LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
>> THE COURT WILL NOW
CONSIDER BIONETICS VS.
KENNIASTY.
>> MY NAME IS JOE CARUSO,
AND I RESERVE 5 MINUTES OF
MY ARGUMENT FOR REBUTTAL.
THE ISSUES TODAY HAVE BEEN
PREVIOUSLY ADDRESSED BY THIS
COURSE IN THREE OF IT'S
OPINIONS.
THOSE OPINIONS ARE THE YOUNG
CASE, THE ROSS CASE, THE
BITTERMAN CASE, AND THE
MENENDEZ CASE.
ALL OF THESE CASES DEALT
WITH THE ISSUE OF STATUTORY
ATTORNEY'S FEES   WHICH THE
COURT HELD TO BE A
SUBSTANTIVE RIGHT AND A
VESTED RIGHT.
AND THE ISSUES IN ALL OF
THOSE CASES AND THE CASE
TODAY, IS WHETHER OR NOT AN
AMENDMENT TO THE STATUTE
PROVIDING FOR THESE
ATTORNEYS FEES CAN BE
APPLIED RETRO ACTIVELY.
IN THE YOUNG CASE, IT DEALT
WITH THE ATTORNEY'S FEE PRO
VISION OF 768.57 WHICH IS
WAS MEDICAL MALPRACTICE.
AND THIS COURT HELD IT
CANNOT BE RETRO ACTIVELY
APPLIED TO A CAUSE VESTED

BEFORE THE DATE BETWEEN
EFFECTIVE EVEN THOUGH THE
LAWSUIT HAD BEEN FILED AFTER
THE DATE.
>> AND IT SEEMS THAT THE 5TH
DIRECT AGREED THIS WAS A

SUBSTANTIVE RIGHT, BUT THEY
APPLIED THE RIGHT OF THE
ISSUE WHEN OF RIGHT TO
ATTORNEY'S FEES WOULD ACCRUE
IN A DIFFERENT MANNER, IS
THAT WHERE THE CONFLICT IS.
THERE'S LANGUAGE IN THERE
THEY SAY IT'S A SUBSTATIVE.
THEY FOUND THE AMENDMENT WAS
SUWSTATIVE BUT THAT IT HAD A
PROCEDURE ASPECT, AND
BECAUSE THE FILING OF A
MOTION TOOK PLACE AFTER THE
AMENDMENT, THAT THAT WAS THE
BASIS FOR THEIR RULING.
THAT IT WAS NOT BEING
APPLIED RETRO ACTIVELY.
>> BUT THE PROVISION WE'RE
TALKING ABOUT IS THE SAFE
HARBOR PROVISION.
>> AND WE HAVE APPROVED OF
WALKER IN MENENDEZ.
WALKER, BITTERMAN, AND ALL
OF THE PREVIOUS CASES I
CITED TO YOU.
>> WHAT I THINK THE MORE
POTENTIALLY INTERESTING
ISSUE IS, IS WHAT IS --
WHEN DOES THE VESTED RIGHT

ACCRUE?
AND I --
IN A CASE LIKE MENENDEZ, IT
WAS CLEAR WE SAID THAT WAS
AN INSURANCE CONTRACT CASE
AND THE RIGHTS ACCRUED AT
THE TIME THAT THE INSURANCE
POLICY WENT INTO EFFECT.
>> MALPRACTICE CASE, THE
RIGHT NOT TO HAVE ATTORNEY'S
FEES WOULD ACCRUE AT THE
TIME OF THE MALPRACTICE.
BUT HERE, THIS IS A RIGHT OF
SOMEONE NOT TO BE SUBJECTED
TO FRIVOLOUS LITIGATION,
CORRECT?
>> YES, MA'AM, AT THE TIME
OF THE CAUSE OF ACTION IS
BROUGHT, OR AT THE TIME THAT
THE FRIVOLOUS CONDUCT
COMMENCES OR CONTINUES.

IS IT A --
IS THERE A DID DISPUTE
REALLY AS TO WHAT IS THE
APPOINT OF ACCRUAL, AND
COULD YOU ADDRESS THAT?
>> NO I THINK THIS THE COURT
COURTS DECISION ADDRESSED
THAT AND DECIDED THAT ISSUE.
THEY SAID IT WAS A CASE
INVOLVING INCREASING THE
AMENDMENT, INCREASED THE
AMOUNT OF ATTORNEYS FEES AN
ATTORNEY COULD COLLECT FROM
A STATE, AND ALLOWED HIM TO

COLLECT IN THE EVENT HE HAD
TO LIT CASE THE
REASONABLENESS OF THAT FEE.
WHAT IT SAID IN BITTERMAN IS
AS SOON AS THE ATTORNEY
PROVIDED IT'S FIRST SERVICES
TO THE ESTATE, THE RIGHTS
VESTED.
I WOULD SUBMIT THAT IN THIS
CASE, AS SOON AS THE
ATTORNEY BEGAN DEFENDING
AGAINST THE CLAIM OF
INTERFERENCE, WHICH WAS UPON
THE FILING OF THE FIRST
COMPLAINT, THAT THE RIGHTST
VESTED AT THAT
DATE WHEN THE FIRST SERVICES
AMENDED.
>> TELL ME WHEN THE
FRIVOLOUS CONDUCT IN THIS
CASE WAS THE REPEATED FILING
OF THE COMPLAINTS?
>> WELL THE COMPLAINT WITH
REGARD TO TORTIOUS
INTERFERENCE WAS FILED FIVE
TIMES AND IT WAS DISMISSED
FIVE TIMES AND ABONDED.
>> THIS WAS A BENCH TRIAL.
>> AND SO AT THE END OF THE
BENCH TRIAL, IT WAS
EVERYTHING, ALL THE CLAIMS
WERE DISMISSED?
>> WEDNESDAY THE SUBJECT OF
THE CLAIMS BEFORE THIS COURT
NEVER WENT TO TRIAL.
THE CASE WENT TO TRIAL ON

THREE SEPARATE CLAIMS.
SO WE'RE DEALING TODAY, WITH
THREE CLAIMS THAT WERE PLEAD
AND AT SOME STAGE OF THE
PROCEEDING, ABANDONED WITH
THE EXCEPTION OF THE
VIOLATION OF THE PROCUREMENT
INTEGRITY ACT WHICH WAS
DISMISSED.
>> WHEN DID THE SAFE HARBOR
PROVISION COME INTO EFFECT
WITH REFERENCE TO WHEN THE
THREE CLAIMS WERE DISMISSED.
>> ALL OF THESE CLAIMS
PROCEEDED THE FILING OF THE
STATE'S HARBOR AMENDMENT.
THE TORTIOUS INTERFERENCE
CLAIM WAS FILED A YEAR
EARLIER AND WAS FILED IN
AUGUST OF 2001.
>> SO IT WOULD HAVE BEEN,
FOR YOU, EVEN, TO HAVE FILED
THE MOTION UNDER THE SAFE
HARBOR, REALLY, ALL THE
FRIVOLOUS CONDUCT ALREADY
OCCURRED.
THERE WOULD BE
NOTHING THAT CHANGED, AND
THIS IS A FRIENDLY QUESTION
FOR YOU.
IN TERMS OF YOU YOU DIDN'T
HAVE AVAILABLE TO TELL THEM
TO STOP AND HERE IS THE SAFE
HARBOR AT THE TIME THEYED
THAT TO FILE THESE

COMPLAINTS IS, IS THAT
CORRECT?
>> WHAT WAS THE SAFE HARBOR
MOTION HAVE SAID?
>> THEY ALREADY DID WHAT
YOUR COMPLAINING ABOUT, AND
WAS SUBJECT OF THE
ATTORNEY'S FEES, CORRECT?
>> THAT'S CORRECT, YOU KNOW,
AND OF COURSE, THE SAFE
HARBOR STATUTE WENT INTO
EFFECT AND OFTEN TIMES YOU
DON'T KNOW THAT A STATUTE IS
GOING INTO EFFECT.
YOU'RE NOT AWARE OF THE

CHANGE IN THE STATUTE, BUT I
SUGGEST TO THE COURT IT
WOULDN'T HAVE MADE ANY
DIFFERENCE BECAUSE THE
RIGHTS TO ATTORNEY FEES ARE
SUBSTANTIVE AND --
I THINK THE 5TH DISTRICT
CASE RELIES ON THREE CASES.
THAT THE AIR TRAN CASE, AND
THE THE AIR TRAN CASE, THE
HAMPTON CASE, AND THE MAX
WELL CASE, AND THE HAMPTON
CASE NAY RELY ON, WAS A SUIT
THAT WAS FILED IN 2000, 2
YEARS BEFORE THE SAFE HARBOR
AMENDMENT, AND THE 4
DISTRICT SAID THEY AGREED
WITH WALKER, AND THAT THE
AMENDMENT IS EFFECTED RIGHTS
AND COULD NOT BE APPLIED

RETROACTIVELY.
THEY THEY RELIED ON THIS
CASE TO REVERSE THE
DECISION.
I SUBMIT TO THE COURT THAT
THE 5TH DISTRICT WAS WRONG
IN SEVERAL RESPECTS.
NUMBER ONE, THEY --
NONE OF THE THREE CASES ARE
THE 5TH DISTRICT CASE
MENTIONS YOUR CONTROLS
DECISIONS IN ROSS, YOUNG, OR
BITTERMAN.
THE DECISION OF 5TH DISTRICT
IS CONTRARY TO WALKER, AND
YOU HAVE RATIFIED AND
CONFIRMED WALKER IN THE
MENENDEZ DECISION.
IN AIR TRAN, MAX WELL, AND
HAMPTON, THEY IGNORING THE
CONTROLLING ISSUE.
THE POINT IN TIME THE RIGHTS
AND OBLIGATIONS LEGALLY
BEST.
AND THAT IS WHEN THE FIRST
SERVICES ARE RENDERED BY THE
ATTORNEY DEFENDING THE CLAIM
WHICH IS THE SUBJECT
MATTER.
THE 5TH DISTRICT CONCLUSION

THAT THE CONTROLLING FACTORS
WHEN THE MOTION FOR 57105
FOREIGN'S FEES IS FILED IS
ABSOLUTELY FLAWED.
THIS WOULD RESULT IN

APPLICATION OF SAFE PAR BOAR
AMENDMENTS EFFECTING
OBLIGATIONS TO ATTORNEY'S
FEES PRIOR TO THE AMENDMENT.
THE 5TH DISTRICT IS TRYING
TO ESTABLISH INDIRECTLY WHAT
THEY COULD NOT DO DIRECTLY.
THEY ADMIT, THAT THE STATUTE
IS SUBSTATIVE, YET THEY
APPLY THE AMENDMENT NONE THE
LESS BECAUSE IT APPLIES TO
CONDUCT AFTER THE DATE.
THIS COURT IN BITTERMAN
REJECTED THE SAME ARGUMENT.
>> BUT THAT'S NOT THE FACTS
OF THIS CASE AS I UNDERSTAND
IT IN RESPONSE AND THESE
BRIEFS, THE CLAIM FOR FEES
IS BASED UPON CONDUCT THAT
OCCURRED BEFORE THE STATUTE
WAS AMENDED.
>> YES, THAT'S TRUE, BUT AS
THIS COURT SAID IN
BITTERMAN, THAT THE CLAIM
FOR ATTORNEY'S FEES VERY
SERVICES RENDERED WHEN A
STATUTE AMENDED, IT APPLIES
TO SERVICES BEFORE THE
AMEND, AND SERVICES AFTER
THE AMENDMENT, BECAUSE
THEY'RE BUNDLED TOGETHER.
>> WE'RE NOT TALKING ABOUT
THAT IN THIS CASE, ARE WE?
SERVICES RENDERED AFTER THIS
AMENDMENT.
>> WE'RE TALKING ABOUT

SERVICES RENDERED, YES.
WE'RE TALKING ABOUT SERVICES
RENDERED UNTIL THE PLANE WAS
ABANDONED WHICH OCCURRED.
>> THAT DID NOT OCCUR UNTIL
AFTER THE STATUTE WAS
AMENDED?
>> YES, THE ABANDONMENT, AND
THE OTHER TWO CLAIMS, WERE

ABANDONED AFTERWARDS.
I WOULD --
THE QUESTION OF WHETHER OR
NOT THE SAFE HARBOR
AMENDMENT IS PROCEDURING
WITH AND THAT'S WHAT THE 5TH
DISTRICT, THEY FOUND IT WAS
SUBSTATIVE, BUT IT HAD A
ASPECT THAT HAD TO DEAL WITH
THE FILES OF THE MOTION
AFTER THE SAFE HARBOR
AMENDMENT.
THAT HAS BEEN DISPOSED OF IN
THE CASE, IN TENAZ VS.
WHITFIELD CITED IN THE
BRIEF.
WITH REGARD TO THE LAST
QUESTION, AND THAT WAS THE
5TH DISTRICT DECIDED THAT
THE INTERFERENCE CLAIM WAS
NOT FRIVOLOUS.
AND IN ORDER TO MAKE THIS
FINDING, THEY HAD TO
DETERMINE THAT THE JUDGE
ABUSED IT'S DISCRETION.
THAT'S THE STANDARD IN

DETERMINING THE AWARD OF
ATTORNEY'S FEES WAS
IMPROPER.
IF YOU LOOK AT WHAT THE
ORDER TERMING ENTITLEMENT TO
ATTORNEY'S FEES THAT THE
JUDGE DRAFTED HIMSELF SAID,
IS THAT THE COURT FINDS THAT
THE LOSING PARTIES ARE THE
LOSING PARTIES ATTORNEY,
KNEW OR SHOULD HAVE KNOWN,
WHEN THE CLAIM WAS FILED AS
PART OF THE SECOND AMENDED
COMPLAINT ON JULY 19TH 2001,
AND THAT ALL TIME THERE'S
AFTER UNTIL IT WAS
ULTIMATELY DISMISSED BY
COURT ORDER NOVEMBER 8TH,
2003, AND ABANDONED BY
PLAINTIFFS, THAT WAS CLAIM
WAS NOT SUPPORTED BY THE
MATERIAL FACTS NECESSARY TO
CLAIM INTERFERENCE BY
DECLARED BY THE STATUTE I

BELIEVE THAT THE 5TH
DISTRICT, FOR WHATEVER
REASON, THE BASIS OF THE
TORTIOUS INTERFERENCE COUNT,
THAT WAS BIONETICS
INTERFERED WITH ADVANTAGEOUS
RELATIONS THAT WE HAD WITH
LOCKHED, AND BOEING.
THEY ALLEGE THAT CERTAIN
STATEMENTS THAT THE
BIONETICS EMPLOYEES MADE,

INTERFERED WITH THEIR FUTURE
RIGHTS TO OBTAIN CONTRACTS
THAT THEY WOULD BID ON IN
THE FUTURE.
WITH BOEING AND LOCKHED.
THE FACTS OF THE CASE, AND
IF YOU READ THE DEPOSITION
OF MR. MOORE, WHICH WAS
FILED IN THE COURSE AND IN
EVIDENCE, IS THAT MR. MOORE
TESTIFIED THAT TECHNARTS,
DID, ON THE LOCKHED WAS
SUCCESSFUL, HE HAS NO
COMPLAINT THERE.
HE ARGUE THAT'S BYE NETTICS
BET ON THE BOEING CONTRACT,
AND JOHNSON CONTROL, NEITHER
ONE WAS A SUCCESSFUL BIDDER.
SO HE HAS NO COMPLAINT
THERE.
>> HE ALLEGED THAT THERE WAS
A FOLLOW ON CONTRACT TO THE
LOCKHED CONTRACT BUT THEY
DIDN'T BID BECAUSE IT WAS A
VIDEO CONTRACT, AND THEIR
PRIMARY EXPERTISE, WAS IN
FILM, NOT IN VIDEO.
SO IF YOU EXAMINE THE
TESTIMONY OF THE DEFENDANT
HIMSELF WITH REGARD TO THE
BASIS OF CLAIM FOR TORTIOUS
INTERFERENCE, THAT WHAT 5TH
DISTRICT SAID IS CONTRARY TO
THE FACTS.
THERE HAS TO BE A
ESTABLISHED BUSINESS

RELATIONSHIP FOR THERE TO BE
A INTERFERENCE WITH A
BUSINESS RELATIONSHIP.

AND THE FACTS OF THIS CASE
AS LEAD, ABSOLUTELY DID NOT
ACCOMPLISH THAT AS THE
MATTER OF LAW, AND THIS
JUDGE HAD FIVE HEARINGS ON
MOTIONS TO DISMISS AND HE
FOUND IT WAS INSUFFICIENT AS
A MATTER OF LAW, AND I
SUBMIT, THE FINDINGS OF THE
COURT THAT TRACK THE WORDING
AT THE STATUTE, WAS
SUFFICIENT TO MEET THE
REQUIREMENTS OF 57105, A,
AND THAT THE JUDGE DID NOT
USE DISCRETION.
I RESERVE MY REMAINING TIME
FOR REBUTTAL.
>> GOOD MORNING, HONORS, MAY
IT PLEASE THE COURT.
I'M FRANK KENNIASTY, AND I'M
THE RESPONDING ATTORNEY IN
THIS MATTER.
THE COURT SHOULD REFIRM THE
DECISION FOR TWO REASONS.
THE PLAIN LANGUAGE OF THE
STATUTE REQUIRES THAT ANY
MOTION SERVED AFTER JULY
FIRST, 2002, MUST COME PLY
WITH THE SAFE HARBOR
PROVISION THAT REQUIRED A 21
DAY NOTICE BEFORE FILING FOR
ATTORNEY'S FEES.

IN THIS CASE IT'S CLEAR THAT
THE ATTORNEY FAILED
THEREFORE THE 5TH DCA'S
DECISION IS CORRECT.
SECONDLY TO THE JUDGE'S
QUESTION WHICH IS THE
CRITICAL ISSUE IN THIS CASE,
IS AS OF JULY FIRST, 2002,
WAS THERE A VESTED RIGHT.
AND I ARGUE THERE WASN'T FOR
THREE MAIN REASONS FOR
ATTORNEY'S FEES.
FIRST THE PETITIONER IN
FILES, SECONDLY, ALL THREE
FRIVOLOUS CLAIMS WERE
PENDING WEB AND TO YOUR
POINT, JUSTICE, THE CONDUCT
OCCURRED BEFORE AND AFTER

THE MENENDEZ STATUTE, SO
WHAT YOU HAVE A IS A
CONTINUING EVENT NOT A
DISCREET EVENT LIKE IN A
PERSONAL INJURY OR MEDICAL
MALPRACTICE WITH A INJURY ON
THAT DATE.
YOU HAVE A FILING AND
ALLEGED CONTINUING FILING
CONDUCT THAT PRECEDED AND
WAS POSTTHE AMENDMENT OF THE
STATURE.
>> IT WAS TO ALL THE CONDUCT
THAT PROCEEDED THE EFFECTIVE
DATE OF THE STATUTE, WHICH
WAS THE FILING OF THE
FRIVOLOUS CLAIMS.

THE SAFE HARBOR PROVISION
WAS NOT IN IN EFFECT AT THAT
TIME TO ALLOW SOMEONE TO SAY
HERE, YOU WITHDRAWAL THIS OR
WE'RE GOING TO FILE A
MOTION, ISN'T THAT CORRECT?
>> THAT'S ABSOLUTELY
CORRECT, YOUR HONOR, SO AT
THE MOST, IF YOU'RE ARGUMENT
IS THAT THERE WAS FRIVOLOUS
CONDUCT BEFORE AND AFTER,
THAT YOU WOULD AT LEAST BE
RESPONSIBLE FOR ALL THE
ATTORNEY'S --
ATTORNEY'S FEES FOR
DEFENDING THE ACTION THAT'S
WERE FRIVOLOUS WERE THE
EFFECTIVE DATE OF THE
MOTION, AS ANYONE ORDERED
THAT?
>> YOUR HONOR, THE COURTS
ANALYZED THAT DIFFERENTLY AS
THIS COURT IS AWARE.
57105 WAS MODELED AFTER RULE
11.
A SIMILAR SITUATION LOOK
PLACE WHERE IT WAS ADDED TO
THE SAFE HARBOR PROVISION.
IN THE CASE I CITED IN MY
SIXTH DISTRICT COURT THEY
HAD THE SAME TWO OR THREE
AMENDED COMPLAINTS.
THE FIRST PREDATED THE

AMENDMENT TO THE STATUTE,
AND THEN FOLLOWING THAT,

THEY CONTINUED.
SO WHAT THE SIXTH FEDERAL
CIRCUIT SAID THERE WAS NO
REASON WHY THE PETITION OR THE
LITIGANT COULD NOT FOLLOW THE
SAFE HARBOR PROVISION.
IN OTHER WORDS, THERE WAS NO
RETROACTIVE EFFECT.
A TRULY RETROACTIVE EFFECT IS
IF THE CONDUCT HAS BEEN
COMPLETED AND YOU DON'T HAVE A
CHANGE TO CHANGE YOUR CONDUCT.
HERE THAT IS NOT THE CASE.
WHAT WE HAVE IS CONTINUING
EVENT, A CONTINUING EVENT EVER
ALLEGED, I ARGUE THESE AREN'T
EVEN FRIVOLOUS CLAIMS TO BEGIN
WITH, BUT ASSUMING THEY ARE,
YOU HAVE ALLEGED FRIVOLOUS
CLAIMS THAT PRECEDE THE STATUTE
AND GO AFTER THAT.
THE THEY HAD PLENTY OF TIME
AFTER THE AMENDMENT TO FILE THE
NOTICE.
OR ALTERNATIVE, YOUR HONOR, THE
PETITIONER COULD HAVE FILED THE
NOTICE BEFORE, FILED A MOTION
BEFORE THE AMENDMENT WITHOUT
NOTICE.
HE HAD TWO OPPORTUNITIES.
EITHER BEFORE THE AMENDED
STATUTE TOOK PLACE TO FILE THE
MOTION.
IN THAT CASE I WOULD ARGUE
PROBABLY WOULD HAVE A VESTED
RIGHT TO SEEK FEES, OR AFTER

THE AMENDED MOTION HE HAD A
SIMPLE PROCEDURE.
ALL HE HAD TO DO WAS PROVIDE A
21-DAY NOTICE WHICH HE FAILED
TO DO.
I CITED NOTICE OF SUPPLEMENTAL
AUTHORITY, U.S. SUPREME COURT
CASE, THE THOR CASE WHICH WAS,
SIMILAR ISSUE OF RETROACTIVITY.
IN THAT CASE YOU HAD A HOUSING
AUTHORITY, PARDON ME, IF WAS A
HOUSING AUTHORITY, THORPE
VERSUS HOUSING AUTHORITY.
IN THAT CASE THE HOUSING
AUTHORITY CHANGED THEIR
REGULATION FOR EVICTION.
EVICTION WAS STARTED PRIOR TO
THE AMENDED REGULATION BUT
DURING THE PRECEDING --
PROCEEDING THE REGULATIONS
CHANGED.
SIMILARLY THE REGULATION
REQUIRED A NOTICE REQUIREMENT.
AND WHAT THE U.S. SUPREME COURT
FOUND IS THAT ALL THAT THE
HOUSING AUTHORITY HAD TO DO WAS
FILE A FAIRLY SIMPLE PROCEDURE
OF FILING NOTICE AND THERE WAS
NO RETROACTIVE EFFECT.
>> BUT IT SEEMS TO ME YOUR
ARGUMENT WOULD ALMOST LEAD TO
THIS RESULT WITH THE SAFE
HARBOR PROVISIONS WHICH IS
THAT AN ATTORNEY WHO STARTS TO
DEFEND A LAWSUIT THAT, OR IT
COULD BE THE OTHER WAY, AN

ATTORNEY WHO FILES A SUIT,
RESPONDS TO SOMETHING THE
DEFENDANT FILES THAT IS NOT,
THAT IS FRIVOLOUS, WOULD START
TO HAVE TO EACH TIME THERE WAS
A FRIVOLOUS ACTION WOULD HAVE
TO BE FILING A MOTION FOR
ATTORNEY'S FEES TO SAY, AND ASK
THEM TO DESIST, CEASE AND
DESIST.
>> RIGHT.
>> INSTEAD THERE WOULD HAVE TO
BE A SERIES OF MOTIONS FOR
ATTORNEY'S FEES?
ISN'T THAT WHAT YOUR ARGUMENT
WOULD LEAD TO IF THERE'S NOT A,
IF THERE'S A SAFE HARBOR
PROVISION AND YOU'RE TRYING TO
GET THEM TO STOP WHAT THEY'RE
DOING?
>> NO, YOUR HONOR.
THAT'S NOT WHAT I'M ARGUING.
I THINK GOING BACK TO THE
INTENT OF THE SAFE HARBOR
PROVISION AND THE RULE ITSELF,
AS THIS COURT IS AWARE, 57.105
WAS MODELED AFTER RULE 11.
THE MAIN PURPOSE OF THIS
ATTORNEY'S FEE STATUTE IS TO
DETER FRIVOLOUS CLAIMS AND EASE
THE PROCEDURE OF THE COURT.
IN OTHER WORDS, HAVE ATTORNEYS
POLICE THEMSELVES.
>> RIGHT. AT THE TIME THIS
LAWSUIT WAS FILED --
>> RIGHT.

>> -- WHICH THE DEFENDANT
DEEMED TO BE FRIVOLOUS, THEY
HAD A RIGHT TO EXPECT THAT IF
IT WAS DETERMINED TO BE
FRIVOLOUS, THAT THEY COULD
RECOVER THEIR ATTORNEY'S FEES
WITHOUT HAVING TO GO THROUGH
EXTRA HOOPS.
AND THAT'S WHAT REALLY, ISN'T
THAT THE SUBSTANTIVE RIGHT
THAT'S BEEN ALTERED? NOW NO
LONGER DO YOU GET ATTORNEY'S
FEES?
YOU HAVE TO ASK THEM TO STOP
WHAT THEY'RE DOING BEFORE YOU
CAN FILE YOUR MOTION?
>> HERE'S THE PROBLEM WITH THAT
ARGUMENT, YOUR HONOR IS THAT,
AND YOUR QUESTION GOES TO THE
CENTRAL POINT.
WHEN DOES THE RIGHT TO
ATTORNEY'S FEES VEST?
IF YOU TAKE PETITIONER'S
ARGUMENT, THE RIGHT TO
ATTORNEY'S FEES VEST WHEN YOU
FIRST FILE YOUR COMPLAINT.
THAT'S ASSUMING, THERE HAS BEEN
NO EVIDENCE TAKEN.
THERE'S BEEN NO DISCOVERY.
THAT'S SAYING THAT THE MOMENT
YOU FILE, THE CLAIMS PLED ARE
FRIVOLOUS.
THAT WOULD GO IN DIRECT
CONTRADICTION TO THIS COURT'S
HOLDING IN THE LOMBARDI CASE,
WHICH AS THIS COURT A AWARE,

MOTIONS TO DISMISS YOU ASSUME
THE FACTS PLED IN THE COMPLAINT
ARE TRUE.
SO IF YOU SAY THE FACTS AND IN
THE COMPLAINT ARE ASSUMED TRUE,
HOW CAN YOU HAVE A VESTED RIGHT
BY SAYING THEY'RE FRIVOLOUS?
THAT COULDN'T COMPORT.
WHAT I WOULD SUGGEST, YOUR
HONOR, THE ANALYSIS HAS TO BE
WHEN DO RIGHT TO ATTORNEY'S
FEES VEST?
I POINT TO THE CASES THAT I
PROVIDED IN NOTICE TO
SUPPLEMENTAL AUTHORITY WHICH IS
THE WISCONSIN CASES.
THE WISCONSIN SUPREME COURT,
NOW, I ANALYZED THEIR TONES
FEES STATUTE WHICH WAS MODELED
AFTER RULE 11.
IN THAT CASE THE CASE SAID THE
RIGHT TO THE ATTORNEY'S FEES
VEST WHEN THE TRIAL COURT MAKE
AS FINDING OF FRIVOLOUSNESS.
NOT WHEN IT IS FILED OR NOT,
ANY OTHER TIME BUT NOT UNTIL
THE COURT MAKE AS FINDING OF
FRIVOLOUSNESS.
I WOULD POINT TO THE PLAIN
LANGUAGE OF THE STATUTE I THINK
SUPPORTS THAT CONTENTION.
IF YOU LOOK AT 57.105, IT
STATES THAT UPON THE COURT'S
INITIATIVE A MOTION OR A PARTY,
IT GOES ON BUT THE ESSENTIAL
POINT IS WHEN DOES IT HAVE TO

TAKE PLACE?
AND NEAR THE END OF THE STATUTE
IT SAYS, WHEN INITIALLY
PRESENTED, OR, ANY TIME BEFORE
TRIAL.
SO, TO MR.^CARUSO'S POINT, IT
DOES SAY YES WHEN INITIALLY
PRESENTED.
THAT IS WHEN A COURT CAN MAKE A
FINDING OF FRIVOLOUSNESS BUT IT
ALSO CAN BE ANY TIME BEFORE
TRIAL.
FOR EXAMPLE, YOU INITIALLY
FILED A COMPLAINT AND YOU
BELIEVE IN GOOD FAITH THERE WAS
EVIDENCE TO SUPPORT IT.
DURING DISCOVERY, PERHAPS YOUR
WITNESS RECANT OR SOME OTHER
FACTS COME OUT.
THEN YOU FIND IT'S FRIVOLOUS.
SO, A RIGHT TO ATTORNEY'S FEES
UNDER 57.105 BY THE PLAIN
LANGUAGE OF THE STATUTE DOESN'T
NECESSARILY ACCRUE OR VEST WHEN
INITIALLY PRESENTED.
IT COULD HAPPEN BECAUSE OF
CERTAIN CIRCUMSTANCES DURING
THE CONDUCT OF THE LITIGATION.
SO BY THE LANGUAGE OF THE
STATUTE YOU CAN'T ACCRUE ONLY
WHEN INITIALLY FILED.
I WOULD ALSO POINT TO, I THINK
THERE'S A DISTINCTION BETWEEN
ACCRUAL AND VESTING.
ACCRUAL UNDER THE DICTIONARY,
MERRIAM DICTIONARY

SOMETHING COMES INTO EXISTENCE
AS LEGALLY ENFORCEABLE CLAIM.
UNDER SECTION 95.031, ACCRUAL
OF A CAUSE OF ACTION OCCURS
WHEN THE LAST ELEMENT
CONSTITUTING THAT CAUSE OF
ACTION OCCURS.
WHEN IS THE LAST ELEMENT OF A
CAUSE OF ACTION ACCRUE UNDER
57.105?
YOU WELL YOU LOOK AT THE
LANGUAGE OF THE STATUTE.
IT IS NOT UNTIL THE LOSING
PARTY OR LOSING PARTY ATTORNEY
ON THE CLAIM OR DEFENSE OR ANY
TIME DURING THE CIVIL
PROCEEDING IN WHICH THE COURT
FINDS THE LOSING PARTY OR THE
LOSING PARTY'S ATTORNEY KNEW OR
SHOULD HAVE KNOWN A CLAIM OR
DEFENSE WHEN INITIALLY
PRESENTED TO THE COURT OR ANY
TIME BEFORE TRIAL, AND IT GOES
ON.
>> WAIT A MINUTE.
THAT LAST PART IS PRETTY
IMPORTANT.
IT IS SAYING THAT A COURT CAN
FIND IT GOES BACK BEFORE.
>> IT CAN, YOUR HONOR.
I'M NOT ARGUING THAT.
BUT THE POINT IS, ACCRUAL
DOESN'T AUTOMATICALLY HAPPEN
WHEN INITIALLY FILED OR ANY
TIME BEFORE TRIAL.
>> BUT IT COULD?

>> I AGREE.
>> OKAY.
>> SO THE QUESTION IN THIS
CASE, WHEN DID IT HAPPEN?
THE FACTS OF THIS CASE ARE WAS
A MOTION PRACTICE.
I CONCEDE THE FACT THAT THERE'S
PROBABLY TOO MANY FILINGS IN
THIS CASE AND THAT WAS AN ERROR
ON MY PART.
HOWEVER, IN GOOD FAITH WE FILED
THOSE CLAIMS AND THERE'S NO
EVIDENCE IN THE RECORD TO
SUGGEST THEY WERE FRIVOLOUS.
>> EXCEPT THAT THE JUDGE HAS
DETERMINED OTHERWISE.
WE'RE NOT HERE TODAY TO DEBATE
WHETHER IT WAS FRIVOLOUS OR
NOT.
>> RIGHT.
>> THE JUDGE HAS DETERMINED
FROM THE GET-GO THESE WERE
FRIVOLOUS CLAIMS.
>> YOUR HONOR, HE DID BUT HE
ALSO, WELL THERE'S SEVERAL
OTHER PROBLEMS WITH THE CASE.
THE FACT THAT THE JUDGE AND THE
PETITIONER IN ERROR, FILED IN
HIS MOTION, HE FILED, HE FILED
A CLAIM THAT NEVER OR
ASSERTED A CLAIM WAS NEVER
FILED IN THIS CASE.
HE USES THE TERM, TORTIOUS
INTERFERENCE IN A GENERAL TERM
BUT THE COUNT THAT WAS FILED IN
THIS CASE WAS TORTIOUS

INTERFERENCE WITH BUSINESS
RELATIONS NOT TORTIOUS
INTERFERENCE WITH A CONTRACT
WHICH IS A COMPLETELY DIFFERENT
CLAIM.
THEY'RE SIMILAR.
SIMILAR TO BATTERY AND ASSAULT.
IN THIS CASE THE TRIAL COURT
GOT IT WRONG.
THE TRIAL COURT GOT IT WRONG
BECAUSE THE PETITIONER ARGUED
THE WRONG CLAIM.
BUT HAVING SAID THAT I WANT TO
GO BACK TO THE VESTED RIGHT
ISSUE, YOUR HONOR.
IS THAT, YOU KNOW, I WANT TO
ADD A COUPLE POINTS THAT I
DIDN'T BRING OUT IN MY BRIEF
AFTER THE READ THE WEINREICH
CASE WITH REGARD TO WHAT A
VESTED RIGHT IS.
IN THAT CASE, THE THIRD DCA
QUOTED JUSTICE CANADY WITH
REGARD TO WHAT A VESTED RIGHT
IS.
TO BE VESTED A RIGHT MUST BE
MORE THAN MERE EXPECTATION
BASED ON ANTICIPATION OF
CONTINUANCE OF EXISTING LAW.
IT MUST BECOME A TITLE, LEGAL
OR EQUITABLE TO THE PRESENT OR
FUTURE ENFORCEMENT OF DEMAND.
I THINK IN THIS CASE AT THE
POINT OF JULY 1st, 2002, WHAT
WAS THE STATUS OF THE AFFAIRS?
WAS THERE A VESTED RIGHT?

I WOULD ARGUE NO, YOUR HONORS.
THERE WAS A EXPECTATION PERHAPS
ON THE PART OF THE PETITIONER
THAT HE WAS GOING TO GET
ATTORNEY'S FEES IF THE COURT
MADE A FINDING FRIVOLOUSNESS
BUT THAT WASN'T THE CASE AT
THIS TIME.
>> ISN'T THAT, WHAT WAS THE
NAME OF THE CASE WHERE WE
DECIDED THAT THE LOSING PARTY
HAVING TO PAY ATTORNEY'S FEES
IN A MALPRACTICE CASE WAS
SOMETHING THAT DID NOT EXIST
BEFORE?
WAS THAT ONE OF THOSE FOUR
CASES THAT YOU MENTIONED?.
>> YES, YOUR HONOR.
THAT WAS PRESENTED IN THE
WEINREICH CASE.
I DON'T RECALL THE EXACT NAME
OF THE CASE.
>> YOUR ARGUMENT THERE WOULD BE
THAT THE DEFENDANT IN A
MALPRACTICE CASE WOULDN'T
EXPECT THAT THEY'RE GOING TO BE
LIABLE FOR ATTORNEY'S FEES
UNTIL THEY LOSE AND THEY DON'T
LOSE UNTIL AFTER THE DATE THAT
THE ATTORNEY'S FEES PROVISION
WENT INTO EFFECT AND THAT'S NOT
HOW WE LOOKED AT THIS.
WE'VE LOOKED AT IT AS THE TIME
OF THE FILING OR THAT IS WHEN
THE RIGHT THAT THE SUBSTANTIVE
RIGHT IS LOOKED AT.

AND I THINK THE CHANGING A
WHOLE LOT OF CASE LAW IF WE
WOULD TAKE YOUR POSITION NOT
UNTIL THERE'S A DETERMINATION
OF FRIVOLOUSNESS OR A
DETERMINATION OF THAT SOMEONE
IS THE WINNING OR LOSING PARTY
THAT YOU LOOK AT THE LAW THAT
TIME AS OPPOSED TO AT THE TIME
THE CASE IS FILED OR THE ACTION
ACCRUES.
>> YOUR HONOR, WITH ALL DUE
RESPECT I THINK COURT IN
MENENDEZ, OF COURSE THAT CASE
HAD TO DO WITH A CONTRACT RIGHT
WHICH I THINK VESTS AT A
DIFFERENT TIME.
I DON'T ARGUE THE POINT.
WHEN YOU ENTER INTO A CONTRACT
THAT'S A VESTED RIGHT.
BUT HERE WHAT WE'RE TALKING
ABOUT IN ESSENCE IS ESSENTIALLY
KIND OF A TORT CLAIM FOR A
FRIVOLOUS LAWSUIT.
SO THE QUESTION BECOMES WHEN
DOES THAT RIGHT VEST?
AND I WOULD ARGUE THE WISCONSIN
SUPREME COURT CASE IS CORRECT.
BUT I'D ALSO LIKE IN THE FACT
THAT IT VESTS WHEN YOU MAKE A
FINDING OF FRIVOLOUSNESS.
I ALSO WANT TO MAKE A
DISTINCTION WHICH I DIDN'T
BRING ABOUT IN MY BRIEF I THINK
THERE IS A DISTINCTION OF THE
INVESTING OF THE RIGHT TO SEEK

FEES VERSUS THE RIGHT TO
ATTORNEY'S FEES THEMSELVES.
FOR EXAMPLE, IF PETITIONER
WOULD FILED A MOTION PRIOR TO
THE AMENDED STATUTE, HE WOULD
HAVE AN EXPECTATION THAT HE
WOULDN'T HAVE TO PROVIDE NOTICE
BECAUSE THERE WAS NO AMENDMENT
AT THAT TIME BUT HE WOULD HAVE
A RIGHT TO SEEK FEES UNDER THE
LAWS OF THAT TIME.
>> BUT HE WOULD NOT HAVE BEEN
ABLE TO BECAUSE, DOES THE RULE
ALLOW AN ASSESSMENT WHILE THE
LITIGATION IS GOING ON WITH
REGARD TO THOSE ISSUES PRIOR TO
THIS AMENDMENT?
YOU'RE SAYING THAT HE COULD
HAVE A WEEK AFTER THE LAWSUIT
WAS FILED, HIS MOTION FOR
ATTORNEY'S FEES FOR
FRIVOLOUSNESS?
>> THE STATUTE SPECIFICALLY
SAYS AT ANY TIME DURING THE
COURSE OF THE LITIGATION.
>> HE WAS FREE TO FILE THEN?
>> HE WAS FREE TO FILE ANY TIME
HE WANTS.
WHAT I'M SAYING, YOUR HONOR, HE
COULD HAVE FILED AT ANY TIME
AND WITH VESTED RIGHT TO SEEK
FEES.
WITH THE RESPECT TO THE VESTS
RIGHT TO OBTAIN FEES THAT'S
DIFFERENT.
WISCONSIN SUPREME COURT DIDN'T

ADDRESS IT.
THEY SAID YOU HAVE A VESTED
RIGHT TO OBTAIN FEES UPON A
FINDING OF FRIVOLOUSNESS.
WHAT I WOULD SUGGEST TO THE
COURT THAT YOU MAKE A
DISTINCTION BETWEEN THE RIGHT
TO SEEK A REMEDY AND IT MAKES
SENSE LIKE FROM A CONTRACT
STANDPOINT.
I HAVE A LAWSUIT.
THE LAWS IN EFFECT AT THE TIME.
I FILED THE MOTION.
THE PETITIONER FILED THE MOTION
AFTER THE AMENDED STATUTE.
WHY SHOULD HE HAVE AN
EXPECTATION AFTER THE STATUTE
WAS AMENDED HE DOESN'T HAVE TO
FILE NOTICE?
THAT DOESN'T MAKE ANY SENSE.
SAME THING WITH CONTRACT LAW.
WHEN YOU SIGN A CONTRACT THE
LAW OF THE CONTRACT AT THAT
TIME THAT IS EXPECTATION THAT
YOU HAVE.
THERE IS NO RETROACTIVE EFFECT
HERE BECAUSE PETITIONER WAS ON
NOTICE.
THE AMENDED STATUTE HAD BEEN
CHANGED.
HE HAD ADEQUATE TIME.
AND THE FACTS OF THIS CASE IS,
THE TORTIOUS INTERFERENCE WITH
BUSINESS RELATIONS CLAIM WAS
CONTINUED MORE THAN FIVE MONTHS
AFTER THE AMENDED STATUTE.

AS A MATTER OF FACT, IT WAS A
NEW, IT WAS THIRD AMENDED
COMPLAINT.
ALL THE PETITIONER HAD TO DO
WAS FILE THE NOTICE WHICH HE
DID NOT DO.
ALTERNATIVELY, AS I SAID
BEFORE, HE COULD HAVE FILED THE
MOTION WITHOUT NOTICE PRIOR TO
THE AMENDMENT.
I WOULD ARGUE HE WOULD HAVE A
VESTED RIGHT TO SEEK FEES UNDER
THE LAWS AT THAT TIME, YOUR
HONOR.
BUT, THIS IS NOT A CASE, THIS
IS NOT A CASE WHERE THERE IS
UNCONSTITUTIONAL OR ANY
RETROACTIVE APPLICATION OF LAW.
AND I POINT TO THE LANDGRAF
CASE, U.S. SUPREME COURT
LANDGRAF CASE SAID STATUTE
DOESN'T NECESSARILY HAVE A
RETROACTIVE EFFECT.
THE CRITICAL DISTINCTION IS
WITH RESPECT TO COMPLETED AND
CONTINUING EVENT.
THIS COURT IN MENENDEZ SAID THE
FOLLOWING.
THE CENTRAL FOCUS OF A
RETROACTIVE APPLICATION OF A
STATUTE IS WHETHER THE
APPLICATION OF THE STATUTE
ATTACHES NEW CONSEQUENCES TO AN
EVENT COMPLETED BEFORE ITS
ENACTMENT.
THIS RELIED ON THE U.S. SUPREME

COURT IN LANDGRAF.
FACTS OF THIS CASE ALL THREE
FRIVOLOUS CLAIMS WERE PENDING,
I.E., NO COMPLETE THE ACT.
THE LANGUAGE OF THE STATUTE
SAYS, I QUOTE, WHEN INITIALLY
PRESENTED OR ANY TIME BEFORE
TRIAL.
TO YOUR POINT, JUSTICE LEWIS,
COULD HAVE BEEN WHEN
INITIALLY PRESENTED.
THIS IS NOT A DISCRETE EVENT.
THIS IS CONTINUING EVENT.
SO WHAT DID PETITIONER HAVE AS
OF JULY 1st, 2002?
THE CLAIMS WERE PENDING.
NO MOTION HAD BEEN FILED.
NO JUDGEMENT OR DISPOSITION TO
ENFORCE THE RIGHTS.
NO FINDING OF FRIVOLOUSNESS.
IN FACT WE WERE STILL IN THE
STAGES OF DISCOVERY.
I WOULD SUGGEST THIS IS VERY
SIMILAR TO THE FACT PATTERN OF
THE THORPE VERSUS HOUSING
AUTHORITY IS THAT THERE IS NO
RETROACTIVE EFFECT HERE.
I WOULD POINT TO THE WISCONSIN
SUPREME COURT CASES AND ITS
COMPANION CASES WHICH HAD THE
SAME FACT PATTERN AND FOUND
THAT YOU SHOULD APPLY THE
AMENDED STATUTE TO THIS FACT
PATTERN.
I WOULD ALSO --
>> DO YOU HAVE APPLICATION OF

TWO DIFFERENT PRINCIPLES HERE?
THAT UP UNTIL THE TIME THAT THE
STATUTE WAS AMEND, WHATEVER
RIGHTS EXISTED, EXISTED AND
THEY MAY BE HE ENTITLED TO FEES
FOR THAT, BUT ONCE THAT STATUTE
WAS AMENDED, THAT ANY SERVICES
PERFORMED AFTER THAT DATE
PURSUANT TO WHICH THEY DID NOT
PROVIDE THE NOTICE THAT THEY
WOULD NOT BE ENTITLED?
>> YOUR HONOR, I WOULD ARGUE
THAT THE SECOND PART OF MY
ARGUMENT WAS THEY WAITED TOO
LONG TO FILE THE MOTION FOR
ATTORNEY'S FEES.
IS THAT, BY WAITING THAT THEY
ESSENTIALLY WAIVED AND UNDER
RULE 1.525, AND I KNOW THE RULE
HAS BEEN AMENDED RECENTLY.
I SAW THE AMENDMENTMENT.
WHAT HAPPENED HERE THEY WAITED
LONGER THAN 30 DAYS AFTER THESE
CLAIMS WERE DISMISSED.
>> THEN ARE YOU SAYING THAT
DEMAND FOR REQUIREMENT AFTER A
FIRST FRIVOLOUS ACT TAKES PLACE
IF YOU DON'T FIND WITHIN 30
DAYS OF THAT YOU'RE OUT OF
COURT?
I THINK IT IS A STRETCH.
>> I THINK IT IS A STRETCH,
YOUR HONOR.
I ARGUED THAT POINT BECAUSE I
THINK THE RULE WAS UNCLEAR BUT
I THINK THE NEW RULES ALREADY

CLARIFIED THAT.
YOU CAN WAIT UNTIL AFTER THE
TRIAL.
>> BUT THE, OUR CASE OF GANS
SAID SPECIFICALLY, EXTREMELY
DIFFICULT, NOT IMPOSSIBLE FOR A
PARTY TO PLEAD IN GOOD FAITH
ITS ENTILEMENT TO ATTORNEY'S
FEES UNDER 57.105 BEFORE THE
CASE SENDED.
>> RIGHT.
THAT'S AN EXCELLENT POINT, YOUR
HONOR, BUT GANS WAS UNDER A
DIFFERENT --
>> THEY HAD A RIGHT TO RELY ON
THAT CASE WHEN THEY WERE GOING
TO FILE THEIR MOTION.
>> EXCELLENT POINT, YOUR HONOR,
THAT GANS, THE WHOLE LAWSUIT
HAD TO BE FRIVOLOUS.
AS YOU'RE AWARE IN THE 1999
STATUTE, 57.105 COULD BE ANY
CLAIM OR DEFENSE.
>> WE DON'T WANT TO ENCOURAGE
ATTORNEYS TO FILE SERIAL
MOTIONS FOR ATTORNEY'S FEES.
>> IN CLOSING YOUR HONOR I
WOULD SUGGEST THERE IS
FUNDAMENTAL DUE PROCESS CONCERN
HERE WITH REGARD TO NOTICE IN
THIS CASE.
THE FACTS OF THE CASE THERE WAS
NO PROPER NOTICE PROVIDED AS TO
WHAT CLAIMS THEY WERE GOING
AFTER AND WHY.
THERE'S NO EVIDENCE IN THE

RECORD.
IF I EXAMINE THE RECORD AND
OTHER THAN THE PLEADINGS.
ADMIT TEDLY THERE WERE MULTIPLE
PLEADINGS.
JUST DISMISSAL AFTER PLEADING
ITSELF IS NOT BASIS FOR A
FRIVOLOUS LAWSUIT.
I WOULD RESPECTFULLY
REQUEST THAT THE COURT AFFIRM
THE FIFTH DCA'S DECISION IN
THIS CASE.
>> THANK YOU.
>> BRIEFLY IN REBUTTAL.
COUNSEL REFERRED TO FEDERAL
RULE 11.
FEDERAL RULE 11 AS THE COURT
KNOWS, IS A RULE OF PROCEDURE.
IT IS NOT A SUBSTANTIVE RULE
AND THE FLORIDA CASES CITED IN
OUR BRIEF OF KAUFMAN AND MULLEN
HAVE ALREADY SAID THAT THE
FEDERAL RULE 11 WILL NOT BE
FOLLOWED IN FLORIDA IF IT, AS
APPLIED WOULD AFFECT
SUBSTANTIVE RIGHTS.
SO THAT'S WHY THE CASES THAT
YOU CITED, THE WISCONSIN CASES,
AND THE CASES OF THE SUPREME
COURT ARE MISPLACED.
TWO, THE RITTER CASE, WHICH WAS
THE HOUSING AUTHORITY CASE, THE
HOUSING AUTHORITY CASE HAD TO
DEAL WITH NORTH CAROLINA
FEDERAL REGULATION THAT SAYS
THE HOUSING AUTHORITY HAD TO

HAVE A CONTRACT WITH THE PARTY
AND EITHER PARTY COULD
TERMINATE IT UPON 30-DAY
NOTICE.
THEY AMENDED THEIR PROCEDURE SO
THAT YOU ALSO HAD TO GIVE THEM
A REASON FOR THE TERMINATION.
BUT IT DID NOT CHANGE THE LEASE
BETWEEN THE PARTIES.
IT DID NOT CHANGE THE TERMS OF
THE LEASE BETWEEN THE PARTIES.
IT DID NOT CHANGE THE RIGHT TO
TERMINATE THE LEASE.
SO WHAT THE COURT SAID IS THAT
IT WAS A PROCEDURAL ASPECT
BECAUSE IT DIDN'T CHANGE
ANYBODY'S RIGHTS.
IT MERELY ADDED THAT YOU HAD TO
GIVE THEM A REASON WHY YOU WERE
TERMINATING AND THAT'S WHY THE
RITTER CASE IS NOT APPLICABLE.
THE BITTERMAN CASE, THIS
COURT'S DECISION IN BITTERMAN
SAYS THAT, AND IT'S CLEAR, THE
RIGHT TO ATTORNEY'S FEES VEST
AS SOON AS THE SERVICES BEGIN
TO BE RENDERED DEFENDING OR
ACTING UPON WHATEVER THE
SERVICES ARE FOR.
THE ATTORNEY'S FEES IN THIS
CASE BEGAN TO BE RENDERED IN
DEFENSE AGAINST THE FRIVOLOUS
MOTIONS AS SOON AS THE MOTION
TO DISMISS WAS FILED IN THE
BEGINNING AND PROCEEDED.
>> WOULD THIS BE A DIFFERENT

CASE IF, SAY THEY HAD HAD TWO
OR THREE VALID CLAIMS AND THEN,
AFTER THE DATE OF THE STATUTE A
FOURTH CLAIM WAS, THE SAFE
HARBOR STATUTE, A FOURTH CLAIM
WAS ADDED AND THAT CLAIM WAS
THE FRIVOLOUS CLAIM?
WOULD THAT BE A DIFFERENT
ANALYSIS OR WOULD YOU STILL GO
BACK TO WHEN THE FIRST SERVICES
WERE RENDERED?
>> WELL I THINK IF THE CLAIM
WAS, IF THE CLAIM WAS FIRST RAISED
AFTER THE AMENDMENT I THINK IT
WOULD BE A DIFFERENT SITUATION.
BECAUSE NO SERVICES WOULD BE
RENDERED BEFORE.
>> IN DEFENSE OF THE FRIVOLOUS
CLAIM?
>> CORRECT, AS TO THE FRIVOLOUS
CLAIM.
I THINK THAT WOULD BE TOTALLY
DIFFERENT AND THAT'S NOT YOUR
FACT PATTERN HERE.
BUT IN BITTERMAN THE COURT MADE
IT CLEAR THAT THE TIME THAT THE
SERVICES BEGAN TO BE RENDERED
IS WHEN THE RIGHT AND
ENTITLEMENT TO ATTORNEY'S FEES
VEST.
THIS COURT IN BITTERMAN ADOPTED
WALKER, REAFFIRMED AND RATIFIED
WALKER.
WALKER IS THE ONLY CASE THAT
SAYS THAT THE SAFE HARBOR
AMENDMENT DOES NOT APPLY TO

CASES FILED BEFORE THE
AMENDMENT WENT INTO EFFECT AND
THEREFORE, SINCE THIS COURT HAS
RATIFIED WALKER, THEN WHAT HE'S
ASKING YOU TO DO IS TO REVERSE
WALKER OR TO IGNORE WALKER.
THE ARGUMENT IS IS THAT JUDGE
BARLOW INADVERTENTLY IN HIS
ORDER REFERRED TO TORTIOUS
INTERFERENCE WITH CONTRACT
INSTEAD OF TORTIOUS
INTERFERENCE WITH BUSINESS
RELATIONS.
WHAT JUDGE BARLOW DID, HE
DISMISSED FIVE TIMES WHAT WAS
PLED.
WHAT WAS PLED WAS TORTIOUS
INTERFERENCE WITH BUSINESS
RELATIONS.
HE DISMISSED IT FIVE TIMES AND
THEN IT WAS ABANDONED.
SO THE INARTFUL USE OF THE WORD
CONTRACT INSTEAD OF BUSINESS
RELATIONS WHICH WAS A MISNOMER
SHOULD NOT CAUSE THIS COURT TO
NOT REVERSE THE FIFTH DISTRICT
COURT OF APPEALS.
SO WHAT I ASK THE COURT TO
REVERSE THE FIFTH DISTRICT
COURT OF APPEALS DECISION AND
TO REINSTATE THE TRIAL COURT'S
JUDGMENT.
THANK YOU.
>> THANK YOU. THANK YOU BOTH.
THAT IS THE FINAL CASE FOR
TODAY.

COURT IS NOW ADJOURNED.
>> PLEASE RISE.
SUPREME COURT IS NOW ADJOURNED.