

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

Edmund Mady v. Daimler Chrysler Corp.

SC08-808

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE NEXT CASE ON OUR AGENDA
IT IS MADY VERSUS

DAIMLERCHRYSLER CORPORATION.

>> YES MAAM, THANK YOU YOUR
HONOR.

THE PETITIONER, EDMUND MADY.

THE ISSUE ON APPEAL IN THIS CASE
IS WHETHER A PLAINTIFF WHO
ACCEPTS A DEFENDANT'S OFFER OF
JUDGEMENT SERVED ON THE FLORIDA
STATUTE SOME SIX, EIGHT, SEVEN,
NINE AND FLORIDA CIVIL PROCEDURE
IS PRECLUDED FROM RECOVERING
ATTORNEY FEES WHERE THE OFFER
EXPRESSLY PERMITS THE PLAINTIFF
TO POSITION THE TRIAL COURT FOR
FEES AND THE OFFER EXPRESSLY
PRESERVES THE TRIAL COURT'S
JURISDICTION OVER THAT ISSUE.

>> IT IS A FEDERAL STATUTE, IS
THAT CORRECT?

>> IT IS A MIX.

THE ISSUE IS WHETHER WE QUALIFY
FOR THE PREVAILING PARTY.

>> THE ISSUE IS WHAT THE WORD
FINALLY PREVAILS AND WHAT THAT
PHRASE MEANS.

>> THAT IS, THAT WHAT PLAYS INTO
THAT IS HOW THE FLORIDA LAW
AFFECTS THAT DEFINITION.

>> SO, IT IS AN INTERPLAY
BETWEEN THE FLORIDA STATUTE AND
WHETHER, WHATEVER IT FINALLY
PREVAILS, MEANING IT IS SET
ASIDE BY ACCEPTANCE-- NO

JUDGEMENT IN THIS CASE?

>> EXACTLY YOUR HONOR AND THE
REASON THERE IS AN INTERPLAY IS,
BACK TO WHY THERE IS, THIS IS AN
APPEAL OF A CASE WHERE THE
DISTRICT COURT DISALLOWED FEES.

ACTUALLY WHAT THE COURT RULED WAS A MATTER OF LAW.

THE PLAINTIFF WAS BARRED FROM RECOVERING FEES, BUT THE CASE IS HERE ON CONFLICT OF JURISDICTION BECAUSE, SIX WEEKS PRIOR TO DECIDING THAT, THE PLAINTIFF WAS PRECLUDED AS A MATTER OF LAW FROM RECOVERING FEES.

THE SECOND DISTRICT COURT OF APPEALS EXPRESSLY RULED THAT WE WOULD NOT PRECLUDE IT FROM RECOVERING FEES.

DIFFERENT PLAINTIFF, THE SAME FIRMS, THE SAME DEFENDANTS. THAT CASE WAS CHRYSLER.

IN EACH OF THESE CASES, THERE IS MADY V. CHRYSLER, WHICH IS UP ON APPEAL, AND THEN THERE IS SAN MARTIN V. CHRYSLER DECIDED BY THE THIRD DISTRICT COURT OF APPEALS.

THE SECOND COURT OF APPEALS AND DEFRESNE SAID WE WERE NOT PRECLUDED FROM SEEKING THESE.

>> LET'S TALK ABOUT THE MERITS.

IT IS NICE THAT ALL THESE APPELLATE COURTS HAVE DONE WHAT THEY HAVE DONE, BUT WHAT IS THE-- THERE IS A SETTLEMENT.

WOULD YOU AGREE THAT THAT WAS NOT FINALLY PREVAILING?

THE PRIVATE SETTLEMENT BETWEEN TWO PARTIES, THEY SETTLED THE CASE.

DOES THAT QUALIFY FOR FINALLY PREVAILING ATTORNEY FEES?

>> THE ANSWER IS THAT DEPENDS, AND HERE'S WHY IT DEPENDS.

THE ISSUE OF PREVAILING PARTY IS REALLY AN INTERPRETATION OF THE SUPREME COURT'S RULING IN MADY.

>> WHEN YOU ARE SAYING PREVAILING PARTY, IT IS THE CASE

LAW OF THE PREVAILING PARTY AND FINALLY PREVAILS.

DOES THAT MEAN EXACTLY THE SAME THING?

>> NOT EXACTLY THE SAME THING BUT THEY ARE INTERPRETED IN SUBSTANTIALLY THE SAME WAY AND UNDER BUCKHANNON THERE IS NO DELINEATED DISTINCTION.

THE ISSUE WAS FINALLY PREVAILING UNDER, AND, IN THAT CASE THE DISABILITY ACT, BUT IT HAS BEEN INTERPRETED IN A VARIETY OF SITUATIONS.

ONE WAS EQUAL ACCESS TO JUSTICE ACT, ONE WAS A VOTING RIGHTS ACT.

IN THIS CASE THE--

>> ARE THESE DIFFERENT KINDS OF STATUTORY SCHEMES?

TO TAKE OUT OF THE NURSING HOME CASE, AND A SITUATION WHERE, BECAUSE THE LAWSUIT IS FILED ALLEGEDLY, IT PROVOKED OR CAUSED SOME CHANGES IN STATUTES OR SOMETHING?

THAT IS A FAR CRY FROM A CASE WHERE YOU'VE GOT INDIVIDUAL LITIGATION BETWEEN INDIVIDUALS AND CONSUMERS AND THE MANUFACTURER, DON'T YOU?

>> THAT IS RIGHT YOUR HONOR.

>> IT SEEMS TO ME THERE HAS TO BE SOME INTERPLAY JUST TO SAY THAT ONE SUPREME COURT CASE IS THE BE ALL END ALL TO THE WHOLE WORLD OF CASES THAT IT HAD NOTHING TO DO WITH, SO ALL THE OTHER DISCUSSION IS SORT OF TO THE HOLDING OF THAT CASE.

>> THAT WOULD BE TRUE, EXCEPT THERE HAVE BEEN APPELLATE COURTS SINCE THEN.

>> NOT THE SUPREME COURT THOUGH. NOT THE UNITED STATES SUPREME COURT.

>> YOU ARE ABSOLUTELY RIGHT.

>> IN BUCKHANNON, WHAT IS THE RATIONALE?

HOW DO YOU DESCRIBE THE HOLDING

THAT THE COURT MADE IN THAT CASE?

>> THAT IS A GOOD QUESTION AND IT WILL BOIL DOWN MY ARGUMENTS. THE HOLDING OF BUCKHANNON IS THAT THERE MUST BE A JUDICIALLY SANCTIONED CHANGE IN THE LEGAL RELATIONSHIP OF THE PARTIES WITHIN THE CONTEXT OF THE LAWS.

>> OKAY, WHERE WAS THERE ANY JUDICIALLY SANCTIONED CHANGE IN THE CASE THAT IS NOW BEFORE US?

>> THE JUDICIALLY SANCTIONED
CHANGES THIS.

THIS WAS NOT A PRIVATE
SETTLEMENT.

JUSTICE PARIENTE ASKED ABOUT
THAT.

THEY SAID IT DEPENDS, BUT I WANT
TO ADDRESS YOUR QUESTION
DIRECTLY.

THE JUDICIALLY SANCTIONED
CHANGES THIS.

THIS WAS NOT A SETTLEMENT, THIS
WAS NOT A PRIVATE SETTLEMENT.
IT DID NOT OCCUR WITHIN THE
CONTEXT OF THE DEFENDANTS
OFFERING TO MY CLIENT SOMETHING,
OUTSIDE THE PRESENCE OF THE
COURT.

IT DID NOT INVOLVE THE COURT.
THIS WAS A CASE IN WHICH THEY
MADE AN OFFER SPECIFICALLY
PURSUANT TO A JUDICIALLY-CREATED
REGIME WHICH AUTHORIZED THE
OFFER MADE, WHICH IMPOSES
CERTAIN REQUIREMENTS UPON IT,
WHICH IMPOSED REQUIREMENTS UPON
US AS THE PLAINTIFF IN TERMS OF
THE ACCEPTANCE.

WE HAVE 30 DAYS TO ACCEPT OR
REJECT IT, AND IF WE DIDN'T
ACCEPT, THAT THERE WERE
JUDICIALLY IMPOSED
REPERCUSSIONS.

>> BUT, IN READING BUCKHANNON,
REPEATEDLY IN THAT CASE, THE
COURT SAID THINGS LIKE THE VIEW
THAT THE PREVAILING PARTY HAS
BEEN AWARDED SOME RELIEF CAN

BE-- FROM PRIOR CASES.

AND, THEY WOULD REJECT THE VIEW
THAT ALLOWS A JUDICIALLY
SANCTIONED CHANGE IN THE LEGAL
RELATIONSHIP OF THE PARTY.

AND, THEY TALK ABOUT THE
COURT-ORDERED CHANGE IN A LEGAL
RELATIONSHIP OF THE PARTY.

THEY TALK ABOUT-- THEY SAID THAT
THE SENATE VOLUNTARY CHANGE IN
CONDUCT, ALTHOUGH PERHAPS
ACCOMPLISHING WHAT THE
PLAINTIFFS SOUGHT TO ACHIEVE,
LACKS THE NECESSARY JUDICIAL--
ON THE CHANGE.

IT IS MADE VERY CLEAR THAT ROLE THEY ARE ARTICULATING IS THAT THE COURT HAS TO DO SOMETHING, NOT, NOT IN A CIRCUMSTANCE WHERE THE COURT MAY-- BUT THE COURT MUST HAVE DONE SOMETHING THAT REFLECTS THAT THE PARTY HAS PREVAILED.

>> THERE IS A LOT IN YOUR QUESTION, AND LET ME TELL YOU WHY I THINK IT IS JUST AS CLEAR THE SUPREME COURT WAS NOT BEING MERELY RESTRICTIVE AND SUGGESTING, AS YOU SAID, A COURT-ORDERED CHANGE.

IT RELATES TO THE DISTINCTION BETWEEN MADY.

BUCKHANNON DOES NOT SAY THERE MUST BE A COURT-ORDERED CHANGE. ACTUALLY, BUCKHANNON SAYS THERE MUST BE A JUDICIALLY SANCTIONED CHANGE IN THE LEGAL RELATIONSHIP OF THE PARTIES, AND LATER IN THAT SAME PARAGRAPH, IT SAYS THERE MUST BE SOMETHING THAT BEARS, AND I AM READING DIRECTLY FROM THE CASE-- THIS IS 605, AND THE PARAGRAPH I AM REFERRING TO STARTS RIGHT AT THE TOP OF 605. IT SAYS WE THINK, HOWEVER, THAT THE CATALYST THEORY FALLS ON THE OTHER SIDE OF THE LINE FROM THESE EXAMPLES.

THE CATALYST THEORY IS A SITUATION WHERE YOU DON'T GET

FEES AND IT GAVE TO EXAMPLES. WHAT ARE THOSE EXAMPLES?

A JUDICIAL-- A JUDGEMENT ON THE MERITS AND A COURT-ORDERED CHANGE IN THE RELATIONSHIP OF THE PARTY.

I AM GOING TO COME BACK TO COURT-ORDERED CHANGE IN A SECOND, BUT I WANT TO MAKE A POINT HERE.

IT GOES ON TO SAY, FALLS ON THE OTHER SIDE OF THE LINES OF THIS EXAMPLE.

IT ALLOWS AN AWARD WHERE THERE IS NO JUDICIALLY-SANCTIONED CHANGE IN THE LEGAL RELATIONSHIP OF THE PARTIES, AND THE COURT CONCLUDES THAT PARAGRAPH BY

SAYING THAT WHAT IT LOOKS FOR IS THE NECESSARY JUDICIAL IMPER MATER ON THE CHANGE BETWEEN THE PARTIES, SO WHY IS COURT-ORDERED IN THERE?

ON THE PREVIOUS PAGE, AND THIS IS 604, THE COURT SAYS IN ADDITION TO JUDGMENTS ON THE MERITS, WE HAVE HELD THAT SETTLEMENT AGREEMENTS ENFORCED BY A DECREE-- ALTHOUGH A CONSENT DECREE DOES NOT ALWAYS INCLUDE AN ADMISSION OF LIABILITY BY THE DEPENDENT-- IT IS A CONSENT DECREE FALLS ON THE OTHER SIDE OF THE LINE BECAUSE IT IS A COURT-ORDERED CHANGE OF THE LEGAL RELATIONSHIP OF THE PARTIES.

>> BUT THE DIFFERENCE THERE IS THAT THE COURT ENTERS A JUDGEMENT.

>> NO SIR.

>> THAT IS NOT A DEFENSE?

>> NO, IN FACT THE COURT RECOGNIZES THAT THE SUPREME COURT IN BUCKHANNON RECOGNIZES, BUCKHANNON DOES NOT STAND ALONE. THERE ARE FEDERAL CASES THAT HAVE INTERPRETED THIS.

>> YOU ARE TELLING ME THAT THE COURT DOES NOT APPROVE A CONSENT

DECREE?

WHY IS THERE A DECREE IN IT? IT IS JUST A SETTLEMENT.

>> THERE IS A DIFFERENCE THERE, BECAUSE THE COURT DOES NOT ALWAYS ENTER A JUDGEMENT.

>> ISN'T A DECREE A JUDGEMENT?

>> WELL, I THINK THERE MUST BE SOME DIFFERENCE BECAUSE, IF THERE WASN'T, THE SUPREME COURT WOULD NOT DISTINGUISH BETWEEN A JUDGEMENT AND A CONSENT DECREE AND I WOULD ARGUE THAT THERE ISN'T.

>> WHAT ABOUT THE WORD IMPRIMATUR.

>> THAT IS A LATIN WAY OF SAYING SANCTIONED AND THE ORAL ARGUMENT TALKED ABOUT, WE CAN'T HAVE THE IMPRIMATUR, MEANING THE ENDORSEMENT.

THE COURT'S ENDORSEMENT.
IMPRIMATUR IS AN ENDORSEMENT FOR
SANCTION AND THE COURT TALKS
ABOUT A SANCTION CHANGED.
I DID NOT SAY THERE MUST BE A
COURT-ORDERED CHANGE, AND THERE
IS A DISTINCTION BETWEEN--

>> WHAT YOU ARE SAYING HERE IS,
BECAUSE IT IS PURSUANT TO OFFER
JUDGEMENT RULE-- THAT IS YOUR
ARGUMENT RIGHT?

WHAT IF IT SAID AN OFFER OF
JUDGEMENT RULE YOU HAD A
COURT-ORDERED MEDIATION?
AND THEN THE PARTIES SETTLED, NO
CONSENT DECREE, NO OTHER WORD.
THE PARTY HAS JUST SETTLED, BUT
YET THEY DO SO PURSUANT TO A
COURT-ORDERED MEDIATION.

>> THAT WOULD NOT QUALIFY, AND
THE REASON IS, IN THAT CASE, THE
EXAMPLE THAT YOU JUST GAVE,
THERE WOULD BE NO RETENTION OF
JURISDICTION.

THERE HAS TO BE RETENTION OF
JURISDICTION, AND THAT RESPONSE,
AND I ANSWERED YOUR FIRST
QUESTION BY SAYING YES, IN PART.
MY ARGUMENT IS THAT THE

SETTLEMENT OCCURRED WITHIN A
REGIME CREATED BY THE COURT.

>> A QUESTION ON THAT.

LET'S LEAVE THAT BUCKHANNON AND
WHATEVER THE JUDICIALLY SANCTION
CHANGED IN THE RELATION OF PARTY
AND GET BACK TO WHAT WE USUALLY
THINK OF AS PREVAILING PARTY.
OBVIOUSLY THERE IS LITIGATION,
AND YOU PREVAIL, SO NOW WE ARE
TALKING ABOUT THE SPECTRUM OF
SETTLEMENT.

AGAIN, WHERE WE WANT TO
ENCOURAGE THE RESOLUTION OF
CASES.

WHY WOULD IT BE ANY DIFFERENT IF
YOU WENT TO COURT ORDERED
MEDIATION, AND IS THERE ANYTHING
IN THE RECORD ABOUT THE VALUE OF
THIS CLAIM?

>> YES, YOU CAN MEASURE IT A FEW
DIFFERENT WAYS.

THE PAYMENTS OVER THE LIFE OF
THE LEASE WERE-- I THINK IT WAS

61 OR \$68,000.

>> SO, THIS WAS, AS FAR AS, LET'S JUST SAY THERE WAS A SETTLEMENT OF \$60,000, AND THERE WAS AN AGREEMENT THAT, TO RESERVE, TO ALLOW THE COURT TO DETERMINE ATTORNEY FEES, THEN WOULD YOU NOT-- WHEN YOU ARGUE THAT YOU WERE THE PREVAILING PARTY, YOUR FILING PREVAILED IN THAT WAY IN A SUCCESSFUL DEVIATED SETTLEMENT?

>> IT WOULD DEPEND ON WHAT THE AGREEMENT ITSELF IS.

>> WELL, THE AGREEMENT SAYS WE ARE NOT GOING TO SETTLE THE ISSUE OF ATTORNEY FEES. OBVIOUSLY, IF ALL THE ISSUES WERE SETTLED YOU WOULD NOT HAVE THIS.

WHAT I AM STRUGGLING WITH IS THAT IT WOULD SEEM TO ME THAT, WHEN SOMEONE FAILS THROUGH A SETTLEMENT, WE OUGHT TO ENCOURAGE THAT, AND I AM SYMPATHETIC TO YOUR VIEW THAT

YOU CAN MAKE A SETTLEMENT AND OFFER TO SETTLE, AND THEY SAY THE EXCLUSIVE ATTORNEYS' FEES, AND SO TO ME, YOU KNOW, I WOULD THINK THAT THERE IS A GOOD REASON THAT-- TO SAY YOU HAVE BEEN SUCCESSFUL.

THERE IS A PART OF ME THAT SAYS, BUT THEY ARE NOT OFFERING TO, YOU KNOW, OFFER A JUDGEMENT. THEY ARE NOT OFFERING A JUDGEMENT.

THERE IS NO ADMISSION OF LIABILITY, AND IT IS ON THE VERY LOW SIDE OF THE CLAIM REPORT, SO HELP ME WITH THE ARTIFICIAL DISTINCTION THAT YOU ARE NOW CREATING BETWEEN SOMETHING THAT IS A VERY SUCCESSFUL COURT-ORDERED MEDIATION THAT RESERVES JURISDICTION ON ATTORNEY FEES AND AN OFFER TO SETTLE, A THOUSAND-DOLLAR OFFER TO SETTLE THAT YOUR CLIENT ACCEPTED.

>> FIRST OF ALL, IN TERMS OF THE AMOUNT, THE AMOUNT IS IMMATERIAL

BECAUSE THE DEFENDANT CAN SEE THE ORAL ARGUMENT BEFORE THE COURT, AND I THINK THEY WILL BE HARD-PRESSED TO FIND-- TO CHANGE THEIR POSITION NOW AND ARGUE THERE IS ANY AMOUNT THAT CAN BE RECOVERED.

YOU SAID THE LOW END, AND FIRST OF ALL, WE HAVE \$8,500 WITH A PROMISE THAT WE GO AFTER FEES OF \$8,500 IS 12.5% OF THE VEHICLE, WHICH I WOULD ARGUE IS NOT INSIGNIFICANT AT ALL.

THE DEFENDANT CAN SEE THE ORAL ARGUMENT IN THE DISTRICT COURT, AND IT WOULDN'T MATTER TO THE FULL VALUE OF THE CLAIM.

THEIR ARGUMENT IS, REGARDLESS OF WHAT WE TAKE, WE CAN'T GET-- THE ANSWER TO YOUR QUESTION, AND THERE ARE A LOT OF PARTS, THE ANSWER TO YOUR QUESTION, I AM NOT GOING TO BE COY ABOUT THAT.

THE REASON IT DEPENDS IS WHETHER THE DEFENDANT AGREES THAT THE COURT WILL HAVE CONTINUING JURISDICTION OVER THIS ISSUE. NOW WE JUST HAD A MEDIATED-- WHERE THEY SAID, THIS IS ALL YOU GET.

THERE IS NO WAY I COULD GO TO THE COURT AND SAY I PREVAILED, SO NOW I GET FEES BUT THAT IS NOT THE SITUATION.

YET HERE, AND IN ANSWER TO JUSTICE POLSTON'S QUESTION, AND THIS RELATES TO YOURS AS WELL, IN PART MY ARGUMENT IS THAT SETTLEMENT HERE OCCURRED UNDER A REGIME CREATED BY THE SUPREME COURT, RULE 1.442.

THAT IS NOT THE END OF THE ANALYSIS.

THE OTHER PART OF THE ANALYSIS IS THAT THE COURT RETAINED JURISDICTION TO DETERMINE ISSUES UNDER THE SETTLEMENT, AND IT DID THAT FOR TWO REASONS.

FIRST, BECAUSE RULE 1442 AND 7689 ALLOW THE COURT TO RETAIN JURISDICTION, BUT LET'S NOT FORGET THE REASON WE ARE HERE IS BECAUSE THE DEFENDANT, WHO

CRAFTED THIS TAKE-IT-OR-LEAVE-IT OFFER, EXPRESSLY SAID IN THE OFFER, WE CAN SEE THAT THE TRIAL COURT HAS CONTINUING JURISDICTION OF THE SETTLEMENT. SO, IN ANSWER TO YOUR QUESTION, YOU SAID I AM SYMPATHETIC. YES, BUT, ON THE OTHER HAND, HERE'S THE THING. IF THE DEFENDANT WANTS TO AVOID THIS ISSUE, THEY CAN SAY THIS IS IT. YOU ARE GETTING THIS AND NOTHING MORE, BUT THAT IS NOT WHAT HAPPENED HERE, AND THE REASON I SAID IT DEPENDS, AGAIN NOT TO BE COY, BUT THE MEDIATED SETTLEMENT AGREEMENT, IF THEY SAY THIS IS ALL YOU GET, I HAVE NO RIGHT TO PETITION FOR FEES AT THAT POINT

BECAUSE MY CLIENT CAN EVALUATE THAT SETTLEMENT OFFER AND SAY I RECOGNIZE THIS IS ALL I GET. SO, MR. GREENE, HOW ARE WE GOING TO SPLIT THIS? THAT IS NOT WHAT HAPPENED HERE. THE DEFENDANT CRAFTED AN OFFER THAT SAID, LOOK, WE KNOW YOU HAVE A SUBSTANTIVE CLAIM. THIS IS \$8,500 FOR YOUR CLIENT. NOTHING FOR YOU AS THE ATTORNEY. THAT IS WHAT EXCLUSIVE MEANS. THEY WERE NOT SAYING THEY WERE EXCLUDING ATTORNEY FEES. THEY WERE SAYING THIS OFFER DOES NOT INCLUDE ATTORNEY FEES, BECAUSE WE RECOGNIZE THAT ATTORNEY FEES ARE IMPORTANT TO YOU, SO, HEY, LET'S AGREE TOGETHER. AND IT WAS NOT REALLY AGREEING TOGETHER. IT WAS A TAKE-IT-OR-LEAVE-IT OFFER. LET'S AGREE TOGETHER THE TRIAL COURT WILL OBTAIN JURISDICTION OVER THAT SETTLEMENT AGREEMENT, AND THEN TAKE IT UP WITH THE COURT. IN THAT SCENARIO, IF WE ARE RIGHT THAT THAT MEDIATION OR RIGHT TO DO AN OFFER OF JUDGEMENT, THAT I WOULD SAY YES,

I AM ENTITLED TO SEEK FEES AND,
BY THE WAY, THAT IS DIFFERENT
THAN SAYING I AM ENTITLED TO
THESE.

>> BUT, IT SEEMS IT IS EVEN MORE
APPLICABLE IF YOU ARE UNDER
STATUTE TO OFFER JUDGEMENT
BECAUSE YOU HAVE SANCTIONS.
YOU HAVE ACTUAL PENALTIES THAT
ARE INVOLVED AND ARE UNDERLYING
THIS ENTIRE PROCEEDING.

>> THERE ARE, AND IN FACT, THE
PENALTIES GO INTO WHY THE OFFER
WAS EXCLUSIVE.

THE SECOND DISTRICT DECIDED THE
CASE, AND IT WAS A CASE JUST
LIKE THIS.

THE DEFENDANT MADE IN INCLUSIVE
OFFER OF JUDGEMENT, AND AT THE
END, THE PLAINTIFF TOOK A LITTLE
BIT LESS THAN THE INCLUSIVE
OFFER JUDGEMENT AND THE TRIAL
COURT SAID, YOU DID NOT MEET
THEIR OFFER JUDGEMENT, SO WHY DO
YOU HAVE A TECHNICAL VICTORY--
AND THE SECOND DISTRICT SAID,
YES BUT LOOK, EVERYBODY KNEW THE
PLAINTIFF WAS SEEKING FEES.
EVERYBODY KNEW THE STATUTE PUT
FEES IN PLACE.

IF YOU ARE GOING TO FIND A
PLAINTIFF UNDER THAT SCENARIO
UNDER FLORIDA'S OFFER OF
JUDGEMENT STATUTE, THEN THE
TRIAL COURT IS REQUIRED TO TAKE
INTO ACCOUNT THE REASONABLE
VALUE THAT THE PLAINTIFFS'
ATTORNEY FEES UP TO THE TIME OF
THE OFFER.

>> LET ME ASK YOU ONE FINAL
QUESTION ABOUT THE STATUE.
IT SAYS THE CONSUMER FINALLY
PREVAILED.

HE MADE-- TO RECOVER AS PART OF
THE JUDGEMENT THE SUM EQUAL TO
THE AGGREGATE AMOUNTS IN EXCESS
INCLUDING ATTORNEYS' FEES.

THE PARTIES THAT ARE DEEMED TO
BE PREVAILING IS THE PARTY THAT
HAS OBTAINED A JUDGEMENT.

>> I WILL TELL YOU, THE ANSWER
TO THAT QUESTION IS, THERE IS NO
COURT IN THIS COUNTRY THAT I

KNOW OF THAT HAS EVER
INTERPRETED A STATUTE THAT WAY.

>> I AM LOOKING AT THE TEXT
HERE, AND WHY WOULDN'T IT BE
REASONABLY UNDERSTOOD AS
SUGGESTING THAT?

>> I HAVE NEVER TAKEN IT THAT
WAY.

THAT HAS NEVER BEEN AN ARGUMENT
PRESENTED BY THE DEFENDANT AND
NO COURT HAS EVER RULED THAT WAY
TO MY KNOWLEDGE.

I DO GO ACROSS THE STATE.
THESE ARE RELATIVELY RECENT

ISSUES.

[INAUDIBLE]

WHY DOES IT SUGGEST THAT?

>> THAT WAS NOT THE INTENT.

AND I KNOW THAT WAS NOT
CONGRESS'S INTENT.

I'M GOING BACK IN LEGISLATIVE
HISTORY AND WHERE HAS CONGRESS
SUGGESTED ONLY THROUGH JUDGEMENT
CAN YOU GET THEM?

ALSO, AND I BELIEVE, AND I'M
GOING FROM MEMORY BECAUSE THAT
IS IN A QUESTION BEING
PRESENTED, BUT IN MERIT V.

CHESNEY, TALKED ABOUT THERE ARE
THREE TYPES OF FINALLY
PREVAILING LANGUAGE CRAFTED BY
CONGRESS, AND ABOUT 100
DIFFERENT STATUTES.

I BELIEVE IT WAS JUSTICE BRENNAN
IN A DISSENT THAT WENT THROUGH
AND NAMED 100 STATUTES, OR QUITE
A FEW OF THEM ANYWAY, AND HE
BROKE IT DOWN INTO SITUATIONS
WHERE YOU MUST AWARD THE
PLAINTIFF PREVAILS, YOU MAY
AWARD IF THE PLAINTIFF PREVAILS
AND EITHER SIDE CAN GET THE--
FEES DEPENDING ON WHO PREVAILS
AND, IN THAT ANALYSIS, THERE WAS
NEVER ANY WARRANTY ACT LISTED IN
THERE.

IN THAT ANALYSIS, THE COURT HAS
NEVER INTERPRETED IT THAT WAY.
IN FACT, WHEN YOU LOOK AT THE
FINALLY PREVAILING STATUS, THEY
LOOK AT IT UNDER A VARIETY OF
DIFFERENT CIRCUMSTANCES, SO THE
COURTS THAT HAVE ANALYZED THE

ISSUE HAVE NOT ANALYZED IT IN THAT WAY AND I WOULD SUGGEST THAT THE LEGISLATIVE HISTORY DOES NOT SUGGEST THAT IT SHOULD BE READ THAT WAY, AND THAT CERTAINLY IS A NEW ARGUMENT. I APOLOGIZE.

I WISH I WAS SO FLUENT IN EVERY NUANCE OF THIS, THAT I COULD ANSWER THAT QUESTION READILY BUT THAT IS THE FIRST TIME I HAVE

EVER BEEN PRESENTED WITH THIS IN SIX YEARS OF MITIGATING THIS AT THE APPELLATE LEVEL.

BUT, I WOULD SUGGEST THAT NO STATUTE HAS BEEN INTERPRETED THAT WAY FROM MY KNOWLEDGE AND, AS I SAID, JUSTICE BRENNAN BROKE THEM DOWN AT THAT POINT.

NO ONE LOOKED AT IT THAT WAY AND I ALSO SUGGEST THE LEGISLATIVE HISTORY DOES NOT CALL FOR THAT. IF I CAN, AND I WANT TO GO BACK TO THE COURT-ORDERED CHANGE.

>> YOU NEED TO SUM UP BECAUSE YOU HAVE LITTLE TIME.

>> I WILL SUM UP, AND HERE'S HOW I WILL SUM UP.

THE DIFFERENCE IS BUCKHANNON LOOKS FOR A JUDICIALLY-SANCTIONED CHANGE OR SOMETHING THAT INVOLVES A JUDICIAL IMPRIMATUR.

A CONSENT DECREE AS ONE EXAMPLE THAT FITS THAT CATEGORY BECAUSE IT IS A COURT ORDER CHANGE IN THE CIRCUMSTANCE OF THE PARTIES AND HERE'S WHY BRING THIS UP AND I WILL WRAP UP.

BECAUSE DUFRANE LOOKED AT CORRECTLY BUCKHANNON TELLS THE COURTS AND INSTRUCTS THE COURTS TO LOOK FOR A

JUDICIALLY-SANCTIONED CHANGE IN THE LEGAL RELATIONSHIP OF THE PARTIES AND THE COURT SAID, AND HERE WE HAVE IT.

THERE IS A JUDICIALLY-SANCTIONED CHANGE.

THE SANCTION IS IN THIS.

THE COURT RETAINED JURISDICTION UNDER RULE 1442 AND IN RETAINING JURISDICTION, AND I WOULD ADD BY

THE WAY, THE COURT DID NOT MENTION BUT HE COULD EASILY HAVE IS THAT THE DEFENDANT AGREES THE COURT WOULD RETAIN JURISDICTION. THAT WAS NOT A TECHNICAL TRICK. SIX WEEKS LATER MADY SAID BUCKHANNON MEANS ONLY THE COURT-ORDERED CHANGE AND THAT IS

INCORRECT, AND I WILL TRY TO GET THAT ON MY REBUTTAL BECAUSE THE OVERWHELMING MAJORITY OF--

>> YOU ARE WELL INTO YOUR TIME. YOU HAVE EXCEEDED THE 20.

>> I AM SORRY.

>> MR. ANDERSON.

>> JOHN GLENN, MAY IT PLEASE THE COURT YOUR HONOR.

GOOD MORNING.

AGAIN, JOHN GLENN ON BEHALF OF DAIMLERCHRYSLER AND THE RESPONDENT.

WE OBVIOUSLY HAVE COURTS CONDUCT JURISDICTION IN DECIDING THE CONFLICT BETWEEN THE DUFRANE AND MADY DECISION, AND THE NARROW ISSUE IS SPECIFICALLY WHETHER OR NOT HAVING ACCEPTED THE SETTLEMENT THAT WAS MADE, PLANS HAVE FINALLY PREVAILED, DETERMINED BY THE UNITED STATES SUPREME COURT.

>> WHY WAS, IN THE OFFER, A JUDGEMENT AND WHY WASN'T THERE ANY DISCUSSION ABOUT ATTORNEY FEES?

IT SEEMS TO ME THAT IN THIS SITUATION, THAT THE PLAINTIFF RIGHTFULLY BELIEVED THAT THAT WAS GOING TO BE AN ISSUE THAT WAS GOING TO BE LITIGATED AFTER HE ACCEPTED THE OFFER OF JUDGEMENT, SO I AM HAVING-- I AM STRUGGLING WITH WHY SHOULDN'T HE HAVE BEEN ALLOWED TO PURSUE HIS ATTORNEY FEES?

>> TO MAKE IT CLEAR THAT THE ISSUE OF FEES WAS A DISPUTE, THAT MERELY BY FILING A LAWSUIT, NOT A PRIVILEGED LAWSUIT BUT MAYBE MERITLESS, YOU DON'T NECESSARILY BECOME THE PREVAILING PARTY.

>> BUT THAT IS NOT THE QUESTION

BEFORE US.

IT IS WHETHER THE SUIT WAS
MERITLESS OR NOT?

IT IS THAT THE QUESTION WE HAVE
TO ADDRESS IN ORDER TO GET TO

THE POINT WE NEED TO GET TO?
MY QUESTION REALLY GOES TO-- THE
QUESTION OF ATTORNEYS' FEES AND
WHAT THEY ARE, YOU ARE GOING TO
DISPUTE THEM OR NOT, I ASSUME
YOU WOULD, BUT DOESN'T THAT GIVE
THE PLAINTIFF, LEAD THE
PLAINTIFF DOWN THE PATH OF
BELIEVING THAT THIS WAS GOING TO
BE AN ISSUE THAT WE ARE GOING TO
BE LATER LITIGATING?

>> NO, IT IS CLEAR FROM THE
OFFER, IT SPECIFICALLY PROVIDES
YOU MUST HAVE A JUDGEMENT IN
ORDER TO BECOME, EVEN CONSIDER
THE PARTY, THE PREVAILING PARTY.

>> IF THAT IS THE CASE, THAT IS
A SIMPLE RULE THEN AND THE
JUDICIAL SANCTIONS CHANGE IN THE
RELATIONSHIP WITH THE PARTIES,
THAT WOULDN'T EVEN BE A PHRASE
THAT YOU WOULD NEED TO USE IF
THE ISSUE WAS YOU HAVE GOT TO
LITIGATE THE CASE, YOU'VE GOT TO
GET A JUDGEMENT.

>> WELL, THAT YOU LOOKED AT THE
CANNON.
THE SUPREME COURT WAS CONCERNED
ABOUT THE EFFECT OF CATALYST
THEORY.

WHAT IT WAS HAVING ON THE
COURTS ACOST THE COUNTRY AND --

>> IS NOT A CATALYST CASE, YOU
AGREE WITH THAT?

>> CORRECT.

>> THE SUPREME COURT IS USING
IMPREMATEUR PHRASEOLOGY.

>> RIGHT.

>> HAS THE UNITED STATES USED
THAT PHRASE IN CONNECTING WITH
OTHER CASES?

>> WHAT THE SUPREME COURT HAS
RULED, SPECIFICALLY IS THAT
THERE IS COURT ORDERED
JUDGEMENT ON THE MERITS OR
COURT ORDERED CONSENT DECREE.

>> WHERE DOES THE UNITED STATES

SUPREME COURT, WHICH CASE HAS ORDERED THAT?

>> SPECIFICALLY UNTIL BUCKHANNON.

>> BUCKHANNON IS NOT THAT CASE. THAT WAS GIVING DESCRIPTION. THAT IS WHERE LEGISLATION OR ELSE WAS CHANGED, CORRECT?

>> CORRECT.

>> CERTAINLY IF THAT HAD BEEN THE TEST THEY SAY THAT, THAT'S IT AND IT IS OVER.

>> THERE IS THE CASE CAME OUT. OF PITCHFORD.

CAME OUT PRETTY MUCH ON ALL FOURS WITH THIS CASE, A MAGNUSON-MOSS CASE WHERE THE PARTIES SAT DOWN SOME TIME IN LITIGATION THEY WANTED TO DECIDE THE CASE.

IT WAS AN ISSUE OVER A MOTOR HOME. THEY SAT DOWN WE RETRY THE SUBSTANTIVE CLAIMS.

WE WILL PAY THE PLAINTIFF X. I DON'T AGREE YOU'RE ENTITLED TO ATTORNEY FEES HOWEVER I WILL LET YOU GO BEFORE THE MAGISTRATE DECIDE THAT ISSUE.

>> WAS THAT UNDER AN OFFER JUDGMENT STATUTE?

>> WAS NOT, NO.

>> SEE, I THINK THAT IF WE, TAKE ASIDE PRIVATE SETTLEMENTS, MY CONCERN IS, THE VERY PURPOSE OF THE OFFER OF JUDGMENT STATUTE, THE VERY PURPOSE OF THE RULE IS TO ENCOURAGEMENT SETTLEMENTS OF CLAIMS.

IF WE ARE TO HOLD CONTRARY, THAT AN OFFER TO SETTLE DOES NOT ALLOW A PLAINTIFF IN THESE CIRCUMSTANCES TO SEEK ATTORNEY'S FEES WE'RE SAYING TO THE PLAINTIFF AND DEFENDANT, YOU BETTER LITIGATE THESE CLAIMS, BECAUSE THAT IS THE ONLY WAY YOU'RE GOING TO GET TO, GET ATTORNEY'S FEES.

SO WE'RE GOING TO HAVE, IT WILL BE, WE'LL BE ENCOURAGING LITIGATION INSTEAD OF TRYING TO DISCOURAGE LITIGATION. SOON THAT IS MY CONCERN BECAUSE THEN WHAT YOU'RE SAYING IS,

EVEN IF THIS, YOU KNOW, IF HE WENT TO TRIAL, AFTER, YOU KNOW, ANOTHER FEW MONTHS OF LITIGATION AND GOT, YOU KNOW, \$10,000, HE IS GOING TO GET ALL OF HIS ATTORNEY FEES INCLUDING EVERYTHING TO LITIGATE THE CLAIM.

HOW IS THAT, YOU KNOW, HOW DOES THAT FIT IN NOT ONLY WITH THE POLICY OF RULE 1.442 AND 768.79 BUT THE POLICY OF THE FEDERAL LAW?

>> WELL THE OFFER OF JUDGMENT STATUTE HAS ITS POLICE POWERS WITHIN IT.

SPECIFICALLY THE JUDGEMENT PROVIDES IF THE OFFER AT SOME POINT, THE COURT DECIDES THAT THE OFFER WAS NOT MADE IN GOOD FAITH, IT WILL NOT ENFORCE IT. THE ISSUE HERE IS, YOU'VE GOT A VEHICLE THAT WAS A \$91,000 VEHICLE.

WHEN THEY FIRST PLED THIS CASE IT WAS RETURN OF ALL THE MONIES PAID, INCIDENTAL CONSEQUENTIAL DAMAGES DIMINUTION IN VALUE PLUS ATTORNEY'S FEES AND COSTS.

>> I APPRECIATE THIS DOESN'T SEEM TO BE, A BIG WIND, BUT ON THE OTHER HAND, YOU WOULD AGREE THAT IF THEY WENT TO TRIAL, AND THEY -- WINDFALL AND THEY BEAT THE OFFER TO SETTLE BY, YOU KNOW, WHAT IS IT, 25% OR WHATEVER IT IS, WHICH WOULDN'T HAVE BEEN THAT MUCH MORE THEY WOULD GET ALL THEIR ATTORNEY'S FEES?

SO WE DON'T, WE DON'T EVALUATE, I ME THE MAGNUSON-MOSS ACT WARRANTY ACT DOESN'T SAY HOW MUCH YOU HAVE TO PREVAIL IN ORDER TO GET ATTORNEY'S FEES. THAT GOES INTO THE REASONABLENESS AND WHETHER IT WAS OVERLITIGATED.

I MEAN THOSE ARE ALL THINGS THAT CAN GO INTO THE AMOUNT.

>> WELL THE ISSUE HERE IS, ESSENTIALLY WHAT, IT MAKES THE PLAINTIFF OR THE DEFENDANT FOR THAT MATTER CONSIDER REAL HARD

ABOUT WHERE THEY STAND IN THEIR CASE WHEN YOU ARE FACED WITH PROPOSAL FOR SETTLEMENT. AND IF THE PROPOSAL IS NOT MADE IN GOOD FAITH, THE COURT IN ITS DISCRETION CAN DO THINGS TO STRIKE IT.

SO WHEN YOU'RE PRESENTED AN OFFER OF JUDGMENT, YOU MAKE A DECISION.

HOW IS MY CASE GOING AT THIS POINT IN TIME?

THIS CASE WE WERE VERY, VERY EARLY IN THE LITIGATION.

IT WAS THE FIRST THREE MONTHS OF LITIGATION AND MAYBE 15 DOCKET ENTRIES ON THE CASE.

>> THAT REALLY SAYS SOMETHING, WOULD BE A SMALL AMOUNT OF ATTORNEY FEES.

YOU ONLY GET ATTORNEY FEES UP UNTIL THE TIME OF OFFER TO SETTLE.

>> ESSENTIALLY WHAT THESE CASES HAVE BECOME BECAUSE I LITIGATE THEM ACROSS THE STATE, IS ABOUT ATTORNEY'S FEES.

IF YOU LOOK AT DUFRESNE --

>> IS THAT REALLY WHAT THIS DISCUSSION IS ABOUT?

THAT IS SORT OF A POLICY KIND OF DISCUSSION.

IS THIS CASE ABOUT THE LAW AND WHAT'S REQUIRED AS A PREREQUISITE OR IS THIS A POLICY DISCUSSION ABOUT ATTORNEY'S FEES?

I MEAN I THINK THAT'S, I'M NOT SURE THE TWO, INTERMIX THE TWO AS FAR AS A LEGAL ARGUMENT.

I UNDERSTAND, YOU KNOW, WE ALL UNDERSTAND IS THAT, YOU KNOW, JUST FICTITIOUS KIND OF CASES TO BUILD UP FEES IS NOT SOMETHING WE'RE SUPPORTING BUT I THINK THOUGHT THIS CASE WAS ABOUT A LEGAL PRINCIPLE?

>> IT IS, YOUR HONOR.

THAT IS SPECIFICALLY THE POINT AT ISSUE THE BUCKHANNON CASE, SPECIFICALLY AS MADY COURT HAS FOUND THAT THE KEY IS A COURT ORDERED CHANGE IN LEGAL RELATIONSHIP BETWEEN THE

PLAINTIFF AND THE DEFENDANT.
WE DON'T HAVE THAT HERE.
THERE WAS NO EFFORT MADE BY THE
PLAINTIFF'S COUNSEL TO SEEK
SUCH COURT-ORDERED CHANGE AND
THERE WAS NO SUCH COURT-ORDERED
CHANGE.

BASICALLY THE COURT, WE
RESERVED THE JURISDICTION TO
ALLOW THE COURT TO COME AHEAD,
IF THEY WANTED TO MAKE --

>> HOW ABOUT IF THE PARTIES GO
IN AND STIPULATE THIS IS THE
JUDGMENT?

THERE IS NO COURT ORDERED
CHANGE.

THE PARTIES HAVE AGREED TO THE
CHANGE.

IT IS JUST DOCUMENTED BY A
PIECE OF PAPER FROM THE COURT.
WHERE DOES THAT ONE FALL?

>> THINK I THAT FITS WITHIN THE
BUCKHANNON CASE.

>> THEREFORE EVEN A CONSENT
JUDGMENT WOULD NOT SATISFY
UNDER YOUR ARGUMENT THEN?

>> IT'S A COURT ORDERED CHANGE
IN THE LEAL RELATIONSHIP.

>> SO THE COURT HAS TO DO IT?
CAN'T BE THE PARTIES?

>> RIGHT.

THAT'S WHAT BUCKHANNON,
SPECIFICALLY JUSTICE REHNQUIST
COURT SPECIFICALLY FOUND IS IT
DID BECAUSE OF THE CONCERN
ABOUT THE PERVASIVENESS OF
THESE TYPES OF STATUTE AND
CATALYST THEORY AND WHAT EFFECT
IT WAS HAVING.

>> SO YOU'RE SAYING IN THIS
CASE THE, WHAT THE PLAINTIFF
SHOULD HAVE DONE, IF HE WANTED
TO ACCEPT THAT OFFER OF
JUDGEMENT IS SAY, AND, WE'RE
GOING TO HAVE THE COURT ENTER A
JUDGMENT IN THAT AMOUNT?
IS WHAT NEEDED TO BE DONE IN
ORDER FOR THE PLAINTIFF TO THEN
BE ABLE TO LITIGATE THE ISSUE
OF ATTORNEY'S FEES?

>> I'M NOT SURE AS FAR AS WHAT
THE COURT OR PLAINTIFF SHOULD
HAVE DONE.

THAT WAS UPPER TO THE PLAINTIFF

TO --

>> -- PRECLUDE THE ENTRY OF
JUDGMENT?

THE.

>> YES. YES.

>> IS THERE A, FINISH, PLEASE,
I'M SORRY.

I DIDN'T KNOW IF YOU WERE
CONTINUING YOUR ANSWER.

>> SURE.

THE PLAINTIFF CERTAINLY, I LOST
MY TRAIN OF THOUGHT ON THE
POINT, YOUR HONOR.

BUT THE PLAINTIFF SIMPLY COULD
HAVE PRESENTED SOME EVIDENCE,
THERE'S A CASE OUT OF THE
SECOND DISTRICT COURT OF APPEAL
WHERE THIS ISSUE WAS RAISED.

THE PINES VERSUS GROWERS
SERVICES CASE WHERE THE PARTIES
VERY SIMILARLY SAID, WE AGREED
THAT YOU'RE ENTITLED TO FEES
BUT WE'RE GOING TO THE ARE THE
COURT DECIDE WHETHER OR NOT
THEY'RE GOING TO GIVE YOU FEES.
SO WHAT THEY DID THERE, THEY
DID GO TO THE COURT AND THE
COURT SAID WE CAN'T TELL BASED
UPON WHAT YOU PRESENTED WHETHER
OR NOT YOU PREVAILED UNDER THE
SPECIFIC STATUTORY FEE-SHIFTING
PROVISION AT ISSUE IN THAT
CASE.

THEY COULD HAVE COME FOR WORD
WITH EVIDENCE AND AFFIDAVITS
THAT PREVAILED.

>> YOUR CLIENT BASICALLY SAID
WE AGREE THERE IS ISSUE ABOUT
FEES.

WE JUST DON'T AGREE WE SHOULD
PAY THEM.

>> YES.

>> BUT IT JUST SEEMS TO ME,
THAT SUBPOENA SO ARTIFICIAL,
THAT WE'VE GOT TO GET PARTIES
TO AGREE AND WE ENCOURAGE THAT.
THAT'S WHAT THE OFFER OF
JUDGEMENT IS ALL, STATUTE IS ABOUT.
WE'RE ENCOURAGING PEOPLE
TO COME TO SOME AGREEMENT SO
THESE CASES AREN'T LITIGATED TO
DEATH.

AND THEN YOU HAVE ATTORNEY'S
FEES THAT ARE OUT OF THE ROOF.

YET, WHEN A PLAINTIFF DOES THAT, YOU'RE BASICALLY SAYING TO ME, AND YOU'RE SAYING THAT THAT'S WHAT THIS CASE LAW SAYS, IS THAT A PLAINTIFF HAS GOT TO SAY, OOPS, BUT WAIT A MINUTE, HERE, I NEED TO MAKE SURE THAT THE COURT ENTERS SOMETHING THAT SAYS, THIS IS A JUDGMENT IF I WANT TO DEAL WITH ATTORNEY'S FEES?

AND THAT REALLY IS WHAT YOU'RE SAYING, CORRECT?

>> WELL, THEY ALSO HAVE THE CHOICE TO NOT ACCEPT THE PROPOSAL AND GO FORWARD. IF YOU RECALL THE CLAIM WAS FOR A SUBSTANTIAL AMOUNT OF MONEY THAN THEY WERE ASKING FOR.

>> YOU KNOW, PEOPLE, ACTUALLY PLEAD FOR LOTS MORE THAN CLAIMS END UP BEING WORTH ALL THE TIME.

SO I'M NOT SURE THAT THAT IS IMPORTANT IN OUR ANALYSIS HERE. WE REALLY ARE CONCERNED WITH WHAT HAS TO BE DONE WHEN A PERSON WHO, IN MY ESTIMATION PREVAILS, WHETHER IT WILL WAS FOR \$8,000 OR THE \$68,000.

WHAT A PERSON HAS TO DO IN ORDER TO BE ABLE TO LITIGATE THE ISSUE OF ATTORNEY'S FEES.

>> WELL, THERE'S A LOT OF CASE LAW ON THIS ISSUE.

WHAT IT ALL BOILS DOWN TO AND POINTS BACK TO IS BUCKHANNON.

>> WHAT DO YOU THINK IS THE PURPOSE OF THE PREVAILING PARTY ATTORNEY'S FEES UNDER THIS ACT? WHAT DO YOU THINK IS THE PURPOSE OF CONGRESS HAVING PUT THAT PREVAILING PARTY ATTORNEY FEES PROVISION IN THE ACT?

>> THE PURPOSE IS TO ALLOW CERTAIN INDIVIDUALS TO BE ABLE TO COME AND RECOUP FEES IN CERTAIN CIRCUMSTANCES. AND THERE ARE OTHER STATUTES IN THE STATE OF FLORIDA THAT ARE TWO-SIDED FEE-SHIFTING PROVISION.

THIS PROVISION AT ISSUE IS A ONE-SIDED PROVISION WHERE THERE

IS NO DOWNSIDE.

>> FOR THE CONSUMER.

>> FOR THE CONSUMER.

WHERE THERE IS NO DOWNSIDE FOR THE PLAINTIFF TO PURSUE A CLAIM WHETHER IT BE, MAYBE NOT, NON-FRIVOLOUS BUT PERHAPS MERITLESS THEY CAN STILL PURSUE THAT CLAIM ALL THE WAY TO JUDGMENT AND STILL NOT HAVE ANY RISK OFING IN HAVING ANY DOWNSIDE.

>> THAT IS NOT TRUE BECAUSE YOU WERE ABLE TO AVAIL OF YOURSELF OF OFFER EVER JUDGEMENT STATUTE RULE SO YOU YOURSELF PROTECTED AGAINST THAT POSSIBILITY.

NO ONE IS SAYING, I DON'T THINK I HEARD THE ARGUMENT THAT YOU WOULDN'T, IF THEY WENT TO TRIAL AND YOU WON, THAT YOU WOULD, WOULDN'T YOU RECEIVE THE BENEFIT OF THE OFFER OF SETTLEMENT SANCTIONS AGAINST THE PLAINTIFF?

>> WE WOULDN'T IN THAT CIRCUMSTANCE.

>> WE ARE DEALING WITH AN INTERFACE HERE BETWEEN THE POLICY OF THE FLORIDA STATUTES AND FLORIDA TO ENCOURAGE SETTLEMENTS AND, TO, VERSUS GOING TO TRIAL.

AND THEREFORE THE ISSUE WHAT FINALLY PREVAILS MEANS UNDER THE OFFER OF JUDGMENT AND OFFER TO SETTLE RULE, CORRECT?

>> CORRECT.
GO AHEAD.

>> I MEAN THAT, I WAS HAVING, I KNOW THAT THE FOURTH DISTRICT DISTINGUISHED OUR CASE OF WILLARD VERSUS LLOYD'S WHERE WE CAME UP WITH THE HOLDING THAT A SETTLEMENT WAS ACTUALLY THE EQUIVALENT CONSENT JUDGMENT FOR PURPOSES OF 627.28.

AND, THE FOURTH DISTRICT REJECTED ANY ANALOGY.

I ASK YOU TO TELL ME, NOW WE HAVE ACTUALLY THE STATUTE IN THE RULE, WHY ISN'T THAT EVEN MORE, SIGNIFICANT AS A JUDICIAL I AM PREMATURE OF WHAT

IMPREMATEUR OF OCCURRED IN THE CASE?

>> THE SUPREME COURT CASE IN BUCKHANNON HAVE TO HAVE COURT ORDERED CHANGE OR LEGAL RELATIONSHIP OR MATERIAL ALTERATION OF THE PARTY'S RIGHTS.

>> BY ARTICULATING I THINK YOU PROBABLY AGREE THAT DOESN'T MEAN A JUDGMENT?

>> IT DOESN'T NECESSARILY MEAN A JUDGEMENT.

AND THAT IS WHAT BUCKHANNON STANDS FOR.

CONSENT DECREE OR SOMETHING SIMILAR TO.

>> SOMETHING WHERE THE COURT WOULD CONTINUE TO HAVE JURISDICTION, WHICH IS WHAT THEY WOULD HAVE UNDER THE OFFER TO SETTLE.

I MEAN, THE RULE AND THE STATUTE.

IT IS ALL THE SANCTIONS THAT COULD BE, AWARDED IF, IF THE, IF THE TERMS ARE VIOLATED.

IT IS EXPRESSLY THAT WOULD ALLOW CONTINUING JUDICIAL OVERSIGHT AND INTERVENTION.

>> WELL IN THIS CASE MR. MADY WAS PAID THE \$8500 AND THE, THE COURT WAS NEVER ASKED TO INTERVENE IN ENFORCING ANY PART OF THE JUDGMENT HERE.

>> WELL WOULD THAT DEPEND -- THEREFORE, BECAUSE I THOUGHT YOUR POINT IT IS A MATTER OF LAW AND OFFER TO SETTLE COULD NEVER BE A PREVAILING OR FINALLY PREVAILING.

ARE YOU SAYING IT WOULD DEPEND ON WHAT HAPPENS IN THE WAY THE SUBSEQUENT ACTIONS AFTER THE OFFER TO SETTLE WAS MADE AND ACCEPTED?

>> RIGHT.

THERE HAS TO BE SOME EXPLICIT INTERVENTION BY THE COURT TO ADOPT THE --

>> WELL I STILL, YOU KEEP GOING BACK TO THE ONE UNITED STATES SUPREME COURT CASE AND IN READING THAT YOU CAN READ LOTS

OF THINGS OUT OF CONTEXT.
THERE ARE A LOT OF DIFFERENT
SENTENCES ALL THROUGHOUT.
IS IT SOMETHING THAT'S UNDER
THE COURT USING LATIN PHRASE, I
AM PREMATURE WOULD SATISFY IT.

>> NO.

>> IN PRITCHARD CASE, IS THAT
UNITED STATES SUPREME COURT
CASE?

>> WESTERN DISTRICT OF VIRGINIA
CASE.

>> YES, SIR.

I DIDN'T THINK THAT WAS --
THERE IS NO OTHER UNITED STATES
SUPREME COURT CASE THAT
INTERPRETS THIS PARTICULAR
STATUTE THAT WE'RE TRUCKING
ABOUT?

AND THEY ALL, ALL THESE OTHER
DECISIONS TRACE BACK TO THIS
ONE CASE TALKS A NURSING HOME
AND TALKS ABOUT THIS CATALYST
KIND OF CONCEPT?.

>> WHICH THEY RECOGNIZE WITHIN
BUCKHANNON THERE ARE AT LEAST
70 OTHER STATUTES THAT --

>> THAT WANTED HOLDING IN
BUCKHANNON.

THE THAT BUCKHANNON WAS THAT
PARTICULAR CASE, WAS IT NOT?
GENERAL PRINCIPLE THAT
ATTEMPTED TO EVERY TYPE OF
STATUTE YOU BELIEVE IN THE
ENTIRE FEDERAL CODE?

>> THERE'S BEEN, I BELIEVE THE
IT IS MERIT CASE A SUPREME
COURT CASE WHERE, I MAY BE
MISSPEAKING ON THAT.

>> BUT THERE IS ANOTHER WE
SHOULD LOOK TO --

>> WHERE THEY HAVE SAID THAT
THE COURT HAS THE OVER 1
STATUTES WHERE THERE IS, I
THINK MY OPPOSING COUNSEL
MENTIONED THAT, THERE ARE OVER
100 STATUTES IN THE FEDERAL
CODE THAT --

>> IS THAT THE HOLDING OF THAT
CASE, THAT OTHER CASE.

>> PREVAILING PARTY STANDARD.
IT IS NOT THE HOLDING.

IT IS JUST --

>> AGAIN COMES BACK TO WE'RE

LOOKING FOR A HOLDING WHAT THAT IS.

DO WE HAVE TO BE SPECIFIC OR -- THAT'S WHAT I'M LOOKING FOR.

IS THERE SOMETHING UNITED STATES SUPREME COURT JURISPRUDENCE THAT SAYS, ALL OF THESE ARE IN THESE CATEGORY?

NOT JUST TALKS ABOUT THE GENERAL STATUTES?

>> AND I CAN'T REMEMBER HOLDING.

BUT RECOGNIZES THAT THIS SAME BUCKHANNON HAD USED --

>> I'M AWARE OF THAT, RIGHT.

>> AND IT ADOPTS THAT THE SAME RATIONAL, RATIONALE WOULD APPLY TO THOSE OTHER 100 STATUTES ESSENTIALLY.

>> AGAIN THE CATALYST THEORY THOUGH?

IN THE CATALYST --

>> NO.

>> IT IS BROADER THAN THAT YOU SAY.

>> CATALYSTRY UNDER BUCKHANNON IS NO LONGER VIABLE. THEORY.

>> NO. IS IT DISCUSSED IN THE CONTEST AFTER CASE MORE IN THE CATALYST CONTEXT THAN IT IS --

>> YES.

>> THAT'S WHERE I HAVE, HELP ME THEN, CONVINC ME THAT THIS CATALYST KIND OF CONTROVERSY IS REALLY CONTROLLING WHEN YOU HAVE CONSUMER PRODUCT LITIGATION, AGAIN COMING BACK TO THAT SAME QUESTION.

THAT'S WHERE I'M STILL STRUGGLING.

THAT THE CATALYST KIND OF SITUATION, IF THE LEGISLATURE CHANGED SOMETHING IN THE STATUTE.

THEREFORE THAT ELIMINATES A CLAIM.

NOW LONGER HAVE A CLAIM.

THAT'S THE KIND OF LOGIC OR REASONING YOU GO THROUGH AS, IN A CASE WHERE YOU HAVE TWO PARTIES, THEY'RE LITIGATING.

IT COMES DOWN TO, A SITUATION

WHERE THERE'S AN OFFER OF
JUDGMENT AND PENALTIES,
ASSOCIATED WITH IT, TO BOTH
SIDES SIDE IF IT WHATEVER
HAPPENS THAT CATALYST KIND OF
CASE IS CONTROLLING IN THAT
ONE-ON-ONE LITIGATION?

>> THERE ARE CASES LIKE THAT.

>> U.S. SUPREME COURT.

I KNOW THERE ARE SOME FEDERAL
CASES.

>> 11th CIRCUIT.

U.S. SUPREME COURT, OFF TOP OF
MY HEAD.

>> I DIDN'T FIND ANY EITHER SO.

>> IT IS CITED IN OUR BRIEF.

THE KEY ISSUE FOR US IS THE,
HOLDING IN BUCKHANNON.

>> OKAY.

>> THEN LOOKING TO PITCH FORD
AND OTHER CASES.

>> I APPRECIATE YOUR CANDOR.

THAT IS WAY WE HAVE TO RESOLVE
THESE THINGS, SURE.

>> ABSOLUTELY.

I SEE THAT I'M OVER TIME HERE
AND I WOULD ASK --

>> IF YOU WOULD JUST WRAP UP.

>> SURE.

I'D ASK THAT THE COURT
FOLLOWING THE HOLDING OF MADY
AND, QUASH THE DECISIONS FROM
DUFRESNE SAN MARTIN BASED UPON
THE BUCKHANNON HOLDING THAT,
ESSENTIALLY FINDS, UNLESS YOU
HAVE A JUDGEMENT ON THE MERITS,
OR COURT ORDERED CONSENT DECREE
YOU ARE NOT PREVAILING PARTY.

>> THANK YOU VERY MUCH.

AND THANK BOTH OF YOU FOR YOUR
ARGUMENTS TODAY.

>> THANK YOU.