

>>> PLEASE RISE.

HEAR YE HEAR YE HEAR YE.

THE SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW

NEAR.

GIVE ATTENTION.

AND YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,

THIS GREAT STATE OF FLORIDA AND

THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING.

AND WELCOME TO THE ORAL ARGUMENT

SESSION FOR THE FLORIDA SUPREME

COURT.

THE FIRST CASE ON OUR CALENDAR

THIS MORNING IS IN RE.:

AMENDMENTS TO FLORIDA RULES OF

CIVIL PROCEDURE.

ARE THE PARTS READY TO PROCEED?

ALL RIGHT.

MR. BIKE OKAY MAN, I UNDERSTAND

YOU HAVE 10 MINUTES, AND THEN,
WE WILL HEAR FROM MR. ROMANCE.
>> JUST CONVINCED I WOULD LIKE TO
RESERVE A MINUTE FOR REBUTTAL IF
POSSIBLE, PLEASE.

PLEASE THE COURT, I'M FROM
PENSACOLA AND PRIVILEGED TO
SERVE ON THIS COURT'S TASK FORCE
FOR RESIDENTIAL MORTGAGE
FORECLOSURES.

THIS COURT ENTERED AN ORDER
MARCH 9, 2009 CREATING THE TASK
FORCE AND THE ORDER IN PART
READS THAT THE RESIDENTIAL
MORTGAGE FORECLOSURE CRISIS IS
OF STATEWIDE PROPORTIONS AND
SHOULD TO EXTENT POSSIBLE BE
ADDRESSED ON A STATEWIDE BASIS,
UNIFORM COURT RULES, AND WITH
UNIFORM PROCEDURES TO MANAGE
CASES AND TO PROTECT RIGHTS OF
HOMEOWNERS AND LENDERS AND TO
EASE THE BURDENS OF THE COURT
AND I KNOW THIS COURT IS
FAMILIAR WITH THE NUMBERS, A

MULTITUDE OF FORECLOSURE CASE,
THAT HAVE INCURRED IN THE STATE
OVER THE LAST 2-3 YEARS AND
CONTINUE TO GO, AND THE FIGURES
WE HAVE THIS MORNING INCREASING
MORE SO NEXT YEAR AND ARE
FLOODING THE COURTS AND IT IS
CREATING A LOT OF JUDICIAL
ENERGY IN THAT AREA.
THAT CANNOT BE DEVOTED TO OTHER
CASES.
SO THE TASK FORCE IS
RECOMMENDING A RULE CHANGE,
PROPOSED FORMS, THE FIRST RULE
CHANGE THAT WE'RE REQUESTING THE
COURT TO CONSIDER IS AMENDMENT
TO RULE 1.10 B WHICH IS TO ASKED
A REQUIREMENT THAT IN
RESIDENTIAL MORTGAGE FORECLOSURE
COMPLAINTS, EXCUSE ME, THE
COMPLAINT BE VERIFIED.
TRADITIONALLY, WHAT IS HAPPENING
NOW, WITH THIS THOUSANDS OF
COMPLAINS, BEING FILED STATEWIDE
IF THE COMPLAINT TYPICALLY

INCLUDES A COUNT FOR LOST NOTES,
AND INVARIABLY WHEN THE ISSUE
COMES UP BEFORE THE COURT
ULTIMATELY COMES UP BEFORE THE
COURT AND ORDINARILY THAT IS
WHEN THE MOTION ON THE HEARING
ON THE MOTION FOR SUMMARY
JUDGMENT THE PLAINTIFF'S COUNSEL
WALKS IN AND SAID HERE'S THE
NOTE AND THERE IS A LOT OF
JUDICIAL ENERGY WASTED BECAUSE
OF THAT COUNT AND THE COURTS
HAVE TO REVIEW THE FILE AND
DETERMINE WHAT IT WILL DO
CONCERNING THE LOSS AND THE NOTE
SHOWS UP AND ANOTHER ISSUE THAT
HAS ARISEN IS WE NEED TO MAKE
SURE THE PLAINTIFF IS IN FACT
THE CORRECT PLAINTIFF AND WE
AREN'T ASKING FOR PROOF TO BE
FILED AT THE BEGINNING OF THE
CASE, THAT IS NOT WHAT IT IS
ABOUT BUT AS SEEN UN-- WHAT WE
HAVE SEEN IN OUR REVIEW THERE IS
ARE A NUMBER OF FORECLOSURES BY

DIFFERENT LENDERS AGAINST THE

SAME MORTGAGER --

>> AS A CONTINUATION OF WHAT YOU

ARE SAYING AND THE VERIFICATION

REQUIREMENTS I NOTICE THAT...

[INAUDIBLE] CIVIL RULES

COMMITTEE ONE OF THE MEMBERS OF

THE RULES COMMITTEE HAD PROPOSED

AN ADDITIONAL REQUIREMENT... AND

HAS THE TASK FORCE TAKEN A

POSITION ON THOSE ADDITIONAL

REQUIREMENTS, THE ACTION SHALL

BE... [INAUDIBLE] RAILROAD FLAW

WITH THOSE.

>> YES, AND THE TASK FORCE DID

NOT GO THAT FAR, OUR

RECOMMENDATION IS MERELY TO

REQUIRE THE RULE CHANGE AND

REQUEST THE RULE CHANGE, TO

110-B AND REQUIRE VERIFICATION

SO AT THE ONSET THE PLAINTIFFS

KNOW THEY HAVE TO DO THE

INVESTIGATION, PRE-FILING

COMPLAINT INVESTIGATION, SO THAT

WHEN THEY FILE THE COMPLAINT,

THEY ARE CERTIFYING -- VERIFYING

--

>> IN CONNECTION WITH THAT, LET
ME ASK YOU, DO YOU SEE A PROBLEM
WITH REQUIRING THAT THE ANSWER
IN AFFIRMATIVE DEFENSES ALSO BE
VERIFIED.

>> I DO NOT.

>> WE CAN -- [INAUDIBLE].

>> YOUR HONOR THE COURTS COULD
CERTAINLY DO THAT.

HOWEVER, TYPICALLY ON AN ANSWER,
IF THERE ARE ANSWERS IN THOSE
PRO SE PROCEEDINGS WHICH IS
NORMALLY WHAT YOU HAVE, IT IS
ADMIT, DENY AND ADMIT, DENY IF
YOU GET A RESPONSE AND IF YOU
NEED TO VERIFY THAT, IF THE
COURT REQUIRED VERIFICATION OF
THE RESPONSE TO THE RESIDENTIAL
MORTGAGE FORECLOSURE COMPLAINT
I'M SURE THE TASK FORCE WOULDN'T
OBJECT BUT THAT IS NOTE THRUST
OF THE TASK FORCE'S JOB.

>> LET ME ASK YOU, YOU WERE

MENTIONING THERE ARE A NUMBER OF
INSTANCES WHEN MORE THAN ONE
ENTITY PROCEEDING AGAINST THE
SAME PIECE OF PROPERTY, AND HOW
OFTEN DOES THAT REALLY HAPPEN IN
THIS --

>> NOT THAT OFTEN, YOUR HONOR.
NOT THAT OFTEN.

I DON'T WANT TO REPRESENT TO THE
COURT IT IS WIDESPREAD, THAT IS
NOT CORRECT BUT IT HAS HAPPENED
AND WE ARE CONCERNED ABOUT THAT.

>> IT HAS HAPPENED BECAUSE WE
DON'T KNOW WHO OWNS -- HAS THE
NOTE IN THEIR HAND, IS THAT
THE ISSUE.

>> THAT IS ONE OF THE ISSUES,
YOUR HONOR, AND BECAUSE OF -- I
KNOW, SOME OF THESE FOLKS WILL
ARGUE THE SECURITIZATION ISSUE,
AND THE WAY NOTES ARE HAND,
NOWADAYS, WHEN I FIRST STARTED
PRACTICING LAW, THERE WAS A
WRITTEN NOTE, AN ENDORSEMENT AND
THE PHYSICAL NOTE WOULD CHANGE

HANDS AND THE ASSIGNMENT, THE MORTGAGE WHICH WAS RECORDED IN PUBLIC RECORDS AND NOW WE ARE DEALING WITH MIRRORS AND SECURITIZATION ISSUES AND HAVE TO UPDATE OURSELVES AS FAR AS THE NEW ERA IS CONCERNED, BUT, NONETHELESS WE HAVE A HOMEOWNER AND NOT TRYING TO FAVOR THE HOMEOWNERS VERSUS THE LENDER. WE ARE TRYING TO CREATE A LEVEL PLAYING FIELD, IF WE WILL AND THAT IS, WHAT WE ARE ASKING THE COURT TO DO IS ASK THE PLAINTIFFS, LENDERS TO DO THE PRE-SUIT INVESTIGATION THEY SHOULD DO ANY WAY TO DETERMINE THEY ARE THE PROPER PARTY, AND STAND UP IN FRONT OF THE COURT AND SAY WE'RE THE OWNER AND THE HOLDER OF THE NOTE AND THE OWNER IS NOT THE ISSUE, THE HOLDER OF THE NOTE AND HAVE THE AUTHORITY TO GO FORWARD AND FORECLOSE.

>> FREDDIE MAC'S RESPONSE

REFERENCE 673.3011 WHERE IT SAYS
YOU DON'T HAVE TO BE THE HOLDER.
YOU CAN BE THE -- IN POSSESSION
OF THE NOTE AND IS NOT
RESTRICTED TO OWNERS OF THE NOTE
WHO CAN BRING THE FORECLOSURE
ACTION UNDER STATE LAW AND THEY
SAY THAT THE COMMENTS IN THE --
AND THE PROPOSED RULE ALTER
THAT.

>> WHAT IS YOUR RESPONSE.

>> I AGREE, YOU DON'T HAVE TO BE
THE OWNER OR HOLDER OF THE NOTE
BUT YOU HAVE TO SHOW THE
AUTHORITY YOU HAVE IN THE
COMPLAINT, TO SAY I'M THE
PLAINTIFF AND HAVE THE ABILITY
TO FORECLOSE THE MORTGAGE AND
THE PERSON WHO OWNS AND/OR HOLDS
THE NOTES HAS TO SIGN OR
TRANSFER THE RIGHTS TO ME AND
ALLEGE THAT IN THE COMPLAINT.

>> THE VERIFICATION REQUIREMENT
WOULD APPLY AS MUCH TO THOSE WHO
PURPORT TO BE BRINGING THIS ON

BEHALF OF OTHERS AS IT WOULD BE
TO TRUE OWNERS.

>> THAT'S CORRECT, YES, SIR.

>> BUT THE COMMENTS, SEEM TO
IMPLY THAT IT IS A REQUIREMENT
JUST FOR THE PLAINTIFFS TO
VERIFY OWNER.

IS THAT -- TOO RESTRICTIVE A
READING.

>> YES, SIR I THINK THAT IS A
BIT RESTRICTIVE.

OUR POSITION IS THAT WHOEVER THE
PLAINTIFF IS, WHETHER THE ACTUAL
OWNER AND HOLDER, WHETHER A
NOMINEE, WHETHER AN ASSIGNEE,
WHOEVER HAS THE RIGHTS TO
PURSUE, PERHAPS THE SERVICING
COMPANY, WHO HAS THE RIGHT TO
PURSUE THE FORECLOSURE, STEP UP
TO THE PLATE AND SAY THIS IS MY
ABILITY AN AUTHORITY TO BE IN
COURT AND VERIFY THAT UP FRONT
SO WE ARE NOT WASTING JUDICIAL
EFFORTS DOWN THE ROAD SOMEWHERE.

>> ALL OF THE REQUIREMENTS... IT

IS JUST AN AFFIRMATION THAT WHAT
IS IN THE COMPLAINT IS TRUE.

>> THAT'S CORRECT.

>> SO THIS IS KIND OF REALLY, A
DIVERSION FROM... FROM THE REAL
ISSUE HERE.

>> AGAIN, JUDGE WE ARE NOT
ASKING FOR PROOF UP FRONT.
THAT IS NOT WHAT WE ARE SEEKING.

>> LET ME ASK YOU ABOUT THE
MOTION TO CANCEL OR RESCHEDULE A
SALE.

>> YES, MA'AM.

>> SOME OF THE COMMENTS ON THAT
PARTICULAR MOTION, SEEMS TO
INDICATE THAT NOW BEFORE YOU CAN
CANCEL THE SALE YOU WILL HAVE TO
COME BEFORE A JUDGE, AND THINGS
MAY BE WORKED OUT, AT THE LAST
MINUTE, AND, RIGHT NOW, AS IT
STANDS, THE PLAINTIFF CAN CANCEL
THE SALE BASICALLY BY I ASSUME
NOT SHOWING UP.

AND, SO --

IT SEEMS TO BE IN CONFLICT WITH

WHAT WE HAVE PROPOSED... HAS
BEEN PROPOSED IN ANOTHER RULES
CASE.

>> YOUR HONOR, YOUR HONOR, IF I
MIGHT...

>> OKAY.

>> SOME PLAINTIFF LAWYERS, SOME
LENDER LAWYERS, ATTEMPT TO PUT
IN THEIR FINAL JUDGMENTS WHEN
THE COURT ORDERS THE SALE BE
HELD ON A PARTICULAR DATE, THAT
NONAPPEARANCE OF THE PLAINTIFF
AUTOMATICALLY CANCELS THE SALE
AND MANY CIRCUIT COURT JUDGES
ARE STRIKING THAT AND NOT
ALLOWING IT TO BE IN THE FINAL
JUDGMENT AND THE COURT ENTERED
AN ORDER IN A TYPICAL
FORECLOSURE ACTION THAT SAYS SO
MUCH MONEY IS DUE AND OWING AND
SOMEBODY HAS TO PAY IT FAILING
WHICH THE PROPERTY WILL BE SOLD
ON THE COURTHOUSE STEPS OR
WHEREVER EVER ON A PARTICULAR
DATE, AND, WHAT THE PLAINTIFFS

ARE ASKING IS WE ARE STILL
NEGOTIATING, WHERE THERE IS THE
POSSIBILITY AND STILL
NEGOTIATING WITH THE MORTGAGER
UP TO THE LAST MOMENT AND ALL
YOU HAVE TO DO IS FILE A MOTION
TO CANCEL THE SALE AND THE COURT
ORDERED THE SALE TO GO FORWARD
AND DON'T FEEL IT IS THE
PLAINTIFF OR THE DEFENDANT'S
OBLIGATION --

>> THE JUSTICE IS REFERRING TO A
CIVIL RULES COMMITTEE IN A
SEPARATE... CASE ASKED FOR A TO
AMEND THE FINAL JUDGMENT OF
FORECLOSURE TO ADD A NEW
PARAGRAPH THAT WOULD SAY THAT
THE PLAINTIFF HAS THE RIGHT TO
CANCEL THE SALE THAT MAY
RESCHEDULE ONLY WITH THE COURT
ORDER, ARE YOU AWARE OF THAT --
SENTENCE THAT IN CONFLICT WITH
WHAT YOU ARE PROPOSING.

>> I DON'T THINK, I DON'T THINK
SO, YOUR HONOR AND MR. ROMANCE

WHO IS CHAIRMAN OF THE RULES
COMMITTEE CAN RESPOND TO THAT.
BUT, IF A COURT HAS ENTERED AN
ORDER SCHEDULING A SALE, WE
DON'T BELIEVE IT APPROPRIATE FOR
EITHER THE PLAINTIFF OR
DEFENDANT SUMMARILY STOP THE
SALE AND GO BACK TO COURT AND
ASK THE COURT TO CANCEL THE SALE
FOR A PARTICULAR REASON AND
RESCHEDULE THE SALE.

>> YOU DON'T THINK THE FINAL
JUDGMENT WOULD GIVE THEM THAT
UNILATERAL RIGHT?
IN THE ONE... WHAT IS BEING
PROPOSED BY THE CIVIL RULES
COMMITTEE.

>> JUSTICE PARIENTE ALL I KNOW
IS IN SOME OF THE PROPOSED FINAL
JUDGMENTS WE SEE NOW WITH THE
PROVISION THE PLAINTIFF HAS THE
ABILITY TO CANCEL THE SALE, THE
CIRCUIT COURT JUDGES ON A
SPOTTED BASE, SOME ARE ALLOWING
IT AND SOME ARE STRIKING IT AND

NOT ALLOWING THAT IN THE FINAL
JUDGMENT.

LOOKING FOR UNIFORMITY.

>> YOU WANT THAT --

>> THE TASK FORCE WOULD NOT WANT
THAT IN THERE.

THE TASK FORCE WOULD RECOMMEND
TO THE COURT THE ADOPTION OF A
PARTICULAR MOTION TO CANCEL THE
SALE AND RESCHEDULE, AS WE SET
FORTH --

>> CONFLICTS.

THE CIVIL RULES, FAST TRACK,
REQUEST TO AMEND THE FINAL
JUDGMENT AND THE MOTION TO
RESCHEDULE THE SALE.

>> TO THE EXTENT THAT THAT WOULD
GIVE THE PLAINTIFF THE
UNILATERAL AUTHORITY TO WALK
AWAY AN CANCEL THE SALE, YES,
MA'AM THE TASK FORCE IS IN
OPPOSITION TO THAT.

>> ALL RIGHT, AND WE WILL GIVE
YOU ONE MINUTE OF REBUTTAL.

>> YES, MA'AM, THANK YOU.

>> ALL RIGHT.

>> MAY IT PLEASE THE COURT MARK
ROMANCE ON BEHALF OF THE CIVIL
RULES COMMITTEE.

OUR INVOLVEMENT IN THIS TASK
FORCE IS -- THE PROPOSAL WAS
SOMEWHAT LIMITED.

BUT, WE HAVE VOTED AND HAVE
APPROVED THE THREE PROPOSALS.

>> WITH THAT, COULD YOU JUST --
WE HAVE LIMITED TIME YOU ALSO,
THOUGH, FILED WITH THIS COURT A
FAST TRACK REQUEST TO HAVE THE
FINAL JUDGMENT AMENDED, AND IN
THERE, IT APPEARS TO GIVE THE
PLAINTIFF THE UNILATERAL RIGHT
TO CANCEL THE SALE.

HOW CAN THE CIVIL RULE, IF THEY
ARE IN FAVOR OF THIS, ISN'T THAT
IN CONFLICT AND IS IT -- IF NOT
EXPLAIN THAT TO ME.

>> YOUR HONOR, I HAVE TO ANSWER
IT THIS WAY.

THAT FAST TRACK, FAST TRACK
PROPOSAL WAS BASED ON THE

CHANGES THE LEGISLATURE MADE.

>> IN WHAT YEAR.

>> I MEAN, IT -- ANY WAY.

>> TWO, I BELIEVE ONE WAS FROM
THE PAST LEGISLATIVE SESSION AND
ONE I BELIEVE FROM ONE OR TWO GO
AND HE DID NOT DIRECTLY ADDRESS
THE CONFLICT THAT YOU --

>> BUT IT IS IN THERE.

>> IT IS, MAY I... MAY I?

THE... THE COMMITTEE OF THE
FLORIDA RULES, REAL ESTATE
SECTION, MADE SUBSTANTIAL
CHANGES TO OUR RULE AND WE
DEFERRED TO THEM, NOT... WE
DEFERRED TO THEM IN PROPOSING
MANY OF THE CHANGES IN THE 1.996
FORM.

SO I CANNOT ANSWER THE QUESTION,
IF THEY ARE IN CONFLICT, MY
ANSWER IS WE'D REFER TO THE TAX
COURTS WHO HAD RECENTLY DONE
SUBSTANTIAL WORK IN THIS AREA
AND HAVE FAR MORE EXPERTISE IN
OUR COMMITTEE IN THE FORECLOSURE

AREA AND I WOULD DEFER TO THEIR
RECOMMENDATIONS ON THAT ISSUE.
EVEN THOUGH IT MAY APPEAR WE ARE
PROPOSING A FORM THAT IS IN
CONFLICT WITH THEIR
RECOMMENDATIONS.

>> SO IF SOMETHING IS GOING ON,
AT THE LAST MINUTE, IN THESE
NEGOTIATION, BETWEEN THIS
MORTGAGE HOLDER AND THE
BORROWER, YOU WOULD HAVE TO RUN
IN AND GET -- DO SOME KIND OF
EMERGENCY MOTION TO STOP THE
SALE?

THAT IS WHAT THIS NEW PROPOSAL
WOULD SAY, CORRECT.

>> I BELIEVE THAT IS WHAT THE
TASK FORCE PROPOSAL IS.
AND AGAIN, OUR POSITION WOULD BE
TO DEFER TO THE TASK FORCE
ANALYSIS WHICH WAS DESIGNED, MY
UNDERSTANDING, DESIGNED TO
STREAMLINE THE PROCESS.
THE ENTIRE PROCESS, NOT JUST THE
PARTICULAR ASPECTS OF IT.

ONE OF THE ISSUES THAT CAME UP
IN OUR COMMITTEE WAS THE
VERIFICATION ISSUE.
OUR COMMITTEE VOTED IN A VERY
CLOSE VOTE, SPORTS THE
VERIFICATION REQUIREMENTS, BUT,
THE DISSENTING MEMBERS OF OUR
COMMITTEE FELT IT WAS A MATTER
FOR THE LEGISLATIVE LEGISLATURE
AND NOT THE RULES COMMITTEE AND
THE COURT AND THE RESPONSE, THE
TASK FORCE FOUND THERE ARE A
NUMBER OF RULES WHICH INCLUDE A
VERIFICATION REQUIREMENT AND SO,
I WANTED -- ONE ASPECT.
THE OTHER WAS, WHICH
VERIFICATION ARE YOU GOING TO
INCLUDE?
THE STATUTE, HAS TWO
VERIFICATIONS, ONE IS THAT THE
ALLEGATIONS ARE TRUE, THE OTHER
IS, TO THEY ARE TRUE BASED ON
INFORMATION AND BELIEF.
THE TASK FORCE CHOSE THE LATTER.
WHICH IS THE ALLEGATION ARE

TRUE, BASED ON INFORMATION AND
BELIEF AND OUR COMMITTEE DOESN'T
OPPOSE THAT.

BUT SOME MEMBERS OF THE
COMMITTEE DID FEEL THAT THE
VERIFICATION SHALL BE TRUE.

NOT JUST BASED ON INFORMATION
AND BELIEF.

>> IN OTHER WORDS, A HIGHER
STANDARD OF TAX RELIEF.

>> CORRECT AND THAT WAS ONLY THE
MINORITY OF OUR COMMITTEE.

>> DID YOU -- MR. RANKIN-PERRY
HAD ADDITIONAL PLEADING
REQUIREMENTS.

THE -- HAS THE COMMITTEE HAD A
CHANCE TO LOOK AT WHETHER THOSE
WOULD BE -- WOULD ACTUALLY
ENHANCE THE PROCESS BY, YOU
KNOW, REQUIRING I THINK IT MUST
BE REQUIRING THE ACTION SHALL BE
BROUGHT IN THE NAME OF ALL
LEGAL, BENEFICIAL AND OTHER
DERIVATIVE OWNERS, AND STATING
WHAT THEIR AUTHORITY IS?

HAS THE COMMITTEE LOOKED AT THAT
YET.

>> NO, WE HAVE NOT HAD AN
OPPORTUNITY TO DO THAT.
THAT CAME UP SORT OF AT THE LAST
MINUTE AFTER WE HAD OUR VOTES,
WE MADE THOSE ADDITIONAL
COMMENTS, AND OUR POSITION WOULD
BE, ONCE THE COURT MOVES FORWARD
WITH THIS WE CAN ANALYZE THE
ADDITIONAL REQUIREMENTS IN OUR
NORMAL CYCLE.

BUT, I UNDERSTAND IT WAS AN
EMERGENCY SITUATION AND WE HAVE
NOT HAD AN OPPORTUNITY TO
ANALYZE THAT.

WITH RESPECT TO THE ISSUE OF A
MOTION TO CANCEL SALE, THERE WAS
SOME DISSENT AMONG OUR COMMITTEE
ABOUT WHETHER THE JUDGES SHOULD
HAVE THE FREEDOM TO DEAL WITH
THIS THROUGH ADMINISTRATIVE
ORDERS OR WHETHER IT SHOULD BE
BY PROPOSED FORM.

AND, A COUPLE OF OUR MEMBERS

COMMENTED THAT IF LEFT TO THE
DISCRETION OF THE COURT IT WOULD
BE LESS LIKELY THAT THE JUDGES
WOULD IMPLEMENT THE REQUIREMENTS
AND, THEREFORE, IT SHOULD BE
A... [INAUDIBLE] THANK YOU.

>> THANK YOU.

MS. TOWNES?

>> THANK YOU, JUSTICE QUINCE.

MAY IT PLEASE THIS COURT.

I'M VIRGINIA TOWNES.

SPEAKING ON BEHALF OF FLORIDA

BANKERS ASSOCIATION.

I SPEAK IN OPPOSITION TO THE
REQUIREMENTS OF VERIFICATION OF
MORTGAGE FORECLOSURE... THAT
RULE IS NEITHER NECESSARY NOR
HELPFUL.

THE TASK FORCE HAVE IDENTIFIED
THE PURPOSE OF THIS RULE TO MAKE
SURE THAT THE PLAINTIFF IN A
FORECLOSURE ACTION HAS STANDING,
WHETHER AN AGENT OR AS THE OWNER
AND HOLDER --

>> DO YOU AGREE, I KNOW THE

FLORIDA BANKER'S ASSOCIATION WAS
A MEMBER OF THE TASK FORCE, THAT
THE... THERE HAVE BEEN THESE
REPORTS IN THE TASK FORCE
REPORT, MUCH ABUSE STATEWIDE,
NOT NECESSARILY POINTING TO ONE
PARTICULAR INDIVIDUAL, BUT, THAT
THIS IS SOMETHING THAT IS NOT A
THEORETICAL PROBLEM BUT A REAL
PROBLEM ON THE GROUND, AS FAR
AS... [INAUDIBLE].

>> I CAN ONLY RESPOND, BASED ON
WHAT I HAVE SEEN IN THE REPORT,
ITSELF.

AND IN THE DOCUMENTS SUPPORTING
THE REPORTS AND NO, YOUR HONOR,
I DO NOT AGREE.

>> BUT, I MEAN, THE FLORIDA
BANKERS ASSOCIATION WAS A MEMBER
OF THE TASK FORCE AND THOUGH
SAY... CERTAIN THINGS ON THE
TASK FORCE I DIDN'T SEE
DISAGREEMENT THAT THERE WAS A
WIDESPREAD PROBLEM IN THIS
REGARD.

>> I DO NOT -- I WAS NOT PART OF
THE PREPARATION OF THE REPORT.
I DO NOT KNOW WHAT THE MEMBER OF
THE... CARDWELL WHO IS NO LONGER
WITH OUR FIRM, SAID ON THIS
ISSUE.

BUT, IF YOU LOOK AT THE TASK
FORCE REPORT ITSELF, WHAT YOU DO
NOT SEE IS THE QUANTIFICATION OF
THIS NUMBER, YOU HAVE ANECDOTAL
EVIDENCE.

YOU DO NOT HAVE ANY NUMBER, ANY
RAW NUMBER, YOU DON'T HAVE ANY
STATISTICAL ANALYSIS.

>> WRONG NUMBERS ON WHICH
PARTICULAR ASPECT?
THAT THEY FILED THESE COMPLAINTS
WITHOUT AND HAVING ANY INDICIA
OF OWNERSHIP.

>> THE WRONG PLAINTIFF IS
BRINGING THE LAWSUIT.
AND THERE IS NOT EVEN A SURVEY
OF THE JUDGES IN THE STATE,
SAYING, HOW OFTEN DO YOU RUN
INTO THIS.

>> HOW IS IT A BURDEN TO SAY FOR
THE LAWYER WHO IS BRINGING THIS
COMPLAINT TO MAKE SURE THAT WHAT
IS BEING SAID IN THE COMPLAINT
IS TRUE AND AULD THEY ARE ASKING
IS TO THE BEST OF HIS OR HER
ABILITY.

IT IS A CHECK, MAY NOT EVEN BE
MUCH IN THE WAY OF BEING A CHECK
BUT AT LEAST IT IS SOMETHING
THAT PUTS A BURDEN ON THE PERSON
BRINGING THE LAWSUIT, TO INQUIRE
ABOUT THE RIGHT TO BRING IT.

>> AND JUSTICE PARIENTE, IT IS A
BURDEN, SIMPLY BECAUSE IT IS ONE
MORE STEP IN AND ALL READY
CROWDED PROCESS.

FOR THE PLAINTIFF AND FOR THE
LAWYERS.

BUT, LET'S LOOK AT THE
DISINCENTIVES THAT ARE ALREADY
BUILT INTO THE --

>> HOW IS IT A BURDEN.

MAYBE I'M... HOW IS IT A BURDEN?

ISN'T IT WHAT A LAWYER SHOULD BE

DOING ANYWAY?

>> THE LAWYER PREPARES THE SUIT PAPERS AND SENDS THEM BACK TO THE BORROWER -- I'M SORRY.

THE LENDER MUST HAVE THEM, CERTIFIED, VERIFIED AND MUST RECEIVE THEM BACK.

THIS IS AGAIN, A TRANSMISSION, A DELAY, AN EXPENSE.

>> LET'S LOOK AT WHAT ALREADY EXISTS IN THE SYSTEM.

BRINGING A FORECLOSURE ACTION IN FLORIDA IS NOT CHEAP.

THE LENDERS, FORECLOSURE ENTITY HAS TO HAVE A TITLE REPORT RUN, HAS TO PAY FOR PREPARATION OF SUIT PAPERS, HAS TO PAY A FILING FEE WHICH IS BETWEEN 900 AND \$1900.

HAS TO PAY FOR SERVICE ON THE DEFENDANT, AND ALL OF THE JUNIOR LIENHOLDERS AND POTENTIALLY MUST PAY SOME WHERE IN THE RANGE OF 700 TO \$1,000 FOR MEDIATION.

IT IS A VERY RARE PLAINTIFF WHO

IS GOING TO FRONTS THAT KIND OF
MONEY WITHOUT A PRETTY GOOD IDEA
THAT HE OR SHE OR IT IS ENTITLED
TO ENFORCE THIS NOTE.

AND LOOK AT WHAT --

>> BUT MANY OF THESE WERE GOING
BY DEFAULT AND SO...

>> I'M SORRY.

>> OKAY.

>> GO AHEAD.

>> LET'S LOOK AT WHAT HAPPENS IF
IN FACT THE WRONG PLAINTIFF DOES
FORECLOSE, OKAY?

IF THE PLAINTIFF SHOWS UP WITH
THE NOTE IT IS THE RIGHT
PLAINTIFF.

BY LAW.

IF IT IS -- FORECLOSES BY
ESTABLISHING A LOST INSTRUMENT,
IT ASSUMES THE LIABILITY OF THE
ORIGINAL DEBTOR.

NOW, THAT IS A PRETTY BIG
DISINCENTIVE FOR A PRETTY
BONEHEADED MISTAKE.

IT IS A SELF-EFFECTUATING

SANCTION THAT ALREADY EXISTS IN
THE STATUTE THAT REQUIRES NO
JUDICIAL EFFORT AT ALL.

THERE ARE SIGNIFICANT
DISINCENTIVES TO BRINGING A
LAWSUIT YOU ARE NOT ENTITLED TO
BRING.

THE COMMENT WAS, WELL, YOU
ALWAYS ESTABLISH THE... YES,
THAT COUNT IS USUALLY BROUGHT IN
AS A PROPHYLACTIC, THE RULES OF
CIVIL PROCEDURE ALLOW YOU TO
PLEAD IN THE ALTERNATIVE AND
FREQUENTLY THAT TURNS UP AND IF
THAT IS A BURDEN, ADDRESS THAT
BURDEN.

THERE IS NO JUDGE WHO DOESN'T
HAVE THE OPPORTUNITY TO SAY --
TAKE 67105 SAYS, I CAN SANCTION
YOU, FOR BRINGING THIS CLAIM
WITHOUT A GOOD FAITH BASIS THAT
IT IS SUPPORTED BY THE MATERIAL
FACTS.

AND LET'S LOOK AT THE
CIRCUMSTANTIAL EVIDENCE, FOR

THIS FREQUENCY OF THIS AND I

THINK THIS IS REALLY

SIGNIFICANT.

JUDGES HAVE INHERENT AUTHORITY

TO SANCTION, IF PEOPLE ARE

ABUSING THEIR COURT SYSTEMS AND

THEY HAVE 57105 AND IF THESE

WERE PROBLEMS AND EXASPERATED

YOU.

>> -- AN EXASPERATED JUDICIARY

WOULD BE... PLAINTIFFS AND

ATTORNEYS AND RIGHTLY SO AND

THERE IS NO EVIDENCE THE

JUDICIARY IS SO UPSET ABOUT THIS

THAT IT ACTUALLY EXERCISED ITS

AUTHORITY.

>> AND WITH THAT, MS. TOWNES,

THANK YOU VERY MUCH.

ANY QUESTIONS?

MR. BEN-EZRA.

>> GOOD MORNING, MAY IT PLEASE

THE COURT, I'M MARC BEN-EZRA,

AND OUR FIRM FOR ALMOST 20 YEARS

REPRESENTED LENDERS AND MORTGAGE

SERVICERS, IN FORECLOSURES,

THROUGHOUT THE STATE OF FLORIDA
AND APPRECIATE THE OPPORTUNITY
TO HAVE A PRACTICAL PERSPECTIVE
OF WHAT IS HAPPENING ON THE
GROUND TO THIS COURT.

>> SO WE KNOW AND I DON'T HAVE
THE TASK COURSE, REPORT IN FRONT
OF ME BUT THEY REPORTED THERE
WAS A... [INAUDIBLE] THE
MAJORITY OF THE TENS OF
THOUSANDS OF CASE.

HOW MANY IN THE LAST TWO YEARS,
HAS YOUR FIRM BROUGHT SO WE
UNDERSTAND, WHETHER IT'S 10% OR
THE BIG GUYS.

>> I SAID PROBABLY IN THE MIDDLE
IS MY UNDERSTANDING AND KIND OF
HARD TO FIGURE OUT SOME OF THOSE
NUMBERS.

>> HOW MANY OF THOSE FORECLOSURE
CASES HAVE YOU BROUGHT IN THE...
[INAUDIBLE].

>> WE PRACTICE STATEWIDE.

>> HOW MANY STATEWIDE.

>> ROUGHLY 30,000 OR SO.

YOUR HONOR, THE POINT THAT THIS
IS A STATEWIDE ISSUE IS VERY
IMPORTANT BECAUSE THE COURT HAS
CHARGED THE TASK FORCE --

>> JUST A FOLLOW-UP -- TO
FOLLOW-UP UP ON THAT, BEFORE WE
HAD THE MUSHROOMING OF
FORECLOSURE CASES, DID YOUR FIRM
ALSO DO FORECLOSURE WORK AND IN
A NORMAL --

>> YES.

>> IN A NORMAL YEAR WHAT WOULD
YOU SAY WAS YOUR STATEWIDE CASES
THAT WERE BROUGHT?

>> IT HAS GONE UP TREMENDOUSLY,
WE PRACTICED IN THE FIELD ALMOST
20 YEARS, AND SO I KNOW A LOT
ABOUT WHAT HAPPENS PRACTICALLY.

IT HAS GONE UP FROM SEVERAL
THOUSAND, PERHAPS, TO 15 OR
20,000.

HOWEVER, IT'S NOT SIMPLY BECAUSE
OF THE RISE -- WE HAVE ALSO
INCREASED OUR CLIENTS BASED
WHICH HAS HELPED US DO THAT BUT

THE ISSUE IS A STATE -- OF
STATEWIDE PROPORTION AND THE
COURT CHARGED THE TASK FORCE
WITH FINDING SOLUTION AND
STATEWIDE PROCEDURES TO CREATE
UNIFORMITY AND SAVE THE BURDEN
ON THE COURT SYSTEM.

WHICH IS BECOMING OVERLOADED.

THE REALITY OF THE PROPOSALS
THAT ARE SUGGESTED IS THAT THEY
WILL NOT DO THAT AND WILL
PROBABLY OVERBURDEN THE COURTS

--

>> DO YOU HAVE A CONTRARY
POSITIVE SOLUTION.

>> ABSOLUTELY.

THE... I ENDORSE THE --

MS. TOWNES COMMENTS AND ADDITION
WOULD LIKE TO FOE --

>> THAT IS NOT A SOLUTION, SHE
SAID WHY WE SHOULDN'T HAVE THE
REQUIREMENT.

I WANT TO KNOW, WHAT COULD --
GIVEN THE TASK FORCE REPORT,
WHAT THEY ARE SAYING IS

HAPPENING ON THE GROUND, AFTER
SEVERAL MONTHS OF HEARINGS AND I
KNOW YOUR FIRM IS ONE THAT
PARTICIPATED, WHAT IS THE...
WHAT IS THE SOLUTION OR WHAT
THIS COURT SYSTEM HAS, AS
VIRTUALLY, A TSUNAMI OF THESE
FILINGS IN RESIDENTIAL MORTGAGE
FORECLOSURE CASES.

>> I -- ONE SOLUTION IS TO FOCUS
ON THE PROPOSED MOTION IN ORDER
TO CANCEL FORECLOSURE SALES,
THIS IS A ONE WAY THAT WE CAN
GET TO THE ISSUE AND TAKE WORK
OFF -- ISSUE AND TAKE WORK OFF
OF JUDGES, AND I HAVE A QUICK
STORY THAT HELPS EXPLAIN WHY WE
CAN BE PRACTICAL, QUICK STORY, A
FAMILY HAS GONE INTO DEFAULT IN
MORTGAGE PAYMENTS AND GONE INTO
FORECLOSURE, AND A FINAL
JUDGMENT HAS BEEN ENTERED AND
NOW THEY ARE FACING A
FORECLOSURE SALE, TOMORROW,
MORNING.

THE FAMILY AND THEIR LENDER ARE
WORKING UP TO THE 11th HOUR TO
TRY TO BE ABLE TO SAVE THE HOME.
THEY DO THAT.

REACH AN AGREEMENT FOR LOST
MITIGATION, 5:00 TODAY.

THE LENDER CALLS MY OFFICE AND
SAYS, STOP THE SALE, GOOD NEWS,
WE'RE ABLE TO HELP THESE PEOPLE.

AT THAT POINT, IF WE HAVE TO
FOLLOW THE PROPOSAL FOR THE
PROPOSED MOTION AND ORDER TO
CANCEL FORECLOSURE SALES, THE
TASK FORCE IS RECOMMENDING, WHAT
WILL HAPPEN IS, 5:00 TODAY,
WE'RE GOING TO HAVE TO TRY TO
FILE A -- AS JUSTICE QUINCE
POINTED OUT, AN EMERGENCY
MOTION.

GET AHOLD OF THE JUDGE IF WE CAN
GET AHOLD OF THE JUDGE, PULLING
HIM AWAY FROM SOMETHING ELSE.

>> LET'S SEE.

MR. BEN-EZRA, WHAT I UNDERSTAND
IS THAT REALLY, THAT STORY,

WHICH IS CERTAINLY HEART
WRENCHING, IS NOT REALLY WHAT
THE TASK FORCE IS DEALING WITH.
THAT WHAT THE TASK FORCE IS
DEALING WITH IS THAT THE JUDGE
SIGNS THE FINAL JUDGMENT OF
FORECLOSURE, HENCE THE SALE AND
THE PLAINTIFF'S ATTORNEY DOESN'T
SHOW UP AND THE SALE IS
CANCELLED AND HAS TO BE
RESUBMITTED.

IS THAT -- AND YOU ARE TELLING
ME AGAIN IN YOUR SITUATION IT
COULD BE SETTLED IN A DON'T
THINK AN AGREED ORDER, ENTERED,
YOU KNOW, THAT SAYS THIS IS WHAT
HAPPENED, AND YOU WOULDN'T NEED
REFILE IT, WOULD WORK?

BUT... ARE YOU TELLING US, AS AN
OFFICER OF THE COURT, THAT WHAT
-- WITH THAT SITUATION, THAT
HARD WRENCHING STORY, IS REALLY
WHAT IS THE BULK OF WHY THE
SALES HAVE BEEN CANCELLED.

>> SEVERAL, SEVERAL THINGS

HAPPENED, THAT SITUATION HAPPENS
MORE THAN YOU WOULD THINK,
ADDITION, SOMETIMES, ON A SALE
THAT IS SUPPOSED TO GO FORWARD,
A SALE ATTENDANT HAS AN
ACCIDENT, FLAT TIRE OR MAKES A
MISTAKE AND DOESN'T GO TO THE
SALE AND AN ACCIDENTAL SALE
OCCURS WHICH CREATES A DISASTER,
FOR THE BORROWER AND CREATES A
DISASTER FOR THE LENDER AND FOR
THE COURT, BECAUSE MORE
LITIGATION ENSUES AND WHAT I --
TO GO MORE DIRECTLY TO YOUR.

>> THE SECOND SITUATION IS
SOMEONE HAS AN ACCIDENT ON THE
WAY TO THE SALE.

>> YES.

AND THAT SITUATION IS NOT
UNCOMMON, OR MAKES A MISTAKE,
YOU ARE LOOKING AT LITTLE -- A
LITTLE SURPRISED.

>> I'LL SAY I FEEL BADLY IF THEY
ARE HAVING ACCIDENTS ON THE WAY
TO THE SALE, BUT, IT JUST -- I

GUESS, YOU ARE GIVING ME SOME
HYPOTHETICAL THAT --
HYPOTHETICALS THAT DO NOT SEEM
TO BE IN KEEPING WITH THE
EXPERIENCE OF THE JUDGE BAILEY
AND ALL OF THOSE JUDGES THAT
HAVE BEEN DOING THESE
FORECLOSURES, ON BEHALF OF YOUR
FIRM AND THE OTHER FIRMS, HAVE
ACTUALLY WITNESSED.

>> WHAT I AM GIVING YOU IS REAL
WORLD AND WHERE MOST OF THE
CANCELLATION ARE COMING IN, WE
HAVEN'T GOTTEN THERE.

THE FEDERAL GOVERNMENT PROGRAM,
THE HOME AFFORDABLE MODIFICATION
PROGRAM WHICH HAS BEEN IMPOSED
BY THE OBAMA ADMINISTRATION IS
REQUIRING MOST SERVICERS TO
REACH OUT TO PROERS AND SEED IF
THEY ARE ELIGIBLE FOR
PARTICIPATION IN THE
MODIFICATION AND IF THEY ARE
ELIGIBLE TO TRY AND QUALIFY
THEM.

>> WHICH CANNOT BE DONE THROUGH
THE MEDIATION PROCESS, ISN'T
THAT PART OF WHAT WE ARE TRYING
TO DO BECAUSE THAT IS A HUGE
IMPORTANT PIECE, BUT SHOULDN'T
THAT BE DONE BEFORE YOU --
POST-JUDGMENT.

>> >> RIGHT NOW UNDER THE
FEDERAL MANDATES, TO TRY TO
REACH OUT TO BORROWERS AND SEE
IF THEY FALL WITHIN THE
GUIDELINES OF THAT PROGRAM.

>> AGAIN SHOULDN'T IT BE DONE
BEFORE THERE IS A FINAL JUDGMENT
IN THE CASE.

>> THE LENDERS ARE TRYING TO WORK
WITH BORROWERS THROUGHOUT THE
PROCESS, EVEN BEFORE THE
FORECLOSURE BEGINS.

>> RIGHT.

>> JUSTICE PARIENTE ASKED HOW
COME SO MANY SALES ARE CANCELLED
AND I'M SAYING PART OF REASON
THE --

>> YOU GO TO THEN THE FEDERAL

PROGRAM, IS CAUSING IT AND I'M SAYING TO YOU, WHY, IS IT NOT MORE LOGICAL THAT THAT OCCURRED BEFORE YOU EVEN GOT A FINAL JUDGMENT, I MEAN, THAT DOESN'T REALLY -- ALMOST NONSENSICAL TO ME.

>> WELL, THAT IS -- THE LENDERS ARE TRYING TO REACH OUT BEFORE CASES GO TO SALE HOWEVER THE REQUIREMENTS OF THE PROGRAM HAVE BEEN PUT IN PLACE IN RELATIVELY THE LAST FEW MONTHS, LAST HALF A YEAR.

>> SO YOU HAVE SOME THAT HAVEN'T GONE THROUGH IT.

>> ABSOLUTELY AND WE HAVE HAD SALES THAT ARE SCHEDULED, WHERE THE LENDER IS NOW TRYING TO MAKE THAT... THE DETERMINATION, DO THEY QUALIFY FOR THE MODIFICATION AND WHILE IT IS IN LIMBO WILL CANCEL THE SALE, AND TRY AND DO THE RIGHT THING AND KEEP IN MIND, LENDERS DON'T WANT

PROPERTIES BACK, LENDERS, AN
INCENTIVE TO TRY TO WORK THINGS
OUT, THE COST FORGETTING THE
PROPERTY BACK.

>> WHY WOULDN'T IT BE A BETTER
POLICY TO REQUIRE THAT A TRIAL
COURT MAKE SURE THAT THAT
INQUIRY IS COMPLETED, BEFORE
EVEN THE FINAL JUDGMENT IS
ENTERED?

>> KEEP IN MIND, THERE IS
SOMETHING OF AN INCENTIVE FOR
DELAY ON THE BORROWER'S SIDE,
THE BORROWER IS NOT --

>> I UNDERSTAND THAT.
I UNDERSTAND.

>> SO WE NEED TO BE ABLE TO HAVE
A PROCESS THAT WORKS EFFICIENTLY
AND GETS TO THE END, IF THE
LENDER WANTS TO GET TO THE END.

>> BUT IT DOESN'T SEEM WHAT YOU
ARE SUGGESTING IS SUFFICIENT,
YOU GET A FINAL JUDGMENT AND ALL
OF A SUDDEN YOU START SCHEDULING
AND CANCELLING, BECAUSE, ON THE

GROUND, I MEAN, IN SOME
CIRCUMSTANCE, THEY -- CIRCUITS
THEY ARE CHARGING, ARE THEY NOT,
SOME KIND OF FEE AS A REOPENING
FEE IF YOU WANT TO TRY AND
CHANGE THE FINAL JUDGMENT AND
THE SALE, BECAUSE THE FINAL
JUDGMENT HAS BEEN ENTERED AND IS
A DEAD FILE AND SENT OVER TO
JUDICIAL SALE DEPARTMENT AND
LAWYERS HAVE TO VIRTUALLY CARRY
IT -- A CHECKBOOK WITH THEM, TO
THE COURTHOUSE, BECAUSE DO YOU
NOT KNOW WHERE THE FILE IS
GOING.

>> YOU MAKE THE POINT, WHY WE'D
LIKE TO TRY AND MOVE THE CASE
ALONG AS QUICKLY AS POSSIBLE,
TOO.

OUR INTERESTS ARE ALIGNED WITH
THE COURT SYSTEM FOR THE MOST
PART AND --

>> LET ME ASK YOU, THOUGH, ISN'T
IT THE CASE THAT, IN SOME CASES
AT LEAST, LENDERS ARE MAKING A

BUSINESS DECISION THAT THEY
DON'T WANT TO -- THE SALE TO GO
FORWARD NOW, THEY WOULD RATHER
INVENTORY THESE CASES, AND WAIT
UNTIL A BETTER TIME IN THE
MARKET.

>> I CAN'T TELL YOU THAT
NEVER HAPPENS -- TELL THAT YOU
THAT NEVER HAPPENS BUT THAT IS
EXTREMELY RARE IN MY EXPERIENCE,
KEEP IN MIND EVERY DAY THAT GOES
BY THE SITUATION IS MORE
PRECARIOUS ANOTHER LENDER AND
PER DIEM INTEREST ACCRUES AND
THEIR LOSS GROWS LARGER EVERY
DAY AND THE LONGER THEY DELAY,
OR THE LONGER DELAY IS IMPOSED
UPON THEM, THE LONGER THAT IT
TAKES FOR THEM TO BE ABLE TO
LIQUIDATE THE COLLATERAL AND
RECOVER WHATEVER THEY CAN FROM
IT.

KEEPING IN MIND, TO JUSTICE
LEWIS'S POINT, TOO, THE
FORECLOSURE AND THE SALES

PROCESS IS THE PLAINTIFF'S RIGHT
AND THE PLAINTIFF'S ATTEMPT TO
BE ABLE TO LIQUIDATE THE
COLLATERAL TO BE ABLE TO TRY AND
SATISFY THE JUDGMENT.

I HAVE TALKED TO MY CLIENTS, TO
TRY TO ASK THAT EXACT QUESTION.

I DON'T SEE IT AND AGAIN I WILL
NOT TELL YOU NEVER, EVER, THAT
WOULD BE THE WRONG THING TO SAY,
I'M SURE, BUT I DO THINK THAT IT
IS NOT -- I THINK THAT IS SORT
OF ONE OF THE EARLY MYTHS OF THE
SITUATION.

IT DOESN'T MAKE ECONOMIC SENSE,
IN MOST CASES.

IN FACT, I'LL UNTIL, WE ARE
GENERALLY RATED BY OUR CLIENTS
ON OUT EFFECTIVELY WE CAN
COMPLETE THIS PROCESS QUICKLY.
SO, WE HAVE TREMENDOUS PRESSURE
ON US, AS FIRMS REPRESENTING
LENDERS, TO TRY TO BE ABLE TO
REDUCE PER DIEM INTEREST COSTS
AND REDUCE THE EXPENSE AND TIME

IT TAKES TO GET THROUGH THE
PROCESS AND WOULD LOVE, JUSTICE
LEWIS WOULD LOVE TO BE ABLE TO
GET THE NEGOTIATION OUT OF THE
WAY UP FRONT AND REALITY IS,
THOUGH, FOR MANY PEOPLE, THEY
WON'T REACT FOR DON'T GET THE
WHOLE... UNTIL A FINAL JUDGMENT
IS BEARING DOWN ON THEM AND
UNTIL THEY ARE FACED WITH THE
PRESSURE OF A FORECLOSURE SALE.

>> JUSTICE POLSTON HAS A
QUESTION.

>> FOR JUSTICE PERRY, WHO IS
CONTINUING -- UNABLE TO SPEAK,
HOW IS THE BORROWER HURT BY
CANCELLING THE SALE.

>> THE BORROWER IS NEVER HURT BY
CANCELLING THE SALE AND IT IS
SITUATION, ALLOWING UNILATERAL
CANCELLATION OF SALES WITH THE
SALES PROTECTION CAUSE IS A
SELF-EXECUTING WAY THROUGH THE
COURT ORDER IMBEDDED IN THE
FINAL JUDGMENT TO CANCEL A SALE,

IF THE PLAINTIFF'S
REPRESENTATIVE DOES NOT ATTEND
THE SALE.

AND, YOUR HONOR --

>> ARE YOU IN FAVOR THEN OF THE
PROPOSAL THAT WAS IN THE FAST
TRACK RULES, THE RULES COMMITTEE
SUBMITTED?

IN THE -- THAT SAYS BASICALLY IN
THE FINAL JUDGMENT, THAT IF YOU
ARE NOT THERE, THE --

>> I BELIEVE STRONGLY A SALES
PROTECTION CLAUSE THAT SAYS IF
THE PLAINTIFF'S REPRESENTATIVE
IS NOT PRESENT THE SALE SHOULD
BE CANCELLED.

ACCIDENTAL SALES, AND THE
DISASTERS THAT COME FROM THEM
WHICH ARE DESCRIBED FULLY IN OUR
PAPERS, WILL BE STOPPED, AND
FAMILIES THAT ARE ABOUT TO LOSE
THEIR HOMES FOR FAILURE TO BE
ABLE TO LOCATE A JUDGE AT THE
11th HOUR, WILL BE STOPPED, AND
IF THE -- A SIMPLE WAY TO BE

ABLE TO HANDLE THE SITUATION.

>> WITH THAT --

>> WITH THAT WE'D REQUEST THAT YOU MANDATE A SALE PROTECTION CLAUSE IN ALL FORECLOSURE FINAL JUDGMENTS THINLY STATE OF FLORIDA AND PLEASE FIND A WAY TO STREAMLINE THE PROCESS, IT IS VERY FRACTURED AND VERY DISJOINT ACROSS THE STATE, THANK YOU ANOTHER OPPORTUNITY TO BE WITH YOU TODAY.

>> CHIEF JUSTICE, LET ME REFER THE COURT TO APPENDIX F, PAGE 6 OF THE REPORT.

WHICH IS THE SUMMARY OF THE JUDICIAL RESPONSES TO THE INQUIRY, THE SURVEYS THAT YOU SENT OUT AND LET ME REPORT THAT OF THE JUDGES REPORTING THE 73.3% OF THE JUDGES SAID THAT THESE ARE PROBLEMS IN FORECLOSURE CASES.

>> HOW... WE'LL LOOK AT THAT APPENDIX, BUT IN THE LIMITED

TIME, IF THE BORROWER IS NOT
HURT, AND THERE IS NO JUDICIAL
ADDITIONAL JUDICIAL RESOURCES,
WHAT IS THE TRA OF THE COURT
SYSTEM ON REQUIRING A NOTION
RESCHEDULE, TO CANCEL AND
RESCHEDULE, AND, BECAUSE FRANKLY
I'M NOT -- YOU KNOW, I'M NOT
SURE I SEE IT.

>> YES, MA'AM AND I AGREE THE
BORROWER IS NOT IMPACTED, IF IN
FACT A SALE IS POSTPONED.

>> IS THAT NECESSARILY THE CASE,
BECAUSE THESE THINGS ARE
PUBLISHED AND LISTED, AND PEOPLE
FOLLOW THEM, AND, PEOPLE WANT TO
BUY CERTAIN PROPERTY SO I DON'T
KNOW -- I DON'T KNOW WHETHER --
I MEAN, IT SEEMS TO ME THAT IT
COULD BE.

YOU PUT A PIECE OF PROPERTY UP
AND YOU WILL HAVE BIDDERS AND
PUMP IT OFF AND IT GOES -- YOU
KNOW WHAT I'M SAYING?

I DON'T KNOW, BECAUSE,

HISTORICALLY, IT IS MY
UNDERSTANDING, THAT IF SOMEBODY
MISSES THE SALE, ON -- IT IS
NEXT TO IMPOSSIBLE TO SET THE
SALE ASIDE.

HISTORICALLY, COMMON LAW, THAT
IS FLORIDA LAW AND I HAVE SEEN
ALL KINDS OF SAD SOMEBODY
STORIES, AND EVEN ATTEMPTED TO
REPRESENT SOME OF THOSE PEOPLE
AND IT SEEMED UNCONSCIONABLE BUT
COULDN'T SET THE SALE ASIDE.

>> RIGHT NOW, YOUR HONOR SOME OF
THE CIRCUITS ARE SETTING SALES
120 TO 150 DAYS OUT AND 11th
CIRCUIT, 250 SALES PER DAY
SCHEDULED, IF YOU CANCEL SALES,
WILLY-NILLY, NOT AN APPROPRIATE
TERM AND I HAVE USED IT BEFORE
THE COURT BEFORE AND I APOLOGIZE
BUT ALLOW THE PLAINTIFFS NOT TO
SHOW UP AND CAN'T SELL LOOK AT
THE HAVOC IT CREATES WITHIN THE
COURT SYSTEM.

>> ISN'T IT ALSO CREATING MORE

WORK FOR THE COURT SYSTEM IF YOU
HAVE TO HEAR SOME KIND OF MOTION
EVERY TIME SOMEONE WANTS TO
CANCEL A SALE?

>> JUSTICE QUINCE IF A PLAINTIFF
WALKED UP AT THE 11TH HOUR,
WHICH I AGREE WITH WHAT JUSTICE
LEWIS SAID EARLIER, THE
MITIGATION SHOULD BE GOING ON
WAY IN ADVANCE AND JUDGE BAILEY
WILL BE ADDRESSING THAT SHORTLY.
BUT, AS LONG AS THERE IS
NEGOTIATION GOING ON, IF YOU
WENT INTO A CIRCUIT COURT JUDGE
AND SAID A SALE IS SET AT 11:00
AND WE ARE TRYING TO WORK
SOMETHING OUT WITH THESE PEOPLE
THE JUDGE WILL SIGN THE ORDER
CANCELLING SALE, ALL WE ARE
ASKING IS FOR THE PLAINTIFFS TO
STEP UP --

>> IF YOU CAN GET TO THE JUDGE
AT THE 11th HOUR.

>> IN MY CIRCUIT, THAT CAN BE
DONE.

I PRACTICE IN A SMALLER CIRCUIT.
I UNDERSTAND THAT AND I'M NOT
SURE HOW IT WORKS IN OTHER
CIRCUITS, WE HAVE DUTY JUDGES
AND WE GET A JUDGE AT 8:00 A.M.
AND WALK OVER TO THE COURTHOUSE
AND FIND A JUDGE, QUITE FRANKLY
AND IF A LAWYER STEPS UP AND
SAYS, JUDGE WE ARE NEGOTIATING
WITH THE BAR, WE HAVE A SALE AT
11:00 TODAY, WE THE LENDER WANT
TO CANCEL IT TO TRY TO WORK IT
OUT, I DON'T KNOW A CIRCUIT
COURT JUDGE IN THE STATE THAT
WOULD SAY NO.

>> AND WITH THAT, WE THANK YOU
ALL FOR YOUR ARGUMENTS HERE
TODAY AND APPRECIATE THE TIME
AND EFFORT THAT HAS GONE INTO
THIS.

>> THANK YOU VERY MUCH, YOUR
HONOR.