

>> THE PLAINTIFFS IN THIS CASE CONTEND THAT THE STATUTE MAY NOT BE APPLIED RETROACTIVELY TO THEIR CASES BECAUSE THEY SAY THEY HAVE CREW CAUSES OF ACTION AND THE STATUTE WOULD AGGRAVATE.

THAT IS NOT THE WAY THE STATUTE WOULD OPERATE.

ALL THE PROOF WE NEED IS THAT THE CASES WERE DISMISSED BY THE TRIAL COURTS.

IN FACT THEY COMMIT TO POINT OUT THE DISMISSALS WERE DISMISSED WITHOUT PREJUDICE WHICH IS A PROCEDURAL CONSEQUENCE.

>> SO WHAT YOU CONTENT, WHAT WOULD YOU THEN CONTEND IS THE POINT FOR THESE CAUSES OF ACTION SO THAT WE DON'T HAVE -- EVEN IF THEY WERE DISMISSED WITHOUT PREJUDICE IS THERE ANY STATUTE OF LIMITATIONS?

>> NO, THERE IS NOT, YOUR HONOR. THE STATUTE HOLDS THE STATUTE OF LIMITATIONS FOR THESE CLAIMS UNTIL SUCH TIME AS THERE IS A CONDITION THAT IS INJURIOUS TO THEIR HEALTH.

THE CLAIM WOULD ARISE --

>> YOU CHARACTERIZE THAT THERE IS A CONDITION THAT MATCHES PARTICULAR ELEMENTS THAT THEN AND NOW CONSTITUTE INJURY NOT AS IT WAS BEFORE.

>> WELL, THAT IS THE FUNDAMENTAL QUESTION, YOUR HONOR. WHETHER THE STATUTE CHANGES THE SUBJECT OF A STANDARD THAT PRE-EXISTED THE STATUTE.

>> THE LEGISLATURE THOUGHT SO. THOUSANDS OF CLAIMS THAT ARE CLOGGING THE COURTS.

IF THERE WERE NON-EXISTING CLAIMS WHAT WERE THEY CONCERNED ABOUT?

UNFORTUNATELY FOR YOU WITH THESE WERE GOOD CLAIMS ARE NOT IT APPEARS THAT THE CASE LAW ALLOWED FOR A MANIFESTATION IN THE FORM OF ASBESTOSIS WHICH WOULD BE THE CHANGES IN THE LUNGS THAT GIVE RISE TO A CAUSE OF ACTION IN NEGLIGENCE.

AND IF SOMEBODY DOESN'T MANIFEST INTO THOSE PHYSICAL IMPAIRMENTS OR CANCER OF A SPECIFIC KIND THEY HAVE NO RIGHT TO BRING CAUSE OF ACTION.

SO LITERALLY THEY HAVE ELIMINATED A CLASS OF WHAT THEY CONSIDER TO BE THE VERY MINOR CASES.

LIKE THE NO-FAULT STATUTE.

THESE ARE CLOGGING THE COURTS.

WE ARE GOING TO PUT A THRESHOLD HERE.

I MAY NOT LIKE THESE CLAIMS ANY MORE THAN YOU DO.

IT SEEMS LIKE THE COURTS HAVE RECOGNIZED THE COURSE OF ACTION.

>> THE COURTS HAVE NOT RECOGNIZED THE COURSE OF ACTION WHICH IS THE FUNDAMENTAL ISSUE.

WERE THOSE CLAIMS THAT HAD SUBSTANCE EVEN IN COMMON LAW.

WE SUBMIT THAT DID NOT DECREASE THERE A DIFFERENCE BETWEEN ASSISTING A CLAIM AND HAVING AN ACCRUED CAUSE OF ACTION.

BEFORE SOMEBODY HAS A VESTED RIGHT IT HAS TO BE THE EQUIVALENT OF TITLE, LEGAL OR EQUITABLE TITLE.

I CAN WALK NEXT DOOR TO MY NEIGHBOR'S PROPERTY AND SAY THAT IS MY PROPERTY, BUT MY SAYING THAT I HAVE TITLE DOES NOT CREATE TITLE.

YES.

>> LEGISLATURE.

A LOT OF PEOPLE DON'T LIKE SLIP-AND-FALL CASES.

YOU CAN FALL, AND THEY SUE BECAUSE THEY WENT TO THE DOCTOR.

IF THE LEGISLATURE PASSED A LAW THAT SAID THAT BEFORE SOMEBODY TO SUE THEY HAVE GOT TO HAVE A PERMANENT PHYSICAL IMPAIRMENT WOULD THAT BE, IS THAT A CHANGE IN SUBSEQUENT LAW?

>> THERE HAS TO BE AN INJURY TO HAVE AN ACCRUED CLAIM AT COMMON LAW.

THE SITUATION YOU DESCRIBE --

>> LIKE SCARRING OF THE LUNGS.

DO YOU NOT HAVE THE RIGHT TO HAVE YOUR LUNGS FREE FROM SCARRING?

>> NO, YOUR HONOR.

THERE ARE INTERNAL CHANGES THAT OCCUR ALL THE TIME.

>> I WOULD LIKE TO HAVE YOUR NO THICKENING OF YOUR PLURAL LINING.

NO RIGHT TO BE PROTECTED.

>> THERE IS NOT A CLAIM THAT ARISES FROM THE PLURAL THICKENING.

>> YOU'RE SAYING THAT IS NOT AN INJURY TO SOMEONE?

>> THAT IS RIGHT.

>> SCARRING OF THE LUNGS IS NOT AN INJURY?

>> THAT'S CORRECT.

WHAT THE MEDICINE AND CASES SHOW IS THAT WHEN WE BREATHE FIBERS, AND MANY OF US ARE BREATHING FIBERS.

THE LEGISLATURE SAID THAT ASBESTOS IS FOUND IN TWO-THIRDS OF THE ROCKS IN THE EARTH'S CRUST.

WE BREATHE 10-15000 FIBERS A DAY.

URBAN DWELLERS HAVE, 90% HAVE SOME SCARRING IN THEIR LUNGS.

WE COULD GET SCARRING FROM A VIRAL --

>> DOES NOT A QUESTION OF AN INJURY.

YOU ARE SAYING THAT THE SCARRING TO THE LUNGS.

DOES ANYONE SAY THAT THERE IS NO REQUIREMENT THAT THE PROOF THAT THIS IS CAUSED BY THE PRODUCT?

>> NO, YOUR HONOR.

IT IS NOT JUST ABOUT CAUSATION.

IT IS ABOUT WHETHER THERE IS A INJURY. THE BEST DISCUSSION ON THIS CONCERN IN FLORIDA LAW IS THE CELOTEX V. MEEHAN CASE.

SHE EXPLAINS HOW THIS PROCESS WORKS. SHE SAID WHEN YOU BREATHE FIBERS THE BODY HAS A NATURAL DEFENSE MECHANISM.

IT ENCAPSULATES THOSE FIBERS.

IT IS CLEAR, AND THE COURTS WIDELY ACKNOWLEDGED THIS.

VERY FEW OF THESE PEOPLE ARE ACTUALLY GOING TO INCUR THE DISEASE.

THESE ARE BENIGN CHANGES IN THE LUNGS.

THIS IS AN ENCAPSULATION PROCESS.

THIS IS SOMETIMES DESCRIBED AS SCARRING THAT IS DETECTABLE BY X-RAYS.

THAT DOES NOT EQUAL INJURY.

WHEN THAT ENCAPSULATION PROCESS PROGRESSES TO DIMINISH IMPAIR PULMONARY FUNCTION THEN YOU HAVE A CLAIM.

BUT INITIALLY --

>> A SEPARATE CONCURRENCE.

>> THAT'S CORRECT.

>> SEPARATE CAUSES OF ACTION.

IT HAS BEEN ACKNOWLEDGED FOR ASBESTOS, ASBESTOSIS VERSUS MALIGNANCY.

>> THAT IS CORRECT, YOUR HONOR.

THERE IS A CLAIM FOR ASBESTOSIS.

>> ARE YOU SAING THAT WHEN SOMEBODY SUBTRACTS ASBESTOSIS THAT BEFORE THE STATUTE PASSED THEY COULD NOT BRING A CLAIM, A COMMON-LAW CLAIM FOR

INJURIES ARRIVING FROM THAT
PERMANENT CHANGE IN THEIR LUNGS?

>> NO, WE ARE NOT SAYING THAT.

WE ARE SAYING BEFORE THE LAW WAS
PASSED AND AFTER THE LAW WAS PASSED
SOMEBODY CAN BRING THE CLAIM FOR
ASBESTOS.

THESE CLAIMANTS TO NOT HAVE
ASBESTOS.

THEY HAVE X-RAY READINGS.

THEY FILED --

>> DISMISSAL BASED ON WOULD THAT BE
AN EASIER WAY?

>> YOUR HONOR, FOR ME TO THEM
COMPLAINED THEY HAD A DIAGNOSIS OF
ASBESTOS.

THEY HAD REPORTS THAT GAVE THEM
SUCH AN X-RAYS SHOWING THAT SOME
ENCAPSULATION AND SCARRING WAS
DETECTED.

AT THE TRIAL THE JUDGE ASKED THEM IF
YOU HAVE DIAGNOSES.

COUNCIL REPRESENTING THE PLAINTIFFS IN
THE WILLIAMS CASE SAID WE DON'T REALLY
HAVE DIAGNOSES.

HAVE ONE FOR MR. MARTINEZ, BUT WE
DID NOT FILE IT BECAUSE IT DOES NOT
SATISFY THE STATUTE.

NO ACTIVE DISEASE PRESENT.

>> IN ALL FAIRNESS I DON'T KNOW THAT
YOU ARE DIRECTLY ANSWER MY QUESTION
AS TO WHETHER THERE IS A COMMON LAW
CAUSE OF ACTION.

WHETHER THERE WOULD BE A SUMMARY
JUDGMENT ON THE BASIS OF CAUSATION
OR WHATEVER THE DIAGNOSIS.

AS FAR AS WHETHER AN ALLEGATION THAT
THEY HAVE GOT TO SHOW PERMANENT
IMPAIRMENT, MALIGNANCY, THEY HAVE
GOT TO SHOW IT IS A SUBSTANTIAL
CONTRIBUTING CAUSE.

AND THEY HAVE GOT TO HAVE FIVE OR SIX OTHER PREREQUISITES THAT ARE VERY SPECIFIC, THAT CHANGES THE CAUSE OF ACTION.

AGAIN, IT MIGHT BE A GOOD THING TO DO THAT.

MAYBE A GOOD AREA TO REGULATE, JUST LIKE NO-FAULT WAS HAILED.

NOW MAYBE PEOPLE HAVE GOTTEN USED TO IT.

IT IS A CHANGE IN THE COMMON-LAW.

>> LET ME ADDRESS THAT.

>> I KNOW YOU DIDN'T SAY YES.

I JUST AM HAVING A DIFFICULT TIME SEEING HOW YOU CAN SAY THAT THIS STATUTE DOES NOT CHANGE THE COMMON-LAW CAUSE OF ACTION AND NOW CREATES A STATUTORY RIGHT THAT IS DIFFERENT FROM THE COMMON LAW.

>> THERE IS A CHANGE, YOUR HONOR.

THERE ARE SIGNIFICANT CHANGES IN THE STATUTE.

THEY ARE THE KINDS THAT THIS COURT HAS HELD AND CAN APPLY RETROACTIVELY.

THE STATUTE TAKES SUBSTANTIVE RIGHTS THAT EXISTED BEFORE THIS ACT WAS ADOPTED.

IT CODIFIES THOSE RIGHTS.

IN SUBSTANCE THE STANDARD REMAINED THE SAME.

>> THE LEGISLATURE WOULD BE VERY UPSET TO KNOW THAT ALL THEY WERE DOING WAS CODIFYING THE COMMON-LAW.

>> LET ME ASK YOU ABOUT ONE SPECIFIC THING IN THE STATUTE.

THAT IS THAT DAMAGES MAY NOT BE AWARDED FOR FEAR OR RISK OF CANCER.

IS THAT A SUBSTANTIVE CHANGE.

>> THAT WOULD BE A SUBSTANTIVE CHANGE.

THAT ISSUE IS NOT AS FOR THE PRESENTED ON THIS RECORD BECAUSE NONE OF THE PLAINTIFFS WERE ABLE TO SHOW THEY HAVE ASBESTOSIS.

AN ELEMENT OF PAIN AND SUFFERING ONCE THE CLAIMANT.

>> THAT IS AN IMPORTANT PROCEDURAL ASPECT.

WE ARE NOT HERE ON A CLASS-ACTION CASE, RIGHT?

>> THAT'S CORRECT.

>> THESE ARE INDIVIDUAL CASES FILED SEPARATELY.

DID THESE INDIVIDUAL PLAINTIFFS ALLEGE THIS FEAR?

>> THEY ALLEGED THEY HAD A DIAGNOSIS OF ASBESTOS.

THEY DID NOT SPECIFICALLY ALLEGE THIS FEAR.

THEY ASKED FOR ALL REMEDIES THEY OR ENTITLED TO.

THEY DID NOT ALLEGE THIS FEAR.

THESE WERE BASED ON ALLEGED INJURIES TO THEIR HEALTH.

>> DID THEY CHALLENGE SECTION 774.206 WHICH HAS THIS PROVISION FOR FEAR OF CANCER?

>> THEY DID NOT CHALLENGE THAT PROVISION SPECIFICALLY.

THE PROVISION THAT SAYS THERE MUST BE A DIAGNOSIS OF ASBESTOS, THE PROVISION THAT EXPLAINS THAT THERE MUST BE A DIAGNOSIS OF CAUSATION, AND THE DEMONSTRATION OF IMPAIRMENT.

THOSE ARE THE PROVISIONS THEY ACTUALLY CHALLENGED.

IN SUBSTANCE, AGAIN, THE QUESTION IS, NOT IS THERE A SUBSTANTIVE REGULATION, BUT IS THERE SUBSTANTIVE DEPRIVATION.

AND THE PLAINTIFFS ARE ALLEGING THAT THEY HAVE BEEN DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW.

FIRST WE HAVE TO SEE IF THEY HAVE A PROPERTY RIGHT IN WHAT THEY ARE SEEKING TO PROTECT.

CLEARLY IF SOMEBODY HAS AN ACCRUED CLAIM AND THEY HAVE THE LAST ELEMENT NECESSARY TO GIVE RISE TO THE CLAIM INJURY TO AND THEY HAVE A CAUSE OF ACTION.

WE HAVE TO LOOK AT THE REASONS. ARE THEY GOOD ENOUGH REASONS TO OVERCOME THAT.

THIS COURT BEGAN ITS ANALYSIS BY SAYING THERE WERE PRISONERS IN THAT CASE WHO HAD EARLY RELEASE CREDITS. THERE WERE GIVEN TO THE PRISONERS UNCONDITIONALLY.

NOW, THE COURT LOOKED AT THIS AND SAID THEY HAVE SOME CONDITIONAL CREDITS.

THE STATE TOOK THOSE AWAY. THEY DID NOT HAVE ANY VESTED RIGHTS IN THIS CONDITIONAL CREDITS.

THEY HAD SOME UNCONDITIONAL GRANTS FOR THE RELEASE.

THE STATE TOOK THEM BACK.

THE STATE HAD GRANTED THEM BECAUSE THE PRISONS WERE OVERCROWDED SO THERE WAS A DEPRIVATION OF A VESTED LIBERTY INTEREST.

OKAY.

IS THERE DUE PROCESS?

WELL, THIS IS A LEGISLATIVE CASE.

WE HAVE TO SEE IF THERE WAS A GOOD REASON FOR THE STATE TO DO THIS.

DOES THE LAW HAVE GOOD REASON?

THE COURT SAYS YES.

THERE IS GOOD REASON.

EVEN HAS A COMPELLING REASON.

>> THIS STATUTORY RIGHT, NOT COMMON-LAW.

>> YES.

>> THEY HAVE THAT.

LATER ON THERE IS A LIMITATION.

THAT IS NOT WHAT WE ARE DEALING WITH HERE.

WE'RE DEALING WITH A STATUTORILY AGREED ACCIDENT ANYWAY.

>> THAT IS RIGHT, YOUR HONOR.

VERY IMPORTANT CHANGES.

WHAT THE LEGISLATURE DID HERE WAS AMASS OF THE DATA NECESSARY TO IDENTIFY ACCEPTED MEDICAL STANDARDS OF THE DIAGNOSIS FOR ASBESTOSIS.

IT IS CONSISTENTLY AGREED TO HAVE A DIAGNOSIS.

YOU HAVE TO HAVE MORE.

YOU HAVE HAVE MORE THAN EVIDENCE OF INTERNAL SCARRING.

THERE HAS TO BE AN INVESTIGATION.

I'M SORRY.

>> IN THIS CASE WHEN WERE THEY FILED IN RELATIONSHIP TO THE STATUTE?

>> THEY WERE ALL FILED BEFORE THE STATUTE WAS PASSED.

>> AND WAS THERE EVER ANY MOTION TO DISMISS ON THESE CASES ON CAUSE OF ACTION PRIOR TO THE PASSAGE OF THE STATUTE?

>> NO, YOUR HONOR.

IT COULD HAVE BEEN GRANTED.

THEY CLAIMED IN THE COMPLAINT.

WHAT HAS TASTED IS THE PROCEDURE.

WITH THE LEGISLATURE HAS DONE IS CREATED A NEW PROCEDURE MECHANISM THAT CALLS UPON THE PLAINTIFFS TO STEP FORWARD EARLIER IN THEIR CASES THAN THEY OTHERWISE WOULD HAVE TO SHOW THEY HAVE A PRIMA FACIE BASIS TO GO FORWARD.

IT IS A TEST JUST LIKE A MOTION.

A DIFFERENT TOOL, A DIFFERENT TEST.
IF IT FAILS IT DOES NOT RESULT IN ENTRY
OF JUDGMENT FOR THE DEFENDANT LIKE
SUMMARY JUDGMENT.

IT RESULTS IN THE DISMISSAL WITHOUT
PREJUDICE UNTIL SUCH TIME THAT THESE
PEOPLE CAN COME BACK WITH THE
PROPER SHOWING THAT THEY DO, IN FACT,
AND MAKE A DIAGNOSIS WHICH IS WHAT
THEY HAVE ALWAYS NEEDED IN COMMON-
LAW TO GO FORWARD.

>> IS THAT YOU'RE BASING THAT ON?

>> NO, YOUR HONOR.

>> YOU HAVE SUFFICIENT IMPACT TO HAVE
AN EMOTIONAL DISTRESS CLAIM AN
ELEMENT OF DAMAGE FOR THAT IN ONE OF
OUR OTHER CASES AND RELIED UPON THE
CASE IS TALKING ABOUT ASBESTOS.

>> THERE WAS DISCUSSION ABOUT WHAT
IS NECESSARY TO GIVE RISE TO A NET
PRESENT INFECTION.

>> WILLIS WAS THE TOUCHING.

SO THIS IS NOT THE TOUCHING.

I BELIEVE, MAYBE I'M WRONG.

BUT RECOGNIZING THAT THE MERE
INHALATION IN PRODUCT CASES, THE
TAKING IN OF THE FOOD, IS THAT
SUFFICIENT CONTACT TO GIVE RISE TO AN
ELEMENT OF DAMAGE FOR THE
INTANGIBLE?

THAT IS WHAT WE ARE TALKING ABOUT.

THE PAIN AND SUFFERING.

>> THERE IS NO SUCH CASE.

THE EAGLE-PITCHER CASE DEALT WITH
THAT SITUATION.

THE CLAIM IN EAGLE-PITCHER WHICH WAS
A CLEAR DC-8 CASE IN 1966.

THE ISSUE THERE WAS EXACTLY AS YOUR
HONOR DESCRIBES.

IS MERE INGESTION OF ASBESTOS FIBERS
ENOUGH TO GIVE RISE TO CLAIM FOR
NEGLIGENT COMPLEXION?

>> THAT IS THE INTANGIBLE OR SOME KIND OF INJURY.

>> AND WHAT THE COURT HELD THERE IS WE ARE NOT GOING TO DO THAT.

THEY SAID TECHNICALLY SPEAKING THERE IS CASE LAW THAT SAYS ANY KIND OF INVASION OF THE BODY BY SOMETHING FOREIGN IS A SUFFICIENT TOUCHING OR IMPACT TO GIVE RISE TO NEGLIGENCE.

>> AND THAT HAS BEEN APPLIED BY THIS COURT, HASN'T IT?

>> IT HAS BEEN, BUT NOT IN THIS CONTEXT.

WHAT EAGLE-PITCHER SAID WAS IN THIS CONTEXT THERE IS TOO MUCH RISK OF OPENING FLOODGATES TO INSUBSTANTIAL CLAIMS BECAUSE WE ARE ALL INGESTING THESE FIBERS.

WE NEED EVIDENCE OF PHYSICAL INJURY BEFORE WE ARE GOING TO ALLOW ONE OF THESE CLAIMS TO GO FORWARD.

THAT IS THE LAW SINCE 1986.

>> THE CASE THAT SAID THEY'RE GOING TO ALLOW DAMAGES FOR THE FEAR OF CONTRACTING CANCER, NOT THE INCREASED RISK, A SECOND CAUSE OF ACTION FOR THAT.

SO THEY GOT CANCER THEY WOULD ALLOW A SECOND CAUSE OF ACTION.

THEY DIDN'T SAY THAT THE PERSON DIAGNOSED WITH ASBESTOS DIDN'T HAVE CLAIM FOR EMOTIONAL DISTRESS INJURIES, DID THEY?

>> NO, YOUR HONOR.

WHAT EAGLE-PITCHER SAID WAS THE INGESTION OF FIBERS DOES NOT CONSTITUTE SUFFICIENT IMPACT.

>> THEY WERE ALLOWED TO GO AHEAD AND CLAIM INTANGIBLE DAMAGES.

>> BECAUSE THEY HAD ASBESTOS.

THE COURT DESCRIBED IT AS A PAINFUL AND SERIOUS INJURY.

THERE WAS ASBESTOSIS FOR THE VICTIMS
IN EAGLE-PITCHER.
WAS NOT JUST INGESTION OF FIBER.
THE INGESTION HAD OCCURRED.
THE ENCAPSULATION HAD CONTINUED.
THERE WAS A LATENCY.
THERE WAS A DIAGNOSIS.
IF YOU'RE FAMILIAR WITH THE EVIDENCE IT
WOULD HAVE SATISFIED THE STATUTORY
STANDARD FOR DIAGNOSIS OF ASBESTOSIS.
IT WAS A CLEAR INDICATION OF THE TYPE
OF SCARRING ASSOCIATED WITH ASBESTOS.
THE COURT DESCRIBED SYMPTOMS TO
INDICATE THE PLAINTIFFS WERE
SYMPTOMATIC, WHICH IS WHAT WE'RE
TALKING ABOUT IS WHAT NEEDS TO BE
SHOT.
SO THE COURT WAS VERY CAREFUL NOT TO
ALLOW A NEGLIGENT INFLICTION CLAIM TO
MOVE FORWARD MERELY UPON EXPOSURE
OF FIBERS WHICH NORMALLY MIGHT HAVE
SUFFICED UNDER THE CASE LAW ON
TOUCHING IMPACT.
THE REASON IT DID SO IS BECAUSE IT SAID
THESE CASES ARE DIFFERENT.
THIS COURT HAS RECOGNIZED THAT
LATENCY CASES ARE DIFFERENT BECAUSE
IMAGINE THE CONSEQUENCES THAT
REALLY HAD NOT BEEN ANNOUNCED IN
THIS STATE BEFORE THAT MERE INTERNAL
CHANGES THAT ARE MEDICALLY
DETECTABLE GIVE RISE TO A
CONTEMPTIBLE INJURY.
WE WALK THROUGH AN X-RAY SCREENING.
PERHAPS WE ARE HAVING A CELLULAR
CHANGE.
>> YOU'RE GOING BACK TO WHAT CAUSED
IT.
THEY ARE OUT OF THE BALLPARK.
OF COURSE THAT IS CAUSATION, AND
WHETHER IT IS CAUSED BY THE MACHINE
OR ROCKS OR SOMEWHERE ELSE.

IF THEY CAN'T PROVE THEIR CLAIMS THEY ARE OUT.

THEY WERE OUT FROM DAY ONE.

>> THE REAL ISSUE IS NOT JUST CAUSATION.

IT'S WHETHER THERE IS A CONTEMPTIBLE INJURY.

>> WE CAN GO BACK TO THE QUESTION OF CAUSATION.

>> NOT EXACTLY, YOUR HONOR.

WHAT CELOTEX V. COPELAND SAID WHEN DESCRIBING WHETHER AN ASBESTOSIS CLAIM ARISED WAS THAT THE ACCUMULATED EFFECTS OF EXPOSURE WOULD BE MANIFESTED AT SOME POINT. AND THE PLAINTIFF IN THAT CASE WAS DISABLED.

HAD SHORTNESS OF BREATH, A DIAGNOSIS OF ASBESTOSIS.

THERE WAS A SHOWING OF IMPAIRMENT.

THERE IS NO CASE IN FLORIDA THAT SAYS YOU CAN GET A RECOVERY FOR A DISEASE WITHOUT HAVING THE DISEASE.

THE DISEASE IS DEFINED IN WEBSTER'S AS A CONDITION OF THE BODY THAT IMPAIRS ITS NORMAL FUNCTION.

MERELY HAVING INGESTION OF SOMETHING THAT CAUSES INTERNAL CHANGES DOESN'T IMPAIR OUR FUNCTION, THAT DOESN'T PRODUCE SYMPTOMS, THAT DOESN'T PRODUCE AN ILLNESS IS NOT IN AND OF ITSELF A CONTEMPTIBLE INJURY. THOSE TYPES OF THINGS HAPPEN ALL THE TIME.

THE QUESTION IS NOT JUST WHAT CAUSED WHATEVER CHANGES ARE TAKING PLACE, BUT WHEN DO THEY RISE TO THE LEVEL OF A CONTEMPTIBLE INJURY?

WHEN DO THEY ACHIEVED THE EQUIVALENCY OF AN AUTO ACCIDENT WHERE THE INJURY IS ALWAYS CLEAR. A SLIP-AND-FALL.

A DEMONSTRABLE INJURY.

>> YOU HAVE USED MORE THAN YOUR TIME.

THANK YOU.

>> MAY IT PLEASE THE COURT MY NAME IS JOEL PERWIN REPRESENTING THE PLAINTIFFS.

POINT ONE IS THAT ALL OF THE RECORDS CONCERNING ALL PLAINTIFFS OR IN THIS RECORD.

THEY ARE FOUND IN THE DEFENDANT'S APPELLATE TWO.

ALL TEST RESULTS RELEVANT TO THE STATUTE, ALL DOCTORS' REPORTS.

>> LET ME GET TO WHAT THE LAW WAS BEFORE THIS STATUTE.

AS I UNDERSTAND IT YOU'RE ONLY ATTACKING THE RETROACTIVE APPLICATION.

YOUR CLIENTS HAVE NOT MADE A GENERALIZED ATTACK THAT THIS THAT IT TAKES AWAY A REMEDY WITHOUT ADEQUATE SUBSTITUTION, CORRECT?

>> YES.

ON THE PREMISE.

>> ON THE -- PRIOR TO 2005 THE RIGHT WAS EXPOSURE TO ASBESTOS.

DO YOU AGREE WITH THAT?

EXPOSURE.

>> YES.

EXPOSURE IS NOT SUFFICIENT.

>> TALK ABOUT A PERSON HAVING BEEN DIAGNOSED WITH ASBESTOSIS.

IS THAT CORRECT?

>> THAT'S CORRECT.

NOT THE FAR MORE RESTRICTIVE DEFINITION.

>> ALL RIGHT.

WHAT IS UNDER THE COMMON-LAW?

>> ANY MANIFEST DEFECTS FROM INGESTION OF ASBESTOS DEFINED BY

CERTAIN STANDARDS CREATED BY CERTAIN ORGANIZATIONS.

THE MORE STRICT VERBAL STANDARDS ATTACHED BY THIS STATUTE.

>> IS THERE A REQUIREMENT THAT YOU CAN MANIFEST THE DISEASE THAT THERE HAS TO BE SYMPTOMS IN THE FORM OF INCREASED LUNG CAPACITY, AND DIFFICULTY BREATHING.

>> NO, YOUR HONOR.

THERE WERE NO SYMPTOMS.

>> THERE IS A RECOGNIZED CAUSE OF ACTION.

THE CHANGE IN THE X-RAY CHANGE WITHOUT ANY ADEQUATE SYMPTOMS.

>> WITHOUT ANY DEBILITATING SYMPTOMS.

>> DEBILITATING.

>> ANYTHING THAT YOU WOULD NOT KNOW THAT YOU HAD.

NO PAIN, NO DIFFICULTY, NO DECREASE IN BREATHING.

>> THERE HAD TO BE A PHYSICAL MANIFESTATION THAT SATISFIED THE IMPACT.

IF THAT DID NOT HAPPEN, AND TO MY KNOWLEDGE THAT IS THE ONLY REQUIREMENT OF THE PHYSICAL IMPACT THAT EXISTED AT COMMON-LAW.

COUNSEL HAS DRAWN A DICHOTOMY BETWEEN WHAT HE CALLS PHYSIOLOGICAL RESPONSES WHICH IS KIND OF CURIOUS FOR WHICH PUT IT.

THE EXPOSURE ALONE IS NOT SUFFICIENT, WHICH IS CORRECT.

THEREFORE THE OTHER END OF THE SPECTRUM, THE COMMON-LAW IMPAIRMENT AS REQUIRED.

THERE IS A WHOLE SPECTRUM BETWEEN THAT.

THE ONLY THING THAT EXISTED IN COMMON-LAW WAS IMPACT, SOME KIND

OF PHYSICAL MANIFESTATION WITHOUT ANY DEBILITATION LIKE BREATHING PROBLEMS OR FATIGUE, CERTAINLY WITHOUT CANCER.

ASBESTOSIS AS DEFINED THEN COULD HAVE BEEN A BENIGN IN THAT RESPECT AS LONG AS THE IMPACT WAS SATISFIED.

THAT IS SUFFICIENT TO GIVE RISE TO A CAUSE OF ACTION.

YOU MIGHT HAVE BEEN RESTRICTED TO THE AMOUNT OF DAMAGES.

>> LET ME ASK YOU.

YOU SAY THAT YOU WOULD EVEN HAVE TO HAVE MEDICAL EVIDENCE THAT SUPPORTS THE CONCLUSION THAT THERE WAS SCARRING OR SOME CHANGE.

>> YES.

>> IMPACT ALONE IS NOT ENOUGH BECAUSE YOU COULD HAVE SOMEONE TESTIFY THEY BREATH IN THE STUFF AND THEN HEARD IT WAS PROBLEMATIC.

LET ME ASK YOU THIS.

WHERE IN THE COMMON-LAW, IN THE CASE LAW IS ASBESTOSIS DEFINED?

>> IT IS DEFINED BY EXPERT TESTIMONY AND NOT IN ANY PARTICULAR WAY BY STATUTE.

>> I'M NOT TALKING ABOUT EXPERT TESTIMONY.

I AM TALKING ABOUT WHERE IN THE CASE LAW DO SEE A DEFINITION OF ASBESTOSIS THAT YOU'RE TALKING ABOUT?

>> THE CASE LAW THE STATUS IS THAT VARIOUS FORMS OF ASBESTOSIS COULD INCLUDE.

>> I AM ASKING CLEAR.

I UNDERSTAND.

I WANT TO BE CLEAR WHAT CASE DOES THAT.

>> TAKE A LOOK AT W.R. GRACE.

>> I HAVE LOOK AT THOSE.

I DON'T SEE THAT DEFINITION.

>> THE OUTSIDE FORCE OR SUBSTANCE.
THERE ARE NOT IMMEDIATELY.
IF THROUGH EXPERT TESTIMONY YOU
ESTABLISH A PHYSICAL MANIFESTATION,
WHICH COULD TAKE A VARIETY OF
FUNCTIONS, PLURAL THICKENING.
IT COULD BE A SPECIFIC PLEURAL
BLACKNESS.
IT COULD BE SCARRING.
IT WAS A CASE BY CASE, YOUR HONOR,
BASED ON EXPERT TESTIMONY.
THE ONLY CRITERIA THAT HAD TO BE
SATISFIED WITH THE IMPACT ROLLS.
THEREFORE W.R. GRACE SAYS MILD
ASBESTOSIS IS SATISFIED.
EAGLE-PITCHER, I JUST QUOTED ITS
FINDING.
QUOTES THE PROVISION SAYING THERE
HAS TO BE A MANIFESTATION EVEN IF IT
DOESN'T.
SO CELOTEX SAYS THE CAUSE OF ACTION
ARISES FOR PURPOSES OF STATUTE OF
LIMITATION MEANT THE EFFECTS ARE
MANIFEST.
NOT NECESSARILY, NOT DEBILITATING
NECESSARILY.
CERTAINLY NOT A PERMANENT DISEASE.
MANIFEST DEFECTS.
IT IS A CASE BY CASE DETERMINATION
BASED ON EXPERT TESTIMONY WHICH
GENERALLY ESTABLISHES THE STANDARDS
THAT WE TALKED ABOUT.
>> LET ME ASK YOU ABOUT THE SUPREME
COURT.
THE U.S. SUPREME COURT.
YOU CITED THAT IN YOUR CASE.
IT ACTUALLY IMPAIRS ON THIS ISSUE OF
CANCER CLAIMS.
BUT IN THE COURSE OF THAT DISCUSSION
IN THE COURT THEY ARE INTERPRETING THE
STATUTE.

THEY RECOGNIZE THAT THEY NEED TO INTERPRET IT IN LIGHT OF THE COMMON-LAW AND COMMON-LAW PRESENCE.

IT COMES TO BEAR.

IT SEEMS LIKE TO ME IN THEIR DISCUSSION IN THAT CASE THEY INDICATE THAT THERE HAS GOT TO BE SOMETHING MORE THAN JUST SOME CHANGE IN THE CELLULAR STRUCTURE.

THEY SAY, THEY PREFER AN EARLIER CASE FOR THEY SAY THAT SHARPLY DISTINGUISHED EXPOSURE FOR CLAIMANTS TO SUFFER FROM A DISEASE AND STATED UNAMBIGUOUSLY THAT THE COMMON-LAW PERMITS AN ACTUAL STRESS RECOVERY FOR THE LATTER CATEGORY.

THE COURT GOES ON TO SAY COMMENTARY DISTINGUISHES ASYMPTOMATIC ASBESTOS CLAIMANTS FROM PLAINTIFFS WHO DEVELOP ASBESTOSIS AND SUFFER REAL PHYSICAL HARM.

IN THIS DAY, THAT PLAINTIFFS WITH PLURAL THICKENING THEY HAVE SIGNIFICANTLY INCREASE OF CANCER.

IT SERVES AS THE CURRENT PROVIDER.

IF I AM READING THAT IT SEEMS LIKE THEY UNDERSTAND THAT TO HAVE AN ACTIONABLE INJURY ASBESTOS CLAIM YOU HAVE GOT TO HAVE SOMETHING MORE THAN JUST SOME CHANGE IN THE CELLULAR STRUCTURE WHICH HAS NO IMPACT IN IMPAIRMENT.

>> NOT UNDER FLORIDA LAW.

NOT UNDER FLORIDA CASE.

I HAVE JUST QUOTED YOU FIVE CASES WHICH SAY PHYSICAL MANIFESTATION.

I MIGHT ADD PARENTHETICALLY THAT SOME OF THESE PEOPLE DO HAVE BREATHING PROBLEMS.

THEY CAN'T SATISFY THE QUANTITATIVE STANDARD PROVING UP THE DISABILITY.

AND THAT RETROACTIVE APPLICATION.

>> THAT IS IMPORTANT.

I THINK WE CAN TAKE THE FACT THAT WE HAVE THE RECORD.

I THINK THE CONCERN THAT I WOULD HAVE IN MAKING THE LAW VERY CLEAR SEEMS TO BE THAT THERE IS THIS PROGRESSION.

YOU QUOTED FROM A SUPREME COURT CASE BETWEEN SOMETHING THAT IS COMPLETELY ASYMPTOMATIC AND SOMETHING THAT HAS CAUSED SOME DIFFICULTY, WHATEVER THE DIFFICULTY MIGHT BE AND THAT IT WOULD NOT RISE TO THE LEVEL OF STATUTORY CLAIMS.

ARE YOU REPRESENTING THAT THERE ARE PLAINTIFFS IN THE CASES THAT ARE BEFORE US THAT HAVE SYMPTOMS EVEN IF THEY DON'T HAVE AN IMPAIRMENT UNDER THE STATUTE?

I THOUGHT I'M UNDERSTOOD THAT ALL OF THE PLAINTIFFS FOR ASYMPTOMATIC.

>> THERE WERE ONE OR TWO WHO SAID THEY HAD BREATHING DIFFICULTIES, BUT COULD STILL NOT SATISFIED THE UNDERLYING REQUIREMENTS OF WHICH THERE ARE MANY OF PROVING UP THE REQUIREMENT.

>> BUT YOU THINK THAT HAVING A CASE THAT WOULD SAY THAT ASBESTOSIS HAS BEEN ALWAYS UNDERSTOOD, EVEN UNDER EAGLE-PITCHER THEY TALK ABOUT THE EXACT DEFINITION.

THE PLAINTIFFS HAVE DIFFICULTY. SYMPTOMS.

>> WHICH IS STILL NOT SATISFIED.

>> WE HAVE NOT BEEN ASKED TO CLARIFY THE COMMON-LAW.

IT WOULD REQUIRE A MANIFESTATION OF SYMPTOMS.

THEY WOULD HAVE A SUSPECTED CAUSE OF ACTION AND THIS WOULD BE UNCONSTITUTIONAL.

FOR THOSE WHO SIMPLY HAVE X-RAY CHANGES WITHOUT A MANIFESTATION OF SYMPTOMS THERE WAS NEVER A CAUSE OF ACTION.

WE HAVE NOT BEEN ASKED TO GIVE THAT ALTERNATIVE, WHICH IS THAT NOT EVERYONE GETS THROUGH THE DOOR.

PEOPLE WHO HAVE SYMPTOMS THAT MANIFESTED BEFORE 2005 ARE IN THE DOOR AND DON'T HAVE TO COMPLY WITH THIS HIGHER STANDARD.

>> RESPECTFULLY I AM ASKING YOU TO CONCLUDE THAT EVEN IN THE ABSENCE OF THE SYMPTOMS THIS PAST RULE IS SATISFIED AND THE ONLY PRE-EXISTING REQUIREMENT.

>> IF WE CONCLUDE AND WE GO BACK TO CASE LAW AND SAY THERE IS SOME SENTIMENT AND THAT IS ANOTHER ROUND TO SAY THAT THE COMMON LAW HAS BEEN, YOU KNOW, UNDERSTOOD TO BE THERE HAD TO BE SOME SYMPTOMS.

>> AND EVEN AT CIRCUMSTANCE THE STATUTE WOULD BE RETROACTIVE.

>> I UNDERSTAND THAT.

WE GO FROM ONE EXTREME, WHICH IS ANYBODY THAT HAS X-RAY CHANGES GETS A CLAIM TO ANOTHER EXTREME THAT THEY HAVE TO GO THROUGH ALL THESE REQUIREMENTS THAT ARE CLEARLY, TO ME, SUBSTANTIVE.

IF IT DID NOT HAVE THE RIGHTS TO BEGIN WITH, IT DID NOT MATTER.

THEY AT LEAST HAVE TO BE ABLE TO ALLEGE THAT THEY HAVE SYMPTOMS FROM THE DIAGNOSIS.

AND I'M NOT JUST ASKING.

>> BUT LOOK AT THE IMPACT RULE DECISIONS.

HAVE A CAUSE OF ACTION FOR STATUTE OF LIMITATION PURPOSES WHICH MEANS THE

CAUSE OF ACTION STARTS WHEN THE EFFECTS OF INFLATION ARE MANIFEST.
>> TO GO BACK TO WHAT WAS SAID, DON'T CHANGE.

>> THAT IS WHAT ALL THE IMPACT.

>> BUT IN THE CELOTEX THE FELLOW WAS VERY SICK.

THERE IS NO QUESTION IT MANIFESTED. THERE WERE SYMPTOMS.

LET ME ASK YOU THIS.

IF THE COMMON-LAW IS NOT ENTIRELY CLEAR BASED ON OUR CASE LAW ABOUT EXACTLY WHAT YOU HAD TO SHOW TO ESTABLISH AN ACTIONABLE INJURY HOW CAN WE SAY THAT THERE IS A VESTED RIGHT TO A PARTICULAR SET OF, A VESTED RIGHT NOT TO HAVE A PARTICULAR SET OF REQUIREMENTS THAT THE LEGISLATURE DECIDES ARE APPROPRIATE?

IT IS NOT CLEAR.

>> LET ME TALK ABOUT VESTED RIGHTS. THERE WAS A NEW REQUIREMENT ABOUT NOTICE OF INTENT.

THERE WAS A CAP ON INTEREST AND PENALTIES.

VESTED RIGHTS BASED ON JUDGMENTS. THERE WAS A GRACE PERIOD.

SIMPLY DELAYED THE CAUSE OF ACTION. THE STATUTE OF LIMITATION WAS PULLED FROM A 15-30 DAYS.

THAT WAS NOT AN VESTED RIGHT.

YOU CITED ALL SORTS OF PROCEDURAL CASES IN WHICH THIS COURT SAID THE RETROACTIVE DECISION WHICH REQUIRES THE PLAINTIFF TO HAVE A SUBSTANTIVE CAUSE OF ACTION HAS NOT EVEN BEEN FILED YET.

THIS COURT SAID, I'M NOT TALKING ABOUT VESTED RIGHTS.

I'M TALKING ABOUT NEW OBLIGATIONS ARE SUBSTANTIVE IMPAIRMENT IS WITH RETROACTIVE APPLICATION ON A STATUTE.

CAUSE OF ACTION IS ANYTHING THAT DATES BACK TO SOMETHING AFTER THE CAUSE OF ACTION ARISES.

THIS COURSE OF ALSO SAID THAT SUBSTANTIVE CHANGES, NOT NECESSARILY VESTED RIGHTS AS A JUDGE.

>> THAT IS NOT WHAT I MEANT.

I DID NOT MEAN THAT JUDGMENT.

I'M NOT TALKING ABOUT FEDERAL LAW AND ALL THAT.

THAT IS A DIFFERENT SUBJECT.

THIS SEEMS LIKE TO ME MY POINT, IF IN A CAUSE OF ACTION, CAN THERE BE A VESTED RIGHT ON CAUSE OF ACTION UNDER THE COMMON-LAW IF THE COMMON-LAW IS BASED ON THE CASE LAW AND NOT ENTIRELY CLEAR ABOUT THE MAGNITUDE OF INJURY THAT GETS YOU TO THE POINT OR THE EXACT SORT OF MANIFESTATION THAT YOU HAVE TO HAVE TO GET YOU TO THE POINT OF HAVING AN ACTIONABLE CLAIM?

AND WHEN I LOOK AT THESE CASES EVERYBODY IN THESE CASES WAS SICK.

I MEAN, THEY WERE COMING FORTH WITH SERIOUS PROBLEMS.

AND SO I CANNOT SEE IN OUR CASE LAW ANYTHING THAT SUGGESTS THAT SOMEBODY WHO IS NOT REALLY SUFFERING FROM THE CONSEQUENCES OF INHALING, AND NOT JUST SCARRING, BUT SOME ACTUAL CONSEQUENCES BEYOND THAT WOULD HAVE HAD A CAUSE OF ACTION IN COMMON-LAW.

DON'T SEE IT IN THE CASE IS.

I UNDERSTAND WHAT YOU HAVE SAID AND I READ THE CASES.

>> MILD ASBESTOSIS WITH NO MANIFESTATION.

>> AGAIN.

>> LOOK AT CELOTEX. STATUTE ARISES.

CAUSE OF ACTION EXISTS WHEN THE EFFECTS ARE MANIFESTED.

THAT IS NOT PERMANENT INJURY.

>> THIS IS AN AREA WHERE THE TERMINOLOGY IS VERY TRICKY AND SLIPPERY.

MANIFESTATION, THAT CAN MEAN DIFFERENT THINGS.

IT CAN BE MANIFESTED UNDER THE MICROSCOPE, OR IT CAN BE MANIFESTED IN A PERSON'S HEALTH AND THEIR EXPERIENCE OF WHETHER THEY'RE HEALTH OR NOT.

>> FOR IMPACT WILL PURPOSES WHICH WAS THE ONLY RULE.

LOOK AT ALL THE MANIFESTATION, NOT NECESSARILY INJURY, YOU SATISFIED THE IMPACT RULE.

>> THE SIMPLE ANSWER HERE IS THAT COMMON-LAW, THERE WAS NEVER IN ANY CLASSIFICATION OF CASES A MEASURING A MAGNITUDE OF WHATEVER THE RESULTS OF THE LEGAL LAW WAS.

>> OR A REQUIREMENT.

>> SO TO SAY NOW BECAUSE THEY PUT ONE IN WE DID NOT HAVE ANY BEFORE AND THIS CAN BE DONE IS SORT OF CIRCULAR.

ANY TYPE OF TORT THAT WE HAVE, ASSAULT AND BATTERY OR WHATEVER IS THAT WE DID NOT HAVE A MEASURING A MAGNITUDE OF THE INJURY AS PART OF THE CAUSE OF ACTION.

WOULD BE THEN, IT COMES OUT IN THE AMOUNT OF DAMAGES YOU ARE ENTITLED TO.

IT MAYBE ZERO OR A PENNY.

>> YOU DON'T HAVE A PHYSICAL.

>> THE FLIP SIDE.

A LOT OF THE CASES AS I READ IT WERE CONCERNED.

IF YOU ARE A PLAINTIFF WHO WAS EXPOSED TO ASBESTOS AND YOU GET NERVOUS.
YOU GO TO A DOCTOR.
THE DOCTOR SAYS YOU HAVE SIGNS OF EARLY LUNG CHANGES, BUT YOU'RE DOING FINE.
YOU ARE GOING TO BE ABLE TO LIVE WITHOUT ANY SYMPTOMS FOR ANOTHER 5-10 YEARS.
UNDER THE LAW THAT SAYS THE STATUTE OF LIMITATIONS RUNS FROM THE TIME THEY EXPERIENCE MANIFEST THERE WAS CONCERN ABOUT WHETHER THEY WOULD LOSE THEIR RIGHTS TO SUE.
SO IN ONE WAY -- I'M NOT SAYING -- IN ONE WAY THE LEGISLATURE BY SAYING, LISTEN, YOU DON'T HAVE TO SUE AT THE TIME YOU HAVE LUNG CHANGES.
YOU HAVE TO WAIT UNTIL THERE ARE SYMPTOMS.
THAT IS ACTUALLY A HELPFUL THING.
BUT THERE IS THE CLASS OF CASES THAT PEOPLE THAT HAVE CHANGES.
THEY WERE NOT SHOWING A PHYSICAL IMPAIRMENT.
THOSE CASES WERE BEING BROUGHT REGULARLY.
>> OTHER CASES WOULD NOT HAVE ARISEN.
THEY WOULD NOT HAVE HAD A COURSE OF ACTION.
THEY MUST OF HAD A CAUSE OF ACTION.
THOSE ARE TWO FLORIDA SUPREME COURT CASES SAYING YOUR CAUSE OF ACTION JUST STARTED WITH THESE SYMPTOMS, WITH THESE PHYSICAL IMPACT MANIFESTED.
SO I RESPECTFULLY DISAGREE, YOUR HONOR, THAT THERE IS NO CASE LAW ON THIS.

HOWEVER, I DON'T THINK THERE HAS TO BE.

WE JUST HAVE A NEW DECISION THAT SAYS PROCEDURAL CHANGES ALONE IN THERE RETROACTIVE IMPACT CAN UNDERMINE PRE-EXISTING SUBSTANTIVE RIGHTS, PRE-EXISTING CAUSE OF ACTION.

>> WHAT ARE THE ISSUES?

WHAT ARE THE ISSUES THERE OF SOMEONE'S RIGHT TO ATTORNEYS' FEES WHICH THEY OTHERWISE WOULD HAVE HAD?

>> LET ME ASK YOU.

YOU SAID IN THIS CASE.

>> SORRY.

>> PLAINTIFFS THAT HAD PHYSICAL MANIFESTATIONS BUT WOULD STILL NOT BE ABLE TO SATISFY THE STATUTORY REQUIREMENTS.

IS THAT RIGHT?

>> THAT'S CORRECT.

>> WHO ARE THEY?

AND WHAT STATUTORY REQUIREMENTS CANNOT FULFILL?

>> I HAVE TWO.

I CAN GO THROUGH THEM ALL.

HE HAD ON THE ILL SCALE BELOW ONE / NINE.

774.

HE IS DECEASED.

UNDER 774.242 THERE ARE THREE MEASURES OF IMPAIRMENT.

REMEMBER, IMPAIRMENT IS ANOTHER SUBSTANTIVE STANDARDS.

THREE MEASURES OF IMPAIRMENT.

CANNOT SATISFY THOSE MEASURES.

HIS CAUSE OF ACTION IS OVER.

COUNCIL STATEMENT, COUNCIL

ARGUMENT MADE FOR THE FIRST TIME.

THEY SHOULD HAVE REFILED BECAUSE HE

MAYBE COULD HAVE PURSUED THEIR

ACTIONS.

THEY NEVER HAD ONE.
TAKE A LOOK.
ERIC MEYERS WAS TESTED AFTER THE
STATUTE WAS ENACTED TO SEE IF HE
COULD SATISFY.
HE HAD NO CANCER.
HE HAD NO THICKENING.
UNDER 774.2042F HE REQUIRED A TWO /
ONE ON THE SCALE.
ONLY HAD A ONE / ONE.
HE COULD NOT SATISFIED.
HE HAD TO HAVE LESS THAN 80% OF
PREDICTED MINIMAL LEVELS.
HIS CAPACITY WAS 87%.
HE IS OUT.
HE CANNOT SATISFY THIS STATUTE.
>> HIS PHYSICAL MANIFESTATIONS WERE
WHAT?
>> I THINK HIS PHYSICAL MANIFESTATIONS
MAY HAVE EXCLUDED SOME FORM.
I DON'T SEE IT HERE.
BUT EVEN IF HIS PHYSICAL
MANIFESTATIONS HAVE INCLUDED SOME
DEBILITY LIKE FATIGUE OR SHORTNESS OF
BREATH, EVEN IF THAT HAD BEEN
ACTIONABLE HE WAS OUT.
HE HAD TO SATISFY THE STANDARDS EVEN
WITH THOSE MANIFESTATIONS.
HE HAD TO SATISFY THEM.
ALL OF THESE NUMBERS AND
PERCENTAGES, NONE OF WHICH EXISTED IN
COMMON LAW, ALL SORTS OF DISTRICT
MEASURES, HAD TO BE SATISFIED TO
PURSUE THIS CLAIM EVEN WITH
SYMPTOMS.
EVEN ON THE ASSUMPTION THAT THERE
WAS NO PRIOR COMMON-LAW CAUSE OF
ACTION ABOUT THE SYMPTOMS I
QUESTION THAT ASSUMPTION.
BUT JUST THOSE FACTORS ALONE TAKE
THESE TWO OUT OF COURT.

NOT ONLY WERE THEY TOLD TO GO TO THE BACK OF THE LINE, THEY WERE TOLD TO GET OUT OF THE LINE ENTIRELY.

YOU DON'T HAVE A CAUSE OF ACTION.

ALL WE ARE SAYING IS THE CAUSE OF ACTION THAT EXISTED ALREADY UNDER THE COMMON-LAW MEANING THAT WE MANIFESTED THE SYMPTOMS AND COULD BRING AN ACTION.

THE PRIOR FOR AT LEAST NON-ECONOMIC DAMAGES.

>> ARE THESE TWO THAT YOU MENTIONED, ARE THEY FACTUALLY DIFFERENT THAN ALL THE OTHER PLAINTIFFS?

>> NO.

ALL OF THE OTHERS WERE SHORT OF THE MANIFESTATIONS OF EITHER CANCER AS SPECIFICALLY DEFINED, ASBESTOSIS AS SPECIFICALLY DESIGNED, AND PLURAL THICKENING.

>> WE SHOULD ASSUME FOR OUR PURPOSES AND ALL THESE PLAINTIFFS, THERE ARE NO FACTUAL DISTINCTIONS?

>> FOR PURPOSES OF SATISFYING THE STATUTE, YES.

BUT THIS --

>> AND WE CAN LOOK AT THE MOTIONS, THE COMPLAINTS AND ASSUME ALL THE ALLEGATIONS IN THE COMPLAINT FOR PURPOSES OF ANALYZING THE PROPRIETY OF THE MOTION BE DISMISSED.

>> YES, AND THE ALLEGATION OF ASBESTOSIS WAS UNDER THE PRE-EXISTING STANDARD.

THIS STATUTE TAKES AWAY THE DEFINITION OF ASBESTOSIS, A CAUSE OF ACTION PREDICATED ON CONCENTRATED PLURAL THICKENING, A CAUSE OF ACTION PREDICATED ON SCARRING, MANIFESTATIONS, WITH OR WITHOUT BREATHING PROBLEMS.

>> THE RECORDED DECISION FOR THE
EXISTENCE OF A PLURAL PLAQUE.
SOME CASES WERE CITED AND THE
RESTATEMENT.

THAT IS NOT A CONSISTENT INJURY.

>> JUDGE, I HAVE GONE THROUGH EVERY
CASE.

IF THE MANIFESTATION OF PHYSICAL
MANIFESTATION OF THIS DISEASE, WHICH
PLEURAL PLAQUE IS, THAT IS NOT
DISPUTED, STOPS THE STATUTE OF
LIMITATIONS.

>> THAT WOULD NOT SERVE THE STATUTE
OF LIMITATIONS HERE.

>> THOSE PART TO FLORIDA SUPREME
COURT DECISIONS.

I AM SETTING FLORIDA CASES.

THAT IS WHAT THE COURT SAID.

THAT MEANS YOU HAVE GOT TO HAVE A
CAUSE OF ACTION.

>> AGAIN.

>> I DON'T THINK IT IS CLEAR FROM THAT
CASE.

THE PLURAL FACTS, I THINK IT IS CLEAR
THEY WARRANT MANIFESTATION.

>> IT CERTAINLY DID NOT HAVE AN
IMPAIRMENT.

THIS STATUTE REQUIRES AN IMPAIRMENT.

>> YOU DON'T HAVE A CASE.

ANYWHERE IN THE COUNTRY THAT SAYS
SOMEONE WITH PLURAL PLAQUE, THAT
ALONE HAS AN ACTIONABLE.

>> JUDGE, I HAVE SO MANY FLORIDA
CASES.

I EVEN LOOKED FOR NON-FLORIDA CASES.
THE ANSWER IS NO.

>> MR. PERWIN, IF YOU WOULD SUM UP
PLEASE.

YOU ARE WELL BEYOND YOUR TIME.

>> I WILL QUICKLY.

THESE PLAINTIFFS COULD NOT SATISFY THE
STATUTE WHEN THEY WERE DISMISSED.

THAT POINT IS NOT CORRECT.
THEY DID HAVE A PRE-EXISTING CAUSE OF
ACTION.

I WILL NOT TAKE ANY MORE OF THE
COURT'S TIME.

WE SUBMIT THAT THE DECISION SHOULD
BE APPROVED.

>> I WILL GIVE YOU TWO MINUTES.

>> THANK YOU, YOUR HONOR.

>> FOR SOME REBUTTAL.

>> THERE IS NOT A SINGLE CASE IN THE
COUNTRY THAT SAYS YOU CAN GET A
RECOVERY FOR MERE SCARRING, INTERNAL
SCARRING, OR PLURAL PLAQUE.

WE HAVE CITED THE COURT WITH
NUMEROUS AUTHORITIES THROUGHOUT
THE COUNTRY THAT YOU CAN'T GET A
RECOVERY WITH SCARRING.

>> HOW DOES THE STATUTE OF
LIMITATIONS WORK?

YOU HAVE TO HAVE ONE OF THESE THINGS.
IS IT ONE, IS A MULTIPLE?

HOW DO YOU UNDERSTAND THAT?

>> THE STATUTE OF LIMITATIONS.

>> I UNDERSTAND THE TOLLING.

WHAT CAUSES IT TO RUN?

>> WHEN AN INDIVIDUAL IS ABLE TO --

>> THAT INCLUDES ALL THESE THINGS?

>> THAT INCLUDES ALL THESE THINGS.

>> THERE COMES A POINT IN TIME WHEN
SOMEONE COMES IN AND THEIR
BREATHING IS REALLY SO FAR DOWN THE
LINE.

YOU HAD THAT TWO YEARS AGO.

THAT IS HOW THIS IS GOING TO WORK ITS
WAY THROUGH.

AFTER THE FACT THAT MITIGATES THE
STATUTE OF LIMITATIONS FOR THESE
ELEMENTS.

>> THAT COULD ALWAYS BE THE CASE.

>> YES.

>> EVERYBODY IS ON NOTICE.

WHAT VARIOUS STATES HAVE DONE WITH CASES LIKE THIS, NEW YORK, ILLINOIS, MASSACHUSETTS, MARYLAND, THE COURTS ARE SHELIVING CASES LIKE THIS ON A DORMANT DOCKETS UNTIL PEOPLE CAN SHOW SYMPTOMS.

THEY DON'T HAVE OBJECTIVE CRITERIA TO MEET.

IT IS A STATE OF LIMBO.

HERE THERE ARE OBJECTIVE CRITERIA.

EVERYBODY KNOWS WHERE THEY STAND.

>> YOU ARE TALKING ABOUT CASES WHERE SOMEBODY HAS FILED CAUSE OF ACTION.

>> YES.

>> BUT THERE IS CONCERN.

>> IRONICALLY WHEN THESE INDIVIDUALS GET THESE X-RAY READING WHEN THEY CHARACTERIZE IT AS A DIAGNOSIS IN THE COMPLAINT THEY ARE ARGUABLY THE STATUTE OF THEMSELVES.

THEY ARE IN THE TORT SYSTEM.

THEY CAN'T GET FULL COMPENSATION.

>> THAT IS THE RISK.

ABSOLUTELY.

>> THIS IS NOT A NEGLIGENT INFLICTION CASE.

NOT FILED AS A NEGLIGENT INFLICTION CASE.

THE IMPACT RULE DOESN'T APPLY.

WHAT COUNSEL SAID IN ITS BRIEF.

>> THEY HAVE NO INJURIES.

YOU ALLEGE YOU HAVE NO INJURY.

YOU ARE SAYING THEY HAVE NO RIGHT TO AN INTANGIBLE DAMAGE FOR THIS FEAR. SO THIS REALLY IS.

THAT IS THE DOG.

NOW YOU'RE SAYING IT IS NOT.

>> THEY HAVE NOT BROUGHT A CLAIM OF FEAR.

THEY BROUGHT A CLAIM FOR PERSONAL INJURY.

>> YOU ARE TALKING ABOUT THE FEAR.

IT REALLY PERTAINS TO THE WELL OF
DISCUSSIONS.

>> EXACTLY.

THEY SAY IT IS ABOUT ASBESTOSIS.
THEY CAN SEE THAT A DIAGNOSIS HAS TO
MEET THE PREVAILING STANDARDS IN
VARIOUS MEDICAL SOCIETIES.

WHAT THIS RECORD SHOWING WHAT THIS
STANDARD IS BASED ON IN THE STATUTE,
AN ABA BIPARTISAN COMMISSION REPORT.

THIS SURVEY ALL OF THESE MEDICAL
SOCIETIES.

THE BEST INPUT TO IDENTIFY ACCEPTED
MEDICAL PRACTICES WITH ONE CAVEAT.

A SLANTED TOWARD THE POINT.

PERFECT PURPOSELY.

>> WITH THAT YOU HAVE GONE WAY
BEYOND YOUR TIME.

THANK YOU.

THIS COURT IS NOW IN RECESS UNTIL
TOMORROW MORNING.

>> PLEASE RISE.