JUST HAVE ONE LAST QUESTION. SOMETHING YOU BROUGHT UP AND YOU SAID YOU WEREN'T GOING TO SLICE THE APPLE ON THIS. BUT DO YOU SEE A DISTINCTION BETWEEN SOMEONE BEING ABLE TO PROTECT AND SAY, YOU KNOW, FOOTBALL IS INHERENTLY DANGEROUS. ATV RACING IS INHERENTLY DANGEROUS. BY PARTICIPATING IN THIS YOU ARE ACKNOWLEDGING THOSE RISKS AND THAT'S THE WAIVER WHICH IS YOU CAN'T SUE TO SAY FOOTBALL IS INHERENTLY DANGEROUS OR ATV RACING IS INHERENTLY DANGEROUS.

THERE HAS TO BE SOMETHING ABOUT WHAT THEY DID SPECIFICALLY, LIKE AGAIN, IF THEY CREATE THE HOLE -- IF THIS WAS A SITUATION WHERE THERE WAS A HOLE IN THE FIELD AND THE VEHICLE FLIPPED OVER, THAT'S NOT WITHIN THE CONTEMPLATION OF WHAT SOMEONE

DOES.

DO YOU SEE THAT AS BEING --
THAT IS -- THAT THERE OUGHT TO
BE AN ALLOWANCE IF YOU ALLOW A
CHILD TO PARTICIPATE IN
CHEERLEADING, WELL, THERE IS,
U, MY KIDS'S GOING TO DO ONE OF
THESE --

>> PYRAMID THINGS.

>> PYRAMIDS SO YOU CAN'T SUE
FOR THE PYRAMID BUT IF THERE IS
SOMEBODY GOES ALONG AND DOES A
KICK AND IT'S UNANTICIPATED
DOES ANYONE MAKE THAT
DISTINCTION?

>> IN MY BRIEF IN THE FOURTH
DISTRICT, I BROUGHT UP THE
POSSIBILITY NAT -- THAT ALONG
THE SAME LINES AS ASSUMPTION OF
THE RISK, WE, WE SAY WELL THE
INHERENT RISKS ARE SOMETHING
THAT YOU CAN ASSUME BUT NOT
PLAYING FOOTBALL.

YOU CAN ASSUME THE RISK YOU
WOULD GET INJURED ON A BLOCK OR
TACKLE BUT IF SOMEBODY BROUGHT
A KNIFE INTO THE GAME AND
STABBED YOU WITH IT.

YOU ARE NOT ASSUMING THAT, SO
THERE COULD BE DICHOTOMY THERE.

>> ARE ALL THE CASES PREDICATED
ON DOING SOMETHING WRONG?

IT'S NOT BEHOLDING A ATV RACE
TRACK TO THE STANDARD OF A
PUBLIC STREET, CERTAINLY.

IT IS IN THE OP-- YOU HAVE TO
KEEP THE BURDEN EVEN IF YOU
HAVE A CAUSE OF ACTION TO SHOW
IN THE OPERATION OF AN ATV RACE
FACILITY, IT'S NOT A STRICT
LIABILITY.

>> CERTAINLY.

ATV RACING I HAVE NEVER SEEN
ONE BUT IT HAS NOTHING TO DO
WITH STREETS AND THERE'S --
IT'S THERE FOR EXCITEMENT.

>> TO ANTICIPATE JUMPS AND, IT
IS, IT IS DANGEROUS.

SO YOU TAKE THAT INTO ACCOUNT.

>> THANK YOU.

YOU'VE WELL EXCEEDED YOUR TIME.

>> THANK YOU.

>> WE'RE GOING TO EVEN OUT THE TIME SO YOU CERTAINLY HAVE SOME EXTRA TIME A. COUPLE OF EXTRA MINUTES, PLEASE.
>> JUST ONE THING, YOUR HONOR.

I WOULD LIKE TO ANSWER YOUR QUESTION THAT YOU ASKED RESPONDED.
YOU ASKED IF THE COURTS HAD STRICKEN MINOR RELEASE HUSBAND THE SAME TYPE OF STATUTORY SCHEME.

I'D LIKE THAT ONE OF THE CASES THAT'S CITED IN OUR BRIEF AND THE HIS BRIEF IS HOJNOWSKI BRIEF FROM THE NEW JERSEY COURT.

>> DID YOU SAY NEW JERSEY SUPREME COURT?

>> YES, MA'AM.

IT'S CITED IN OUR BRIEF, AND IT, THE CITE IS 187 NEW JERSEY 323.

HOJNOWSKI v. VANS SKATE PARK DECIDED JULY 17th, 2006, AND THE NEW JERSEY COURT STATED, FIRST, WE ARE NOT PERSUADED BY THE ARGUMENT THAT WE SHOULD ALLOW FOR PARENTAL LIABILITY RELEASES BECAUSE THE MINOR'S RELEASE OF POTENTIAL TORT CLAIMS IS NO DIFFERENT THAN A PARENT'S DECISION NOT TO BRING SUIT ON A MINOR'S BEHALF. THAT ARGUMENT IGNORES THE FACT THAT UNDER THE TOLLING PROVISIONS OF NEW JERSEY'S STATUTE OF LIMITATIONS, A MINOR RETAINS THE RIGHT TO SUE FOR MOSE PERSONAL INJURIES FOR TWO YEARS AFTER REACHING THE AGE OF MAJORITY.

THAT'S DIFFERENT THAN FLORIDA. MORE SIGNIFICANTLY, ONE OF THE OTHER UNDERPINNINGS OF THIS DECISION WAS THAT IN NEW JERSEY, AND I'M CITING NOW FROM PAGE 234, UNDER RULE 4-434, AFTER A MINOR SUFFERS A TORTIOUS INJURY, A MINOR'S PARENT MAY NOT DISPOSE OF --

>> THE NEW JERSEY COURT IN FACT SAID THAT THE PARENT COULD NOT

WAIVE THE, THE CHILD'S ACTION,
CORRECT?

>> COULD NOT DO IT PRE-INJURY
BECAUSE THEY COULD NOT DO IT
POST-INJURY.

THEY SAID WE DON'T LET THEM DO
IT POST-INJURY, SO WHY SHOULD
WE LET THEM DO IT PRE-INJURY.

>> THAT'S FLORIDA LAW --

>> NO, FLOR FLORIDA LAW SAYS
THAT A PARENT -- CAN
POST-INJURY -- IN OTHER WORDS
APARENT IN FLORIDA HAS THE SOLE
DECISION OF WHETHER TO FILE THE
LAWSUIT.

THE STATUTE OF LIMITATIONS RUNS
OUT.

>> BUT NOT ONCE THAT CAUSE OF
ACTION.

IF YOU ARE GOING TO SET ALCAUSE
OF ACTION THAS TO HAVE COURT
APPROVAL.

>> ONLY IF IT EXCEEDS --

>> WELL, TRUE.

WE HAVE A STATUTORY SCHEME.
THAT'S WHAT I WAS GETTING TO.
THERE IS A STATUTORY SCHEME IN
NEW YORK THAT EXPRESSES THAT
POLICY.

>> CORRECT AND THE STATUTORY
SCHEME IN NEW YORK IS DIFFERENT
THAN FLORIDA'S BECAUSE THEY
CAN'T SETTLE ANY CLAIM AND THAT
BRINGS ME TO THE FINAL POINT I
WANT TO MAKE.

MY OPPOSING COUNSEL AND I
DISAGREE ON THE INTERPRETATION
OF THE GLOBAL TRAVEL TO THE
EXTENT THAT 744301 AND 387 I
THINK IT IS AN EXPANSION OF
RIGHTS.

I MEAN A RESTRICTION OF RIGHTS.
HE THINKS EXPANSION OF RIGHTS
AND I'D LIKE TO BRING THE
COURT'S ATTENTION TO PAGE 400
OF THAT DECISION.

WHERE IT, IT'S TALKING ABOUT --
IT SAYS THERE'S NO STATUTORY
PROHIBITION ON AGREEMENTS TO
ARBITRATE MINOR'S CLAIMS AND IT
SAYS THAT THERE'S NO COMPARABLE
STATUTORY SCHEME GOVERNING
PRE-INJURY LIABILITY RELEASES
AND ARBITRATION AGREEMENTS.

THOSE EXECUTED BEFORE ANY CAUSE OF ACTION ACCRUES AND NO STATUTE REQUIRE APARENT TO APPROVE COURT APPROVAL. WHAT THEY'RE SAYING THERE THE LEGISLATURE HAS CREATED A STATUTORY SCHEME THAT SAYS POST-INJURY IF IT EXCEEDS \$15,000 YOU HAVE TO GET THE COURT'S APPROVAL.

THERE'S NO SIMILAR STATUTORY SCHEME WITH REGARD TO PRE-INJURY RELEASES OR PRE-INJURY ARBITRATION.

>> IS THE STATUTORY SCHEME IN DEROGATION OF THE COMMON LAW?

>> I WOULD THINK, YOUR HONOR, PUT IT THIS WAY, IT IS CLEARLY A RESTRICTION OF WHAT I THINK IS A CONSTITUTIONAL RIGHT.

BUT I THINK THE UNDERLYING --

>> LET ME ASK YOU -- AT COMMON LAW, COULD THE PARENT WAIVE POST-INJURY THE CLAIM?

>> I THINK UNDER ARTICAL 1 SECTION 23, YES AT COMMON LAW, NO.

>> OKAY.

THANK YOU.

>> I THINK ONCE ARTICLE 1 SECTION 23 WAS PASSED IN 1980, I THINK THAT CHANGED THE BALL GAME.

AND I THINK THE -- AND THIS IS REALLY THE CRUX OF MY ARGUMENT.

THE UNDERLYING DECISION OF WHETHER TO SUBJECT YOUR CHILD TO THE COURT SYSTEM, WHETHER TO FILE THE LAWSUIT AT ALL, LIES SOLEY WITH THE PARENT.

NOT WITH THE COURT, NOT WITH THE LEGISLATURE, SOLEY WITH THE PARENT.

ONCE THE, ONCE THE PARENT MAKES THE DECISION TO BRING HIS CHILD INTO COURT, THEN THERE ARE RULES THEY HAVE TO FOLLOW.

744301 AND 387 ARE THOSE RULES BUT THE UNDERLYING FUNDAMENTAL DECISION THAT THIS COURT SHOULD NOT INTERFERE WITH IS WHETHER OR NOT A CHILD SHOULD GO TO COURT.

THAT'S FOR THE PARENT.

>> WELL, THE STATUTE APPLIES
EVEN BEFORE YOU GO INTO A
LAWSUIT.

IT'S A QUESTION OF SETTling THE
CLAIM BECAUSE YOU HAVE TO HAVE
FRIENDLY SUITS.

>> THAT'S CORRECT.

>> TO APPROVE THE SETTLEMENT SO
IT'S REALLY ANYTIME AFTER THE
INJURY IS WHETHER IT FLOW

>> BUT YOU'RE AVAILING YOURSELF
OF THE SYSTEM.

>> NOT NECESSARILY YOU AND I
CAN AGREE TO IT AND NOT INVOKE
THE SYSTEM BUT I CAN'T SETTLE
IT FOR MY CHILD UNLESS I GET
APPROVAL OR THAT SETTLEMENT'S
INVALID.

>> I AGREE BUT THINK OF THE
POTENTIAL FOR ABUSE.

I MEAN, FLORIDA ACCEPTS THE
POTENTIAL FOR ABUSE THAT A
PARENT COULD -- THE TORT FEES
COULD COME TO THE PARENT AND
SAY LISTEN YOUR CHILD HAS A
\$250,000 CLAIM BUT I AM GOING
TO PAY YOU 250 GRAND TO NOT
ACCEPT THE LAWSUIT.

WE ACCEPT THAT FRISK BUT IF IN
A PRE-INJURY RELEASE SITUATION,

--

>> WAIT A MINUTE.

>> I DON'T AGREE WITH YOU ON
THAT ONE.

>> MY POINT IS --

>> YOU ARE SAYING YOU CAN PAY
MONEY TO RELEASE A CLAIM
WITHOUT FILING A LAWSUIT AND
OUR STATUTES DON'T COVER THAT.

I DISAGREE.

I THINK WE HAVE A CLEAR STATUTE
THAT SAYS AFTER THE INJURY, THE
CAUSE OF ACTION ACCRUICIZE THAT
YOU CANNOT RESOLVE IT WITHOUT
COURT APPROVAL IF IT EXCEEDS
CERTAIN AMOUNTS.

>> BUT IS WHAT YOU'RE SAYING IS
THAT THE PARENT CAN TAKE THE
50,000 AND ALLOW THE STATUTE OF
LIMITATIONS TO RUN.

>> EXACTLY.

WE ACCEPT THE RISK FOR THOSE

TYPES OF UNETHICAL PARENTS.
THOSE -- THAT TYPE OF UNETHICAL
BEHAVIOR DOES NOT EXIST WITH
PRE-INJURY RELEASES BOSS
THERE'S NO PRECUNINARY PRESSURE.
I KNOW I'VE LOTT YOU ON THAT
ONE.

>> IT'S ALL RIGHT.
IT'S A GOOD DISCUSSION.
THAT'S WHAT THE LAW OUGHT TO BE
A GOOD DISCUSSION.
YOU'VE EXCEEDED YOUR TIME.
IF YOU CAN MAKE CONCLUDING
REMARKS.

>> I HAVE NO CONCLUDING REMARKS
I'VE ENJOYING THE DISCUSSION.

>> THANK YOU BOTH FOR THE
ARGUMENTS.
WE'LL TAKE THE CASE UNDER
ADVISEMENT.