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Emma Murray v. Mariner Health/Ace USA

SC07-244

ALL RISE.

O YE, O YE, O YE.

SUPREME COURT OF FLORIDA'S NOW
IN SESSION.

ALL THOSE HAVING BUSINESS
BEFORE THIS COURT, DRAW NIGH,
GIVE ATTENTION, AND YE 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 ON THE ORAL ARGUMENT
CALENDAR FOR WEDNESDAY, APRIL
9th.

OUR FIRST CASE IS MURRAY v.
MARINER HEALTH.

MR. SICKING, ARE YOU READY TO
APPROACH?

I AM RICHARD SICKING FROM
CORAL GABLES FOR THE PETITIONER
EMMA MURRAY.

TRIAL COUNSEL FROM PORT
CHARLOTTE AND HER APPELLATE
COUNSEL.

I WOULD LIKE TO SAVE THREE AT
LEAST MINUTES FOR REBUTTAL.
EMMA MURRAY WAS A NURSING
ASSISTANT WITH THE RESPONDENT
FOR MARINER HEALTH.

CAN I ASK YOU A QUESTION ON
YOUR CONSTITUTIONAL ISSUES FROM
READING THE BRIEFS, IT SEEMS TO
ME THAT THE PROBLEM -- THE
SPECIFIC ARGUMENT YOU'RE MAKING
IS ON SUBSECTION 3 OF THE
STATUTE, WHICH ATTORNEYS FEES
GIVEN TO THE PREVAILING PARTY
IF IT PREVAILS.

TO THE EMPLOYEE IF THE EMPLOYEE

PREVAILS.

YOU DON'T NEED TO BE CONCERNING
A CONSTITUTIONAL ARGUMENT AS TO
SUBSECTION 1, WHICH LIMITS THE
FEES THAT THE EMPLOYEE CAN
RECOVER OR CAN PAY THEIR OWN
ATTORNEY.

WELL, ACTUALLY THE
LIMITATION AND PERCENTAGES
STATED, APPLIES TO BOTH.

I UNDERSTAND THAT.

I UNDERSTAND THAT BUT IT SEEMS
FROM THE BRIEFS THAT YOU'RE
ONLY ARGUING THAT SUBSECTION 3
IS UNCONSTITUTIONAL TO THE
EXTENT THAT IT LIMITS THE
ATTORNEYS' FEES THAT AN
EMPLOYEE IF SHE IS A REVEALING
PARTY IN THE LITIGATION AGAINST
THE ANYWHERE CARE CONSIDER.

WELL THAT LIMITS THE FACTS
OF THIS CASE AND IF YOU LIMIT
IT TO THE FACTS OF THIS CASE,
THAT'S TRUE.

BUT AS I SAY IT APPLIES TO
BOTH.

THE LEGISLATURE DID NOT MAKE
THAT DISTINCTION.

WELL, BECAUSE, IF THE
STATUTE OPERATED BEFORE, FOR
2003 IN YOUR CONTENTION, YOU'VE
ALL SINCE FOR AT LEAST 20 YEARS
THERE'S BEEN A SEPARATION
BETWEEN WHERE THEY SEPARATED
OUT ATTORNEYS' FEES FOR THE
EMPLOYER, CARRIER, PREVAILING
PARTY VERSUS BETWEEN ATTORNEY
AND CLIENT.

HAS SUBSECTION 1 DEALT WITH
PERCENTAGES AND THEN HAD THE
LEE ENGINEERING FACTORS.

IT ALWAYS DID.

BECAUSE OF 2003 AND THEN
SUBSECTION 3 DEALS WITH
PREVAILING PARTY.

BEFORE 2003, HOW WAS THERE A
LIMITATION ON ATTORNEY-CLIENT
FEES WHERE TO THE CONTINGENCY
OR COULD THEY ALSO ASK THE
COURT FOR A HIGHER FEE BASED ON
THE LEE ENGINEERING FACTORED?
IT WAS THE SAME FOR BOTH.

BOTH.

SO THEREFORE -- I GUESS THIS

GOES BACK TO JUST THE STATUTORY CONSTRUCTION AND YOU MAY NOT BE MAKING IT TODAY, SUBSECTION 3 NEVER REFERRED TO THE LEE ENGINEERING FACTORS SO THE WAY THE STATUTE'S ALWAYS BEEN CONSTRUED ONE, SUBSECTION 1 AND SUBSECTION 3 WERE ALWAYS CONSTRUED IN PARI MATERIA ARE YOU THEN NOT ARE YOU GOING TO MAKE THE ARGUMENT THAT WAS MADE IN THE BRIEF THAT SUBSECTION 3 SHOULD BE STANDING BY ITSELF AND NOT BE CONSTRUED AS LIMITED TO CONTINGENT FEES OR ALSO INCLUDE THE LEE ENGINEERING FACTORS.

OR AND THAT WAS THE ARGUMENT MADE IN ONE OF THE AMICUS BRIEFS.

WELL I THINK THEY RUN TOGETHER.

I THINK IF YOU UNDERSTAND IT HISTORICALLY THE LEE CASE WAS MADE AND IN THE THE COURT CODIFIED.

I UNDERSTAND HOW IT WENT. WHAT I AM ASKING IS THAT BEFORE IT WAS UNDERSTOOD EVEN THOUGH SUBSECTION 1 IS THE ONLY SUBSECTION THAT STATED THE LEE ENGINEERING FACTORS THAT SUBSECTION 3 IN FACT INCORPORATED THOSE FACTORS.

YEAH.

THEY, THEY'RE ENTWINED.

THERE'S NO QUESTION.

OKAY.

BUT, IN THE BRIEF TO US, THE ARGUMENT HAS BEEN MADE THAT THEY WERE ACTUALLY SEPARATE FREE STANDING AND THE THAT THE REASONABLE ATTORNEY'S FEE IN SUBSECTION 3 DID NOT NECESSARILY INCORPORATE WHAT SUBSECTION STATED.

WELL THAT WAS AN INTERPRETATION ARGUMENT BUT I THINK THAT WAS THOUGHT THE CONSTITUTIONAL ARGUMENT.

BUT IF WE -- IF WE'RE ABANDONING THAT THEN WE NEED TO KNOW THAT.

YEAH, I THINK IT'S A
CONSTITUTIONAL QUESTION IF YOU
LOOK AT THE STATUTE TAKEN AS
WHOLE YOU SEE THAT THE CHANGE
FROM BEFORE TO THE CURRENT LAW
CHANGES A NUMBER OF THINGS.

MR. ^--

FIRST IT CHANGED.

THE PAYMENT WAS NOT FOR
SERVICES RENDERED.

BUT RATHER FOR BENEFITS
SECURED.

THAT WAS ONE -- THAT WAS ONE OF
THE CHANGES.

THE OTHER CHANGE WAS TO DELETE
THE LEE ENGINEERING FACTORS
WHICH OF COURSE WERE REALLY THE
FACTORS FROM THE RULES FOR THE
REGULATION OF THE FLORIDA BAR,
WHICH PREVIOUSLY THE CODE
OF PROFESSIONAL ETHICS AND THEN
12 WHEN LEE ENGINEERING WAS
ENACTED.

YOU'VE GOT A UNIQUE
OPPORTUNITY THIS MORNING
ALTHOUGH IT'S A VERY LIMITED
OPPORTUNITY BECAUSE A AS YOU
CAN SEE IN TERMS OF US BOTH
TRYING TO UNDERSTAND WHAT THE
LEGISLATURE HAS DONE AND THE
STATUTORY INTERPRETATION HERE
TRYING TO INTERPRET THESE
DECISIONS OUT THERE COMING OUT
OF THE FIRST DISTRICT COURT OF
APPEAL AS FAR AS WHAT HAS
ACTUALLY BEEN HAPPENING ON THE
GROUND THIS CASE APPEARS TO BE
A PRIME EXAMPLE OF THAT.

WOULD YOU AGREE IN TERMS OF THE
WAY THAT THE STATUTE, THE
EFFECT THAT IT'S HAVING, BUT
WHAT I AM LOOKING FOR FROM YOU
IS AN ARTICULATION OF YOUR MAIN
CONSTITUTIONAL ARGUMENT THAT
THE YOU'RE MAKING HERE.

WHETHER IT'S AN ARGUMENT ABOUT
ONCE THE LEGISLATURE PROVIDES
FOR ATTORNEYS' FEES IN A
STATUTORY SCHEME, THAT CERTAIN
CONSTITUTIONAL PROVISIONS APPLY
OR WHATEVER, WHAT -- I DON'T
WANT TO PUT WORDS IN YOUR
MOUTH, BUT THIS, THIS IS AN
OPPORTUNITY FOR YOU NOW TO

ARTICULATE IN, IN THIS VERY DIRECT WAY JUST EXACTLY THE, THE GIST, THE STRONGEST PART OF -- WHAT IS YOUR CONSTITUTIONAL ARGUMENT?

OKAY.

THE SETTING FOR ALL OF THIS IS 4411053 C, WHICH MAKES IT A CRIME FOR ANY LAWYER TO TAKE ANY MONEY OR ANYTHING OF VALUE FOR ANYONE REPRESENTING ANYONE IN A WORKERS' COMPENSATION MATTER WITHOUT APPROVAL OF THE JUDGE SO NOW YOU UNDERSTAND WHY 44034 JUDGE'S APPROVAL IS SO IMPORTANT.

THE JUDGE'S APPROVAL UNDER THIS AMENDED STATUTE CAN ONLY BE GIVEN IN AN AMOUNT THAT IS EQUAL TO NO MORE THAN A FIXED PERCENTAGE OF THE BENEFITS SECURED.

THE STATUTE WENT FROM A PAYMENT -- WHETHER WHO PAID IT, THE CLIENT OR THE NONPREVAILING PARTY TO A FIXED AMOUNT.

IT USED TO BE THAT THE PERCENTAGE WAS A STARTING POINT.

NOW IT'S A CONCLUSIVE ENDING POINT AND THAT'S WHAT'S WRONG WITH IT.

LET ME ASK ONE QUESTION. WITHOUT THE CRIMINALIZATION, IS IT STILL YOUR ARGUMENT THAT IT IS AN UNCONSTITUTIONAL PROVISION OR IS IT BECAUSE OF THE CRIMINALIZATION OF TAKES FEES ABOVE THAT?

CERTAINLY THAT'S PART OF T. IN THIS SENSE.

WE CAN'T LOSE TRACK OF THE FACT THAT THIS FEE IF THE PARTY'S AGREED, TRIED TO AGREE, IF THEY TRIED TO DO ANYTHING IN VIOLATION OF THIS REGULATION THAT IT'S A CRIME.

IT'S A CONCLUSIVE PREMONITION THEN THAT THE FEE, THE STRUCTURE SET OUT IN THE STATUTE WHICH LIMITS THE FEE OBVIOUSLY TO AMOUNTS SUCH AS THIS CASE EXEMPLIFIES, IT'S THAT CONCLUSIVE PRESUMPTION

THAT YOU'RE FOCUSING ON AND
WHAT CONSTITUTIONAL PROTECTION
DOES THAT VIOLATE?
DUE PROCESS, PROCEDURAL DUE
PROCESS.

WELL, WE HAVE PERCENTAGE
PROVISIONS IN THE STATUTES FOR
PERCENTAGES OF ATTORNEYS' FEES.

SOVEREIGN IMMUNITY BEING ONE.
LIMITS ATTORNEYS' FEES 25%.
SO THAT, THAT, YOU KNOW, THIS,
THAT WAS APPROVED IN INGRAM BY
THIS COURT.

THE PERCENTAGES BEFORE WERE
OKAY.

THE QUESTION IS CAN THEY BE
MODIFIED BY FACTS.

BUT SOVEREIGN IMMUNITY
CANNOT BE MODIFIED BY FACTS.
BUT WE DON'T HAVE A CRIMINAL
-- WE DON'T HAVE A CRIMINAL --

SO IT'S -- LET ME, LET ME,
MR. ^SICKING YOU HAVE BEEN
AROUND THIS ABOUT AS LONG AS I
HAVE, SO I'LL WANT TO DRAW ON
YOUR EXPERIENCE HERE.

WHAT IS -- AND IT WAS A
THROWAWAY PART OF YOUR BRIEF.
WHEN I SAY THROWAWAY IT WAS
JUST MENTIONED AND MOVED ON IS
THAT UNDER THE LONG-STANDING
PROVISION OF THE COMPACT THAT
IN 105 IT HAS THIS PROVISION
THAT IS UNLAWFUL FOR ANY
ATTORNEY OR OTHER PERSON IN HIS
OR HER INDIVIDUAL CAPACITY?
NOW THAT, THAT DOESN'T JUST
LIMIT IT TO CLAIMANTS'
ATTORNEYS.
THAT LIMITS IT TO ANY ATTORNEY.

WHAT'S THE REASON THAT THAT'S
BEEN?

I KNOW IT HASN'T BEEN IN
PRACTICE THAT YOU'VE GOT TO THE
EC ATTORNEYS FOR, FOR APPROVAL
BUT WHAT'S --

WELL, IT DOESN'T HAVE MUCH
TO DO WITH WHAT WE ARE DOING
TODAY NECESSARILY BUT
ORIGINALLY THE STATUTE CLEARLY
APPLIED TO ONLY THE ATTORNEY
WHO REPRESENTED THE EMPLOYEE,

AND WHEN IT WAS MOVED FROM 434
AND ALL THE CRIMINAL VIOLATIONS
WERE PUT TOGETHER, THE LANGUAGE
WAS ENLARGED.

IT REALLY DOES SAY ANYBODY.
YOU'RE ABSOLUTELY RIGHT.
HOWEVER, IT WAS ALWAYS -- THE
LEGISLATIVE HISTORY AT THAT
TIME WAS THAT IT ONLY APPLIED
TO LAWYERS WHO REPRESENTED
WORKERS, NOT THE LAWYERS TO
REPRESENTED WORKERS AND
CARRIERS -- EMPLOYERS AND
CARRIERS.

I AM HAVING A HARD TIME
UNDERSTANDING YOUR
CONSTITUTIONAL ARGUMENT.
ANYTHING EVERYONE HERE WOULD
AGREE THESE FACTS LOOK CRAZY.
YOU HAVE GOT AN EMPLOYER WHO IS
PAYING THEIR ATTORNEY \$16,000
AND, AND EXPERIENCED WORKERS
COMPENSATION ATTORNEY WHO'S
DONE, YOU KNOW, 80 HOURS OF
WORK GETS \$600, WHICH IS \$8.11
AN HOUR, AND THE IDEA WAS
LEGISLATURE SAID WE WANT TO
ACTUALLY INCREASE BENEFITS TO
THE CLAIMANT AND -- IT DOESN'T
MAKE -- IT DOESN'T MAKE SENSE
BUT WHAT YOU JUST SAID IN
ANSWER TO JUSTICE ANSTEAD IS
THAT IT'S A PROCEDURAL DUE
PROCESS ARGUMENT.

BUT THE CRIMINALIZATION OF
CHARGING A HIGHER ATTORNEYS'
FEES HAS NOTHING TO DO WITH
THAT I CAN TELL THAT HAS TO DO
WITH PROCEDURAL DUE PROCESS.
NOW IF YOU WERE TALKING ABOUT
SUBSTANTIVE DUE PROCESS
FAIRNESS BUT THIS SEEMS TO BE A
MOVING TARGET.

IT'S LIKE EVERYONE KNOWS THIS
JUST SEEMS UNFAIR BUT NO ONE'S
ATTACKING THE WHOLE SYSTEM
SAYING WE NOW HAVE -- WE DON'T
HAVE A REASONABLE ALTERNATIVE
ANYMORE.

THE WAY -- WHAT THE
LEGISLATURE'S DONE OVER THE
LAST 20 YEARS, THEY'VE
EVISCERATED RIGHTS FOR WORKERS.

NO ONE'S MAKING THAT GENERAL
ATTACK, AND I'M -- YOU'RE HERE,
AGAIN, WE'RE --, I, I DON'T SEE
WHERE PROCEDURAL DUE PROCESS
HAS TO DO WHETHER A FEE IS
CRIMINALIZED AND ONE MORE
THING.

IN ANSWER TO JUSTICE
CANTERO, THE PROBLEM IS NOT
JUST THAT YOU CAN'T GET THAT
FEE FROM THE EMPLOYER CARRIER.

I WOULD THINK YOU WOULD HAVE TO
ATTACK BOTH SUBSECTION 1 AND 3
BECAUSE IF YOU COULD ASK YOUR
CLIENT FOR THE ADDITIONAL
MONEY, JUST LIKE A SMALL CLAIMS
CASE MAYBE IT WOULD BE FAIR
AGAIN BUT YOU ARE ONLY
ATTACKING ONE PART, WHICH IS
THE RIGHT TO ATTORNEYS' FEES
AND IT'S LEGISLATIVE GRACE
WHETHER THEY DECIDE TO GIVE
ATTORNEYS' FEES OR NOT.

SO CAN YOU REARTICULATE HOW
THIS ALL WORKS TO BE PROCEDURAL
DUE PROCESS AND WHAT YOUR BEST
CASE IS ON THAT.

AS YOU KNOW, YOU HEARD FROM
EVERYONE THAT IT VIOLATED
ALMOST EVERY PROVISION OF THE
CONSTITUTION THAT THERE IS.

BUT WE HEARD FROM --

-- CONCLUSIVE PRESUMPTION,
THAT GIVES RISE TO PROCEDURAL
DUE PROCESS BECAUSE THERE IS NO
OPPORTUNITY TO BE HEARD.

IT DOES OFFEND SUBSTANTIVE DUE
PROCESS AND EQUAL PROTECTION AS
WELL BECAUSE IT CREATES A VERY
UNEQUAL CONTEST BETWEEN THE --
WHOEVER PAYS, THE EMPLOYEE OR
THE NONPREVAILING PARTY TO THE
EMPLOYEE BECAUSE THE EMPLOYER
CARRIER HAS A SWORD FOR WHICH
AN EMPLOYEE HAS NO SHIELD.

THEY CAN SPEND WHATEVER THEY
WANT IN DEFENSE OF THE CASE,
BUT HE IS FACED WITH BEING ABLE
TO PAY ONLY ON LIMITED
CIRCUMSTANCES A LIMITED AMOUNT
TO HIS ATTORNEY TO REPRESENT --

BUT THAT WAS PART OF JUSTICE

PARIENTE'S QUESTION THAT YOU
THREW IN ABOUT THE CRIMINAL
PENALTIES ON THE WARRIOR, BUT
YOU HAVEN'T THROWN IN TO THE
RECIPE OR THE MIX THE STATUTORY
PROHIBITION AGAINST THE
EMPLOYEE OF, OF PAYING.
IT'S THE SAME.

OKAY.

SO THERE ARE TWO PROVISIONS
THAT AFFECT THIS, IS THAT
RIGHT?

AND SO YOUR, YOU'RE ENDING
UNSAYING THAT THE EMPLOYEE GETS
SO BOXED IN THAT THERE'S JUST
NO LIFELINE OUT THERE THAT THE
EMPLOYEE HAS LEFT IN ORDER TO
GET FAIR REPRESENTATION, AND
FOR THIS TO BE A FAIR PROCESS.

IS THAT --

YEAH.

BECAUSE OF ALL THESE THINGS
BOXING IN.

IT IS AN ACCESS TO COURTS
PROBLEM IN MANY WAYS, ALTHOUGH
IT'S SORT OF LIKE AN EQUAL
PROTECTION/ACCESS TO COURTS.
MANY OF THE WORKERS'
COMPENSATION CASES ARE VERY
SMALL.

THIS ONE -- NO ONE IN TODAY'S
ECONOMY WOULD SAY THAT A \$3,000
CASE WAS A BIG CASE BUT BY THE
SAME TOKEN, IF SOMEONE HAD ONLY
THREE WEEKS OF COMPENSATION, IT
WOULD BE A THREE, \$400 --

WHY DOESN'T THE LEGISLATURE
MADE NO PROVISION FOR THERE
EVER TO BE AN INSTANCE IN WHICH
THE CLAIMANT COULD GET EC
ATTORNEYS' FEES, IN OTHER
WORDS, ATTORNEYS FEE FEES PAID
BY THE EMPLOYEE CARRIER.

THAT ISN'T THE FACTS OF THE
CASE BUT UNDER THE LIMITATIONS
IT WOULD BE THE SAME BECAUSE
THEY DIDN'T DISTINGUISH ABOUT
WHO COULD MAY.

THE QUESTION JUSTICE ANSTEAD
IS SAYING THERE ARE MANY CASES
THAT ARE SMALL CLAIMS CASES
WHERE THERE IS NO PREVAILING
PARTY ATTORNEYS' FEES STATUTE,

SO COULDN'T THE LEGISLATURE
HAVE SAID AS TO THE EMPLOYER
CARRIER PAYING ATTORNEYS' FEES,
COULDN'T IT JUST HAVE REMOVED
THAT PROVISION FROM THE STATUTE
ALTOGETHER AND SAY THERE'S NO
PREVAILING ATTORNEYS' PARTIES
FEES IN WORKERS COMP.

THAT'S NOT OUR PROBLEM TODAY
BECAUSE THE LEGISLATURE CAN DO
WHAT IT DOES THAT YOU CAN ONLY
LOOK AT IT LATER AND SAY IS
THIS CRAZY OR NOT, BUT HERE?

--

THEY CAN REMOVE IT ENTIRELY
WITHOUT ANY PROBLEM, THEN WHY
CAN'T THEY LIMIT THE PREVAILING
PARTY ATTORNEYS'
FEES.

BECAUSE ONCE THEY HAVE DONE
IT, THEY CAN'T DO IT IN AN
UNCONSTITUTIONAL MANNER.
LET'S DISCUSS THE ACTUAL
CERTIFIED QUESTION THAT IS CAME
BEFORE THE COURT.

ARE YOU THEN CONCEDED WE
HAVEN'T DISCUSSED IT OR NOT AS
TO WHETHER THIS STATUTE
ACTUALLY LIMITS JUST TO THOSE
20, 10, 5% ALL OF THOSE THINGS
THAT ARE IN THE STATUTE.

UNDER SECTION 3, DO YOU HAVE TO
IN FACT USE THOSE PERCENTAGES
BECAUSE AS I READ THAT STATUTE,
THEY TALK ABOUT A REASONABLE
ATTORNEYS' FEE UNDER SECTION 3
SO, IS THERE ANY ROOM IN
SECTION 3 FOR SAYING THAT THE
20% LIMITATION THAT IS IN
SECTION 1 REALLY IS NOT
APPLICABLE TO SECTION 3?
WISHES WILL NOT MAKE IT SO.

IT'S VERY PLAIN BECAUSE OF THE
WAY THEY'VE CHANGED THE WORDS
FROM -- PAYMENT IS FOR SERVICES
TO NOW IS ONLY BASED ON BENEFIT
SECURITY THAT THE JUDGE MUST
NOT AWARD MORE THAN THESE
PERCENTAGE.

THAT'S EXACTLY
WHAT'S IN THE OTHER SUBSECTION
BUT IN SUBSECTION 3 S THAT THE
SAME LANGUAGE.

YEAH, THEY'RE REALLY TOGETHER.
SO YOU ARE CONCEDING THEN -- ON THE CERTIFIED QUESTION THAT, YES, YOU ARE LIMITED TO THOSE THOSE PERCENTAGES.
I DON'T THINK ANYBODY HERE IN PRACTICE AND THAT'S WHERE WE'RE STUCK. EVERY COMP JUDGE AND EVERY -- HAS INTERPRETED.
THERE IS NO ONE HERE WHO WANTS TO RUN THE RISK OF -- WELL THEN HOW DO YOU -- JUSTICE WELLS HAS A QUESTION.
BENEFIT SECURED WAS IN THE STATUTE PRIOR TO 2003.
IT WAS THERE,.
BUT THE PERCENTAGES WERE ONLY A BEGINNING POINT SUBJECT TO MODIFICATION BY DUE PROCESS.

RIGHT.
AND REALLY -- CONSIDERATION.
NOW AS A CONCLUSIVE ENDING POINT WITH NO OPPORTUNITY TO REBUT IT.
WHERE THE CHANGE WAS AT THE END OF SUBSECTION 1 OR SECTION 1.
AND THE DELETION OF THE FLORIDA BAR FACTORS BASICALLY.
THAT, THAT WAS THE CHANGE IN 2003, CORRECT.
WELL, THERE WERE MORE.
THERE WERE MORE IN OTHER PARTS OF THE STAT INSTITUTE.
BUT IT'S PART OF A SYSTEM IN THAT THE BAIZE FOR THE PAYMENT IS NO LONGER SERVICES IS TIME AS OPPOSED TO MERELY SAYING WHATEVER THE BENEFITS ARE, IF THEY PRODUCE THE FEE \$60600 THAT'S REASONABLE.
THAT'S NOT CONSTITUTIONALLY REASONABLE.
IT'S NOT DUE PROCESS.
NOBODY HAS A CHANCE TO SAY THEIR PEACE.
TO SAY THAT FOR THE LEGISLATURE TO SAY TO THE EXECUTIVE YOU SHALL NOT CONSIDER THE RULES

ADOPTED SUPREME COURT, AS TO WHAT IS DETERMINES A REASONABLE ATTORNEYS' FEE THAT YOU NOT CONSIDER THE FACTS OF TIME IS TYING A FACTOR THAT THE JUDGE SHOULD CONSIDER.

ABRAHAM LINCOLN SAID THAT A LAWYERS' TIME AND ADVICE ARE HIS STOCK AND TRADE.

ABRAHAM LINCOLN WAS NOT WRONG.

TIME IS AN IMPORTANT FACTOR, AND WHAT THE LEGISLATURE HAS SAID HERE IS YOU CAN HAVE A HEARING BUT YOU CAN'T TELL THE JUNG HOW MUCH TIME WAS SPENT -- JUDGE HOW MUCH TIME WAS SPENT BECAUSE THAT'S NOW LEGALLY IRRELEVANT EVEN THOUGH EVERYWHERE IN THE LAW, IN THE RULES YOU FOLKS ADOPTED FOR THE REGULATION OF THE FLORIDA BAR, EVEN IN THIS STATUTE, IF IT WAS TO BE REDUCED BY THE JUDGE, HE HAS TO LOOK SOMEWHERE FOR THE LAW OF WHAT IS RELEVANT.

AND THE TIME EXPENDED FOR THE SERVICE IS A RELEVANT FACTOR. SO ARE YOU REALLY SAYING HERE THEN THAT IF A CLAIMANT COULD IN FACT REACH SOME OTHER AGREEMENT WITH THEIR ATTORNEY, THAT THIS LIMITATION ON THE FEES AND THE STATUTE WOULD NOT BE UNCONSTITUTIONAL?

NO.

HE CAN'T DO THAT BECAUSE IF HE DOES, IT'S A CRIME.

I UNDERSTAND.

I'M DOCKING ABOUT, I'M TRYING TO GET TO WHAT YOU'RE REALLY TRYING TO SAY, THE REASON THIS STATUTE IS UNCONSTITUTIONAL? IT HAS NO WAY OUT.

THESE PERCENTAGES ARE IT.

THERE'S NO FACT -- THERE'S NO AGREEMENT.

WE CAN'T AGREE.

IF WE AGREE, THEN WE VIOLATED THE STATUTE THAT HAS A CRIMINAL PENALTY IN IT.

SO YOU CAN'T AGREE TO COMMIT A CRIME.

THE JUDGE CAN ONLY APPROVE THE

PERCENTAGE OF THE BENEFITS.

THERE IS NO OPPORTUNITY TO PRESENT FAX TO HIM THAT COULD MAKE IT DEFENDANT ASK -- FACTS TO HIM THAT COULD MAKE IT DIFFERENT.

AND THAT'S NOT FAIR.

THAT'S NOT FAIR.

THAT'S NOT THE AMERICAN WAY.

THE AMERICAN WAY IS THE JUDGE LISTENS TO ALL THE FACTS.

THE JUDGE WHO ONLY GIVES DUE PROCESS HEARINGS, THAT'S HIS ONLY JOB YOU CAN'T CONDUCT A DUE PROCESS HEARING, YOU CAN'T CONSIDER ALL THE FACTS.

WE ARE GOING TO SAY THAT YOU CAN ONLY CONSIDER SOME OF THEM, AND SOME OF THEM WHEN WE DO IT THIS WAY, AND BY THE WAY, THIS, THE POPULATION OF FLORIDA'S 18 MILLION PEOPLE.

WE HAVE A LOT OF WORKERS' COMPENSATION CASES.

THIS CASE IS NOT SO UNUSUAL YOU COULD SAY COULD WE JUST DO UNCONSTITUTIONAL APPLIED?

NO, WE CAN'T BECAUSE THE JUDGE OF COMPENSATION CLAIMS ISN'T -- HE CAN'T DO UNCONSTITUTIONAL As APPLIED AND THE NUMBER OF CASES WE COULD NOT POSSIBLY DUMP ON THE DISTRICT COURT YOU KNOW BY SAYING WE HAVE GOT TO GO TO THE JUDICIAL BRANCH --

SO YOU ARE SAYING IT'S A PRIMA FACIE CLAIM.

IT HAS TO BE BECAUSE THE COMP JUDGE -- IN FACT, YOU WOULDN'T WANT TO GIVE HIM THAT POWER THERE ARE SO MANY THINGS CRAZY IN THAT LAW.

AND THERE ARE TOO MANY CASES. IF THESE PERCENTAGES, IF BE JUST USED THEM AS A GUIDELINE.

THERE'S NOTHING WRONG WITH USING THEM AS A GUIDELINE BUT IT CAN'T BE THE CONCLUSIVE ENDING POINT BUT IF IT WORKS 95% OF THE TIME WE WOULD HAVE TO DUMP SOMEWHERE FROM 100 TO 300 CASE AS WEEK ON THE DISTRICT COURT JUST TO DECIDE

ATTORNEYS' FEES.
WE CAN'T DO THAT.
THAT'S WHY IT'S FACIALLY
INVALID.
IT MAY BE ONLY A PERCENTAGE OF
THE CASES THAT ARE THE
SMALL CASES THAT PRODUCE THIS
RESULT BUT BECAUSE OF THE
POPULATION OF FLORIDA, THE
GROSS NUMBER OF THEM IS TOO
GREAT FOR THE LAW TO WORK T.
JUST DOESN'T WORK FOR MANY,
MANY, MANY CASES AND THAT'S THE
REASON ITS SPATIALLY INVALID.
I THINK I HAVE ONLY A FEW
SECONDS.

NO, I THINK I THINK YOU'VE
EXHAUSTED ALL YOUR TIME.
I KEPT TRYING TO SIGNAL TO YOU
BUT YOU JUST KEPT GOING.
RESPONSE?

GOOD MORNING.
MAY IT PLEASE THE COURT.
COUNCIL, MY NAME IS CHERYL
WILKE AND ALONG WITH JOHN
DARIN I HAVE THE PRIVILEGE OF
REPRESENTING MARINER HEALTH.
NOT WITHSTANDING
MR. ^SICKING'S CONCESSION, IT
SEEMS TO ME THAT ONE OF THE
ELEMENTS THAT THE 2003
AMENDMENT DID NOT DELETE WAS IN
SUBSECTION 3 WHERE IT REFERS TO
A REASONABLE ATTORNEYS' FEES.
THE CERTAINLY THE LEGISLATURE
COULD'VE DEL33TED THE TERM --
DELETED THE TERM REASONABLE
BECAUSE THAT IMPLIES THE
ALLOCATION OF CERTAIN FACTORS
TO DETERMINE WHAT A REASONABLE
FEE IS.

DOES THE FACT THAT THE TERM
REASONABLE ATTORNEYS' FEES
REMAINS IN SUBSECTION 3 AT
LEAST CREATE AN AMBIGUITY IN
THE STATUTE THAT WOULD ALLOW A
COURT TO SAY, WELL THAT SIMPLY,
THESE FORMULA DOES NOT APPLY TO
ATTORNEYS' FEES AWARDED ON
SUBSECTION 3 BECAUSE UNDER THAT
SUBSECTION, THE LEGISLATURE
INTENDED FOR THE ATTORNEYS'
FEES TO BE REASONABLE.
JUSTICE CANTERO, IT DOES SAY

IN SECTION 1, AND I KNOW JUST GOING BACK THAT ANY ATTORNEYS' FEE HAS TO BE APPROVED BY THE JUDGE AND THAT THE JUDGE MUST APPROVE A FEE WITHIN THOSE PERCENTAGES.

I UNDERSTAND, AND THAT, HENCE THE AMBIGUITY.

IF IT DIDN'T SAY THAT, THERE WOULDN'T BE AN AMBIGUITY.

IT WOULD BE CLEARLY REASONABLE ATTORNEYS' FEES, SO.

BUT THEY ALSO USE THE WORD REASONABLE IN SECTION 1 TO THE EXTENT THEY SAY MUST APPROVE A REASONABLE FEE SO, THEY USE REASONABLE IN BOTH SECTIONS OF THE STATUTE.

I WOULD LIKE TO FOLLOW UP WITH JUSTICE CANTERO BECAUSE NOTWITHSTANDING MR. ^SICKING'S BELIEF THAT IT IS NOT UNCLEAR AND AMBIGUOUS I ACTUALLY FOUND JUDGE URBAN'S BRIEF TO BE SOMEWHAT COMPELLING AND THAT'S WHY I'D ASK THIS QUESTION.

FIRST OF ALL, SUBSECTION 5 DEALS WITH ANY PROCEEDINGS HAD FOR REVIEW THAT THE COURT MAY AWARD THE INJURED EMPLOYER TO PEN AN ATTORNEY'S FEE TO BE PAID BY THE CARRIER.

UNDER SUBSECTION 5, WHICH I ASSUME REFERS TO APPELLATE ATTORNEYS' FEES ARE THE SAME LIMITATIONS IN, THAT ARE -- THAT, HOW DOES -- HOW IS THAT DETERMINED?

WE GO BACK TO SUBSECTION 1 OR IS THAT A FREESTANDING PROVISION?

JUSTICE PARIENTE, THAT ISSUE HAS NOT BEEN RAISED BEFORE THIS COURT, HOWEVER --

NO --

I UNDERSTAND THAT BUT MY UNDERSTANDING IS THAT IT WOULD BE A FREE STANDING PROVISION.

NOW I APPRECIATE YOUR CANDOR IN THAT.

IF IT'S A FREE STANDING PROVISION THEN I'M HAVING TROUBLE UNDERSTANDING WHY

SUBSECTION 3 ISN'T A FREE
STANDING PROVISION, AND THE
REASON I, THAT I GET TO THE
ISSUE OF AMBIGUITY IS AS
FOLLOWED, IS THAT YOU SAID THAT
IT REQUIRES THAT ANY ATTORNEYS'
FEES BY THE JUDGE -- BE
APPROVED BY THE JUDGE OF
COMPENSATION CLAIMS.
CLAIMANT.

IT GOES ON IN THAT SUBSECTION 1
TO SAY THE JUDGE' COMPENSATION
CLAIM SHOULD NOT CONCLUDE A
COMPENSATION ORDER A JOINT
STIPULATION OR AN AGREEMENT OR
ANY OTHER AGREEMENT THAT'S IN
EXCESS OF THIS AMOUNT.
TO ME THAT APPLIES TO AGAIN
STIPULATIONS FOR SETTLEMENT.
CONTRACTS BETWEEN ATTORNEY AND
CLIENT.

BUT IF THEY WANTED TO INCLUDE
IN THAT LIMITATION AN AWARD OF
FEES THEY COULD'VE SIMPLY SAID
AND THE JUDGE OF COMPENSATION
CLAIMS WILL NOT AWARD FEES TO
THE CARRIER IN EXCESS OF THIS
AMOUNT.

THE FACT THAT'S NOT IN THERE
AND IT'S NOT IN SUBSECTION 3,
I'VE READ THIS, AGAIN, I'VE
READ THE STATUTE AND I DON'T
HAVE THE BENEFIT OF
MR.^SICKING'S EXPERIENCE OF HOW
IT ACTUALLY WORKS IN PRACTICE
SO I LOOK AT THE STATUTE AND I
DON'T SEE THAT THE LIMITATIONS
IN SUBSECTION 1 ARE NOT, ARE
NECESSARILY IN SUBSECTION 3.
AND IT SAYS REASONABLE
ATTORNEYS' FEES, AND IT DOESN'T
THEN SAY REASONABLE ATTORNEYS'
FEES AS DEFINED BY SUBSECTION
1.

SO TELL ME WHY THAT'S NOT AN
AMBIGUITY AND THAT UNDER ALL
THE CIRCUMSTANCES OF THIS CASE
WE SHOULDN'T CONSTRUE IT AS
THE, ACTUALLY AS THE BRIEF IN
THIS CASE MAKES THAT POINT AND
VOID THE CONSTITUTIONAL ISSUE
THAT MR.^SICKING SEEMS SO
DESIROUS OF OUR CONFRONTING
HERE.

CERTAINLY, JUSTICE PARIENTE,
YOU HAVE THE RIGHT TO FIND ANY
AMBIGUITY YOU WANT.

I DON'T WANT TO FIND IT.

I WANT TO SAY --

[LAUGHTER]

SUBSECTION 5 AND AGREED THAT'S
FREE STANDING.

AND NOT SAY SUBSECTION 3 IT'S
FREESTANDING.

SUBSECTION 5 HAS NEVER COME
UP AND I CAN SEE WHERE IT'S AN
ISSUE.

I CAN SEE WHERE IT'S FREE
STANDING IN THE PAST BECAUSE
ATTORNEYS' FEES WERE AWARDED OR
NOT AWARDED BY THE APPELLATE
COURT A. MOTION WAS FILED AND
THEN A MOTION WAS DETERMINED
WHETHER OR NOT APPELLATE FEES
WOULD BE WARRANTED.

I DO UNDERSTAND THE BREAKDOWN
BETWEEN SECTION 1 AND 3, AND
JUSTICE IRVINE DID ADDRESS THAT
ISSUE.

PRACTICALITY A COMPENSATION
ORDER WHICH IS DEFINED IN
SUBSECTION 1 APPLIES TO
SUBSECTION 3.

YOU SAID YOU WEREN'T SURE
EXACTLY WHAT THE CONNECTION WAS
BUT A COMPENSATION ORDER WHICH
WOULD BE ANY COMPENSATION
AWARDING COMPENSATION OR
MEDICAL BENEFITS AS DEFINED BY
440.01 WOULD BE THE CONNECTING
LINK BETWEEN SECTION 1 AND
SECTION 3.

LET NEE ADDRESS MR.^SICKING
AND THAT POINT IS
GNAWING AT ME AND IT DOES
SEEM TO ME THAT THE REAL
PROBLEM HERE IS 440.105 AND
PROHIBITED ACTIVITIES PROVISION
BECAUSE OF THE FACT THAT
CLAIMANT CANNOT GET A ATTORNEYS
FEE UNLESS IT'S APPROVED UNDER
440.34.

HOWEVER, THE STATUTE READ
LITERALLY DOESN'T IT APPLY NOT
ONLY TO CLAIMANTS ATTORNEYS BUT
TO ANY ATTORNEYS?

I MEAN, THAT SPECIFICALLY WHAT
THIS PROVISION SAYS ITS

UNLAWFUL FOR ANY ATTORNEY OR OTHER PERSON IN HIS OR HER INDIVIDUAL CAPACITY FOR OR FOR ANY FIRM TO RECEIVE ANY FEE FROM A PERSON, A PERSON IS DEFINED AS EVERYBODY.

NOW, IF THAT, IF THAT APPLIES BOTH TO THE EC, IF THIS STATUTE IN TOTO APPLIES BOTH TO THE EC'S ATTORNEY AND THE CLAIMANT'S ATTORNEY, THEN IT SEEMS TO ME WE'VE GOT AN EQUAL PROTECTION QUESTION.

IN MR. ^SICKING'S BRIEF THERE WAS AN ADMINISTRATIVE ORDER BY THE THEN CHIEF JUDGE SAYING THAT THAT PROVISION DID NOT APPLY TO IN PAID CARRIER'S ATTORNEYS' FEES.

BUT TELL ME WHY UNDER THE LANGUAGE OF THIS STATUTE IT DOES NOT?

WHAT IN THIS STATUTE SAYS THAT IT ONLY APPLIES TO A CLAIMANT'S ATTORNEY?

WELL, BECAUSE JUSTICE, IT -- THE STATUTE DEALS WITH THE AWARD OF BENEFITS.

NOT 405.

405 IS PROHIBITED ACTIVITIES.

AGAIN, BECAUSE THE IT WAS CLARIFIED BY THE CHIEF JUDGE AT THE TIME TO INDICATE THAT DIDN'T APPLY TO PROVISION CARRIERS.

THE PLAIN WORDING OF THE STATUTE DOES SAY THAT YOU MUST BIDE BY THE TERMS AND CONDITIONS OF THAT STATUTE.

AND IF YOU'VE GOT TO DO THAT THEN IT SEEMS TO ME THAT THE BOTH THE CLAIMANT'S ATTORNEY AND THE EC'S ATTORNEY HAS TO BE DEALT WITH ON EQUAL FOOTING. EXCEPT IN EMPLOYER CARRIERS ATTORNEYS CANNOT BE AWARDED ARE NOT AWARDED BENEFITS.

WELL, THAT, SEEMS TO BE WHERE THE, WHERE THE PROBLEM LIES.

HISTORICALLY, JUSTICE, THE WHOLE ISSUE HAS BEEN THAT EMPLOYER CARRIERS WERE PAID

HOURLY FEES BECAUSE OF THE NATURE AND EXTENT OF THE WORK AND THOSE HOURLY RATES WERE SUBSTANTIALLY GENERALLY SUBSTANTIALLY LOWER.

IN CASE SIEVE CO WHEN THOSE CASES CAME OUT AND WERE VERY, VERY LARGE HOURLY FEES AWARDED THE LEGISLATURE TENDED TO ADDRESS CLAIMANTS, EMPLOYER CARRIER-PAID ATTORNEYS FEES TO CLAIMANTS.

THAT WAS BROUGHT FORTH IN THE LUNDE CASE TO SAY THAT THE LEGISLATURE DOES HAVE A VESTED INTEREST IN REGULATING ATTORNEYS FEES.

DO YOU AGREE THE CONCEPT OF REASONABLE APPLIES TO THE FEES THAT ARE TO BE AWARDED.

REASONABLE AS DEFINED BY THE PERCENTAGES, YES, SIR?

WELL, LET ME ASK YOU THAT QUESTION.

THE CONCEPT OF REASONABLE THAT I TAKE YOUR ANSWER TO MEAN REASONABLE.

THEN IF WE APPLY THE STRICT LIMITATION AND SAY THAT THAT IS AN IRREBUTTABLE, IRREBUTTABLE THAT THAT'S WHAT A REASONABLE FEE IS.

WILL YOU SHARE WITH ME YOUR THOUGHTS.

SURE.

THE DUE PROCESS PROBLEMS WITH IRREBUTTABLE, IRREBUTTABLE ESTABLISHMENT OF THAT FEE AND WHAT CASE YOU WOULD RELY ON ADDRESSING THIS ISSUE.

ST. STATES SO AND WHICH HAVE BEEN STRICKEN BY THIS COURSE COURT, INCLUDING -- LET ME SEE THEN, LET ME SEE THEN.

LET'S GO BACK BECAUSE I THOUGHT THAT YOU SAID THAT THIS WAS CONCLUSIVE IN THIS CASE EVEN THOUGH IT MAY NOT BE STATED IN THE STATUTE.

IT IS A REASONABLY IS CONCLUSIVELY DEFINED I DID NOT SAY IT WAS A PRESUMPTION AND BELIEVE THAT IT WAS A

PRESUMPTION IN DEFINED.

ARE WE PLAYING WITH WORDS
THEN BECAUSE IF THAT'S WHAT IT
IS BECAUSE IT DOES NOT SAY
THAT, IF IN FACT THAT'S WHAT IT
IS BUT IT DOES NOT SAY THAT
DOES THAT REMOVE IT?
I DON'T WANT TO EXAMINE IT?
I WANT TO KNOW DOES THAT REMOVE
THE CONCEPT OF BEING
IRREBUTTABLE BECAUSE SIMPLY
BECAUSE IT DOESN'T USE THAT
LANGUAGE.

IF THE LEGISLATURE INTENDED
TO BE A PRESUMPTION IRREBUTTABLE
OR NOT, THEY WOULD HAVE SAID
THAT WHAT THEY HAVE IMPOSED IS
A MANDATE WHICH IS VERY
DIFFERENT THAN A REBUTTABLE
PRESUMPTION.

WHEN THEY ESTABLISH THE
MAXIMUM THAT YOU CANNOT REBUT
AND SAY THAT IS REASONABLE THAT
THEY HAVE NOT THEN ESTABLISHED
SOMETHING THAT'S IRREBUTTABLE
YOU CANNOT REFUTE THAT BECAUSE
YOU HAVE ALREADY SAID THAT IT'S
THE CONCEPT OF REASONABLE AS
APPLIED.

SUCH AS CHIROPRACTIC LIMITS
BEING LIMITED TO 18 THERE IS
NOTHING IN THE STATUTE THAT
INDICATES THAT THAT IS A AN
IRREBUTTABLE --

I WOULD REALLY APPRECIATE IF
YOU WOULD JUST ADDRESS THE
DIRECT QUESTION.

TRYING TO MOVE THAT
SOMEWHERE ELSE.

NO THERE ARE LOTS OF ANSWERS
PORTIONS OF THE STATUTES THAT
ARE NOT IRREBUTTABLE
PRESUMPTIONS.

THIS IS ONE OF THEM.

JUST BECAUSE AN ATTORNEY FEE
STATES THAT DEFINES REASONABLE,
THERE ARE LOTS OF OTHER
PROVISIONS, 104 WEEKS OF
TEMPORARY TOTAL DISABILITY.

WELL, WHAT'S THE
DISTINCTION OR DIFFERENCE THAT
YOU WOULD HAVE HERE AS TO AN
IRREBUTTABLE PRESUMPTION.
IN OTHER WORDS, I AM AFRAID

THAT WE'RE DANCING ON SOME LANGUAGE AND USING A LOT OF TIME FOR IT.

YOU DO AGREE THAT THE STATUTE FIXES A VERY DEFINITE LIMIT ON THE FEES.

YES.

DO YOU NOT?

AND SO THE STATUTE SAYS THIS IS THE ONLY FEE, AND, AND THE, THE FORMULA AND THAT REASONABLENESS REALLY DOES, GOES OUT THE WINDOW WITH, WITH THE STATUTE -- WITH THE LEGISLATURE BEING SO PRECISE S. THAT CORRECT?

BECAUSE, I NEVER HEARD YOUR, YOUR ANSWER TO, TO JUSTICE CANTERO'S QUESTION.

WHERE HE SAID BY THE VIRTUE OF THE FACT THAT THEY'VE RETAINED THE WORD REASONABLE, OKAY. DOES THAT CREATE AN AMBIGUITY THEN IN TERMS OF A CONSTRUCTION OF THE STATUTE.

RIGHT.

I DIDN'T -- YOU, YOU STARTED TO -- TALK ABOUT FREE STANDING AND WHATEVER BUT I DIDN'T HEAR YOUR ANSWER TO HIS QUESTION. DO YOU AGREE OR DISAGREE THAT AN AMBIGUITY IS CREATED BY BOTH THE FIXED FORMULA THAT THE LEGISLATURE HAS SET OUT BUT BY THE USE OF THE WORD REASONABLE IN THE SAME STATUTE.

NO, BECAUSE REASONABLE -- NO DA.

WAIT A MINUTE.

NO, THERE IS NO AMBIGUITY?

NO, THERE IS NO AMBIGUITY.

THERE IS NO AND THE READ THERE IS NO AMBIGUITY IS BECAUSE THE LEGISLATURE HAS BEEN CLEAR THAT THIS IS THE ONLY FEE THAT YOU CAN GET S. THAT CORRECT?

THEY HAVE A CLEAR AND DEFINING REASONABLE, YES.

NOW WE ARE IN THIS EXTRAORDINARY SITUATION HERE WHERE LAWYERS LIKE YOURSELF AND LAWYERS WITH FAR MORE EXPERIENCE THEN YOU

REPRESENTING EMPLOYERS AND CARRIERS HAVE COME FORWARD AND HAVE, YOU KNOW, FILED AFFIDAVITS OR HAVE TESTIFIED THAT THESE FEES IN ESSENCE ARE OUTRAGEOUSLY LOW.

AND NOT REASONABLE.

YOU KNOW SO THIS IS AN EXTRAORDINARY THING FOR US TO SEE EMPLOYER CARRIER LAWYERS OF VERY GREAT STATURE, YOU KNOW, COME FORWARD AND, AND AGREE THAT THESE FEES UNDER ANY DEFINITION, YOU KNOW ARE, NOT REASONABLE.

I ASKED THE QUESTION BEFORE OF YOUR OPPONENT AS TO WHETHER OR NOT THE LEGISLATURE COULD JUST NOT PROVIDE FOR FEES AT ALL. BECAUSE YOU KNOW SOMETIMES WE APPLY THIS LEGAL PROPOSITION, WELL IF THEY CAN DO, IF THEY CAN BE KING KONG AND, AND SWAT EVERYTHING AWAY, THEN WHY CAN'T THEY DO SOMETHING LESSER, ALL RIGHT?

AND THAT AND I THINK THAT PROBABLY IS A, IS AN ISSUE HERE BUT I'M CONCERNED AND I THINK THAT THE REST OF US ARE CONCERNED THAT THE LEGISLATURE HASN'T JUST SIMPLY DONE THAT. WHAT THEY'VE DONE IS THEY'VE, HAVE MADE THIS FIXED FORMULA AND THEN THEY'VE MADE IT A CRIME FOR A LAWYER TO CHARGE ANY FEE AND THEN PLUS THEY HAVE MADE IT IMPOSSIBLE FOR THE CLAIM TONIGHT PAY THE PERSON IN CHANGES COURT FACING AN OBLIGATION AND AT LEAST IS FREE YOU KNOW TO TRY TO GET A LIAR.

YOU KNOW, LAWYER TO REPRESENT THEM ON A CONTINGENCY BASIS OR WHATEVER BUT HERE THE LEGISLATURE HAS COMPLETELY CUT OFF AT EVERY PASS ANY ABILITY OF THE CLAIMANT.

AND SO MY CONCERN IN THIS LONG QUESTION TO YOU IS, IS THAT BY DOING ALL OF THOSE THINGS THAT THEY, THEY HAVE JUST, THEY'VE

PROVIDED NO REASONABLE PROCESS
AT ALL.

THEY HAVE MADE IT SUBSTANTIVE
SAYING WE ARE GOING TO GIVE YOU
A FEE BUT IT IS IMPOSSIBLE FOR
YOU TO HAVE ANY OUTLET FROM
THIS UNREASONABLE FORMULA
THOUGHT YOU HAVE.

HELP ME WITH THE FACT THE
LEGISLATURE THAT THIS IS THE
STRAW THAT BREAKS THE CAMEL'S
BACK.

WELL.

BY MAKING IT A CRIME ON THE
ONE SIDE, WHICH I, YOU KNOW,
THOSE PROVISIONS MAY HAVE BEEN
THERE BEFORE IN A DIFFERENT
CONTEXT.

AND NOW MAKING IT IMPOSSIBLE
FOR THE CLAIMANT TO PAY
ANYTHING ELSE.

ALL THERE'S JUST NO OUTLET HERE
FOR A CLAIMANT.

THIS GOES BACK AGAIN TO WHAT
JUSTICE PARIENTE SAID ABOUT
WHETHER OR NOT WHEN YOU LOOK AT
THE WHOLE PICTURE, WHETHER OR
NOT THIS WHOLE STORY SEEMS
CRAZY.

IF YOU LOOK AT -- v. HILLMAN AT
YOUR FIRST POINT IF THIS IS
MANIFESTLY UNFAIR BECAUSE OF
THE -- THEN --

WHY ISN'T IT A DUE PROCESS
ISSUE?

HERE?

IN THIS CASE AS FAR AS BEING A
DUE PROCESS ISSUE, THIS COURT
HAS ALREADY SAID THAT THE TEST
SHOULD BE USED IS WHETHER -- AS
TO WHETHER AN ACT IS
OF DUE PROCESS IS WHETHER THE
STATUTE HAS A REASONABLE BASIS
TO IT SET -- TO ITS SET PURPOSE
AND THE LUNDE COURT UNDER THE
FIRST DISTRICT COURT OF
APPEALS CLEARLY STATE THAT
WORKERS' COMPENSATION, THE
LEGISLATURE'S CONTROL OF
ATTORNEYS' FEES IN WORKERS'
COMPENSATION CASES BUT THIS --
LET ME TRY --

AND I --

AND I GO BACK TO THE ISSUE

OF THE PURPOSE.

IF THE PURPOSE IS TO MAXIMIZE
THE AWARD FOR THE CLAIMANT.
HOW COULD ARBITRARILY LIMITING
THE FEES PAID BY THE EMPLOYER
CARRIER, WHO IS WRONGFULLY
DENIED BENEFITS, AND IT
ADVERSELY AFFECTS NOT THE
CLAIMANT WITH THE BIG CLAIM,
BUT THE POOR WOMAN OR MAN WHO
HAS THE SMALL CLAIM.

SO WHAT THAT DOES THEY HAVEN'T
LEVELED THE PLAYING FIELD THEY
HAVE EVISCERATED THE PLAYING
FIELD BY SIT A SITUATION THAT
A CARRIER TO SPEND
UNLIMITED AMOUNTS OF MONEY
THERE IS A PRETTY HEFTY
EMPLOYER CARRIER BAR AND
EVISCERATED FEES THAT CAN BE
RECEIVED BY THE CLAIMANT.
AND AGAIN, I DON'T THINK THE
WHOLE STATUTE CAN GO.

WE DON'T LIKE THE EMPLOYER
CARRIER BUT WE ARE OKAY WITH
OUR WHOLE LIMITATION.

IT'S THE COMBINATION OF THE TWO
THAT MAKES THIS IN MY VIEW A
QUESTION OF WHETHER THERE IS
ALSO A DENIAL OF EQUAL
PROTECTION.

IN TERMS OF THE ABILITY OF
CLAIMANTS.

TO FIGHT WRONGFUL DENIALS OF
BENEFITS AND SO WHERE IS THE
EQUAL -- HOW IS THIS NOT A
DENIAL OF EQUAL PROTECTION AND
TWO, HOW DOES THE WAY THE
STATUTE IS WORKING FURTHER A
LEGITIMATE PURPOSE OF
MAXIMIZING BENEFITS TO THE
CLAIMANT.

JUSTICE PARIENTE,
THERE WAS MORE THAN
ONE PURPOSE BEHIND THIS
LEGISLATION SET FORTH BY THE
FLORIDA LEGISLATURE.
ONE OF THE OTHER PURPOSES
BESIDES ENHANCING BENEFITS WAS
REDUCING THE ECONOMIC IMPACT TO
EMPLOYER CARRIERS.

SO WHY COULDN'T THAT DIE
THAT.

WHY SHOULDN'T THEY LEVEL THE

FIELD SAYING WE ARE GOING TO LIMIT THE FEES THAT EMPLOYER CARRIERS CAN PAY THEIR OWN ATTORNEYS?

GINN, THEY HAD THE ABILITY TO DO THAT.

BUT THE ISSUE WAS CLAIMANT ATTORNEY PAID FEES FROM THE EMPLOYER CARRIER.

AGAIN, NOT DIRECTLY FROM THE CLAIMANT.

MR. ^SICKING IS ABSOLUTELY RIGHT.

IN PRACTICE, CLAIMANTS ATTORNEYS DON'T GO BACK TO THEIR CLAIMANTS AND ASK FOR FEES.

THEY SIMPLY SEEK BENEFITS, SEEK THOSE FEES FROM THE EMPLOYER CARRIER SO IN REALITY WHAT HAPPENS IS THAT THE EMPLOYER CARRIER OVER IN HISTORICALLY HAS ENDED UP PAYING SUBSTANTIALLY HIGHER FEES --

ALL THEY NEED TO DO IS PAY LEGITIMATE CLAIMS AND THEN THERE'S NO ATTORNEYS' FEES. ABSOLUTELY AND THAT IS WHAT THE LEGISLATURE IS --

THAT IS WHAT THE LEGISLATION INTENDED TO BUT HOW IN THIS CASE WHICH WE HAVE BEFORE US WHICH IS, THEY DENIED THE BENEFIT, THEY CLAIMED FRAUD AGAINST THE PLAINTIFF THAT WAS CLAIMING IT AND EVERYBODY AGREES THESE WERE COMPLEX ISSUES THAT COULDN'T HAVE BEEN LITIGATED.

HOW DID THAT -- HOW DID THAT SERVE THE LEGISLATIVE PURPOSE?

WHAT HAPPENED IN THIS CASE? YOUR HONOR, TAKEN THE FACTS SEPARATELY AS THE WAY YOU'VE STATED THEM, IT DOESN'T APPEAR TO HAVE ANY RELEVANCE HOWEVER IN LOOKING AT, MS. ^MURRAY IS NOT THE ONLY WORKERS' COMPENSATION CLAIMANT OUT THERE.

THERE ARE LOTS OF WORKERS' COMPENSATION CLAIMANTS WHO GET

EXCELLENT REPRESENTATION FROM THEIR ATTORNEY. YOU NOTICE THERE IS A GALLERY FULL OF PEOPLE HERE INTERESTED BECAUSE THESE PEOPLE DO WANT TO TAKE THESE CASES NOW LOOKING AT THE LIMITED FACTS AND AGAIN IF YOU DON'T AND I'M SURE YOU DID DELVE INTO THE ACTUAL FACTS THE FEE ACCEPTED BY MR. ^SUITOR WAS BASED ON A FAIRLY SMALL GROUP OF BENEFITS HE ACCEPTED THAT HE WAS AWARDED HE WAS ALSO AWARDED THE PAYMENT AWARDED THE SURGERY, AND HE, IT CHOSE NOT TO ASK FOR AN ATTORNEY' FEES ON THE AWARD OF THE SURGERY THAT WAS PAID BY HEALTH INSURANCE AND THEN REQUIRED TO BE REIMBURSED BY THE EMPLOYER CARRIER SO THE BENEFITS AWARDED IN THIS UNDERLYING CASE WERE NOT SIMPLY LIMITED BY WHAT YOU SAW FACIALLY THEY COULD'VE BEEN SUBSTANTIALLY HIGHER.

YOU HAVE USED UP ALL OF YOUR TIME.

I KNOW YOU HAVE A GENTLEMAN THAT CAME WITH YOU I WILL GIVE HIM SOME TIME AND I WILL GIVE ADDITIONAL TIME TO MR. ^SICKING BUT DID YOU HAVE A FEW COMMENTS, SIR.

YES, YOUR HONOR.

I JUST WANTED TO -- THE ACCESS TO COURTS SEEMS TO HAVE DEVOLVED TO ACCESS TO ATTORNEYS AND THE WAY THE WORKERS' COMPENSATION LAW WORKS FROM A LEGAL PERSPECTIVE IS THAT IF A INJURED WORKING IS RECEIVING BENEFITS HE GOES TO A LAWYER'S OFFICE IT'S NOT UNCOMMON THERE MAY BE AN ISSUE ABOUT THE RATE THEY ARE BEING PAID OR THEY WANT A DIFFERENT DOCTOR BUT ONCE THAT RETAINER AGREEMENT IS SIGNED IT'S NOT UNCOMMON FOR THE ATTORNEY TO START ESCROWING 10% OF THE WEEKLY PAYMENTS EVENTUALLY COVER ANY ATTORNEY' FEE FOR ANY BENEFIT SECURED ON BEHALF -- ISN'T THAT COVERED UNDER THE

STATUTE?

I MEAN, YOU, YOU STARTED
WITHOUT AN ACCESS TO COURTS
KIND OF ARGUMENT.
HOW IN THE WORLD IS REAL ACCESS
TO THE COURTS FOR THESE
CLAIMANTS?
IF THEY ARE LIMITED BY WHAT
THEY CAN GET UNDER THE STATUTE.

UNDER 3 OR 1, WHICHEVER 1 YOU
ARE TALKING ABOUT.
THEY CAN'T GO BEYOND THAT AND
GIVE ATTORNEYS ADDITIONAL
MONIES AND SO HOW IS THAT A
REAL ACCESS?
HOW MANY ATTORNEYS ARE GOING TO
WANT TO SPEND AS IN THIS CASE
80 SOME HOURS AND END UP
GETTING PAID \$8 AN HOUR FOR
THEIR SERVICES?
WHY -- WHY ISN'T THAT A REAL
ACCESS TO COURTS ISSUE?
WELL, IT'S AN EXCELLENT
POINT, JUSTICE QUINCE.
IN THE CASE OF CAPS ON ATTORNEY
FEES IN MED MALPRACTICE CASES
IT'S MY UNDERSTANDING THAT NOW
THE INDIVIDUAL IS ENTITLED IF
THEY WANT TO, TO SIGN AN
AGREEMENT FOR IN EXCESS OF THE
CAPS THAT WERE IMPOSED.
BUT YOU CERTAINLY CANNOT DO
THAT UNDER THIS STATUTE.
TRUE BUT IN MS.^MURRAY'S
CASE IF WE ARE NOT GOING TO USE
THIS PARTICULAR CASE TO SIMPLY
A VEHICLE TO ATTACK THE
CONSTITUTIONALITY OF A STATUTE
MS.^MURRAY NEVER HAD A PROBLEM
OBTAINING COUNSEL OR ACCESS TO
COURTS.
YOU ARE STOPPING AT THE
INDIVIDUAL CASE, AND YOU'RE
OPENING TO THAT IS A HUGE
OPENING.
YOU SAID TRUE.
IN ANSWER TO JUSTICE QUINCE'S
QUESTION.
TRUE THAT SINCE THEY CAN'T
AGREE TO PAY ANY AGREED OR FEE
THAT THEY'RE HEMMED IN AND NOW
YOU GO TO MS.^MURRAY'S CASE
WHAT GOOD DOES IT DO TO

DEMONSTRATE THAT IN ONE CASE,
YOU KNOW, MAYBE THINGS WORKED
OUT ALL RIGHT OR SOMETHING, BUT
THAT THE LAW, OKAY HERE, TRUE,
OKAY, REALLY AS OPPOSED TO THIS
INCREDIBLE USE OF THE WORD
REASONABLE AND THEN TO GO TO A
FORMULA HERE THAT IN, IN
EVERYBODY'S VIEW AND AS I SAID
BEFORE WE HAVE THIS
EXTRAORDINARY SITUATION OF
PEOPLE LIKE YOURSELF SAYING
THIS IS TOTALLY IRRATIONAL.
THAT, THAT, IN TERMS OF THE
FEES.

SO HOW CAN WE LET A SCHEME THAT
ALLOWS NO OXYGEN IN STAND?
JUSTICE ANSTEAD, THE
CLAIMANTS' PRACTICE IS ALIVE
AND WELL.

THE SYSTEM AS A WHOLE IS
WORKING.

BECAUSE BETWEEN, IF YOU'VE GOT
100 OR 200 CLIENTS, YOU'RE
ESCROWING MONEY ON AT 10%.
THIS STATUTE ONLY APPLIES DO
I UNDERSTAND THE CORRECTLY WHEN
THE EC UNREASONABLY OR
IMPROPERLY DENIED BENEFITS.
IS THAT THE TRIGGERING EFFECT
OF THIS PARTICULAR STATUTORY
SCHEME?

WELL, THE PERCENTAGES APPLY
ANYTIME A, IF A CLAIMANT'S
PAYING THEIR OWN FEE, THE
CLAIMANT PAYS ONLY IF THEY HAVE
DENIED BENEFITS FOR 30 DAYS --
THIS CASE CAME ABOUT BECAUSE
OF THE UNREASONABLE DENIAL OF,
OF THE CLAIM.

ISN'T THAT RIGHT.

NO.

NO?

THERE WERE GOOD ISSUES BOTH
WAYS BUT THE EMPLOYER CARRIER --

SO I SEE.

THAT HAS NOTHING TO DO WITH
MS.^MURRAY'S CASE.

WELL I AM JUST SAYING THERE
WERE REAL ISSUES THERE.

THERE WERE NO PRIVILEGES.

I AM ASKING YOU IF THE ISSUE
IN THE CASE WAS THE

UNREASONABLE DENIAL OF
BENEFITS.

NO, THE ISSUE IN
MS.^MURRAY'S CASE WAS WHETHER
SHE WAS ELIGIBLE FOR THE
BENEFITS.

I SEE.

COULD I GET YOU TO ADDRESS
THE QUESTION THAT I POSED TO
YOUR CO-COUNSEL, AND THAT IS IS
IT NECESSARY IN YOUR VIEW THAT
THE STATUTE SAY SPECIFICALLY
AND EXPRESSLY SAY THAT THIS IS
AN IRREBUTTABLE PRESUMPTION
BEFORE THE CONCEPT OF
IRREBUTTABLE PRESUMPTIONS CAN
BECOME OPERATIVE AND CAN BECOME
A DUE PROCESS CONCERN OR DOES
THIS STATUTE BY VIRTUE OF US
USING THE PHRASE REASONABLE
FEES AND THEN STATING WHAT
THOSE ARE THAT CANNOT BE
CHANGED ACCORDING TO YOUR
ARGUMENT, WHY WOULD NAT THAT
DROSS THE ISSUE OF IRREBUTTABLE
PRESUMPTIONS OF WHAT IS
REASONABLE AND IMPACT IN SOME
WAY A DUE PROCESS DISCUSSION.

I, I AGREE WITH MY
CO-COUNSEL THAT THERE WOULD
HAVE TO BE SOME SORT OF
STATEMENT THAT IT WOULD BE
IRREBUTTABLE.

HAS TO BE EXPRESSED THE
STATEMENT.

THE CASE SUPPORTS THAT.
I WOULD -- IF YOU GO BACK TO
THE RECKY CASE THAT WAS CITED
IN THE BRIEFS THERE WAS A TEST
PUT FORTH THERE REGARDING
IRREBUTTABLE PRESUMPTIONS.
AND I THINK THE, THE TEST IS
STATED HERE.

LEAD TO AN INTERPRETATION BUT
THE GUIDELINES SET FORTH IN
440.34 ARE NOT AN IRREBUTTABLE
PRESUMPTION.

WELL, WHAT A -- WAIT A
SECOND.

YOU ARE AGREEING THAT THE
SUBSECTION 3 WHEN IT SAYS THAT
THERE SHALL BE AN AWARD OF
REASONABLE ATTORNEYS' FEES,
THAT DOESN'T EVEN REFERENCE

ANYTHING ABOUT WHAT REASONABLE IS, WHAT YOU'RE ASKING THIS COURT TO DO IS SAY REASONABLE IS CONCLUSIVELY DEFINED AND CANNOT BE REBUTTED OR CHALLENGED BY THE PERCENTAGES STATED IN SUBSECTION 1. ISN'T THAT HOW YOU ARE ASKING US TO INTERPRET THE STATUTE? I'M, I'M ASKING THE COURT TO LITERALLY AND STRICTLY INTERPRET THE STATUTE IF IT NEEDS INTERPRETATION BECAUSE IN

--

BUT TELL ME.

-- THE ANSWER IS NOT -- JUST LIKE YOU CAN'T THROW OUT EVERY CONSTITUTIONAL PROVISION THAT EVER EXISTED AND TELL THE COURT JUST PICK WHICHEVER ONE YOU WANT I AM SAYING THIS STATUTE WHAT YOU ARE SAYING IN SUBSECTION 3 SAYS REASONABLE ATTORNEYS' FEES SHALL BE NO MORE THAN THE PERCENTAGES OF BENEFITS RECOVERED AND THOSE PERCENTAGES ARE SET FORTH IN SUBSECTION 1 AND NO MATTER WHETHER THERE'S EVERY MEMBER OF THE BAR COMES IN AND SAYS REASONABLE IN THIS CASE IS NOT THAT, THE JUDGE CAN'T HEAR THAT.

THAT'S THE EFFECT OF THE STATUTE, THAT AS YOU'RE INTERPRETING IT, CORRECT? THAT IS CORRECT, JUSTICE PARIENTE.

AND NOW YOU ARE TELLING US, YOU ARE STANDING HERE AND TELLING US THAT THAT'S NOT A CONCLUSIVE IRREBUTTABLE PRESUMPTION?

OR WHATEVER -- OR EVIDENTIARY FACT THAT DOESN'T GIVE ANY DISCRETION TO THE JUDGE OF COMPENSATION CLAIMS?

NO MORE THAN THE ATTORNEYS' FEE LIMITS AND SOVEREIGN IMMUNITY CASES, YOUR HONOR. AND THERE IS A PROVISION IN 44043 THAT TALKS ABOUT IN MEDICAL ONLY CLAIMS THERE'S A \$150 AN HOUR PROVISION UP TO

\$1500 SO IF THE LEGISLATURE INTENDED FOR REASONABLE TO MEAN SOMETHING DIFFERENT UNDER THE 30-DAY PROVISION OR THE TOTAL DENIAL OF A CASE PROVISION, THEY COULD'VE PUT IT IN THERE, BUT THEY DIDN'T.

THEY ONLY PUT IN THE \$150 AN HOUR PROVISION FOR MEDICAL ONLY CLAIMS.

WE HAVE NOW GONE WAY OVER WITH, WITH BOTH AND I'LL JUST EQUAL OUT THE TIME.

THANK YOU VERY MUMP, YOUR HONOR.

I APPRECIATE IT.

THANK YOU FOR YOUR ARGUMENTS.

YOU WILL HAVE -- PLEASE SWITCH THE CLOCK.

THE OPPOSITE OF REASONABLE IS UNREASONABLE.

IF THE STATUTE HAD SAID.

PLEASE START THE CLOCK.

REASONABLE FEE AND WE STARTED -- IF THERE WERE NO WORD AT ALL.

THE CONSTITUTION WOULD REQUIRE THAT THE FEE BE REASONABLE.

SO THE, AND THE GOOD -- AND AMBIGUITY WE APPEAR TO HAVE IS THAT IT SAYS UNREASONABLE AND THEN DOES SOMETHING THAT'S UNREASONABLE.

AND SO THE FOCUS MUST BE HERE I THINK ON WHAT IS DONE NOT WHAT IS SAID, WHAT LABEL THE LEGISLATURE PUTS ON.

IF WE HAVE A CRIME AND NOW IN ADDITION TO THAT, WE HAVE AN ECONOMIC DISINCENTIVE FOR EMPLOYEES TO MAKE SMALL CLAIMS BECAUSE THE, THE FEES THAT WOULD BE GENERATED BY A SMALL AMOUNT WOULD BE SO PICAYUNE THEY WOULD NEVER PAY FOR THE SERVICE.

THE KEY OF COURSE IS THAT THEY CHANGED THE FOCUS FROM IT BEING FOR SERVICES RENDERED, REPEALED THAT LANGUAGE AND NOW MADE IT THAT THE PAYMENT WAS ONLY FOR SERVICES -- FOR BENEFITS OBTAINED, BENEFITS

SECURED.

AND THAT ISN'T REAL --
WELL LET ME ASK YOU A
QUESTION.

YOU FOLKS ON THE MICRO, THE
LEGISLATURE FOCUSES ON THE
MACRO ECONOMIC.

AND WHAT IS IT YOUR POSITION
THAT THIS COURT IS BECAUSE YOU
SELECTED THIS CASE AND THE
MACRO IMPACT IS WHAT IT IS.
OR IS THERE ANY CONSIDERATION
THIS COURT GIVES TO THE MACRO?

VIEW OF THE COST?

WELL, I --

PUBLIC POLICY ISSUES.

WELL, I THINK THE PUBLIC
POLICY ISSUE IS IN THE, IN THE
\$4 BILLION INDUSTRY THAT
WORKERS' COMPENSATION IS.

THIS IS SMALL.

BUT TO THE INDIVIDUAL PEOPLE
WHO HAVE SMALL CLAIMS FOR
WHATEVER, A FEW WEEKS OF
WORKERS' COMPENSATION, YOU
KNOW, EVEN A CASE LIKE THIS,
THAT WAS VERY COMPLICATED,
BECAUSE OF THE \$18 MILLION
PEOPLE, -- 18 MILLION PEOPLE,
IT'S A LOT AND FOR THEM, IT'S
EVERYTHING.

THIS IS WORKERS' COMPENSATION
IS AFTER ALL ONE OF THE MOST
COMMON WAYS CHIN THE PEOPLE OF
FLORIDA MEET THEIR LEGAL
SYSTEM.

SO COST IN TERMS OF THE BIG
PICTURE IT'S VERY SMALL BUT TO
THE INDIVIDUAL PEOPLE INVOLVED,
IT'S VERY BILL.

-- BIG.

BUT LET NEE GO BACK TO
FOLLOW-UP ON JUSTICE BELL'S
SORT OF COMMENT AND I'M
WONDERING YOU CONCEDE SAYING
THIS IS A FACIAL CHALLENGE BUT
AT THE SAME TIME YOU ARE SAYING
WELL THERE IS A SIGNIFICANT
NUMBER THAT THIS WOULD IMPACT.

WHAT IS THE CONSTITUTIONAL
TEST, THOUGH FOR A FACIAL
INVALIDITY OF A PARTICULAR

STATUTE OR PROVISION?

IT'S NOT THAT THAT A GREAT MANY
TIMES THIS MAY BE, CANNOT BE
APPLIED BUT ISN'T THE FACIAL
TEST THAT UNDER NO
CIRCUMSTANCES CAN THIS BE
APPLIED AND IF NOT, THEN IT'S,
AN APPLIED TEST RATHER THAN A
FACIAL.

CHALLENGE.

WELL, IN A SUBSTITUTE
AGREEMENT FOR A
COMMON LAW IT HAS

TO BE A LAW THAT WORKS SO I
DIDN'T WANT ANYONE TO THINK.

WHAT CASE WAS THAT?

IT WAS MY UNDERSTANDING THAT IT
WAS THERE MUST BE AN ADEQUATE
ALTERNATIVE REMEDY THAT CAME
OUT OF THE CASE YEARS
AGO.

I DON'T KNOW ABOUT A CASE THAT
SAYS THAT SOMETHING MUST ALSO
WORK.

WELL IT CERTAINLY HAS TO BE
ONE THAT WORKS.

I ONLY MENTION THAT POINT
BECAUSE THE CASE IS NOT AN
ISOLATED CASE AND AS YOU KNOW,
IT WAS LIKE, I THINK IS THE
FIFTH, FOURTH OR FIFTH CASE
THAT HAD COME TO THE CASE.

THAT MAKES A DIFFERENCE,
DOES IT NOT, IN THE SUBSTANTIVE
LAW IF IT'S A FACIAL CHALLENGE
OR AS APPLIED CHALLENGE.

WELL YOU CAN DO AS APPLIED
BUT THE JUDGE OF COMPENSATION
CAN'T IN THE NEXT CASE WE WOULD
HAVE TO DO IT AGAIN AND OVER
AND OVER AGAIN.

THE COMP JUDGE CAN'T DO IT
BECAUSE HE'S AN EXECUTIVE
BRANCH OFFICIAL WE WOULD HAVE
TO GO TO THE JUDICIAL BRANCH.
WE WOULD BE DUMPING A MINIMAL
OF 100 CASE AS WEEK ON THEM.

SO JUST TO FOLLOW UP ON
THAT, IF IT'S AN FACIAL
CHALLENGE, YOU'RE, WE'RE REALLY
LIMITED TO THE, THE STATUTE
ITSELF, THE LANGUAGE OF THE
STATUTE.

WE CAN'T CONSIDER WELL WHAT

WOULD HAPPEN IN THIS PARTICULAR CASE.

BECAUSE WE'RE LOOKING AT JUST THE STATUTE FACIALLY AS APPLIED TO EVERYBODY IS IT CONSTITUTIONAL?

YEAH, BECAUSE IT SAID THIS IS REASONABLE.

THAT WAS THE LABEL.

AND THEN WHAT THEY DID ISN'T.

AND THAT'S WHY IT'S FACIALLY INVALID.

I MEAN,.

WELL, AGAIN, YOU CAN'T --

-- 16,000 WE HAVE TURNED THE WORLD UPSIDE DOWN.

THE WINNER GETS LESS -- IT'S BETTER TO LOSE.

IT MAKES NO SENSE.

IT'S CRAZY LAW.

AND.

BUT THE QUESTION WOULD --

NOT TRYING TO AVOID -- THE

QUESTION IS GETTING THROUGH.

IS WHETHER THERE IS A CASE OUT THERE, YOU KNOW, FOR A HIGHER

BENEFITS AND SUCH IS THAT,

WHERE IF THIS LEGISLATE

FORMULA WAS APPLIED, THAT IT

WOULD APPEAR TO GIVE A RESULT

AND IT ALSO APPEARS TO BE

REASONABLE.

ISN'T THERE A CASE OUT THERE

LIKE THAT.

THE PRYOR BALL WORKED FOR

DECADES.

THERE'S NOTHING WRONG -- THAT'S IN YOUR RULES.

THE VALUE OF A, OF THE FEE

TIMES THE RESULT IS SOMETHING

TO CONSIDER AS A STARTING

POINT.

NOT BEING THE ENDING POINT IS

DUE PROCESS IMPOSSIBLE.

THAT IS NOT THE QUESTION.

IS THERE A CASE OUT THERE --

SURE THERE ARE SOME CASES

WHERE IT WOULD WORK.

THERE ALSO LIMITATIONS ON OW

POUR.

I UNDERSTAND.

AND WHY THE POWER -- PRIOR

LAW MAY HAVE WORKED, THIS COURT

CAN'T JUST GO BACK AND SAY WELL

THE PRIOR LAW WORKED BEFORE
BETTER AND THEREFORE --
THE POINT IS THIS LAW IS
UNCONSTITUTIONAL, WHICH IT IS,
WOULD NOT WREAK CHAOS WE WOULD
REFER TO THE FORMER STATUTE
BECAUSE IT WAS AN AMENDMENT.
THAT WAS MY POINT.

OKAY.

THANK YOU VERY MUCH.

WE APPRECIATE THE ARGUMENTS,
AND WE'LL TAKE THE CASE UNDER
ADVISEMENT.