>> FINAL CASE IS WESTGATE MIAMI
BEACH, LIMITED VERSUS NEWPORT
OPERATING CORP.
>> GOOD MORNING, YOUR HONORS.
MR.^CHIEF JUSTICE.
MEMBERS OF THE COURT.
MY NAME IS DAN STENGLE.
I'M HERE ON BEHALF OF WESTGATE
MIAMI BEACH, LIMITED.
MAY IT PLEASE THE COURT.
WE'RE HERE ON CERTIFIED
QUESTIONS OF THE THIRD DISTRICT
COURT OF APPEAL ASKING THIS
COURT TO REVISIT THE McGURN
CASE, A CASE OF THE FLORIDA
SUPREME COURT, WHICH IS A CASE
THAT'S VERY EASY TO APPLY AND
VERY DIFFICULT TO UNDERSTAND
AND LEADS, AS IT DOES IN THIS
CASE, TO WHAT THE THIRD DCA
REFERRED TO AS, AN UNFAIRNESS.
>> IF YOU HAD THE ABILITY TO BE
ONE OF THE JUSTICES AND WRITE
THIS OPINION, AND REWRITE
McGURN, TELL ME WHAT, WOULD
YOU FIRST START WITH THAT THE
REASON A PLAINTIFF WHO HAS
SUCCESSFULLY WON A SUBSTANTIAL
DAMAGES AWARD WOULD WANT THERE
TO BE A FINAL, A DOCUMENT
ENTITLED, FINAL JUDGEMENT WITH
LET EXECUTION ISSUE? IF, DO
THEY HAVE THE OPPORTUNITY AT
THAT TIME AND UNDER THE CASE
YOU WOULD WRITE THEN EXECUTE ON
THAT JUDGMENT?

WOULD THAT, IN OTHER WORDS, I
GUESS I'M TRYING TO SEE ALL OF
THE -- WHY MR.^FRANKEL, WHO IS
NOW NOT HERE, RIGHT?
IS THAT WHO YOU REPLACED?
>> WELL, I'M HEAR ON ORAL
ARGUMENT.
MR.^FRANKEL HANDLED THE CASE.
>> WHY HE FELT TO NEED TO GET A
FINAL JUDGE -- IF HE KNEW
McGURN, WHEN WHY HE FELT THE
NEED TO GET A FINAL JUDGMENT
PRESERVING JUDGEMENT INTEREST
AND LET EXECUTION?
WAS HE PLANNING ON EXECUTING ON
THAT JUDGEMENT.
>> I DO NOT KNOW.
>> AS A LAWYER YOURSELF IS
THERE A REAL WORLD REASON, SUCH
AS WANTING TO MAKE SURE AFFIXED
POST-JUDGEMENT INTEREST, THAT
SOMEONE WOULD WANT A DOCUMENT
STYLED, FINAL JUDGMENT?
>> WELL, YOUR HONOR, I
THINK AS THE DISTRICT COURT OF
APPEAL SAID IN THIS CASE AND I
THINK IT SUMS UP THE FACTS
PRETTY CONCISELY, NEITHER PARTY
OBJECTED OR INDICATED TO THE
TRIAL COURT THAT DELAYING THE
DETERMINATION OF THE
PREJUDGMENT INTEREST WOULD
PROVE PROBLEMATIC.
THE RECORD REFLECTS THAT THE
LAWYERS MISTAKENLY BELIEVED
THAT JURISDICTION TO DETERMINE

THE AMOUNT, YOU KNOW, THE JUDGE
HAD DETERMINED IN THIS CASE
THAT THE PLAINTIFF WAS ENTITLED
TO PREJUDGMENT INTEREST, AND
THE LAWYERS, ACCORDING TO THE
THIRD DCA MISTAKENLY BELIEVED
THAT THE TRIAL COURT COULD
INDEFINITELY RETAIN
JURISDICTION TO AWARD
PREJUDGEMENT INTEREST ONCE THE
ENTITLEMENT WAS ESTABLISHED.
>> IS THAT WHAT YOU WOULD SAY
WOULD BE THE BETTER LAW?
I MEAN THESE TWO LAWYERS
MISTAKENLY THOUGHT THAT, BUT
THAT'S NOT WHAT McGURN SAYS.
WE'VE GOT A WHOLE LOT OF
LAWYERS THAT HAVE FOLLOWED
McGURN WITHOUT A PROBLEM.
ARE YOU SAYING NOW WE SHOULD
REWRITE THE LAW AND SAY THAT
THIS IS PROBABLY THE PREFERABLE
WAY, HAVE A FINAL JUDGMENT, LET
EXECUTION ISSUE, EXCEPT FOR
PREJUDGEMENT INTEREST AND LET
PREJUDGEMENT INTEREST BE
TREATED EVEN THOUGH IT'S AN
ELEMENT OF DAMAGES LIKE
ATTORNEY'S FEES AND COSTS?
I ASK THIS, I'M JUST TRYING
TO --
>> SURE.
>> WHAT I WANT TO MAKE SURE, IF
WE WERE TO RECEDE FROM McGURN
WE DON'T CREATE OTHER POTENTIAL
PROBLEMS FOR EITHER A PLAINTIFF

OR A DEFT.
>> COMPLETELY UNDERSTANDABLE,
YOUR HONOR.
I THINK THE EASIEST AND MOST
READILY, THE EASIEST WAY THAT
THE COURT COULD DO THIS WITHOUT
IMPLICATING OR CAUSING OTHER
PROBLEMS IS SIMPLY IN THE
ANALYSIS OF McGURN, TO MODIFY
McGURN AND PARTICULARLY, WHERE
McGURN, McGURN SAYS WE AGREE
THAT THE, IN THE INSTANT CASE
THAT THE TRIAL COURT'S ORDER
WAS NOT FINAL, AND THEN IT GOES
ON TO SAY, WE DO NOT, HOWEVER,
AGREE THAT THE APPEAL WAS
PREMATURE AND SHOULD HAVE BEEN
DISMISSED.
>> LET ME ASK YOU THIS.
ISN'T McGURN, IN THAT RESPECT,
INCONSISTENT WITH OUR RULE,
9.100 SUBSECTION L?
>> MOST ASSUREDLY, YOUR HONOR.
>> WELL, ISN'T IT THE CASE THAT
RULE WAS PROMULGATED
AFTER McGURN WAS DECIDED?
>> YES, YOUR HONOR.
THAT IS THE SUBJECT OF THE
SECOND QUESTION OF THE DISTRICT
COURT OF APPEAL.
WHY IS THIS, WHEN YOU READ THE
RULE, AND THE RULES OF
APPELLATE PROCEDURE, 9.110(L)
IT IS NOT CLEAR WHY THIS ORDER,
THAT IS PREMATURE AND NOT FINAL
IS CONVERTED TO A FINAL ORDER

UPON THE APPEAL.
AND THE INADVERTENT WAIVER THUS
REALLY BECOMES THE PROBLEM AS
POINTED OUT IN JUDGE COHEN'S
CONCURRING OPINION.
>> WOULD YOU SAY, SOMEBODY
AFTER THIS OPINION, YOU HAVE
THE FINAL JUDGMENT, LET
EXECUTION ISSUE BUT YOU'RE
SAYING THE BETTER RULE WOULD
STILL BE TO SAY IT IS NOT FINAL
BECAUSE PREJUDGMENT INTEREST
HAS TO BE DETERMINED.
CAN THE PLAINTIFF GO AHEAD AND,
EVEN, NONFINAL, CAN THEY GO
AHEAD AND EXECUTE ON THAT
JUDGMENT?
>> I DON'T BELIEVE THEY CAN.
>> THAT WAS THE, SEE, WHAT
McGURN SAID AND THEY SAID, IT
CAUSES THIS PROCEDURAL QUANDARY
FOR THE DEFENDANT WHO EITHER,
YOU KNOW, WANTS TO AVOID
EXECUTION, CAN'T APPEAL BECAUSE
IT IS PREMATURE BUT IT HAS ALL
THIS LANGUAGE, LET EXECUTION
ISSUE.
>> YES, YOUR HONOR, BUT THAT IS
ANOTHER PROBLEM IN McGURN WHERE
IT SAYS THE ORDER IS NOT FINAL
AND YET, IT'S A NONSEQUITOR
WHERE THE COURT GOES ON TO SAY,
IF IT HAS INDICIA OF A FINAL
ORDER.
HOW CAN AN ORDER THAT ATTEMPTS
TO RESERVE JURISDICTION IN THE

LOWER COURT BE BOTH, FIRST OF
ALL, NOT FINAL, WE MUST BE
TREATED AS FINAL, AND ATTEMPTS
TO UNLAWFULLY RESERVE
JURISDICTION BUT ALSO APPEAR
TO BE A FINAL ORDER?
>> BECAUSE THERE ARE A LOT OF
CASES IN THE APPELLATE COURTS
SAY WHEN SOMEONE PUTS IN THE
MAGIC LANGUAGE, LET EXECUTION
ISSUE. IT IS, THEY HAVE, BY
THEIR INTENTIONALLY PUTTING
THAT LANGUAGE IN, ESSENTIALLY,
THEY HAVE MADE THAT A FINAL
JUDGMENT, AND I GUESS, WHY
ISN'T IT A BETTER RULE TO SAY,
YOU MAY WANT TO FIGURE OUT SOME
WAY TO HELP YOUR PARTICULAR
CLIENT.
>> I DO.
>> SEEMS LIKE THEY WERE BOTH,
YOU KNOW, MISLED, AS WAS THE
JURY, THE JUDGE, BUT TO SAY THE
WAY TO DO THIS, YOU ENTER AN
ORDER AFFIXING DAMAGES,
ACCORDING TO McGURN.
DO YOU AGREE THAT THEN ALLOWS
POST-JUDGEMENT INTEREST TO RUN
OR, AN ORDER THAT FIXES
DAMAGES?
>> YES.
>> OKAY. SO YOU DON'T HAVE
TO HAVE FINAL JUDGEMENT.
YOU KNOW THAT YOU DON'T NEED
TO, YOU'RE NOT EXECUTING.
>> CORRECT.

>> SO WHY SHOULD A LAWYER
TRAINED IN THE LAW BE GIVING
JUDGES FINAL JUDGMENTS WITH LET
EXECUTION ISSUES WHEN THERE ARE
PENDING MATTERS THAT PREVENT
THAT FINAL, THAT CASE FROM
BEING AN APPEALABLE ORDER?
>> BECAUSE, YOUR HONOR, THE
SIMPLE EXPLANATION IT
WAS THROUGH INADVERTANCE.
>> AND --
>> THAT IS WHAT THE THIRD DCA
RECOGNIZED.
THE PROBLEM IS, AS THE CHIEF
JUSTICE HAS POINTED OUT,
9.110(L) OF THE
RULES OF APPELLATE PROCEDURE
SEEMS TO ADDRESS THIS VERY
CIRCUMSTANCE WHERE THE ORDER
ISN'T FINAL AND THE APPEAL IS
PREMATURE.
AND McGURN SAYS THAT RULE --
>> LET'S ASSUME WE CHANGE THE
RULE.
SAY YOURE NEXT LAWYER, NOT
ONLY HAS THE SAME FINAL
JUDGMENT BUT STILL DECIDES TO
APPEAL IT AND BECAUSE THEY'RE
NOW UNAWARE OF McGURN TOO,
NOBODY MOVES TO DISMISS AS A
PREMATURE APPEAL. IS -- WHAT
HAPPENS IN THAT SITUATION?
>> WELL, I THINK UNDER THOSE
CIRCUMSTANCES, AND OBVIOUSLY
THE PARTIES, NOT THE PARTIES
BUT THE ELEMENT IN THIS CASE

THAT UNDERSTOOD THE APPLICATION
OF McGURN ARE THE DISTRICT
COURTS OF APPEAL.
THE ISSUE IS WHETHER THE COURT
SUA SPONTAE, ON ITS OWN MOTION,
9.110(L), BECAUSE YOU ATTEMPTED
UNLAWFULLY ATTEMPTED TO RESERVE
JURISDICTION AND LIKE EVERY
OTHER CASE WHICH THE APPEAL IS
PREMATURE THEY SEND IT BACK TO
THE TRIAL OF TRIAL COURT FOR
THE FINISHING OF THE JUDICIAL
LABOR.
>> YOU'RE PUTTING ON THE
APPELLATE COURTS THE OBLIGATION
TO DECIDE IF AN ORDER
THAT WASN'T FINAL, WAS
IMPROPERLY APPEALED, NOT THE
PARTIES?
>> NO, MORE SO, YOUR HONOR,
THAN IN ANY OTHER CIRCUMSTANCE
UNDER WHICH AN APPEAL IS TAKEN
PREMATURELY UNDER 9.110(L).
WHAT THAT RULE PROVIDES IS,
EITHER AS THE THIRD DISTRICT
COURT OF APPEAL RECOMMENDS TO
THE THIS COURT, EITHER, THE
PARTIES MAY SUGGEST THAT TO THE
DISTRICT COURT OF APPEAL AND SO
MOVE TO HAVE IT REMANDED TO THE
TRIAL COURT FOR FINALIZING OF
THE JUDICIAL LABOR OR THE COURT
ITSELF.
THAT WORKS IN EVERY OTHER CASE
AND IN EVERY OTHER CIRCUMSTANCE
WHERE THERE IS AN APPEAL

PREMATURELY OF A COURT ORDER.
>> THAT'S ALSO, APPELLATE RULE
REALLY SAYS WHEN YOU HAVE AN
ORDER THAT IS REALLY NOT FINAL,
THERE'S AN APPEAL TAKEN
PREMATURELY, HOW YOU TREAT
THAT.
BUT THE SUPREME COURT CASE OF
McGURN ONLY GOES TO WHETHER THE
ORDER SHOULD BE TREATED AS
FINAL.
ON THE OTHER HAND ARE THOSE TWO
SEPARATE THINGS?
>> YES, YOUR HONOR, BUT IT IS
VERY DIFFICULT TO RECONCILE THE
BASIC NONSEQUITOR OF
THE McGURN, THE APPEAL OF
IT MUST BE TREATED AS FINAL
AND THEREFORE ULTIMATELY
PREJUDGEMENT INTEREST WAS
WAIVED.
>> RIGHT, SO THE McGURN CASE,
WHEN WE HAVE AN ORDER, OR
JUDGMENT THAT LOOKS FINAL WILL
BE TREATED AS FINAL --
[INAUDIBLE]
>> BUT IT IS DIFFICULT --
>> -- RULE OF APPELLATE
PROCEDURE GOES TO SITUATION
WHERE YOU MAY HAVE --
[INAUDIBLE]
ORDER GRANTING SUMMARY
JUDGEMENT BUT DOESN'T HAVE ALL
THE INDICIA, YOU NEED TO HAVE A
TRUE FINAL JUDGMENT AND HOW YOU
TREAT AN APPEAL THAT IS TAKEN

ON AN ORDER LIKE THAT.
AND IN THAT SITUATION --
>> WELL --
>> -- THERE IS NO DISPUTE WHETHER
IT IS TRULY FINAL?
>> WELL, YOUR HONOR, HERE
UNDER 9.110 IF A NOTICE
OF APPEAL IS FILED BEFORE
RENDITION OF A FINAL ORDER THE
APPEAL IS SUBJECT TO DISMISSAL
FOR BEING PREMATURE.
IN THIS CASE THE INDICIA THAT
IT WAS NOT A FINAL ORDER SEEMS
EQUALLY COMPELLING WITH THE
INDICIA THAT IT IS A FINAL
ORDER IN THAT THE TRIAL JUDGE
ATTEMPTED TO RESERVE
JURISDICTION WHICH IT COULD NOT
DO. SO THE APPEAL OF THAT ORDER COULD
BE DEEMED TO BE FINAL.
>> I MEAN IN FAIRNESS THOUGH IT
WAS YOUR, YOUR CLIENT'S
ATTORNEY THAT PREPARED THE
LANGUAGE OF THE FINAL JUDGMENT,
IS THAT CORRECT?
>> YES.
>> JUST SO WE PUT THE TRIAL
COURT ERRED BUT THE BOTTOM LINE
IS, IS THAT AFTER McGURN, A
LAWYER THAT KNOWS THE LAW OF
FLORIDA, WHICH THEY'RE
OBLIGATED TO KNOW --
>> YES.
>> -- KNOWS THEY SHOULD NOT BE
PUTTING BEFORE A JUDGE FINAL
JUDGEMENT WITH LET EXECUTION

ISSUE WHEN THERE ARE ISSUES TO
BE DETERMINED.
WE WOULD STILL WANT TO
ENCOURAGE THAT, WOULDN'T WE?
WE REALLY DON'T WANT LAWYERS
GIVING JUDGES, FINAL JUDGEMENTS
WITH LET EXECUTION LANGUAGE
WHEN THAT ORDER, WHEN THERE ARE
MORE ISSUES TO BE DETERMINED?
>> BUT IT IS VERY DIFFICULT,
YOUR HONOR, TO RECONCILE THE
RULE OF APPELLATE PROCEDURE
THEN WITH THE CIRCUMSTANCES OF
THIS CASE BECAUSE THE RULE
ALREADY PROVIDES FOR THESE
APPEALS WHICH ARE NOT FINAL,
THAT CAN BE RETURNED TO THE
LOWER COURT FOR EXHAUSTION OF
THE JUDICIAL LABOR.
AND AS THE THIRD DCA POINTS
OUT, BUT FOR McGURN, THIS
UNFAIR RESULT WHICH GIVES, IN
THIS CASE, SOMETHING NORTH OF
$2 MILLION OF A WINDFALL TO ONE
PARTY AND HE DEPRIVES THE OTHER
OF WHAT IS ALREADY DETERMINED
TO BE A RIGHT --
>> LET ME ASK YOU THIS.
WHO SHOULD THE BURDEN BE ON TO
SAY THIS IS A PREMATURE APPEAL?
I MEAN, IF THIS CASE FALLS
UNDER 9.110(L) AND IT WAS A
PREMATURE APPEAL, THEN WHO HAS
TO SAY THAT?
SHOULDN'T YOUR CLIENT HAVE
SAID, SINCE IT WAS THE OTHER

PARTY WHO WAS APPEALING, THIS
MAY HAVE THE BURDEN OF SAYING,
WAIT, DISTRICT COURT.
THIS IS A PREMATURE APPEAL?
>> YOUR HONOR, UNDER THE RULE,
ANY PARTY MAY RAISE THE ISSUE
OF THE PREMATURE APPEAL BEFORE
THE COURT.
>> THAT'S WHAT I'M SAYING.
THE OTHER PARTY, THEY'RE THE
ONES WHO ARE APPEALING AND IF
YOUR CLIENT BELIEVES THAT THIS
ISN'T THE TIME TO DEAL WITH
THIS, THEN THE BURDEN SHOULD
BE ON THEM.
WE'RE NOT GOING TO LEAVE IT TO
THE APPELLATE COURT TO SAY,
OOPS, LOOK AT THIS LANGUAGE,
THERE IS A PREMATURE APPEAL.
>> BUT YOUR HONOR, BECAUSE
9.110(L) DOES NOT APPLY BY
THE VERY LANGUAGE MUCH McGURN
SAYING THAT THE TRIAL COURT'S
ORDER WAS NOT FINAL BUT THEY
DON'T AGREE THAT THE APPEAL WAS
PREMATURE, THAT, IN EFFECT
CAUSES THE PROBLEM.
AND IT IS BASICALLY, THAT LEAP
IN LOGIC THAT MAKES McGURN
INTERNALLY INCONSISTENT AND
SEEMS TO BE AN ANOMALY.
>> WHAT DOES IT SAY ABOUT
McGURN?
I THINK WE STARTED WITH, THAT
YOU WERE WRITING THIS, WHAT
WOULD I SAY?

>> I WOULD, I WOULD ANSWER THE
SECOND QUESTION, EASIEST AND
MOST READY WAY WITHOUT CAUSING
UNDUE PROBLEMS WITH THE COURT
SYSTEM FOR THIS COURT TO
DETERMINE, 9.110, THE SECOND
QUESTION OF THE DISTRICT COURT
OF APPEALS SHOULD BE ANSWERED
IN THE AFFIRMATIVE.
>> WOULDN'T THE DEFENDANT
POINT OUT THAT, REALLY NOT A,
THERE IS AN ANSWER ALREADY.
YOUR CLIENT AFTER THE APPEALS
WERE TAKEN COULD HAVE MOVED TO
RELINQUISH AND, WHICH, SAME
AFTERWARDS, SOMEONE WOULD STILL
HAVE TO RECOGNIZE IT IS
PREMATURE.
WASN'T THERE ALREADY IN McGURN
A SAFETY VALVE?
THE COURTS ALSO FOUND A SAFETY
VALVE IN BEING ABLE TO FILE A
MOTION UNDER 1.530(B,) I DON'T
KNOW IF IT IS SUBSECTION,
WITHIN 10 DAYS?
SO, IT SEEMS LIKE THERE'S,
THESE ARE THE PROTECTIONS UNDER
McGURN.
YOU DON'T GET A FINAL JUDGMENT
WITH LET EXECUTION ISSUE IF
THERE IS MORE JUDICIAL LABOR.
TWO, IF YOU DO THAT, THEN YOU
CAN EITHER FILE A MOTION TO
CORRECT IT OR YOU CAN ASK THE
APPELLATE COURT TO RELINQUISH.
SO THOSE ARE THE SAFETY

VALVES.
NOW UNDER YOURS, THERE WOULD
STILL BE THESE FINAL JUDGMENTS.
BUT SOMEONE WOULD STILL HAVE
RECOGNIZE THAT IT'S PREMATURE.
THAT YOU WOULD NOT BE ABLE TO
APPEAL IT, EVEN IF YOU WANTED
TO APPEAL IT?
>> BUT, YOUR HONOR, THAT SAFETY
VALVE IS UNAVAILING IN THE
CIRCUMSTANCE WHERE THE PARTIES
ARE UNAWARE AND THERE TRULY IS
INADVERTENT WAIVER.
IF --
>> IF WE ALLOW THE DEFENDANT,
AND I APPRECIATE THE SITUATION.
WE SAY THAT TO DEFENDANTS,
IGNORANCE OF THE LAW IS NO
EXCUSE IN CRIMINAL LAW.
I FEEL BADLY THAT THIS
HAPPENED.
I'M SYMPATHETIC TO YOUR
ARGUMENT.
STRUGGLING WITH IT, BUT SEEMS
HUNDREDS IF NOT THOUSANDS OF
LAWYERS OVER THE LAST 20 PLUS
YEARS HAVE SUCCESSFULLY
NAVIGATED McGURN AND, BUT, YOU
KNOW, AND, SO THAT'S MY
CONCERN.
THE OTHER CONCERN IS THAT THERE
ARE SEVERAL CASES FROM THE
APPELLATE COURTS THAT SAY WHEN
LET EXECUTION ISSUE GOES IN,
THAT THEY'RE NOT GOING TO TREAT
THESE CASES AS PREMATURE

APPEALS.
AND WE'RE GOING TO HAVE TO
RECEDE IF WE FOLLOW WHAT YOU'RE
SUGGESTING FROM ALL THOSE CASES
AND THAT SAY, EVEN IF IT SAYS
LET EXECUTION ISSUE AND IT'S A
FINAL JUDGEMENT, THEY'RE
PREMATURE APPEALS BECAUSE THEY
DON'T DETERMINE ALL OF THE
OTHER ISSUES SO --
>> THE TRIAL COURT IN ESSENCE
LOSES JURISDICTION ONLY BECAUSE
OF THE LOGICAL LEAP THAT McGURN
MADE BY SIMPLY SAYING IT'S A
PREMATURE APPEAL, WE MUST BE
TREATED AS A FINAL ORDER.
McGURN COULD EASILY HAVE GONE
OTHER WAY AND SAID, THE COURT
MAY, AS THE THIRD DCA SUGGESTS
HERE, ON ITS OWN MOTION, OR
THAT OF A PARTY, I RECOGNIZE
IT'S NOT FOOLPROOF.
BUT OBVIOUSLY, FROM McGURN AND
ITS PROGENY THERE IS
CONFUSION ABOUT THE ISSUE,
POINTS OUT, IT WAS
PRIOR PRECEDENT BEFORE McGURN
WAS DECIDED IN THAT DISTRICT
FOR JURISDICTION --
>> YOU'RE DOWN TO ABOUT TWO
MINUTES.
>> YES, I APPRECIATE THAT, YOUR
HONOR.
I THINK A READING OF McGURN AND
ITS PROGENY INDICATES THAT BY
THE ESTABLISHMENT OF McGURN,

THERE ARE, THE RULES HAVE ONE
GIANT EXCEPTION FOR
PREJUDGEMENT INTEREST, AND AN
EXAMINATION OF McGURN INDICATES
THAT WHERE THERE'S FURTHER
JUDICIAL LABOR JUST AS COST AND
ATTORNEY FEES, THAT THE
ARGONAUT DEVELOPMENT CASE
APPLIES.
THAT THIS IS SIMPLY A
MINISTERIAL DUTY.
I THINK BECAUSE OF McGURN, AND
ITS DETERMINATION THAT IT WAS
INTRINSIC TO SUBJECT MATTER
JURISDICTION, THAT ITSELF
CAUSES THE PROBLEM.
I WILL RESERVE THE REMAINDER OF
MY TIME FOR REBUTTAL.
>> GOOD AFTERNOON.
MAY IT PLEASE THE COURT.
>> COULD I ASK JUST A COUPLE
FACTUAL QUESTIONS.
WERE YOU TRIAL COUNSEL IN THIS
CASE?
>> YES, SIR, I WAS.
>> AND IS THE RECORD CORRECT
THAT YOU AGREED WITH EXACTLY
EVERYTHING, HOW IT WAS GOING TO
BE HANDLED?
THAT THE MATTER OF PREJUDGEMENT
INTEREST WAS NOT GOING TO BE
PRESENTED UNTIL AFTER THE
APPEAL WAS OVER.
AND OR THAT IT WOULD BE
RESERVED IN THAT FINAL
JUDGMENT?

>> WOW! THERE IS NO ANSWER TO
THE QUESTION THE WAY IT WAS
PHRASED BECAUSE --
>> THEN YOU TELL ME EXACTLY
THEN HOW I SHOULD PHRASE IT.
I'M NOT TRYING TO PLAY WORD
GAMES. HONEST ANSWER.
>> I WATCHED THAT FROM THE
BENCHES. I GOT THAT.
LET ME TELL THIS COURT, FIRST
AND FOREMOST, THAT I DON'T
BELIEVE THERE IS A RESERVATION
OF JURISDICTION TO DETERMINE
PREJUDGEMENT INTEREST IN THIS
FINAL JUDGEMENT.
THERE IS A PRESERVATION OF
JURISDICTION TO RESOLVE
ATTORNEYS FEES AND COSTS.
BUT IF YOU LOOK AT THIS FINAL
JUDGMENT, IT GOES OUT OF ITS
WAY NOT TO RESERVE JURISDICTION
TO DETERMINE PREJUDGEMENT
INTEREST. IT SAYS --
>> OKAY. THAT'S FINE.
>> THIS ORDER WOULD BE AWARDED
AND WHEN WE WERE THERE ON OUR
POST-TRIAL MOTION --
>> WHAT IT SAYS, IT SAYS,
DIDN'T RESERVE, WHAT DID IT SAY
INSTEAD?
>> IT SAYS A SEPARATE ORDER
WILL BE ENTERED.
>> ISN'T THAT AN IMPLICIT
RESERVATION?
>> WELL I DON'T KNOW WHETHER A
RESERVATION OF JURISDICTION CAN

BE IMPLICIT OR NOT.
I JUST KNOW THAT --
>> NOW WE'RE GOING INTO WORD
GAMES. I ASKED YOU A VERY SIMPLE
QUESTION.
WAS IT AGREED THAT THE MATTER
OF PREJUDGEMENT INTEREST WAS
GOING TO COME BEFORE THIS JUDGE
BEFORE HE OR SHE TO TAKE
EVIDENCE AND MAKE A DECISION AT
A LATER TIME?
>> I THINK IT COULD BE FAIRLY
CONSTRUED THAT I --
>> I DIDN'T ASK YOU FAIRLY
CONSTRUED.
WAS THAT THE INTENT OF THE
PARTIES? WHY WAS IT IN THE
ORDER.
>> IT WAS NOT MY INTENT.
>> WHY WAS THIS FURTHER ORDER?
WHY WAS THAT IN THERE?
>> I DIDN'T DRAFT THE FINAL
JUDGEMENT FORM OF ORDER.
I KNOW MR.^FRANKEL WAS THERE
WHILE WE WERE ARGUING
POST-JUDGEMENT MOTIONS. HE WAS
TRYING TO GET HIS PREJUDGMENT
INTEREST MOTION HEARD AT THAT
TIME.
>> RIGHT.
>> IF IT WAS INTENDED THAT
PREJUDGMENT INTEREST WOULD WAIT
UNTIL AFTER MANDATE COMES DOWN
POST-APPEAL HE WOULDN'T HAVE
BEEN THERE THAT DAY ARGUING
PREJUDGEMENT INTEREST JUST LIKE

HE WASN'T THERE ARGUING
ATTORNEY'S FEESES AND COSTS.
IT WAS NEVER INTENDED THAT
PREJUDGEMENT INTEREST WAS GOING
TO WAIT UNTIL POST-APPEAL.
>> WHAT DOES THAT SEPARATE
ORDER MEAN?
>> IT MEANS THAT
POST-JUDGEMENT, THAT
PREJUDGMENT INTEREST WOULD BE
DETERMINED AND HE WANTED IT
DETERMINED AT THAT PARTICULAR
HEARING.
>> THE JUDGE SAID, NO, I WILL
DETERMINE LATER?
>> THE JUDGE SAID, SHE DID NOT
HAVE ANY TIME TO HANDLE IT.
>> WAS IT CONTEMPLATED IT WAS
GOING TO BE ADDRESSED AFTER
THAT, WHATEVER FINAL DOCUMENT
SAYS, FINAL JUDGMENT ON IT, WAS
SIGNED BY THE CIRCUIT JUDGE?
>> I THINK WHAT HAPPENED IS, AT
THAT HEARING, WHEN THE JUDGE
SAID SHE COULD HEAR THE PJI,
PREJUDGMENT ISSUE AT THAT
MOMENT IN TIME, AT THAT POINT
IN TIME, IT BECAME CLEAR THAT
IT WAS PROBABLY GOING TO HAVE
TO WAIT UNTIL SOME OTHER TIME.
>> SOME FURTHER TIME.
OKAY. FINALLY GOT DOWN TO AN
ANSWER AFTER ABOUT FOUR MINUTES.
SECOND QUESTION I HAVE --
>> I APOLOGIZE.
I JUST WANT TO POINT OUT THAT

THE RECORD REFLECTS THAT IN
THE, LETTER OF CREDIT, THE
SIDE LETTER AGREEMENT WHERE WE
POSTED EIGHT AND A HALF MILLION
FOR $5 MILLION JUDGEMENT, THAT
SPECIFICALLY MAKES CLEAR THAT
THERE WAS NO AGREEMENT TO
POSTPONE THE DETERMINATION OF
PREJUDGMENT INTEREST.
IT MAKES VERY CLEAR IN THAT
LETTER ITSELF THAT --
>> SAYS WHAT?
>> IT MAKES IT VERY CLEAR.
SAYS NOTHING CONTAINED IN THAT
SEIDLER AGREEMENT PRECLUDES
WESTGATE FROM LIQUIDATING ITS
PREJUDGEMENT INTEREST PENDING
APPEAL.
IT SAYS, BUT IF YOU DO THAT,
AND THE COURT DETERMINES THAT
YOU'RE NOT ENTITLED TO IT, OR,
DETERMINE AS LESSER AMOUNT,
THEN YOU HAVE TO AGREE TO
ALLOW US TO RELEASE --
>> WHO DRAFTED THE LETTER OF
CREDIT?
>> I'M SORRY.
>>> WHO DRAFTED LETTER OF
CREDIT?
>> IT WAS JOINTLY DRAFTED BY
BOTH PARTIES.
>> RIGHT. BUT UNDER McGURN
THAT COULDN'T HAPPEN.
>> WELL, TO ANSWER YOUR
QUESTION OF PAGE 5 OF THEIR
BRIEF THEY MAKE THE POINT THAT

THEY WERE EXECUTING ON THEIR
JUDGEMENT.
THEY SAY IT IN THEIR BRIEF.
THEY FORCED US TO POST A LETTER
OF CREDIT FOR 2 1/2 MILLION OF
INTEREST THAT HAD NEVER BEEN
EVEN AWARDED.
THEY WERE AT OUR GATE.
THEY WERE FORCING US TO POST
THIS LETTER OF CREDIT WHICH IS
WHAT WE HAD DONE.
NOW, I THINK REALLY THE POINT
IS, IF THIS COURT RECEDES FROM
McGURN, I DON'T THINK ANYTHING
CHANGES. ABSOLUTELY NOTHING.
>> COUPLE OTHER QUESTIONS.
>> I'M SORRY.
>> YOU'RE GOING IN THE OTHER
DIRECTION.
ON THIS SUGGESTION OF MOOTNESS,
WERE YOU THE TRIAL ATTORNEY
THAT PREPARED THE RELEASE IN
THAT CASE?
>> I AM NOT. WESTGATE'S COUNSEL
DID. I HAD NOTHING TO DO WITH IT.
I DON'T EVEN THINK, I'M NOT
EVEN SURE IF I HAD MADE AN
APPEARANCE IN THAT CASE OR NOT.
I MIGHT HAVE BUT, FOR SURE I
HAD NOTHING TO DO WITH IT.
>> WITH THAT RELEASE?
>> NOTHING AT ALL. OKAY.
I KNEW ABOUT IT.
I KNEW THAT THE PARTIES HAD
MADE THAT AGREEMENT AND THEY
WERE GOING TO SIGN A RELEASE.

OKAY.
HERE'S, LET ME COME BACK TO WHY,
IF THIS COURT SAYS, YOU KNOW
WHAT, LET'S SKIP McGURN ALL
TOGETHER, LET'S MAKE IT
DISAPPEAR, HERE'S WHY I THINK
NOTHING CHANGES.
FIRST AND FOREMOST, NO ONE
SEEMS TO BE ARGUING THAT THE
LONG-HELD RULE IN ARGONAUT
SHOULD BE REVERSED.
OKAY?
IN FACT, THIS COURT STATED IN
ARGONAUT VERY CLEARLY, IT SAYS,
SINCE AT LEAST BEFORE THE TURN
OF THE CENTURY, FLORIDA HAS
ADOPTED THE POSITION THAT
PREJUDGEMENT INTEREST IS MERELY
ANOTHER ELEMENT OF PECUNIARY
DAMAGES AND IT TALKS ABOUT
CASES FROM THE PAST CENTURY
WHICH THIS COURT HAS NEVER
RECEDED.
OF COURSE IN THOSE DAYS THE
CENTURY REFERRED BACK TO THE
1800s, NOT THE 1900s.
SO ONE OF THE THINGS WE KNOW IS
THAT, THAT THAT FINAL JUDGEMENT
WAS NOT FINAL BECAUSE PJI WAS
NOT PARTICULARLY INCLUDED.
BUT, THE THIRD DISTRICT HAS A
LINE OF CASES THAT, DEL
CASTILLO CASES WHICH THE COURT
CITED IN McGURN THAT SAYS WAIT
A MINUTE.
THERE ARE TWO PROBLEMS HERE.

WE HAVE PROCEDURAL QUANDRY
WE CLEARLY WOULD HAVE FALLEN
INTO BECAUSE THEY WERE EXECUTING
STRAIGHT ON.
THIRD DISTRICT WOULD NOT HEAR
THIS AS FINAL APPEALABLE
ORDER --
>> HOW COULD, SINCE YOU DIDN'T
OBJECT, SAYING WITH THIS
LANGUAGE, LET EXECUTION ISSUE,
EVEN THOUGH IT WAS NONFINAL YOU
WERE SUBJECT TO HAVING
EXECUTION.
WHY WOULDN'T YOU THEN, IF THAT
IS THE CASE, NOT A PROCEDURAL
QUANDARY.
SAY, JUDGE, YOU STILL HAVE
PREJUDGEMENT INTEREST GOING.
WE WANT TO APPEAL BOTH
TOGETHER.
THAT, THE LANGUAGE IS IMPROPER.
WE SHOULDN'T BE SUBJECT TO
EXECUTION.
WE SHOULDN'T BE IN A JUDICIAL
QUANDARY.
TRYING TO UNDERSTAND REAL WORLD
SITUATION A BETTER WAY TO
APPROACH IT WHICH IS, NOT TO
ENCOURAGE TRIAL JUDGES TO ISSUE
FINAL JUDGEMENTS WITH LET
EXECUTION ISSUE WHEN THERE ARE
STILL MATTERS TO BE DETERMINED
REGARDING DAMAGES?
>> WELL, I THINK WE'VE MADE
CLEAR IN OUR BRIEFS, I
CERTAINLY THOUGHT THAT

PREJUDGMENT INTEREST COULD HAVE
BEEN DETERMINED AFTER THE FACT
AS DID THE COURT.
OF COURSE AS DID MR.^FRANKEL.
THE ISSUE HERE --
>> YOU KNOW, I APPRECIATE THAT
YOU BEING HONEST ABOUT THAT.
DOES McGURN NOT CLEARLY SAY YOU
CAN'T DO THAT?
>> OH, YES, IT DOES.
I DIDN'T KNOW ABOUT McGURN ON
THAT JUNE OR JULY DAY WHEN WE
WERE MAKING THAT PARTICULAR
ARGUMENT.
I WAS NOT AWARE OF IT.
BUT IT COMES BACK TO THE
LETTER OF CREDIT THAT WE POSTED
AND THE REASON FOR THAT IS, WHY
DIDN'T WE APPLY FOR A
SUPERSEDEAS BOND?
WELL IT WAS SUCH AN ENORMOUS
AMOUNT OF MONEY, BONDING FEE
WAS HIGH AND CANDIDLY, CANDIDLY
I DON'T THINK IT WAS EXPECTED
THAT THE THIRD DISTRICT WOULD
ENTER AN PCA WITHOUT AN OPINION
ON UNDERLYING JUDGMENT BUT THAT
IS NOT AN ISSUE HERE.
WHAT I'M SAYING IS WE POSTED
THIS LETTER OF CREDIT FOR
MONIES THAT WE DID NOT EVEN OWE
AND WE PROCEEDED ALONG WITH THE
APPEAL.
IF McGURN --
>> IF YOU WERE NOT AWARE OF
McGURN --

>> YES.
>>, McGURN IS A GOOD RULE AND
YOU'RE I ASSUME AN EXPERIENCED
COMMERCIAL LITIGATOR. IS
THERE SOMETHING NOT WRONG WITH
A RULE THAT LAWYERS THAT ARE
EXPERIENCED THINK IS NOT FINAL
FOR PURPOSES OF ALLOWING
PREJUDGEMENT INTEREST AND YET
HAVE THE THAT LANGUAGE IN THERE
AND YOU FEEL LIKE YOU CAN
APPEAL IT?
YOU SAID THAT EVEN IF WE RECEDE
FROM McGURN THE PROBLEM WON'T
DISAPPEAR.
ARE YOU SAYING THE McGURN RULE
IS GOOD RULE OR THERE SHOULD BE
A DIFFERENT RULE?
>> WHAT I'M SAYING IS, AS I
READ McGURN ALL IT DID
SAY, UNDER ARGONAUT,
PREJUDGEMENT INTEREST IS AN
ELEMENT OF DAMAGES.
THEREFORE IF YOU DON'T PUT THAT
IN YOUR FINAL JUDGEMENT IT'S
NOT TRULY A FINAL JUDGMENT.
THEN WHAT THIS COURT DID IT
LOOKING AT DEL CASTILLO, IT
LOOKED AT LINE OF CASES WHAT DO
WE DO ABOUT OTHER CASES WHERE
IT HAD ACCOUTREMONTS OF
FINAL JUDGEMENT.
IT IS THERE, THEY'RE EXECUTING
ON IT?
THE THIRD CASE IN DEL CASTILLO
AND POINT OIL IS ANOTHER ONE

CITED THERE, SAY WHEN A FINAL
JUDGEMENT HAS APPEARANCE OF A
FINAL JUDGMENT, IT'S
APPEALABLE.
THEY WILL TREAT IT AS A FINAL
APPEALABLE ORDER AND THE SECOND
DISTRICT, THE THIRD DISTRICT
AND THE FIFTH DISTRICT, ALL
FOLLOW EXACTLY THE RULE IN DEL
CASTILLO, AND I WOULD ARGUE THE
FIRST AND FOURTH AS WELL.
ALSO ALL FOLLOW.
WHAT DID REALLY McGURN DO?
WHAT McGURN SAID, WE'RE GOING
TO FOLLOW THE RULE OF DEL
CASTILLO.
>> DOESN'T THE FIRST DISTRICT
DISAGREE WITH THAT?
>> I'M SORRY.
>>> THE FIRST DISTRICT, HAVEN'T
THEY DISAGREED WITH THAT?
WHERE THERE WAS LANGUAGE FOR
LET EXECUTION ISSUE RESERVED
AND THEY DISMISSED APPEAL AS
PREMATURE?
>> I SAID THE SECOND, THIRD AND
FIFTH.
I WASN'T SURE ABOUT THE FIRST
AND THE FOURTH.
THERE WAS LANGUAGE I WAS
LOOKING AT A CASE THIS MORNING
FROM THE FOURTH AND I'M NOT
SURE IT IS COMPLETELY IN
ACCORDANCE WITH THAT.
BUT I READ McGURN AS SAYING
THAT IT WAS ESSENTIALLY, THE

ONLY RULE McGURN DID WAS
BASICALLY TAKE THE DEL CASTILLO
RULE, SAY WHEN A FINAL
JUDGEMENT, WHEN A NONFINAL
JUDGEMENT HAS THE APPEARANCE OF
BEING A FINAL JUDGMENT, IT
BECOMES APPEALABLE AT THAT
POINT IN TIME.
>> AND EVERYTHING ELSE THEY,
THE PARTIES AND THE TRIAL COURT
AGREED TO RESERVE IS WAIVED?
>> WELL, I TALK ABOUT THAT.
>> IN DEL CASTILLO IT WAS
PUNITIVE DAMAGES.
>> I THINK THE POINT OIL CASE
WAS PUNITIVE DAMAGES.
I THINK THAT'S WHAT IT WAS BUT,
THE, THE ISSUE, THE ISSUE I
THINK IS, HOW DOES ONE RESERVE
JURISDICTION ON THAT?
WE HAVE A JURISDICTIONAL ISSUES
OF COURSE, BUT THE, IN THIS
COURT'S DECISION ON RULE 1.525
FROM JUST ABOUT A YEAR AGO, THE
AMAR LIFE INSURANCE CASE, THIS
COURT DESCRIBED THE RESERVATION
OF JURISDICTION PRECISELY THIS
WAY.
THIS COURT SAID IT IS
PROCEDURALLY ENLARGEMENT OF
TIME IN ACCORDANCE WITH RULE
1.090 SUBSECTION B.
WELL NOW I GO AND LOOK AT RULE
1.090 SUBSECTION B AND THAT
RULE SPECIFICALLY SAYS THAT YOU
CAN NOT EXTEND THE TIME TO FILE

1.530 MOTIONS, 1.540 MOTIONS,
OR NOTICES OF APPEAL.
THE POINT OF THAT IS, IS THAT,
YOU CAN NOT RESERVE
JURISDICTION TO FILE UNTIMELY,
A MOTION UNDER 1.530.
AND THAT'S REALLY WHAT WE'VE
GOT HERE IS WE'VE GOT A FINAL
JUDGEMENT, NOT DRAFTED BY US OF
COURSE.
IT IS VERY UNUSUAL FORM.
I CAN TELL YOU IN 20 SOME YEARS
OF PRACTICE I HAVE NEVER SEEN
THAT HAPPEN BEFORE.
I ALWAYS PUT PJI IN MY FINAL
JUDGMENT.
I THINK MORE OUT OF INSTINCT
THAN OUT OF McGURN.
>> WHAT DO YOU MEAN PUT IT IN?
>> I ALWAYS LIQUIDATE
PREJUDGEMENT INTEREST RIGHT
INTO MY FINAL JUDGMENTS.
I NEVER --
>> BUT YOU WERE DISPUTING WHAT
THE AMOUNT OF PREJUDGEMENT
INTEREST WAS?
>> ABSOLUTELY. ABSOLUTELY.
>> AND I TOLD THE TRIAL
JUDGE, THIS IS MY PROBLEM WITH
THIS.
I DON'T KNOW WHAT HAPPENS IN
ALL YOUR YEARS OR ALL ANYONE
ELSE'S YEARS.
WHAT I KNOW IS THIS.
THE PLAINTIFF WASN'T GIVING UP
OVER 2 MILLION DOLLARS IN

EARNED PREJUDGEMENT INTEREST.
AND SOMEHOW OUR RULES HAVE
WORKED TO CREATE AN INJUSTICE
THAT NEITHER SIDE INTENDED.
>> THAT'S TRUE. THAT'S TRUE.
>> WHAT I DON'T LIKE, OKAY.
WHAT I DON'T LIKE ABOUT THE
ALTERNATIVE TO SAY, THINGS THAT
SAY, LET EXECUTION ISSUE SHOULD
BE DISMISSED AS, YOU KNOW
PREMATURE IS THAT, IF THERE IS
AN INTENT, TO PUT LET EXECUTION
ISSUE AND PUT A DEFENDANT AT
RISK OF HAVING ASSETS ATTACHED
THAT CREATES ANOTHER
POTENTIALLY INJUSTICE.
>> OF COURSE.
>> SO, WE'VE GOT TO WEIGH THE
RELATIVE, YOU KNOW, INJUSTICES
HERE FOR THE FUTURE.
BUT, WOULD YOU SAY THAT
IN THIS CASE THE CALCULATION OF
PREJUDGMENT INTEREST WAS JUST
MINISTERIAL?
THERE WAS NO REASON FOR THE
PLAINTIFF NOT TO HAVE BEEN ABLE
TO PUT THAT AMOUNT IN?
IT WAS JUST A MATHEMATICAL
CALCULATION?
>> WHAT I SAID WAS THAT ONCE
THE PARTIES COULD AGREE ON A
METHOD OF CALCULATING IT, IT'S
A MINISTERIAL CALCULATION BUT I
THINK AS YOU CAN SEE IN THE
PAPER, I WAS VERY UNHAPPY WITH
THE WAY THIS WAS SUDDENLY BEING

ACCOUNTED TO EACH OTHER.
YOU'VE GOT TWO BUSINESSES
OPERATING IN ONE HOTEL
FACILITY.
AND SO, FOR WHATEVER THE
REASONS WERE, IS, WESTGATE
GUESTS WERE BEING PLACED IN
NEWPORT'S HOTEL ROOMS.
GUESS WHAT?
NEWPORT GUESTS WERE BEING
PLACED INTO WESTGATE'S HOTEL
ROOMS.
WHEN IT COMES TO AN ACCOUNTING
CASE AND HOW THINGS ARE DONE
AND WHO IS PAYING THEIR
MAINTENANCE AND TAXES FOR THE
CONDOMINIUM ASSOCIATION AND WHO
IS NOT AND THE EVIDENCE WAS,
THE EVIDENCE WAS PARTIES
DEVELOPED ANNUAL ACCOUNTING
EVERY YEAR LIKE IN FEBRUARY OF
EACH YEAR THEY WOULD DO AN
ANNUAL TRUE-UP.
WHAT WESTGATE WAS TRYING TOO
DO, IN MY VIEW GET AN EXTRA
BONUS YEAR OF PREJUDGEMENT
INTEREST BY TRYING TO ACCOUNT
ON A DAILY OR WEEKLY BASIS
WHICH WAS NEVER WHAT THE
PATTERN AND THE PRACTICE WAS,
AND IT DID NOT TAKE INTO
ACCOUNT AS WELL, THE OFFSETS
BECAUSE, WELL, YOU DIDN'T
SUFFER A LOT OF THIS DATE
BECAUSE YOUR GUEST WAS IN A
NEWPORT ROOM.

YOU HAVE TO LOOK AT ON THAT
SAME DAY, WAS A WESTGATE GUEST
IN A NEWPORT ROOM?
>> LET ME ASK YOU A QUESTION ON
McGURN AND YOU SAID WELL, THERE
IS AN ESCAPE HATCH WHICH IS A
MOTION TO RELINQUISH.
WHAT WOULD BE THE PARAMETERS
FOR A, IF WE, CLARIFY THE RULE
IN McGURN, ABOUT, WHEN WOULD A
MOTION TO RELINQUISH HAVE TO BE
FILED?
WHAT WOULD BE EQUITABLE OR
OTHER FACTORS THAT A DISTRICT
COURT WOULD LOOK AT IF, IN
FACT, UNDER McGURN, THAT
JURISDICTION'S LOST AND
PREJUDGMENT INTEREST IS WAIVED?
SO HOW WOULD YOU TERM, WHAT
WOULD YOU SAY?
IN OTHER WORDS, IF THEY HAD
FILED THEIR MOTION TO
RELINQUISH, IS IT A
DISCRETIONARY CALL ON THE PART
OF THE APPELLATE COURT?
SHOULD IT BE A MANDATORY THING?
TWO PARTIES HAVE ALLOWED THIS
TO HAPPEN AND NOBODY'S OBJECTED
THAT IT BE, THAT IT ALWAYS BE
RELINQUISHED?
OR IS IT A CASE-BY-CASE
DECISION?
>> I THINK THAT THAT IS LIKE
TRYING TO UNTANGLE A BALL OF
YARN.
I REALLY MEAN THAT VERY

RESPECTFULLY.
BECAUSE IF ARGONAUT STANDS
AND PREJUDGMENT INTEREST IS
PART AND PARCEL OF PECUNIARY
DAMAGES ARE WE GOING TO CREATE
A RULE JUST FOR PJI NOW?
WHAT ABOUT PUNITIVE DAMAGES?
WELL THAT IS PART OF OUR
DAMAGES AS WELL.
WHAT HAPPENS IF SOMEBODY ONLY
TRIES TWO OR THREE OF THEIR
COMPONENTS EVER DAMAGES?
SHOULD WE TALL LOU THAT COME UP
ON APPEAL AND COME BACK FOR
MORE TRADITIONAL PECUNIARY
DAMAGES LATER?
>> I'M ASKING ABOUT THE
RELINQUISHMENT.
I THOUGHT YOU SAID IN YOUR
BRIEF THERE IS ALREADY ESCAPE
HATCH UNDER McGURN TO FILE A
MOTION TO RELINQUISH?
>> SURE.
ONE APPELLATE COURT CASE, I
THINK EMERALD COAST CASE, WHERE
THE SECOND DISTRICT DECLINED TO
ALLOW SOMEBODY TO RELINQUISH ON
THE BASIS OF THE FACT THAT
McGURN WAS SO OLD AT THAT POINT
THAT LAWYERS SHOULD HAVE BEEN
ON NOTICE.
>> SO THERE ISN'T -- THEREFORE
EVEN THOUGH YOU'RE AN
EXPERIENCED LITIGATOR AND I'M
ASSUMING MR.^FRANKEL WAS AN
EXPERIENCED LITIGATOR, THAT

BOTH OF YOU, WHO HAD BEEN
LITIGATING WAS, EVEN THOUGH IT'S
OLD WEREN'T AWARE OF IT AND
YOU'RE SAYING THAT THE
APPELLATE COURT SAID WOULD
HAVE, THERE IS THIS ESCAPE
HATCH BUT IT'S ILLUSORY, IF
McGURN IS OLD, THEN IT WOULD
NEVER BE EQUITABLE BECAUSE YOU
SHOULD ALWAYS KNOW ABOUT IT.
>> THERE IS DIFFERENCE BETWEEN
RELINQUISHING FOR PURPOSES OF
GETTING A TRUE FINAL ORDER AND
RELINQUISHING FOR AN AMENDED
FINAL JUDGEMENT.
THE CASE YOU DESCRIBED
EARLIER -- [INAUDIBLE]
WAS THAT FOR PURPOSES OF
GETTING AN AMENDED FINAL
JUDGMENT OR -- [INAUDIBLE]
>> NOT SPECIFICALLY.
I BELIEVE IT WAS SPECIFICALLY
TO GO BACK TO GET THE
PREJUDGEMENT INTEREST THOUGH.
>> IN THIS CASE WAS THERE ANY
MOTION MADE BY THE PLAINTIFF IN
DISTRICT COURT OF APPEAL TO
RELINQUISH THAT FOR PURPOSES OF
AN AMENDED FINAL JUDGEMENT --
[INAUDIBLE]
>> NO, SIR.
BECAUSE, I DIDN'T KNOW ABOUT
IT.
AND THE TRIAL JUDGE DIDN'T KNOW
ABOUT IT.
ALTHOUGH MR.^FRANKEL IN HIS

PAPERS IMPLIES HE DID KNOW
ABOUT IT --
>> AT THE DCA LEVEL, SOMEBODY
FIGURED IT OUT BY THEN
OBVIOUSLY.
THE PLAINTIFF AT THE DISTRICT
COURT OF APPEAL WOULD HAVE
DISCOVERED THIS WAS A PROBLEM
OF CALCULATION OF PREJUDGEMENT
INTEREST WAS MISSING RIGHT?
>> I DON'T KNOW WHAT THE
PLAINTIFF THOUGHT AT THAT
POINT.
>> IT WAS NEVER BROUGHT -- FIRST
TIME ANYONE MENTIONED McGURN
WAS TO JUDGE COHEN AFTER THE
FIRST APPEAL WAS DECIDED BY
PCA?
>> CORRECT.
AND BY THE WAY, NOBODY COULD
HAVE ANTICIPATED OR EXPECTED
THAT THIRD DISTRICT, SUA
SPONTAE KICKED THIS
THING OUT, McGURN GAVE THEM THE
JURISDICTION TO HEAR IT IN THE
FIRST PLACE.
>> EMERALD COAST DECLINED TO
RELINQUISH JURISDICTION BECAUSE
THE PLAINTIFFS HADN'T ALSO
FILED 1.30-B MOTION.
WHAT I'M ASKING BUT THE ESCAPE
HATCH IS, IT WAS, McGURN SAID,
RELINQUISH IN ORDER TO CONSIDER
POST-, PREJUDGEMENT INTEREST.
ARE YOU SAYING THAT IS A GOOD
RULE, THAT WE SHOULD CONTINUE

TO REAFFIRM?
THAT IS THAT SHOULD BE
LIBERALLY GRANTED WHEN THE,
NEITHER SIDE HAS BROUGHT TO THE
JUDGE'S ATTENTION THE PROBLEMS
WITH THE RESERVATION OR THE
SEPARATE DETERMINATION?
>> OKAY. I THINK I UNDERSTAND THE
QUESTION.
I THINK McGURN WORKS EXACTLY
THE WAY THAT IT IS AND I THINK
EACH DISTRICT COURT OF APPEAL,
EACH PANEL WHEN FACED WITH THAT
SITUATION SHOULD BE ENTITLED TO
GRANT A MOTION IF MADE TO
RELINQUISH JURISDICTION.
>> BASED ON WHAT?
>> BUT THEN WE END UP IN THIS
MESS AGAIN BECAUSE IF THE COURT
TURNS AROUND AND RELINQUISHES
JURISDICTION, THEN IN OUR
CASE, FOR INSTANCE,
ASSUMING WE KNEW ABOUT IT BIT,
MY CLIENT HAD 8.5 MILLION
DOLLARS POSTED BY THE TIME THIS
PREJUDGEMENT ISSUE COULD HAVE
BEEN WORKED OUT, AS YOU READ,
JUDGE COHEN WAS ASKING FOR
EXPERT TESTIMONY AND WHO KNOWS
HOW LONG IT WOULD HAVE TAKEN,
OUR RIGHTS TO APPEAL WOULD HAVE
BEEN ESSENTIALLY SUSPENDED IN
TIME.
>> SO ISN'T IT BETTER TO JUST
TREAT PREJUDGEMENT INTEREST AS
A, LIKE ATTORNEY FEES AND COSTS

AND LET IT BE SEPARATELY
DETERMINED?
>> LET ME TELL YOU, I GOT TO
TELL YOU, THERE ARE MANY CASES
WHERE PREJUDGEMENT INTEREST IS
VERY EASY TO CALCULATE.
THERE ARE, OKAY?
PROMISSORY NOTE, CAME DUE ON A
CERTAIN DATE AND IT IS REAL
EASY TO CALCULATE PREJUDGEMENT
INTEREST.
>> AS OUR COSTS IN MANY CASES.
>> THIS IS NOT THAT CASE.
THIS IS THE CASE THAT LITERALLY
GOES BACK IN AND HAS TO DEAL
WITH ALL OF THE EVIDENCE AGAIN.
IT HAS TO DEAL WITH SET-OFFS.
IT HAS TO DEAL WITH HOW TO
CALCULATE THIS AND THIS IS
PRECISELY WHERE WE ARE.
NOW, HERE'S THE THING, IF THIS
COURT WANTED TO TREAT
PREJUDGMENT INTEREST AS
ATTORNEY'S FEES, WHICH IS
REALLY WHAT I KIND OF THOUGHT
THE RULE WAS ANYWAY, THE
PROBLEM IS, THE PROBLEM YOU
HAVE WITH THAT, IS, YOU'RE
GOING TO HAVE TO OVERTURN
ARGONAUT.
AND I CAN'T EVEN BEGIN,
I MEAN --
>> WE'RE THE SUPREME COURT.
WE CAN SAY, THERE'S A NARROW
REASON TO DO THIS BECAUSE WE
DON'T WANT TO HAVE

INADVERTENT --
>> I HEAR.
>> I APPRECIATE YOUR
HONESTY, BY THE WAY, ON THIS
POINT, WE'RE TRYING TO FIGURE
OUT WHY.
>> THERE IS NO QUESTION, LOOK I
WAS VILIFIED IN THE UNDERLYING
BRIEFS UNTIL THE REPLY BRIEF.
I SUSPECT THERE IS DIFFERENT
AUTHOR OF THE REPLY BRIEF THAT
FINALLY CONCEDED, YES, WESTGATE
DID AGREE TO COURT DEFERING ON
ITS MOTIONS AND I DID NOT
MISLEAD THE COURT INTO DEFERING
THAT.
I WAS PLEASED TO SEE THAT ON
PAGE 2 OF THE REPLY BRIEF THEY
FINALLY CONCEDED THAT.
>> YOUR TIME IS UP.
>> BUT --
>> A SENTENCE OR TWO.
>> LET ME POINT OUT THAT I
TASKED OUR POOR SUMMER INTERNS
THIS SUMMER TO REVIEW THE LAW
ACROSS --
>> DOESN'T SOUND LIKE BEGINNING
OF A SENTENCE OR TWO.
A SENTENCE OR TWO.
>> OH, OKAY, MY SENTENCE WOULD
BE IF FLORIDA WAS GOING TO
RECEDE FROM ARGONAUT IN ANY
WAY, I THINK WE WOULD BE ONLY
STATE IN THE COUNTRY THAT HAS
DONE THAT.
AND SO I WOULD JUST CONCLUDE BY

POINTING OUT THAT EVERY TIME
THIS COURT MAKES ANY SORT OF A
CHANGE, IT CREATES UNFORESEEN
CIRCUMSTANCES SOMEWHERE DOWN
THE ROAD AND McGURN DOES WORK,
EVEN THOUGH IN THIS INSTANCE,
NOTHING CAN PROTECT LAWYERS WHO
DON'T KNOW THE LAW.
NOTHING CAN PROTECT THEM.
>> THANK YOU.
>> OBVIOUSLY LAWYERS WHO ARE
DEFENDANTS IN THESE CASES ARE
PROTECTED BECAUSE THE, THEIR
CLIENTS GET A WINDFALL WHILE
THE MERITS OF THE CASE AREN'T
DETERMINED YET.
>> I DON'T KNOW.
BUT THERE IS A CONCERN HERE,
MR.^STENGLE, ABOUT THIS, IN THE
LETTER OF GET ABOUT THIS, WHY
WOULD A PLAINTIFF PUT LANGUAGE
IN, LET EXECUTION ISSUE, IF
THEY WEREN'T INTENDING TO
EXECUTE?
THAT IS REALLY WHAT McGURN WAS
CONCERNED WITH. SO WE WANT TO BE
FAIR TO BOTH SIDES.
>> YES, YOUR HONOR, BUT IT DOES
NOT REQUIRE THAT, THAT ARGONAUT
BE OVERTURNED.
>> I UNDERSTAND.
I AGREE WITH YOU ON THAT BUT,
ON THE ISSUE THAT, LAWYERS
SHOULD KNOW THAT THEY DON'T
NEED TO PUT THESE FINAL
JUDGEMENT LANGUAGES IN IF

THEY'RE NOT INTENDING TO
EXECUTE.
IF THEY ARE INTENDING TO
EXECUTE THEY FACE THE RISK
THEY'RE GOING TO WAIVE ISSUES
THAT THEY HAD OTHERWISE WANTED
TO HAVE DETERMINED.
>> BUT YOUR HONOR, --
>> THAT'S WHAT McGURN SAYS.
>> I RECOGNIZE THAT, THIS MAY
CAUSE SOME CONCERN AND THAT
LAWYERS ARE REQUIRED TO KNOW
WHAT THE RULES ARE, INCLUDING
THE CASE LAW RULES, BUT IN THIS
INSTANCE NOBODY, THE TRIAL
COURT, NOR THE OTHER TWO
PARTIES, KNEW.
WHEN IT GOT TO THE APPELLATE
ROUTE, BECAUSE OF THE LANGUAGE
OF McGURN, THE ESCAPE CLAUSE
THAT IS THE ONLY EFFECTIVE ONE
AND NOT ILLUSORY IN THIS CASE,
THE 9.110(L) IS UNAVAILING
BECAUSE OF THE LANGUAGE OF
McGURN.
I WILL LEAVE YOU WITH THIS
FINAL QUESTION.
IF McGURN DIDN'T EXIST AND
THE FLORIDA BAR PETITIONED FOR
THE COURT TO APPROVE A RULE OF
APPELLATE PROCEDURE, WOULD THE
RULE READ LIKE McGURN?
WOULD IT SAY, THIS IS NOT A
FINAL ORDER, THAT MUST BE
TREATED LIKE A FINAL ORDER?
AND FORECLOSE CONSIDERATION OF

THE CASE ON THE MERITS, GIVING
A WINDFALL TO ONE PARTY AND
WHAT THE THIRD DCA CALLED AN
UNFAIRNESS TO THE OTHER PARTY?
I THINK McGURN CAN BE MODIFIED
SUCH THAT, AS THE CHIEF JUSTICE
SUGGESTS, 9.110(L) APPLIES AND
WOULD DO THE LEAST DAMAGE.
IF IT IS GOOD IN ALL OTHER
CIRCUMSTANCES, THEN IT OUGHT TO
BE GOOD TO RETURN JURISDICTION
BELOW FOR THE EXHAUSTION OF THE
JUDICIAL LABOR.
THANK YOU, YOUR HONORS.
>> THANK YOU.
THAT CONCLUDES TODAY'S
SESSION OF COURT.
WE ARE ADJOURNED.
>> PLEASE RISE.
THE SUPREME COURT IS NOW
ADJOURNED.