

THE NEXT CASE ON THE COURT'S AGENDA IS GOLDBERG VERSUS MERRILL LYNCH, AND THE DOCUMENTS SAY THIS IS 15 MINUTES FOR EACH SIDE.

THIS IS A CHANGE, THERE'S 20 MINUTES TO THE SIDE IN THE WAY YOU HAVE DIVIDED THE TIME IT LOOKS LIKE YOU REALIZE THAT BECAUSE IT COMES TO A TOTAL OF 40 MINUTES, SO WE WILL GO WITH MR. MILLER HAVING 11 MINUTES PLUS FOUR MINUTES FOR REBUTTAL AND MISS HOLCOMBE HAVE BEEN TEN MINUTES AND MR. LANG HAS 15 MINUTES.

>> OKAY.

MR. MILLER.

>> MAY IT PLEASE THE COURT, MY NAME IS LES MILLER AND ALONG WITH MY CO-COUNSEL I REPRESENT THE FORMANS AND GOLDBERG THE HOMEOWNERS.

THE FOURTH DISTRICT, A STANDING PREREQUISITES THAT IS RECOGNIZABLE WILL PREVENT-- FROM HAVING ANY REMEDY AND IT IS CONTRARY TO THE DECISION.

>> THE WAY YOU NEED TO GO HERE IS WHY THE LINE OF CASES FROM THE THIRD DISTRICT ON UP ARE DISTINGUISHABLE.

>> IN THE LIGHT OF THE CASES THAT SAY--

>> THOSE CASES ARE ALL INJUNCTIVE CASES AS WE PUT ON OUR BRIEF AND THE ROLE THAT THIS DOCKET SPECIFICALLY MADE IT OFFICIAL BETWEEN INJUNCTIVE

ACTION AND DISCIPLINARY ACTION, ONLY THE BAR CAN BRING IT TO

THIS COURT IN CIVIL ACTIONS ARE DAMAGES OF RESTITUTION.

>> SO, THAT IS THE DISTINCTION YOU ARE MAKING, IS THAT SOMEBODY COULD BRING AN INJUNCTION?

>> RIGHT.

>> BUT, THE ISSUE OF WHETHER THE PRACTICE OF LAW AND WHAT IS THE UNAUTHORIZED PRACTICE OF LAW IS DETERMINED BY THIS COURT, BUT WHAT THE BAR WILL BE ARGUING, IN THIS CASE, YOU ARE SEEKING TO HAVE A CLASS-ACTION, WHICH MUST BE SIMILAR TO OTHER STATES CLASS ACTIONS THAT HAVE BEEN BROUGHT, WHERE A BANK IS CHARGING I GUESS A PREPARATION FOR THE MORTGAGE DOCUMENTS AND A 50-DOLLAR CHARGE BY A NON-LAWYER OR FOR A BANK? IS THAT RIGHT?

>> RIGHT.

THE CHARGE IS \$250.

>> NOW, CLEARLY IF YOU HAD A CASE THAT SOMEONE WAS PRACTICING LAW AND THEY WERE TAKING DEPOSITIONS AND THEY WERE NOT A LAWYER, THAT WOULD BE SOMETHING THAT WE WOULD NOT BE CONCERNED ABOUT IT GOING INTO THE FORUM WHERE THERE HADN'T BEEN A SPECIFIC DETERMINATION BETWEEN THE PARTIES, BUT IN CASES THAT INVOLVE WHETHER DOCUMENTS BY NON-LAWYERS CONSTITUTE THE UNAUTHORIZED PRACTICE OF LAW, IT SEEMS THAT THERE HAVE BEEN A LOT OF NUANCES, AND NUANCED DISTINCTIONS WHETHER IT IS THE FILL IN THE BLANK DOCUMENTS, AND THE BAR HAS REALLY ENGAGED IN EXTENSIVE REGULATIONS. MY CONCERN THEN, IN THIS

SITUATION IS THAT IF YOU DON'T GET LEAST GET THE BAR TO MAKE THE GENERAL DECISION THAT THIS SITUATION THAT IS BY A BANK OF MORTGAGE DOCUMENTS IS THE UNAUTHORIZED PRACTICE OF LAW.

DON'T WE END UP HAVING A JURY ESSENTIALLY DECIDING WHAT THE COURT HAS NOT DECIDED WHETHER SOMETHING IS OR IS NOT THE PRACTICE OF LAW, APPLICATION, NOT JUST BETWEEN YOUR CLIENT AND THE BANK, BUT THAT ACTS, THAT IS WHETHER A BANK EMPLOYEE CAN DO THIS UNDER THE AUSPICES OF THE BANK AND CHARGED IN CONNECTION WITH A LOAN TRANSACTION? THAT IS MY CONCERN.

IS SAID AND ALL OR NOTHING SITUATION.

THE BAR IS ASKING FOR SOME IN BETWEEN SITUATION AND I'M JUST TRYING TO FIGURE OUT HOW IT WOULD DEFAULT TO SAY, SOMETIMES THE JURY COULD DECIDE IT BUT SOMETIMES THEY MIGHT NOT DECIDE IT, SO IF YOU COULD HELP CLARIFY YOUR POSITION IN THAT REGARD.

>> WE AGREE WITH THE BAR.

I THINK IT IS BASICALLY-- AND IF UNDER THE COURT'S PRIOR PRECEDENT AND RULES, THEN YOU COULD GO FORWARD ON THE COMPLAINT.

IS SIMILAR TO WHAT WE HAVE IN THE CRIMINAL CONTEXT WHERE AS LONG AS THE DUE PROCESS RIGHTS OF THE DEFENDANT ARE PROTECTED AND HE HAS FAIR WARNING THAT HIS ACTIONS WOULD BE-- HE CAN BE PROSECUTED FOR A FELONY BY A

JURY AND CONVICTED OF THAT.
>> THEN YOU ARE SAYING IT WOULD
BE A SUMMARY JUDGMENT MATTER IF
THERE ARE FACTS AND SOMEONE
TAKES A DEPOSITION.

WE KNOW THAT IS THE PRACTICE OF
LAW.

A LANDLORD-- SOMETHING THAT
HASN'T BEEN APPROVED BY THE
COURT, THEN IT IS PROBABLY
UNAUTHORIZED AND THE SUPREME
COURT FORUM IS AUTHORIZED, SO
DOES THE JUDGE THEN MAKE THAT
DETERMINATION AS TO WHETHER
THOSE FACTS NOT ONLY STATED

CAUSE OF ACTION BUT ACTUALLY AS
A MATTER OF LAW, CONSTITUTE THE
UNAUTHORIZED PRACTICE OF LAW?

>> I THINK IN THOSE CASES THAT
IS WHAT WILL HAPPEN.

THERE MAY BE A DISPUTE IN THE
PARTIES AS TO WHAT THOSE FACTS
ARE AND THEY WOULD BE INSTRUCTED
BY THE COURTS.

>> OKAY.

I AM NOT SURE I STILL UNDERSTAND
YOUR POSITION.

YOU SAID YOU AGREE WITH THE LAW
THAT THIS COURT HAS TO HAVE MADE
A GENERAL STATEMENT THAT THIS
KIND OF ACTIVITY IS THE
UNAUTHORIZED PRACTICE OF LAW?
IS THAT CORRECT?

>> YES.

OUR POSITION IN THE BAR'S
POSITION IS THAT DOES NOT HAVE
TO BE SPECIFIC AS TO ANY
PARTICULAR TYPE OF DEFENDANT,
THAT IT CAN BE A COMBINATION OF
SEVERAL DIFFERENT CASES.

>> BUT, THEN WE GET TO A

SITUATION THAT SEEMS TO ME,
WHERE YOU THEN HAVE THE JURY OR
THE TRIAL COURT JUDGE, IF YOU
DON'T HAVE A JURY, MAKING A
DECISION ABOUT WHETHER NOT
SPECIFIC CATEGORIES OF PEOPLE
ARE ACTUALLY YOU KNOW, DOING THE
UNAUTHORIZED PRACTICE OF LAW.
I AM THINKING OF THAT LINE OF
CASES WHERE WE TALKED ABOUT THAT
A PROPERTY MANAGER, EVEN THOUGH
THE ACTIVITY THEY WERE ENGAGING
IN WOULD GENERALLY BE
UNAUTHORIZED PRACTICE OF LAW, WE
SAID THAT BECAUSE THIS ACTIVITY
WAS BEING DONE BY A PROPERTY
MANAGER-- SO EVEN IF THIS COURT
HAS MADE A GENERAL STATEMENT
THAT THAT IS THE UNAUTHORIZED
PRACTICE OF LAW, DON'T WE STILL
GET TO A POSITION WHERE EITHER A
JUDGE, A TRIAL COURT JUDGE OR A
JURY IS MAKING THE DECISION THAT
THESE PARTICULAR PEOPLE HOWEVER

ARE EITHER-- OR NOT PRACTICING
LAW?

>> THE COURT HAS MADE EXCEPTIONS
FOR CERTAIN GROUPS OF
INDIVIDUALS TO PRACTICE BUT
THOSE EXCEPTIONS HAVE ALWAYS
BEEN LIMITED, USUALLY THERE
INCIDENT TO A BUSINESS THAN THE
EXCEPTION, INCIDENT OF A
BUSINESS EXCEPTION OF WHAT IS
CLEAR IN THIS CASE IS THERE WAS
A CHARGE MADE FOR THAT IN THE
COURT'S PRIOR HOLDING IN THE
TITLE SERVICES CASE, EVEN WHEN
THE COURT AUTHORIZES A SPECIFIC
INDIVIDUAL TO DO AN ACTIVITY IN
THEIR BUSINESS THEY CANNOT

CHARGE A SEPARATE FEE FOR THAT.
I THINK FOR A COUPLE OF
IMPORTANT REASONS.
ONE IS IT CREATES A BRIGHT LINE
THAT WON'T OCCUR WITH
NON-LAWYERS IN CHARGING PEOPLE
FOR THEIR LEGAL SERVICES AND
JUST TO KEEP THOSE ACTIVITIES AS
INCIDENTS OF THEIR BUSINESS WHEN
COMMERCE, THE WHEELS OF COMMERCE
TURN MORE QUICKLY.
BUT NEVER HAS THE COURT ALLOWED
A FEE TO BE CHARGED FOR THE
NON-LAWYER TO GO INTO THE
BUSINESS OF LAW.

>> WHEN I ASKED YOU TO
DISTINGUISH THE LINE OF CASES,
YOU STOPPED THAT INJUNCTION.
IT SEEMS TO ME THAT THIS IS THE
ENTIRE UNDERLYING PRINCIPLE OF
THAT LINE OF CASES.

THAT THE DISTINGUISHED YOU WILL
HAVE TO DEMONSTRATE TO US, THAT
THAT REASONING IN THOSE CASES
THAT WERE GOING TO GET INTO AN
AD HOC DETERMINATION OF
UNAUTHORIZED PRACTICES OF LAW
FROM TIME TO TIME DEPENDING UPON
THE CIRCUMSTANCES IS AN
UNDERLYING ACHILLES HEEL AND
THAT IS WHERE I THINK YOU REALLY
RUN INTO THE ESTABLISHED LAW.
HAS THIS COURT EVER HELD THAT

LENDERS, LENDING INSTITUTIONS
AND MAYBE EVEN MORE
CHARACTERIZATION TO MATCH THIS
CASE, CANNOT, CANNOT PREPARE THE
NECESSARY DOCUMENTS, MORTGAGE
NOTES AND MORTGAGES, AND HAVE A
CHARGE FOR THAT?

>> NO, NOT STATE SPECIFIC--

>> AGAIN, SEE THAT IT COMES DOWN TO SOMEONE, EITHER A TRIAL JUDGE OR A JURY WILL HAVE TO THEN COME TO THAT CONCLUSION FOR YOU TO PREVAIL, CORRECT?

>> CORRECT.

>> THOSE CASES SEEM TO SAY THAT THAT IS WHAT THEY ARE TRYING TO AVOID AND THAT IS WHY I NEED YOU TO DISTINGUISH THOSE ARE SOMEHOW EXPLAIN WHY THE CASE IS DIFFERENT THAN THE THEORY, THE UNDERLYING THEORY.

>> THIS CASE IS DIFFERENT BECAUSE OF THE CHARGE. THE COURT, WHEN A JUDGE WOULD HAVE TO MAKE A DECISION WHETHER OR NOT THIS COURT WOULD AUTHORIZE THE ACTIVITY, THIS COURT HAS ALWAYS SAID YOU CANNOT CHARGE A FEE WHEN THEY LAYPERSON PRACTICING LAW--

>> BUT WE HAVE NOT SAID THAT YET.

IT IS A LENDING INSTITUTION SITUATION.

HAS THE COURT HELD THAT YOU CANNOT-- THE DOCUMENT?

>> A BANK?

NO.

>> SO WE HAVE NOT SAID THAT. SO WE HAVE TO CROSS THAT, WHETHER THERE IS A CHARGE OR NOT.

>> YES.

>> SO EITHER THE TRIAL JUDGE OR THIS JURY OR THE-- IS GOING TO HAVE TO SAY THAT AS A MATTER OF LAW, THIS IS AN UNAUTHORIZED PRACTICE OF LAW.

>> BUT THE COURT'S RULES SAY MORTGAGES AND DEEDS AND

DOCUMENTS THAT AFFECT THE INTERESTS OF THE REAL PROPERTY IN THE PRACTICE OF LAW IS A FUNDAMENTAL THING.

>> IN CONNECTION WITH THE BANK AND IN CONNECTION WITH THE LAW. YOU ARE SAYING MAYBE IT DOES NOT.

IT IF THAT IS WHAT YOU ARE SAYING IT MAKES NO DIFFERENCE THAT THIS IS A BANK OR LENDING INSTITUTION IN THE COURSE OF PREPARING DOCUMENTS YOU HAVE TO HAVE.

>> I AM SAYING THE DETERMINATION OF WHETHER NOT IT IS A PRACTICE OF LAW IS SOMETHING THE COURT CAN DECIDE WHETHER IT IS A BANK IN GENERAL, WHETHER NOT THERE'S A POINT TO BE AN AUTHORIZATION IS A SEPARATE INQUIRY AND WHETHER NOT THERE'S GOING TO BE A FEE ALLOWED, THE COURT IS NEVER ALLOWED A FEE FOR AN AUTHORIZATION FOR A LAYPERSON TO PRACTICE LAW.

>> YOU ARE TRYING TO BRING A CLASS-ACTION ON BEHALF OF HOW MANY?

>> THOUSANDS.

>> THOUSANDS?

THEY ARE ALL SIMILARLY SITUATED? SO IT IS ONE THING TO SAY THAT YOU WOULDN'T WANT EACH OF THOSE INDIVIDUALS TO HAVE TO GO BEFORE THE BAR AND HAVE A REFEREE MAKE THIS DETERMINATION?

BUT I GUESS WHAT I WONDER IS, WHAT IS THE PROBLEM WITH A REPRESENTATIVE PERSON HAVING, FILING THIS COMPLAINT WITH THE

BAR, HAVING A REFEREE MAKE THIS DECISION, HAVING THE COURT, SINCE WE ARE TALKING ABOUT THOUSANDS OF INDIVIDUALS REFINANCING ALL THE TIME IN THIS STATE, MAKE THAT DETERMINATION SO IT WOULD HELP YOUR CLIENT. IT WOULD HELP MAINTAIN THE UNIFORMITY

THE SYSTEM THAT THIS COURT IS SET UP IS REALLY NOT DESIGNED TO MAKE DECISIONS ON SOMETHING THAT IS AFFECTING THOUSANDS OF PEOPLE AND I WOULD FIND THAT TO BE QUITE DISCONCERTING.

IF THE BAR DOESN'T THINK THIS IS IMPORTANT ENOUGH, WE ARE GOING TO INSTEAD ALLOW A CLASS-ACTION TO PROCEED AND BROWARD OR DADE OR WHEREVER, AND HAVE IT CITED FOR THE FIRST TIME THERE?

>> A LOT OF THE SITUATIONS WHERE THE BARN FACTS SAYS, AND CASES WHERE THE PRACTICE IS NO LONGER BEING IMPLEMENTED.

>> IS THIS A PRACTICE FOR A SHORT PERIOD OF TIME?

>> I AM NOT SURE IF THIS ON THE RECORD.

>> IF IT WAS NOT A DISMISSAL THAN WE HAVE A COURT OF APPEALS DECIDING WHAT THE UNAUTHORIZED PRACTICE OF LAW IS AND THE CONSTITUTION REQUIRES IT BE DONE BY THE COURT.

>> THE CONSTITUTION GIVES THIS COURT DISTINCTION NOT OVER DISCIPLINE OF LAWYERS AND THE COURT TO RULE INTERPRETED AS INJUNCTIVE DISCIPLINARY ACTION TO REGULATE THE PRACTICE.

IN THIS CASE, WHAT WE ARE DOING
IS WE ARE SEEKING A REMEDY FOR
SOMETHING.

WE ARE NOT PROHIBITING-- THERE'S
NO OTHER MEANS FOR AN INDIVIDUAL
COMPLAINANT TO GET THAT REMEDY
UNLESS THEY BRING A CIVIL SUIT
AND I THINK THE RULE AMENDMENT
CASE AND THE WARREN CASE
RECOGNIZE THAT YOU ARE NOT
ALWAYS GOING TO HAVE A
PROSECUTION IN THE COURT
INDIVIDUALLY TO BE ABLE TO BRING
THE TRIAL COURT--

>> YOU ARE WELL INTO YOUR
REBUTTAL AND I WILL GIVE YOU A
MINUTE FOR YOUR REBUTTAL.

>> THANK YOU.

MAY IT PLEASE THE COURT.

I AM LORI HOLCOMBE, THE LAW
COUNSEL FOR THE FLORIDA BAR.

WE ARE HERE TODAY BECAUSE WE
WERE ORDERED BY THE COURT TO
ANSWER ONE SPECIFIC QUESTION.

THE COURT ASKED US TO FILE A
BRIEF FOCUSING ON THE EXISTENCE
INADEQUACY OF REMEDIES THAT MAY
BE AVAILABLE TO THOSE CLAIMING
TO HAVE BEEN HARMED BY THE
UNAUTHORIZED PRACTICE OF LAW.

>> LET ME ASK YOU SOMETHING
RIGHT OFF THE BAT HERE AND THAT
IS, DO YOU KNOW IF THERE HAS
EVER BEEN A COMPLAINT FILED THAT
INVOLVES THESE KINDS OF LENDING
INSTITUTIONS AND WHETHER OR NOT
WHAT THEY WERE DOING AND THE
MONIES THEY WERE CHARGING
CONSTITUTED THE UNAUTHORIZED
PRACTICE OF LAW?

>> AS FAR AS I AM AWARE WE HAVE

NOT HAD A COMPLAINT ON-- AND I WOULD LIKE TO FOLLOW-UP ON JUSTICE PARIENTE'S QUESTION ABOUT WHAT WAS THE PROBLEM AND FILING A COMPLAINT.

AS FAR AS WE ARE CONCERNED THERE WAS NOT A PROBLEM.

THE ISSUE AS MR. MILLER POINTED OUT, WE DON'T ALWAYS PROSECUTE. FOR THE PAST THREE YEARS THE AVERAGE 650 CASES, COMPLAINTS TO COME INTO OUR OFFICES A YEAR. OF THOSE IN 2003 WE FILED 22 CASES IN THIS COURT SO THE MAJORITY OF OUR CASES ARE HANDLED SHORT OF MITIGATION.

>> MOST OF THE CASES I HAVE SEEN ARE THESE INDIVIDUAL, INDIVIDUALS WHO ARE REALLY TRYING TO PRACTICE LAW AND THEY ARE PAYING MONEY, BUT THIS IS SOMETHING THAT WE ARE TALKING ABOUT THOUSANDS OF PEOPLE THAT WERE EITHER WRONGED BY LENDING INSTITUTIONS, AND I GUESS IT STRIKES ME AS BEING SOMEWHAT INCONSISTENT FOR THE BAR TO SAY

WELL, WE CAN'T PROSECUTE EVERY CASE, BUT IT IS BROUGHT TO YOUR ATTENTION THAT A POTENTIAL VIOLATION HAS BEEN COMMITTED BY SOME MAJOR LENDING INSTITUTIONS, THAT THAT WOULD SEEM TO BE AT THE TOP OF THE SCALE OF WHAT THE BAR AND THE COURT SHOULD BE INTERESTED IN JUST LIKE WE GIVE GUIDANCE FOR LEASES, JUST AS WE GIVE GUIDANCE IN LEASES, THOSE OTHER AREAS, THE REAL PROPERTY AREAS.

SHOULDN'T THIS BE ONE THAT WE

ARE VERY EXPLICIT ABOUT?

I UNDERSTAND WE ARE GOING TO HAVE TO SOMETIMES HAVE NUANCES THAT WE CAN'T TAKE CARE OF EVERY SINGLE COMPLAINT, BUT IN TERMS OF THE SITUATION WHERE THERE HAS BEEN NO DETERMINATION THAT THIS SPECIFIC TYPE OF CONTACT, NOT AS TO THE VICTIM, BUT AS TO THIS LENDER AND THE SPECIFIC SET OF FACTS, WOULDN'T THE BAR THINK IT WAS PREFERABLE TO TAKE THIS ONE AND MAKE A DETERMINATION THAT THE COURT CAN SAY YES OR NO AND THEN LET THIS CLASS-ACTION EITHER PROCEED OR NOT PROCEED? THIS SEEMS SO MUCH MORE IN LINE WITH WHAT THE COURT HAS WANTED TO DO IN THE UNAUTHORIZED PRACTICE OF LAW THAN LET IT GO IN DIFFERENT CLASS ACTIONS BEING FILED IN FIVE DIFFERENT DISTRICTS AND MAYBE FIVE DIFFERENT VIEWS COMING UP AND THEN SEVERAL YEARS LATER THIS COURT FINALLY MAKING A DECISION, MAYBE, MAYBE NOT.

>> WE ARE TOTALLY COMPLAIN DRIVEN SO WE DO NOT INVESTIGATE UNLESS WE RECEIVE A COMPLAINT AND THERE ARE TWO WAYS TO GET TO THE COURT.

I ALWAYS TELL PEOPLE YOU CAN GET TO THE COURT IN AN ADVISORY OPINION.

WHEN SOMEONE COMES TO THE BAR

AND ASKS THE QUESTION, IS THIS THE LIKELY PRACTICE OF LAW? IT GOES DIRECTLY TO THE COURT. THE WAY THE PROCESS WORKS IS IT GOES FIRST TO THE STANDING

COMMITTEE AND THEN MAKE A DETERMINATION AS TO WHETHER TO HOLD A PUBLIC HEARING ON THE ISSUE AND SOMETHING LIKE THIS THAT PROBABLY WOULD BECAUSE IT IS OF GREAT IMPORTANCE TO AN ISOLATED INCIDENT.

THEY WON'T TAKE IT AS AN ADVISORY OPINION AND THEN THERE'S A PUBLIC HEARING HELD IN THE STANDING COMMITTEE ISSUES A PROPOSED ADVISORY OPINION WHICH GOES TO THE COURT WHO HAS THE FINAL SAY.

YOU CAN EITHER ADOPT THE OPINION OR MODIFY THE OPINION.

>> WITH THAT PROCESS BE FOLLOWED BY A LAWYER WHO WANTED TO DO SOMETHING-- I AM SORRY, BY SOMEONE WHO WANTED TO DO SOMETHING OR SOMEONE WHO WAS UPSET ABOUT WHAT SOMEBODY HAD DONE?

>> EITHER/OR.

WE HAVE SEEN IT BOTH WAYS. THE OTHER WAYS TO BE PROSECUTED WHICH IS THE FLORIDA BAR.

USUALLY WHEN PEOPLE ARE GIVEN THE CHOICE THEY WANT TO GO THE ADVISORY ROUTE .

FRANKLY WE DIDN'T KNOW ABOUT THE-- AND THAT IS WHEN WE FIRST LEARN.

>> I THINK WE WANTED THE BAR IN HERE BECAUSE WE HAVE BEEN VERY SUPPORTIVE OF THE BAR'S EFFORTS AND THE UNAUTHORIZED PRACTICE OF LAW AND IT SEEMS THAT SOMETHING LIKE THIS, WHEREAS WE DON'T WANT TO DENY ANY INDIVIDUAL OR REMEDY, THE CONDUCT HAS ALREADY BEEN EXPLAINED OR SET FOR THIS

BEING UNAUTHORIZED, BUT IF IT IS
IN A GRAY AREA AND IT AFFECTS
THOUSANDS OF PEOPLE, IT JUST

SEEMS THAT WE ARE ASKING FOR
TROUBLE TO LET IT GO THE ROUTE
OF A LAWSUIT BEFORE THERE IS ANY
DETERMINATION.

I MEAN, THE BAR, THERE ARE
PRACTICES OF LAW AND ISN'T THAT
OF CONCERN TO THE BAR?

>> TO BE HONEST, NOT REALLY.

>> I SUPPOSE I TRUST THE TRIAL
COURT.

THERE IS CASE LAW IN AN ANOMALY.
THERE IS CASE LAW IN PREPARING
DOCUMENTS.

THERE IS A CASE ON APPEARING AND
CHARGING AND NOT CHARGING.

WHAT THERE ISN'T A CASE LAW ON
THIS IS A BANK DOING ALL OF
THOSE THINGS.

>> BUT IN THAT REGARD, IT ISN'T
THIS SPECIFIC LEGAL ISSUE HERE
LIKE LOTS OF OTHER LEGAL ISSUES
IN THE WORLD, THAT'S MAYBE A
QUESTION OF FIRST IMPRESSION,
BUT WHEN YOU LOOK OF THE BROAD
LEGAL LANDSCAPE, THE ANSWER IS
PRETTY CLEAR.

>> YES.

AND I HAVE ENOUGH FACTS HERE TO
TELL YOU THE ANSWER IN THIS
PARTICULAR CASE.

THE FACTS WERE NEVER DEVELOPED,
BUT THE BAR IS HERE BECAUSE THE
COURT HAS TO BE HERE AND
OBVIOUSLY WE WILL FOLLOW ANY
DIRECTIVE OF THE COURT.

>> WHAT WOULD HAPPEN IF WE, IF A
STATE ATTORNEY FOR EXAMPLE
WANTED TO PROSECUTE FOR THE

UNAUTHORIZED PRACTICE OF LAW
UNDER THE CRIMINAL STATUTE, AND
THIS COURT HAD NEVER MADE ANY
RULING ABOUT WHETHER NOT THAT
WAS THE UNAUTHORIZED PRACTICE OF
LAW?

CAN YOU HAVE THE CRIMINAL
PROSECUTION WITHOUT THIS COURT
HAVING SAID THAT THE CONTACT IS
AN UNAUTHORIZED PRACTICE OF LAW?

>> I BELIEVE THEY HAVE.

I BELIEVE THEY CAN AND THEY HAVE

BECAUSE THE CRIMINAL STATUTE IS
VERY BROAD.

>> THAT IS THE PART THAT SAYS
HOLDING YOURSELF OUT.

>> RIGHT.

>> THERE'S ALSO THE BEGINNING OF
THAT STATUTE THAT TALKS ABOUT
ACTUALLY DOING THINGS THAT ARE
WITHIN THE PRACTICE OF LAW, SO I
AM TRYING TO FIGURE OUT HOW TO
ALSO DOVETAIL INTO ANY KIND OF
CRIMINAL PROSECUTION THAT COULD
POSSIBLY GO ON FOR THE
UNAUTHORIZED PRACTICE OF LAW.

>> I DO RECALL BEING INVOLVED IN
A CRIMINAL PROSECUTION MANY
YEARS AGO THAT WAS THE NOVEL
QUESTION FOR THAT COURT AND THE
INDIVIDUAL WAS CONVICTED.

I DON'T REMEMBER THE EXACT
CIRCUMSTANCES.

I'VE NEVER BEEN ASKED TO
PARTICIPATE IN THAT CASE.

OBVIOUSLY THE BURDEN OF PROOF IS
A LITTLE DIFFERENT IN CIVIL AND
BRINGING THE QUESTION TO THIS
COURT, IT WILL BE HAPPY TO TAKE
THIS ISSUE IN PREPARING THESE
TYPES OF DOCUMENTS AND CHARGING

A FEE BUT UNDER OUR PROCEDURE REALLY THE ONLY WAY TO GET IT THERE IS BY FILING A COMPLAINT. >> DO YOU AGREE THAT THERE IS THE DISTINCTION THAT HAS BEEN BROUGHT UP BY COUNSEL THAT OUR CASE LAW, WHICH HAS SAID THAT YOU CANNOT, SOMEONE CAN SUE FOR AN INJUNCTION BUT ARE THERE RULES NOW THAT ACTUALLY ALLOW THIS AND THEN THE ISSUE OF WHETHER IT HAS HARDLY BEEN DECIDED OR NOT IS REALLY NOT SOMETHING THAT IS GOING TO HAVE TO GO ON A CASE-BY-CASE BASIS? IN OTHER WORDS, DO WE HAVE TO GO WITH THE PETITIONERS HERE, BASICALLY SAYING THE DAMAGE ACTIONS ARE DIFFERENT AND THAT THESE ACTIONS CAN BE BROUGHT CIVILLY AND THERE HAS BEEN A

DETERMINATION BY THE COURT AS TO THIS SPECIFIC CONTACT?

HOW CAN WE SAY AS LONG AS THERE'S A DETERMINATION IN THE GENERAL CONTEXT, WHERE WOULD THAT FIT IN IN TERMS OF THE RULE OF LAW?

>> I BELIEVE WHEN YOU LOOK OF THE DEFINITION OF ANY UNLIKELY PRACTICE OF LAW IN CHAPTER 10 IT SAYS THE UNLICENSED PRACTICE OF LAWS PROHIBITED BY A STATUTE AND THEN WHEN THIS COURT FOUND JURISDICTION OVER THE UNAUTHORIZED PRACTICE OF LAW, WE ALWAYS LOOK AT IT AS A BACK DOOR TO THIS PLAN WERE THIS COURT HAS THE AUTHORITY TO ADMIT AND REGULATE. YOU HAVE THE INHERENT AUTHORITY

TO PROHIBIT THE UNLICENSED PRACTICE OF LAW AND THE DADE COUNTY CASE WHERE SOMEONE THOUGHT TO--

>> YOU ARE SAYING, IN SHORT THAT THE DISTRICT OPINION IS JUST WRONG, THAT DAMAGE ACTION, UNAUTHORIZED PRACTICE OF LAW CAN, TO NOT INTERFERE WITH THIS COURT INCONCLUSIVE JURISDICTION OVER THE PRACTICE OF LAW?

>> YES.

>> AND ONE OTHER QUESTION HERE. IT WAS MAINTAINED THAT IN PREVIOUS CASES WHERE WE MADE EXCEPTIONS.

WE SAID THIS WAS THE UNAUTHORIZED PRACTICE OF LAW AND THIS PROPERTY MANAGER CAN DO THESE KINDS OF DOCUMENTS.

YOU CANNOT CHARGE FOR THEM?

>> I BELIEVE WHAT HE WAS TALKING ABOUT WAS MORE IN THE TITLE CASES AND IF THE ENTIRE INSURANCE COMPANIES, WHAT THIS COURT HELD IS IT IS NOT THE UNLICENSED PRACTICE OF LAW FOR A TITLE COMPANY TO ACCEPT THE CLOSING AS LONG AS THEY DON'T CHARGE FOR IT BECAUSE IT HAS TO

THE INCIDENT TO THE ISSUANCE IN TITLE INSURANCE SO IN OTHER WORDS, THEIR JOB AND THEIR BUSINESS HAS ISSUED TITLE INSURANCE AND THEY CAN DO IT IF THEY ARE CHARGING SEPARATE THEN IT BECOMES A SEPARATE ACTIVITY. IT IS THE SAME WITH THE REAL ESTATE LICENSEE.

>> THEY COULD CHARGE FOR PREPARING A MORTGAGE IF THEY DID

NOT HAVE A LAWYER DO IT?
FOR CHARGING FOR A DEED IN
CONNECTION WITH THE CLOSING.
>> AS LONG AS IT IS INCIDENT TO
THE TITLE INSURANCE AND THEY
COULD PREPARE THE DOCUMENTS.
IF THEY WERE NOT ISSUING TITLE
INSURANCE, THEY CAN CHARGE
SEPARATELY.

>> THAT IS THE ISSUE HERE.
ISN'T THAT ANALOGOUS TO THIS
SITUATION WE HAVE TO LITIGATE?

>> HERE THERE WAS A SEPARATE
CHARGE.

AND BECAUSE WHEN IT IS INCIDENT
TO THE BUSINESS YOU CAN DO IT
BUT IF YOU ARE CHARGING
SEPARATELY, THEN IT IS NO
LONGER.

JUST LIKE-- THE SAME WITH THE
LICENSEE, THE REAL-ESTATE
LICENSEE CAN DRAFT A CONTRACT
FOR SALE BECAUSE IT SHOWS THEIR
HANDIWORK OF BRINGING TOGETHER
THE BUYER AND SELLER.

THEY DON'T CHARGE SEPARATELY FOR
THAT.

IT IS ALL PART OF THEIR
COMMISSION SO I BELIEVE--

>> I AM GOING TO ASK ONE FINAL
QUESTION AND IT GOES BACK TO THE
ADVISORY OPINION AND PROCESS.
IN THE FACTUAL CIRCUMSTANCES
PRESENTED HERE, AM I CORRECT IN
UNDERSTANDING THAT EITHER THE
BANKS OR THE PEOPLE THAT WERE
UNHAPPY WITH WHAT THE BANKS HAD
BEEN DOING COULD HAVE GONE AND
SOUGHT IN ADVISORY OPINION ON

THIS ISSUE?

>> THAT IS CORRECT.

ANYONE CAN ASK FOR AN ADVISORY
OPINION.

THEY CAN'T UNTIL THIS COURT
DECIDES THE CASE BECAUSE THE
CASE IS PENDING BEFORE ANY
TRIBUNAL, THEN THEY CAN'T.

[INAUDIBLE]

>> NO, THERE'S NO STATUTE OF
LIMITATIONS.

>> I HAVE TWO QUESTIONS ON THE
BAR'S INVOLVEMENT.

FIRST, IS THERE A RULE THAT
SEEMS TO INDICATE THAT YOU DON'T
HAVE TO GO THROUGH THIS
UNAUTHORIZED PRACTICE OF LAW,
THAT YOU CAN FILE LEGAL ACTION?
ISN'T THERE ROOM SOMEPLACE THAT
ALLOWS THIS?

>> THERE'S NOT A BAR RULE THAT
TALKS ABOUT THAT, NO.

THERE'S SEVERAL THE TALKS ABOUT
RESTITUTION THAT INDIVIDUALS
COULD SEE THERE ON RESTITUTION.

>> I AM SAYING THAT THEY CAN
SEEK THEIR OWN-- THERE IS A RULE
THAT SAYS THAT.

SECONDLY, WHAT IS THE
RELATIONSHIP TO THIS BOARD OF
GOVERNORS AND THE CONCEPT OF
DISCRETION IN CONNECTION WITH
UPL RULINGS.

DO YOU HAVE TO GO TO THE BOARD
OF GOVERNORS FOR THEIR INPUT?

>> NO, NO.

IT IS INDEPENDENT, AND FOR
EXAMPLE IN THE ADVISORY OPINION
PROCESS THAT IS ALL HANDLED BY
THE STANDING COMMITTEE ON
LICENSE PRACTICE OF LAW.

WE TELL THE BOARD WHAT WE ARE
DOING BUT WE CANNOT GO TO THE
BOARD SEEKING PERMISSION AND IT

HAS TO DO WITH KEEPING THE TWO SEPARATE BECAUSE OF VARYING ISSUES.

FOR PROSECUTION WE DO HAVE TO GET BOARD APPROVAL TO PROSECUTE IF WE ARE GOING TO FILE AN

ACTION, BUT FOR THE BUYS THREE OPINION PROCESS WE DO NOT HAVE TO GO TO THE BOARD.

>> THANK YOU VERY MUCH FOR YOUR PRESENTATION.

>> MAY IT PLEASE THE COURT.

JOE LANG ON BEHALF OF MERRILL LYNCH.

WE DO BELIEVE THAT THIS FALLS SQUARELY WITHIN THE COURT'S EXCLUSIVE JURISDICTION AND LET ME JUMP RIGHT TO THE CHASE AND TELL YOU WHY WE CAN'T HAVE A SYSTEM WHERE YOU PIECE TOGETHER WHAT IS OUT THERE IN THE CIRCUMSTANCES.

AND THAT IS BECAUSE THE CASES THAT ARE OUT THERE ARE FUNDAMENTALLY DIFFERENT THAN WHAT IS HAPPENING HERE.

THIS CASE HAS NEVER BEEN DECIDED AND THAT IS BECAUSE THE CASES THAT ARE OUT THERE, THE PETITIONER SITE ALL INVOLVED HAVING A CLIENT AND THAT IS WHAT IS FUNDAMENTALLY DIFFERENT HERE, IS THAT THE LENDERS IN THIS CASE ARE PREPARING THESE DOCUMENTS FOR THEIR OWN BENEFIT.

THEY ARE NOT PREPARING THESE DOCUMENTS FOR A CLIENT, AND THAT SETS THIS APART.

>> THEY ARE CHARGING THE CONSUMER A SPECIFIC AMOUNT FOR THE SPECIFIC PREPARATION OF

THESE DOCUMENTS.

SO, IF IT IS NOT, IT SEEMS THAT
THE CONSUMER HAS GOT SOME
INTEREST AND THAT.

ISN'T THAT CORRECT?

>> THEY ARE PASSING THE COST OF
PREPARATION OF DOCUMENTS ON.

WE DON'T HAVE A RECORD AS TO
WHAT EXACTLY THAT FEE ENTAILS
BUT THEY ARE PASSING THE
DOCUMENT PREPARATION FEE ON.

>> THE DOCUMENT IS PREPARED BY A
NON-LAWYER, RIGHT?

A NON-LAWYER CAN CHARGE FOR
DOCUMENTS?

IS THAT YOUR POSITION?

>> YES YOUR HONOR THAT IS OUR
PROVISION UNDER THE
CIRCUMSTANCES BUT WE ARE NOT
HERE ON THE MERITS OF WHETHER
THEY CAN OR CANNOT AND I NEED TO
BE--

>> WELL, LET'S START WITH, THERE
IS CASE LAW THIS IS THE
PREPARATION OF THESE KINDS OF
DOCUMENTS IS THE PRACTICE OF
LAW, CORRECT?

>> YES YOUR HONOR.

>> ALRIGHT, YES.

IT IS THE PRACTICE OF LAW.
AND WE HAVE CASE LAW THAT MAY
HAVE SAID THAT SOME SPECIFIC
KINDS OF PEOPLE, EVEN THOUGH IT
IS THE PRACTICE OF LAW, ARE
AUTHORIZED TO DO IT.
WE DON'T HAVE CASE LAW THAT SAYS
THESE BANKS FOR LENDING OUR
INSTITUTIONS ARE AUTHORIZED TO
DO IT, DO WE?

SO I'M TRYING TO GET TO THE REAL
OF YOUR ARGUMENT, WHICH IS ARE

YOU SAYING THAT WE HAVE TO HAVE CASE LAW THAT SAYS SPECIFICALLY WHETHER OR NOT YOUR LENDING INSTITUTION ARE AUTHORIZED TO DO THIS.

>> I'M NOT SAYING THERE HAS TO BE A CASE THAT NAMES MERRILL LYNCH.

>> A LIVING INSTITUTION.
A LENDING INSTITUTION.

>> UNDER THESE ALLEGATIONS YES BECAUSE THE CASE LAW CANNOT PREPARE MORTGAGES, CANNOT PREPARE NOTES.

THOSE ARE ALL CASES WHERE YOU ARE PREPARING NOTES FOR A CLIENT.

>> LET'S STOP HERE AND ANALYZE. SO YOU ARE SAYING THAT WHEN SOMEONE PREPARES THAT MARKET IS REALLY TO THE BENEFIT OF THE LINE THERE, NOT OF THESE PEOPLE?

>> ABSOLUTELY YOUR HONOR.

>> THEN WE HAVE ANOTHER QUESTION

ABOUT CAN THEN CHARGE FOR IT AND PASS THAT ON TO THE CONSUMER SO THAT MAY BE AN ISSUE BUT HOW ABOUT THE DEED?

THE DEED CERTAINLY PROTECTS, I GUESS IT DOES PROTECT THE INSTITUTION'S LENDING MONEY TO SOME EXTENT BUT IT'S CERTAINLY IS, WHERE A DEED IS TRANSFERRING PROPERTY TO THE CLIENT WHO IS HAPPY TO PAY FOR THAT.

SOMEBODY WOULD HAVE TO PREPARE A DEED FOR THEM.

IS IN THAT DIFFERENT THAN THE MORTGAGE AND ISN'T THAT DIFFERENT?

>> THESE ARE CERTAINLY DIFFERENT

THAN MORTGAGES.

THIS IS A LITTLE BIT COMPLICATED
ON THIS RECORD.

THE REASON IT IS COMPLICATED IS,
WE KNOW THAT THERE ARE NO DEEDS
HERE.

THESE ARE REFINANCING AND YOU
CAN LOOK AT THE HUD ONES
ATTACHED TO THE CLASS-ACTION
COMPLAINTS AND THEY CAN TELL
BOTH OF THESE PLAINTIFFS ARE
REFINANCING TRANSACTIONS WERE
THERE WOULD NOT BE DEED.

>> A DEED WOULD BE DIFFERENT
THAN THE MARKET CERTAINLY SO
THESE, YOU ARE SAYING THE
DOCUMENTS ON FILE SHOWS THAT
THESE ARE FOR MORTGAGES AND
NOTES?

>> YES, SIR.

>> THE CASE SAYS THAT THE BANKS
CAN PREPARE LEGAL DOCUMENTS?
I KNOW YOU SAID IT IS NOT CASE
SPECIFIC.

>> I WOULD TURN TO THE CASE THAT
SAYS IN ORDER TO BE PRACTICING
LAW, YOU HAVE TO HAVE A CLIENT,
AND IN THAT CASE, THEY ALLOW THE
TITLE COMPANIES--

>> THEY CAN CHARGE FOR IT.

>> I'M SORRY?

>> CAN THEY CHARGE FOR IT?

>> THE TITLE COMPANY IS ALLOWED

TO CHARGE A PREMIUM BUT NOT
ALLOWED TO CHARGE FOR THE
PREPARATION.

>> WE ARE TALKING ABOUT THE
PREPARATION OF THIS DOCUMENT.

>> THE REASON IS THAT WAS
PREPARED FOR THE BENEFIT OF A
CLIENT OR THIRD-PARTY WHERE IS

THE TITLE COMPANY IS PREPARING A MORTGAGE, A NOTE OR A DEED--
>> I UNDERSTAND THEY CANNOT CHARGE FOR THAT SPECIFIC DOCUMENT.

THEY CAN CHARGE A PREMIUM.
>> THAT IS CORRECT BUT THEY ARE PREPARING IT FOR SOMEBODY ELSE. IN THIS CASE WE ARE PREPARING IT FOR OURSELVES.

>> YOU CAN CHARGE THEM FOR SOMETHING YOU ARE PREPARING?

>> YOU CAN'T PASS THE COST--
[INAUDIBLE]

>> OF COURSE HERE WE ARE TALKING ABOUT-- BUT THE QUESTION I HAVE, WHEN MAY PARTY FILE FOR THE ALLEGED UNAUTHORIZED PRACTICE OF LAW ONLY IF THE SUPREME COURT OF SOUTH FLORIDA DECIDES THE CONDUCT AUTHORIZES THE UNAUTHORIZED PRACTICE OF LAW. DO YOU AGREE WITHOUT, THAT THE CONDUCT MUST HAVE BEEN DECIDED TO BE THE UNAUTHORIZED PRACTICE OF LAW?

>> YES.

>> BUT NOW, YOU ARE NOT SAYING THAT THIS CLASS CONSISTS OF THOUSANDS OF INDIVIDUALS, THE THOUSANDS OF INDIVIDUALS NEED TO FILE COMPLAINTS TO GET A DETERMINATION FROM THIS COURT THAT THE CONDUCT WAS THE UNAUTHORIZED PRACTICE OF LAW?

>> ABSOLUTELY NOT YOUR HONOR.

>> IT HAS TO BE A REPRESENTATIVE INDIVIDUAL TO MAKE SURE THERE WAS EITHER A WRITTEN OPINION OR AN ADVISORY OPINION?

[INAUDIBLE]

>> AND I AM PROBABLY, SOMETIMES

I THINK THE PRACTICAL WAYS OUT OF THIS.

IT SEEMS LIKE THIS IS A MAJOR ISSUE.

OF SEEMS LIKE MAYBE THE CASE LAW MIGHT ARE MIGHT NOT ANSWER IT BUT SPECIFICALLY ANSWER IT FOR LENDERS.

OF THE BAR HAS SAID THEY CAN'T DO ANYTHING WHILE THE CASE IS PENDING.

HAS ANYONE THOUGHT ABOUT ASKING THE COURT TO STAY THE PROCEEDINGS IN THIS CASE, WHILE ADMINISTRATIVE DETERMINATION IS MADE AND THEN COME UP TO THE COURT SEPARATELY SO THAT WE CAN TRY TO DO BOTH, MAKE THE DECISION WE ARE TRYING TO MAKE NOW, WHETHER THIS IS AUTHORIZED OR NOT AUTHORIZED?

>> WE HAVE MADE CLEAR TO THE PROCESS THAT PRACTITIONERS SHOULD IF THIS IS WHAT THEY WANTED TO GO TO FLORIDA BAR AND FILE A COMPLAINT.

WE HAVE NOT CONSIDERED A STAY IN THIS COURT.

>> HAVE YOU CONSIDERED AT ANY POINT, CONSIDER SEEKING AN ADVISORY OPINION FOR YOUR CLIENTS SEEKING AN ADVISORY OPINION ON THIS ISSUE?

>> NOT THAT I KNOW OF.

>> LET ME ASK YOU THIS CENTRAL QUESTION THAT I AM STRUGGLING WITH.

I UNDERSTAND THE COURT HAVING EXCLUSIVE JURISDICTION OVER A CATEGORY OF CASES.

I THINK I'VE UNDERSTAND THAT.

BUT THAT IS NOT WHAT YOU ARE TALKING ABOUT HERE IF I UNDERSTAND CORRECTLY. YOU ARE TALKING ABOUT, FORGIVE ME IF I'M MISSTATING WHAT YOU ARE SAYING, INCLUSIVE JURISDICTION OVER AN ISSUE OF FIRST IMPRESSION. IS THAT AN ACCURATE STATEMENT?

>> I THINK THIS COURT HAS EXCLUSIVE JURISDICTION TO DEFINE THE PRACTICE OF LAW OVER AND OVER AND OVER AGAIN. ONCE YOU HAVE ADDRESSED A GIVEN AREA.

>> IS THE EXCLUSIVE JURISDICTION OVER AN ISSUE OF FIRST IMPRESSION-- THAT IS A FAIR STATEMENT. THAT CONCEPT STRIKES ME AS VERY ODD.

IS THERE ANYWHERE ELSE IN THE LAW THAT THERE IS SUCH A JURISDICTIONAL LIMITATION OR HUD THAT EXISTS?

AGAIN, I UNDERSTAND EXCLUSIVE JURISDICTION OVER CATEGORIES OF CASES BUT IS THERE ANYTHING ANALOGOUS TO THAT, WHAT YOU ARE TALKING ABOUT HERE?

>> NOT THAT IS COMING IMMEDIATELY TO MIND. BUT THE REASON THIS IS TAKING PLACE IS BECAUSE OF THE ABILITY, I MEAN YOU COULD ARGUE FOR THIS RULE THE SAYS TO GO TO THE TRIAL COURT AND SEEK THE CIVIL DAMAGES REMEDY.

YOU COULD ARGUE THAT THIS COURT MEETS TO DECIDE EVERYTHING EXCLUSIVELY.

WE ARE NOT TAKING THE
OPPOSITION.

>> BUT CLEARLY THAT WOULD BE AN
UNWORKABLE RULE.

AND CLEARLY THERE IS NOTHING,
THERE'S NO POLICY OR ANY
JUSTIFICATION THAT WOULD REQUIRE
INVOLVING THIS COURT IN THE
CIVIL DISPUTES RELATED TO
MALPRACTICE AND ALL SORTS OF
OTHER THINGS THAT ARE CONNECTED
WITH OUR DISCIPLINARY STANDARDS
PERHAPS, BUT WHICH AFFECT THE
RIGHT BETWEEN THE LAWYER AND THE
CLIENT AND GIVE RISE TO A CIVIL
CAUSE OF ACTION.

>> THE PROBLEM HERE IS THAT THIS
COURT HAS TO MAKE A POLICY

DECISION AS TO HOW TO FILL THE
GAP.

OTHERWISE YOU ARE GOING TO HAVE
LOCALIZE DECISION-MAKING, THE
GAP BEING THE CASES THAT SAY YOU
CAN'T PREPARE MORTGAGES BUT IN
THE CONTEXT OF DOING IT FOR A
CLIENT, AND THEN THE CHARGE
CASES, WHICH IS REALLY THE
CHARGE CASE, SILVERMAN, FILLING
THAT GAP, TRIAL COURTS ARE GOING
TO DO IT DIFFERENTLY MAKING
DIFFERENT POLICY CALLS AND IT IS
A POLICY CALLED FOR THIS COURT.
THAT IS WHY DO YOU HAVE
EXCLUSIVE JURISDICTION TO ALLOW
THIS TO BE DONE BY TRIAL JUDGES.
WHEN THERE IS NOT THE LEAD CASE
ON POINT, IS GOING TO LEAD TO
THE COMMON LAW DADE CASE WAS
JUST CHAOS.

>> ISN'T THAT WHY DO YOU HAVE
APPEALS AND THE COUNTY COURTS?

>> YOU CERTAINLY, IN THE NORMAL CIVIL JUDICIAL SYSTEM CAN WORK YOUR WAY UP IN THE PROCESS, AND WERE TO WAKE UP TO THE APPEAL BUT THAT TOTALLY UNDERMINES THE EXCLUSIVE JURISDICTION, WHICH IS THAT YOU GET TO MAKE THE DECISION UP FRONT.

THERE, YOU'LL BE WAITING UNTIL MANY TRIAL COURTS HAVE MADE DECISIONS UP TO THE SYSTEM AND YOU'LL BE SITTING AS AN APPELLATE OR A REVIEW COURT AND WILL BE SITTING WITH EXCLUSIVE JURISDICTION.

>> THE FOURTH DISTRICT HERE DID NOT MAKE A DECISION THAT THE PARTICULAR, THAT THE CONDUCT HAD BEEN SUBJECT OF THE SUPREME COURT PRECEDENT OR NOT. WOULDN'T THAT, UNDER YOUR THEORY OF WHAT IS THE CASE GETS DISMISS AND THIS AUDITING ABOUT EXCLUSIVE JURISDICTION OVER IN ISSUE VERSUS A WHOLE SUBJECT MATTER, WOULD THEN THE TRIAL COURT OR THE APPELLATE COURT

HAVE TO ANALYZE WHAT THE PRESIDENT WAS, THE CONDUCT HAS BEEN THE SUBJECT OF SPECIFIC PRIOR DECISION AND THAT NEVER HAPPENED AS I READ THE GOLDBERG CASE.

>> I THINK IT IS UNCLEAR IN THE FOURTH DISTRICT OPINION WHETHER THEY DID THAT OR NOT.

>> THEY DON'T DISCUSS IT AT ALL.

>> THEY DISCUSS CASES AROUND IT. THEY DON'T DISCUSS WHETHER IT HAS BEEN DECIDED OR NOT BUT I THINK THE RESULT IS CONSISTENT

WITH WHAT WE ARE ARGUING HERE TODAY WHICH IS THAT THERE IS NO CASE THAT DECIDES THIS AND I DON'T THINK THE FOURTH DISTRICT REACHES THE CONCLUSION THEY REACHED IF THERE WAS NOT A CASE DECIDED ALREADY.

>> EXCEPT THAT WE HAVE AND ACTUALLY HAVE THAT HOLDING YET. THAT IS WHETHER THE PARAMETERS OF BEING ABLE TO SUE FOR RESTITUTION IS THAT CASE HAS NOT YET BEEN DECIDED BY THIS COURT. THE RULE IS ONLY FAIRLY RECENT IN SAYING THAT VICTIMS CAN SUE FOR RESTITUTION.

YOU FILED A CASE THAT TALKS ABOUT AT LEAST ONE OTHER FEDERAL APPELLATE COURT HAS HELD THIS AREA IS ACTUALLY PREEMPTED. ARE YOU STILL MAKING THAT ARGUMENT?

>> ABSOLUTELY AND I HAVEN'T HAD MUCH TIME BUT THE-- ONE OF MY CLIENTS, THE CASEY CASE IS WHY THIS IS PREEMPTED AND PETITIONERS SAY THERE IS NO CASE THAT DEALS WITH IT IN THE UNAUTHORIZED PRACTICE LAW AREA. CASEY IS-- AND SAYS THIS WOULD BE FEDERALLY PREEMPTED.

>> THE COURTS HAVE NOT REACHED THAT ISSUE GET.

>> THEY HAVE NOT REACH THAT ISSUE YET BUT WE BELIEVE THIS COURT UNDER ANALYSIS--

>> FROM A PRACTICAL STANDPOINT LET'S SAY WE MOVE FORWARD AS A CIVIL MATTER IN THE COURTS BELOW.

WHAT ARE THE HOPES OR PLANS TO

SEEK A STAY THERE AND GET A DETERMINATION TO THE ADVISORY OPINION?

OTHERWISE, THEY MAKE THE PROSPECT TO LITIGATE SPENDING RESOURCES AND ULTIMATELY PERHAPS BE DECIDED AGAINST BY THE COURT SO FROM A PRACTICAL STANDPOINT WOULD THAT BE BETTER?

>> THAT MAKES SENSE TO ME YOUR HONOR.

I DON'T PRESUME TO GIVE LEGAL ADVICE.

>> BUT, DOES A STAY QUALIFY SO THAT THE BAR CAN GET INVOLVED BECAUSE THE CASES STILL PENDING? IT WOULD HAVE TO BE A DISMISSAL, WOULD IT?

>> THAT IS WHAT WE WOULD ARGUE.

>> IF THE COURT ORDERED IT, WHICH IS THAT WE ORDER BEFORE THIS CASE GOES BACK THAT THAT OUGHT TO HAPPEN.

I DON'T THINK THE BAR, ANYBODY IS GOING TO SAY YOU CAN'T PROCEED.

>> PROBABLY NOT.

>> REAL QUICKLY, WITH TEN SECONDS LEFT I DO WANT TO MAKE SURE I COVER THIS IDEA OF REMEDIES AND WHAT IS OUT THERE. THIS CASE IS A VERY NARROW SLIVER AND WE ARE NOT TAKING THE POSITION SOMEBODY THINKING THEY WERE AN ATTORNEY AND THEY STARTED PLEADING, MOST OF THESE UNLICENSED PRACTICES OF LAW, UNAUTHORIZED PRACTICE OF LAW HAVE BEEN LONG DECIDED AND WE ARE NOT SUGGESTING THEY HAVE TO COME BACK TO THIS COURT OVER AND OVER AGAIN.

SO THE REMEDY HERE IS THE BAR
BUT IN MOST CASES THE
TRAIL-BLAZING CASE HAS BEEN

DECIDED AND WE DON'T DISAGREE
THAT THEY PROCEED TO A CIVIL
ACTION.

>> THANK YOU.

WE WOULD ASK YOU TO APPROVE THE
FOURTH DISTRICT COURT.

>> ALRIGHT.

MR. MILLER, WE WILL GIVE YOU TWO
MINUTES OR REBUTTAL HERE.

>> THANK YOUR HONOR.

>> WHY IS HE WRONG WITH REGARD
TO THIS CASE FOR MORTGAGES AND
NOTES BEING PREPARED FOR THE
BENEFIT OF THE LENDER HAS
NOTHING TO DO WITH THE BENEFIT
OF A CLIENT'S HAND THAT IS A
MAJOR DISTINCTION IN THESE
CASES.

>> BECAUSE THE MORTGAGE DOCUMENT
ISN'T JUST FOR THE BENEFIT OF
THE LENDER.

IT AFFECTS THE TITLE OF THE
BORROWER'S PROPERTY.

>> YOU CAN ARGUE THAT IT IS TO
PROTECT THEIR INTEREST AND IF
THEY AGREE TO HAVE SOMEBODY
SITTING AT A DESK THAT MAY OR
MAY NOT KNOW WHAT THEY ARE DOING
TO PREPARE THE DOCUMENT TO
PROTECT THE MORTGAGE INTEREST.

IT IS NOT A FUNDAMENTAL
OWNERSHIP OF THE PROPERTY.

>> THERE IS THE RIGHTS OF
REDEMPTION, RIGHTS OF NOTICE.

IT IS NOT SIMPLY PROS SAY.

THE IDEA BEHIND THE PROCESS
EXCEPTION IS IF I SCREW UP
SOMETHING IN THE DOCUMENTS I DO,

THE LEGAL PRACTICE I DO THIS
GOING TO AFFECT ME SO THAT IS MY
RISPERDAL IN THIS CASE WE HAVE A
MORTGAGE AND IF THEY SCREW UP
THE MORTGAGE IT IS NOT JUST
GOING TO AFFECT THEM.

>> THEY MAY WRITE IT ONE-SIDED
BUT IT IS STILL NOT DESIGNED FOR
THE BENEFIT OF THE CLIENT.
IT IS DESIGNED FOR THE BENEFIT
OF THE MORTGAGE COMPANY.
>> TO SECURE THEIR INTEREST BUT

IT ALSO AFFECTS THE BORROWER AS
WELL.

>> ONLY AS TO THE RIGHTS TO THE
MARKETS.

IT DOES NOT CREATE ANY KIND OF
PARTICULAR INTEREST THEY MAY
HAVE AND THEY CAN WRITE IT AS
ONE-SIDED AS THEY WANT AS LONG
AS THEY DON'T STEP OVER SOME
LEGAL THEORY.

AND THEN IT BECOMES
UNENFORCEABLE.

>> THEY CAN WRITE IT AS
ONE-SIDED AS THEY WANT BUT IF
THEY SCREW UP THE TERMS OR SIGN
THE PROPERTY INCORRECTLY THAN
THE BORROWER WHEN HE GOES TO
SELL THIS HOUSE, HIS NEW BUYER
MAY COME IN.

>> THAT IS A TOTALLY ADDITION--
DIFFERENT ISSUE.

>> THE MORTGAGE INTEREST AFFECTS
THE BAR WERE.

>> AND THE DOCUMENTS OF A
TWO-PARTY AGREEMENT AFFECTS
THEIR INTEREST, BUT YOU ARE NOT
SUGGESTING EVERY TIME THE
DOCUMENT THAT IS PREPARED BY ONE
PARTY FOR WHAT THEY WANT, THAT

THAT AUTOMATICALLY CREATES A PRACTICE OF LAW?

>> NO, I'M SAYING THERE'S A MIXED INTERESTS IN THIS CASE THE BOTH THE BORROWER AND LENDER ARE AFFECTED BY THE MORTGAGE LENDER.

>> THIS IS A PRACTICAL MATTER. IF THE MORTGAGE DOCUMENT HAD TO BE PREPARED BY A LAWYER, WOULDN'T THEY CONTEST THAT THESE, WOULDN'T IT JUST ADD TO THE WHOLE COST OF THE REFINANCING TRANSACTION? WITH THIS ACTUALLY BENEFIT-- THE MORTGAGE DOCUMENTS THEY ARE USING?

>> I THINK A LAWYER -- WITH A \$150 FEE FOR A LAWYER IS GOING TO WASH OUT I THINK.

>> AGAIN, I THINK THE QUESTION ENDS UP BEING HERE, ARE WE GOING

OF AROUND-- ARE WE GETTING TO AN ISSUE THAT IS GOING TO AFFECT A GREAT DEAL OF PEOPLE WITHOUT THEIR FIRST THE NEED DETERMINATION FROM THE COURT AS TO WHETHER IS AN UNAUTHORIZED PRACTICE OF LAW AND THAT REMAINS TO BE MY CONCERN.

>> I THINK THE GENERAL CASE LAW SAYS YOU CANNOT CHARGE A SEPARATE FEE FOR LEGAL SERVICES AND MY CLIENTS HAD NO WAY TO GUARANTEE THERE WOULD HAVE A DAY IN COURT TO RECOVER THIS THE UNLESS THEY FILED A CIVIL ACTION FOR RESTITUTION.

>> BUT YOU AGREE YOU NEVER FILED A COMPLAINT OR TRIED TO GET AN ADVISORY OPINION?

>> NO, WE WOULD NOT HAVE GOTTEN

THE REMEDY WE SOUGHT WHICH WAS
THE RESTITUTION.

WHILE WE FILED THE COMPLAINT--
THE ONLY WAY TO GET THE
RESTITUTION REMEDY IS TO FILE A
CIVIL COMPLAINT AND THAT DOES
NOT-- IN CONJUNCTION WITH THEIR
ROLES RECOGNIZE THE PLAINTIFF
CAN DO THAT.

>> THANK YOU VERY MUCH.

THANK YOU ALL FOR YOUR ARGUMENT
HERE TODAY.

THEN CORE WILL NOW TAKE ITS
MORNING RECESS FOR TEN MINUTES.

>> PLEASE RISE.