

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,
THAT GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

GOOD MORNING AND WELCOME TO
THIS SESSION OF THE FLORIDA
SUPREME COURT THEM.

FIRST CASE ON OUR CALENDAR TODAY
IS KRAUSE VERSUS TEXTRON
FINANCIAL CORPORATION.

ARE THE PARTIES READY?

YOU MAY PROCEED.

HONORABLE CLERK, MAY IT

PLEASE THE COURT I'M WILLIAM
DONOVAN, REPRESENTING ANDREW
KRAUSE AND I LIVE AND PRACTICE
IN NAPLES, WHERE THE CLAIM
AROSE.

WITH YOUR PERMISSION I WOULD
LIKE TO BRIEFLY RECITE WHAT I
THINK ARE SOME OF THE PERTINENT
UNDER LYING FACTS AND HOW THIS
PARTICULAR LITIGATION GOT BEFORE
THIS COURT.

THE ISSUE HAD TO DO WITH MY
CLIENTS HAVING PURCHASED EQUITY
MEMBERSHIPS IN A COUNTRY CLUB IN
THE NAPLES AREA.

NOW, I MUST TELL YOU, NOT BEING
A GOLF, WHAT I KNOW ABOUT HOW
THIS OCCUR IS FROM WHAT I HAVE
REMEMBERED.

THE -- THERE WAS A CONTRACTUAL
RELATIONSHIP BETWEEN THE TWO

PARTIES, TWIN EAGLES COUNTRY CLUB, MY CLIENTS, BOTH HAD EQUITY MEMBERSHIPS AND FROM WHAT I CAN DETERMINE THE REAL KEY TO AN EQUITY MEMBERSHIP IS THAT AT A LATER DATE, SHOULD A MEMBER DECIDE TO RESIGN FROM THE CLUB, THAT MEMBER IS ABLE TO THEN HAVE HIS MEMBERSHIP RESOLD, TO SOMEBODY ELSE ON A WAITING LIST. AND, THE RESIGNING MUST BE WOULD BE ENTITLED TO, IN THIS CASE 90% OF WHATEVER THE SALES PROCEEDS WERE AT THE TIME.

AND, I BELIEVE THE PROCEED AT THE TIME, THESE GENTLEMEN RESIGNED, WERE IN THE AREA OF 100 TO \$110,000, 90% OF THAT WOULD HAVE BEEN THEIR AMOUNT. WHAT OCCURRED, HOWEVER, IS THAT IN 1999, WHEN THEY RESIGNED, THEIR MEMBERSHIPS WERE SOLD, TO OTHER PARTS, BUT, INSTEAD OF THE FUND BEING DELIVERED TO MY CLIENTS, PER THE CONTRACTUAL DOCUMENTS, THEY WERE DELIVERED TO TEXTRON CORPORATION.

IN CONNECTION WITH THAT, COULD YOU ADDRESS THE RELATIONSHIP BETWEEN YOUR CLIENTS AND TEXTRON?

YOU ASSERT THAT THERE IS -- THERE WAS A CONFIDENTIAL RELATIONSHIP, IS THAT CORRECT?

THERE WAS AN ALLEGATION IN THE COMPLAIN, THAT THERE WAS A CONFIDENTIAL RELATIONSHIP.

I DON'T SEE THAT, TO BE CANDID WITH YOU.

THE CONFIDENTIAL RELATIONSHIP I SEE IS CERTAINLY BETWEEN TWIN EAGLES AND MY CLIENT.

OKAY, YOU ARE CONCEDING THAT THIS WAS -- THERE ARE FACTS --

NO ULTIMATE FACTS THAT ARE ALLEGED THAT WOULD SUPPORT THE EXISTENCE OF A CONFIDENTIAL RELATIONSHIP BETWEEN YOUR CLIENT AND TEXTRON?

THERE WAS NO CONTRACTUAL RELATIONSHIP BETWEEN THE PARTIES.

THE RELATIONSHIP REALLY, TEXTRON HAS, THEY WERE -- GAVE A LOAN TO THE COUNTRY CLUB?

YES.

THE MEMBERSHIPS, ARE THEY INTERTWINED WITH THAT FINANCING AS YOU CONSTRUCT AND BUILD A COUNTRY CLUB, YOU SELL MEMBERSHIPS AND ARE THERE ANY ISSUES WITH REGARD TO THE FINANCING, BEING RELATED TO THE SALE OF THOSE MEMBER SHIPS AND, IN THE PROCEEDS WHAT HAPPENS TO THEM.

YES.

YES.

IT IS INTERTWINED WITH THAT.

WELL, IT IS TO THAT EXTENT.

YES.

THE QUESTION WAS WHETHER OR NOT THERE WAS A CONFIDENTIAL RELATIONSHIP --

I ASK THE SAME QUESTION.

I UNDERSTAND AND I APPRECIATE YOUR POINT.

DEFINITELY, IT WAS INTERTWINED AND THE QUESTION -- WE CHALLENGE THAT TEXTRON EVEN HAD ANY SECURITY INTEREST.

IN THE SALE OF MY CLIENT'S MEMBER SHIPS.

WAS IT CLAIMED.

PARDON ME?

WAS IT CLAIMED, DID TEXTRON SAID THEY HAD AN INTEREST.

YES.

SO THEY SAID THEY HAD AN INTEREST.

NOT ONLY THEY SAID THEY HAD AN INTEREST IN IT THEY HAD THE FUNDS DELIVERED --

WE UNDERSTAND THAT AND AGREE -- UNDERSTAND ALL OF THE FACTS AND REALLY WHAT YOU ARE GETTING INTO THIS IS QUESTION OF WHEN RELATEDNESS OR CONNECTIONITY OF ALL OF THE PARTIES AND HOW THE STATUTE, YOU REALLY NEED TO GET TO THAT, ARE RUNNING OUT OF TIME QUICKLY.

THE TOLLING STATUTE AND WHETHER THE CLAIM THAT IS FILED, IN -- IN BANKRUPTCY, APPLIES IN THAT CONTEXT AND THAT IS WHAT BRINGS YOU IN HERE...

YES, SIR.

JUST, TO LAY THE PREDICATE AN ANSWER THAT QUESTION, THIS INVOLVED A... A CLAIM THAT WAS FILED IN BANKRUPTCY, AND, ADVERSARIAL COMPLAIN AND YOU READ THE ALLEGATIONS OF IT. AND, IT WAS SUMMARY JUDGMENT WAS GRANTED, ON THE MERITS, AND SOLICITED BY TEXTRON AND THE COURT EXERCISED JURISDICTION AND GRANTED SUMMARY JUDGMENT ON THE MERITS AND, IN AN ATTEMPT TO APPEAL... AFTER IT WAS ULTIMATELY DIVIDEND.

THE PARTY IN BANKRUPTCY WHAT'S THE COUNTRY CLUB, CORRECT?

THE COUNTRY CLUB.

WHY, WHY WAS A COMPLAINT FILED IN BANKRUPTCY, AGAINST TEXTRON, AS YOU SAY, AND, THEY -- THERE REALLY WAS NO CONTRACTUAL RELATIONSHIP BETWEEN CLIENTS AND TEXTRON,

WHY FILE A COMPLAINT IN THE
BANKRUPTCY PROCEEDING AGAINST
TEXTRON?

BECAUSE, IT IS OUR POSITIONS
THAT TEXTRON WAS NOT ENTITLED TO
THE FUNDS, AND, WERE DELIVERED
TO TEXTRON BY -- THOSE FUNDS,
WITH THE -- WERE THE PROPERTY OF
THE PETITIONERS.

HOW DO YOU GET THOSE FUNDS
BACK IN A BANKRUPTCY PROCEEDING
AGAINST TWIN EAGLE.

TWIN EAGLES.
THE BANKRUPTCY PROCEEDING WAS
ABOUT TWIN EAGLES.

RIGHT.

HOW DO YOU GET MONEY BACK
FROM TEXTRON.
THAT IS WHAT YOU WERE TRYING TO
DO, CORRECT?

HOW DO YOU GET --
BY VIRTUE --
IN THE BANKRUPTCY PROCEEDING.
VIRTUE OF THE ADVERSARIAL
COMPLAINT THAT WAS FILED.

AN ATTEMPT TO STATE THE CLAIMS
FOR' ADJUSTMENT ENRICHMENT.

AND AT WHAT POINT... OVER TO
TEXTRON, WAS IT BEFORE THE
BANKRUPTCY PROCEEDINGS WERE
FILED OR DURING THE... IN
BANKRUPTCY?

BOTH.

BOTH.

THE ALLEGATIONS OF THE
COMPLAINT IN THE CIRCUIT COURT,
ALLEGE THAT... GIVEN TO TEXTRON
THE END OF MAY, OF 2009.

WHEN YOU FILED YOUR
ADVERSARIAL PROCEEDINGS, IN
BANKRUPTCY.

YES.

AT THAT POINT, THE FUNDS
ALREADY IN THE -- WERE IN THE

HANDS OF TEXTRON.

YES.

SO, HOW SOON AFTER THIS INITIAL COMPLAINT... DID TEXTRON MOVE FOR SUMMARY JUDGMENT ON THE BASIS THAT THERE WAS NO BASIS FOR...

TWO YEARS.

WHEN YOU... [INAUDIBLE] YOU HAVE OBVIOUSLY ASSERTED THE CLAIM IN BANKRUPTCY.

THE ARGUMENT ON THE OTHER SIDE IS THAT, IT REALLY WAS NEVER A BASIS FOR BANKRUPTCY COURT...

JURISDICTION OVER THE ADVERSARIAL COMPLAINT, NEVER FROM THE BEGINNING.

AND, SO, WE'RE INTERPRETING, NOT REALLY, WHAT THE BANKRUPTCY COURT HAD AS FAR AS JURISDICTION BUT WHAT THE MEANING OF... 36B IS, FOR ANY CLAIM ASSERTED.

UNDER SUBSECTION A SHALL BE TOLLED WHILE THE CLAIM IS PENDING.

YOU NEVER HAD A PROPER CLAIM PENDING, IN -- ARGUMENT ON THE OTHER SIDE IS, IT NEVER IS TOLLED.

SO THAT IS WHAT --

WELL... TO DEAL WITH THAT QUESTION.

WELL --

I APPRECIATE THAT.

THE ANSWER IN MY ESTIMATION IS THE EXERCISE OF JURISDICTION BY THE BANKRUPTCY COURT WAS JUST THAT.

IT WAS AT THE BEHEST OF TEXTRON AND TOOK ADVANTAGE OF THAT, THEY OBTAINED A SUMMARY JUDGMENT ON THE MERITS, AND --

WHAT MERITS, THE MERITS OF WHETHER THERE WAS JURISDICTION.

NO.

NO.

ON THE MERITS OF THE CLAIM THAT WE FILED, THE CONSTRUCTIVE TRUST ISSUE, WHETHER OR NOT WE COULD PREVAIL AND THAT WAS THE ISSUE THAT WAS BEFORE THE BANKRUPTCY COURT.

THE DISTRICT COURT, DID THEY

--

THE DISTRICT COURT, YES.

THE DISTRICT COURT MADE A --

AN ENTIRELY DIFFERENT FINDING, AT A LATER DATE, AND SUBSEQUENT TO AND THIS IS THE IMPORTANT PART, THE DISMISSAL OF TEXTRON WITH PREJUDICE, BY MY CLIENTS, IN THE ADVERSARIAL PROCEEDING. SUDDENLY, AT THAT POINT, THE JURISDICTION WAS NEVER A QUESTION, IT WAS NEVER RAISED BY TEXTRON, NEVER AN ISSUE.

THE COURT EXERCISED JURISDICTION.

ON THE MERITS, IT WASN'T UNTIL AFTER THE VOLUNTARY DISMISSAL WITH PREJUDICE AGAINST THE BANKRUPT DEBTOR THAT THE ISSUE OF LACK OF SUBJECT MATTER, JURISDICTION WAS RAISED IN 2005 AND IT WAS PENDING FOR A NUMBER OF YEARS, AND, IN '05, THERE WAS A DISMISSAL AND THAT IS WHAT TRIGGERED THE ALLEGATION THAT THERE WAS NO SUBJECT MATTER OF JURISDICTION AND BECAUSE IF YOU DON'T HAVE A BANKRUPT DEBTOR PROCEEDING, NO MATTER WHAT OCCURS, BETWEEN TEXTRON AND MY CLIENTS IT WILL NOT AFFECT THE BANKRUPTCY.

FROM A PRACTICAL STANDPOINT, IF THEY ARE NOT TOLLING, THE PRACTICING LAWYER PLANS TO...

[INAUDIBLE].

YES, SIR.

YES.

AS YOU LOOK AT THIS, I UNDERSTOOD FROM LOOKING AT THE MATERIALS, THAT WHAT YOU WERE NOT AWARE, AT THE TIME, THE ACTION WAS FILED, IN THE BANKRUPTCY COURT, THAT THE MONEY HAD BEEN TURNED OVER TO TEXTRON. IS THAT INCORRECT?

YES.

THAT IS INCORRECT.

I'M SORRY.

THAT IS PROBABLY CORRECT. THE ALLEGATIONS OF THE ORIGINAL COMPLAINT INDICATED THAT --
-- THE COUNTRY CLUB USED IT IN --

SO, IF THERE IS -- I'M TRYING TO UNDERSTAND THIS, IT SEEMS TO ME, AND YOU PROBABLY KNOW MORE ABOUT THE BANKRUPTCY PROCEEDINGS THAN I DO BUT IT SEEMS TO ME, THAT IF I'M SITTING THERE AND THERE IS SOMEONE FILES FOR BANKRUPTCY, AND I HAVE GIVEN THEM MONEY, AND, THERE HAVE BEEN TRANSFERS FROM THAT ORGANIZATION, TO OTHER PEOPLE, THAT THERE MAY BE SOME PREFERENTIAL TRANSFERS THAT ARE SET ASIDE IN BANKRUPTCY. IS THAT A POSSIBILITY?

WELL, THAT IS A POSSIBILITY.

AND... AND PAYMENTS THAT ARE MADE TO PEOPLE, MAYBE, MAYBE NOT, AS TO TEXTRON, BUT ISN'T THAT WHERE IT IS SIFTED OUT, IF A BANKRUPT -- SUBMITS HUNDREDS OF THOUSANDS OF DOLLARS TO SOMEONE AND FILES FOR BANKRUPTCY, DON'T THE COURTS LOOK AT THOSE TRANSFERS, IF

SOMEONE ASKS THEM TO, TO DETERMINE IF THERE IS A PREFERENTIAL TRANSFER.

YES, YOUR HONOR.

AND WOULDN'T THE MONEY BE IN THAT KIND OF CATEGORY.

THAT IS THE ALLEGATION OF THE ADVERSARIAL COMPLAINT.

NOW, WE ARE THERE, TO THAT POINT.

AND THE QUESTION BECOMES, IF IT IS LATER DETERMINED THAT THAT WAS NOT FACTUALLY CORRECT OR WHATEVER, DOES THAT THEN CAUSE THE TOLLING PROVISION TO NOT APPLY, THAT IF YOU HAVE TO GO BACK TO STATE COURT YOU MAY BE OUT.

THAT IS WHAT THE CASE IS REALLY ABOUT.

I UNDERSTAND, WHEN YOU SAY THAT IT IS NOT FACTUALLY CORRECT.

CAN YOU BE MORE SPECIFIC.

NO, I'M SAYING, THAT YOU --

IF YOUR ALLEGATIONS ARE THIS IS A PREFERENTIAL TRANSFER AND THE MONEY BELONGS TO YOU AND THE BANKRUPTCY COURT SAYS, NO.

THAT IS NOT THE CASE, RULES AGAINST YOU, DOES THAT CAUSE YOU TO LOSE THE RIGHTS UNDER THE TOLLING STATUTE, BECAUSE THE COURTS DETERMINED THAT IT DOESN'T HAVE JURISDICTION TO GIVE THAT MONEY BACK TO YOU, IT BELONGS TO SOMEONE ELSE.

IT SHOULD NOT.

THAT'S THE QUESTION BEFORE US.

WHY NOT?

WELL...

WHAT IS THE LAW.

WELL, THE LAW, THERE ARE TWO

FAMILIAR CASE THAT'S ARE
EXTREMELY IMPORTANT.
ONE OF WHICH IS THE SCARFO CASE,
WHICH IS DISCUSSED AND EQUAL
IMPORTANT IS THE BLINN CASE,
FIRST DCA, AND, BOTH OF THOSE
CASES, THEY WERE NOT BANKRUPTCY
CASES.

I WILL NOT BE ABLE TO SAY TO
YOU, A FLORIDA CASE ON ALL FOURS
IN TERMS OF BANKRUPTCY BUT I'M
CITING TO YOU CASES WHICH I
BELIEVE WERE ON ALL FOURS IN
TERMS OF FEDERAL JURISDICTION
AND FEDERAL CAUSES OF ACTION,
THE BLINN CASE AND IF YOU LOOK
AT BLINN, IT WAS A SITUATION
WHERE A FEDERAL CAUSE OF ACTION
WAS ASSERTED IN A FEDERAL COURT
ALONG WITH THE STATE CAUSE OF
ACTION.

AND THE PLAINTIFF IN THAT CASE,
BLINN, DECIDED TO VOLUNTARILY
DISMISS AND REASSERT THE CLAIMS
IN STATE COURT.

THEY REASSERTED AND THE STATUTE
OF LIMITATIONS HAD RUN AND IT
WAS DISMISSED AT THE STATE LEVEL
ON STATUTE AND TAKEN UP ON
APPEAL AND THE ISSUE IN THAT
CASE WAS PRECISELY THE ISSUE
RAISED BEFORE THIS COURT AND IT
WAS WHETHER OR NOT 1368 AND 7-D,
ONLY APPLIED TO THOSE CASES AND
CLAIMS WHERE THE CLAIM WAS
ASSERTED, UNDER 1367 A-C AND
FOUND BY THE COURT TO BE
RELATED.

BUT WITH A DISCRETIONARY
DECISION NOT TO EXERCISE
JURISDICTION.

BUT JURISDICTION WAS NOT AN
ISSUE IN BLINN.

I'M SORRY.

THE BANKRUPTCY COURT'S
JURISDICTION WAS NOT AN ISSUE IN
BLISS, AM I CORRECT?

WELL, IN BLINN, THERE WAS
NEVER --

BLINN, CONCERNING
JURISDICTION.

BUT IN YOUR CASE WAS
DISMISSED IN BANKRUPTCY COURT,
BANKRUPTCY COURT DIDN'T HAVE
JURISDICTION TO BEGIN WITH.

THAT IS STATED IN THE FINAL
ORDER.

THE GIST OF YOUR ARGUMENT
THEN IS, ANY TIME SOMEONE FILES
A BANKRUPTCY PROCEEDING, WHERE
THE BANKRUPTCY COURT HAS
JURISDICTION -- WHETHER THE
COURT HAS JURISDICTION OR NOT IT
AUTOMATICALLY STAYS THE COURT
ACTION, WHETHER OR NOT --
WHETHER THERE IS JURISDICTION OR
NOT --

THERE HAS TO BE SOME
RELATIONSHIP BETWEEN THE
BANKRUPTCY PROCEEDING, AND THE
CLAIM THAT IS FILED.

IT HAS TO BE TAKEN ON A CASE BY
CASE CASES, AND I DON'T THINK
WE'LL BE ABLE TO FIND ANY FACTS
OF THIS PARTICULAR CASE, THAT
ARE EXTRAORDINARY OR UNUSUAL.
THAT, ON THEIR FACE, AS PLED,
WOULD CLEARLY TAKE IT OUT OF THE
BANKRUPTCY PROCEEDING.

THERE ARE ONLY TWO WAYS AS I
UNDERSTAND IT TO CHALLENGE
JURISDICTION.

ONE, IS ON THE FACE OF THE
COMPLAINT, IF IT IS CLEAR, THAT
THERE IS NO JURISDICTION IN THE
COURT, THEN THE COURT CAN
DISMISS IT UPON PROPER MOTION.
THE OTHER IS A FACTUAL FINDING

AND BY DEFINITION, ONE HAS TO LOOK TO THE FACTS OF THE CASE. WHICH IS WHAT WAS DONE IN THIS PARTICULAR SITUATION.

YOU ARE SAYING, IT HAS TO BE A... CLAIM IN THE BANKRUPTCY PROCEEDING.

YES, YOUR HONOR.

IT CAN'T BE SOMETHING THAT HAS NO RELATIONSHIP WHATSOEVER TO THE SPECIOUS FOR THE CLAIM.

RIGHT.

RIGHT.

THAT IS A REASONABLE INTERPRETATION.

NOW HAVING SAID THAT, THE SUPREME COURT HAS COMMENTED IN THE RAYGOR, MINNESOTA BOARD OF REGENTS, THEY COMMENTED THE LANGUAGE IS SO BROAD, THAT IT COULD BE DISMISSED FOR ANY REASON.

SO THAT IS WITHIN YOUR AUTHORITY, TO RULE THAT, SHOULD YOU SO CHOOSE.

WELL, I KNOW YOU ARE IN REBUTTAL BUT REALLY WHAT WE ARE DOING HERE IS CONSTRUING A FEDERAL STATUTE AND TRYING TO DETERMINE IF THAT FEDERAL STATUTE IS BROAD ENOUGH SO A CLAIM ASSERTED SHALL BE TOLLED TO REALLY PROBABLY EFFECTUATE THE PURPOSE WHICH IS THAT IF SOMEONE IS FILING, WHAT WAS BEING ALSO A POTENTIAL STATE COURT CLAIM, BUT CAN BE ALLEGED TO BE RELATED TO THE PENDING FEDERAL CLAIM, AGAIN, AS JUSTICE POLSON SAID EARLIER A LITIGANT SHOULDN'T HAVE TO FIGURE OUT I BETTER FILE IN BOTH PLACES AND PROTECT MYSELF AND, BY FILING IN STATE COURT, SHOULD BE ABLE TO

RELY ON THIS STATUTE.
AND, SO, YOU ARE ALLEGING OR
ASSERTING A BROAD INTERPRETATION
OF THAT STATUTE.

YES.

AND...

I WISH YOU WERE AT THE
PODIUM, THAT IS VERY WELL PUT.
THAT IS EXACTLY WHAT WE'RE
SAYING.

WE HAVE A SITUATION, WHERE THERE
WAS A "CATCH-22" FOR US, NO
MATTER WHERE WE ASSERTED IT WE
WERE SUBJECT TO BE IN BANKRUPTCY
AS BEING RELATED TO.

AND THAT DIDN'T HAPPEN AND
THE DISTRICT COURT DETERMINED
YOU WERE NOT RELATED TO IT AND
THAT IS A FINDING DETERMINATION
BETWEEN THE PARTIES HERE, ISN'T
IT?

WELL, THAT'S THE LANGUAGE,
THAT WAS USED.

I MEAN, I CAN'T -- DISPUTE WHAT
LANGUAGE IS IN THE CASE BUT YOU
HAVE TO CONSIDER HOW IT GOT
THERE, BECAUSE, THE MOTION TO
DISMISS THE APPEAL, AFTER THE
VOLUNTARY DISMISSAL OF TEXTRON,
SAID, SPECIFICALLY, THIS COURT
DOES NOT NOW HAVE JURISDICTION
BECAUSE OF THE DISMISSAL.

ANYTHING THAT IS DONE IS BETWEEN
TEXTRON AND THE CLIENTS WILL NOT
AFFECT THE BANKRUPTCY STATE BUT
THAT OCCURRED IN '05.

NOW, THAT DID GET EXTRAPOLATED
INTO LANGUAGE SAYING THERE WAS
NEVER ANY JURISDICTION.

BUT I, THAT -- NOT A LOGICAL
FINDING AND I CERTAINLY DON'T
AGREE WITH IT.

ISN'T IT CLEAR THAT EARLY ON,
WHEN THE PAYMENTS WERE MADE FROM

T. C. G. TO TEXTRON, THAT YOUR CLIENTS FILED AN ACTION IN STATE COURT REGARDING THE TRANSFER OF THE MONEY.

THERE WAS AN ACTION FILED ON HIM, PRIOR AND BANKRUPTCY AGAINST TWIN EAGLES ALONE AND WHEN BANKRUPTCY WAS INSTITUTED, THAT MATTER WAS REMOVED INTO THE FEDERAL COURT.

AND BOTH OF THEM BEING CREDITORS.

--

DISMISSED OR STAYED.

PARDON.

DISMISSED OR STAYED.

STAYED AND ULTIMATELY DISMISSED BUT TEXTRON IS NOT A PARTY TO THAT.

IT HAS NO REAL BEARING, IT IS TYPICAL IN TERMS OF HOW THESE THINGS OCCUR.

YOU ARE WELL INTO YOUR REBUTTAL.

IF YOU WANT TO SAVE ANY TIME.

WELL, I WAS... I HAVE, WHAT, 50 SECONDS BEFORE I'M FINISHED AND I HAVE FIVE MINUTES.

NO.

THAT IS...

I'LL SAVE THE 27 SECOND.

ALL RIGHT.

.

THANK YOU.

PLEASE THE COURT, JUSTICE KENNEDY YOU ASKED IF THERE IS A RELATIONSHIP BETWEEN TEXTRON AND THE PETITIONER AND THE ANSWER IS THERE WAS NONE, NOT ONLY IS THERE NO CONFIDENTIAL RELATIONSHIP, THERE WAS NONE WHATSOEVER AND IT WAS BETWEEN TEXTRON THAT AND LENDERS AND BORROWERS AND THE GOLF CLUB AND

PETITION, AND GOLF CLUB AND MEMBERS.

WAS THIS AT LEAST A COLORFUL CLAIM.

NO, IT IS UNDISPUTED THAT THE RECORD, FUNDS WERE TRANSFERRED TO TEXTRON PRIOR TO THE BANKRUPTCY CASE AND THAT IS WHY THE FEDERAL DISTRICT COURT HELD THERE WAS NO SUBJECT MATTER RELATED TO JURISDICTION IN THE BANKRUPTCY COURT, THE FUNDS WERE TRANSFERRED, PRE-BANKRUPTCY -- HELP ME WITH THAT.

I UNDERSTOOD AND HAVE SEEN IT HAPPEN WHERE SOMEONE FILES FOR BANKRUPTCY AND THERE ARE CHALLENGES TO PAYMENTS THAT THAT BANKRUPT HAS MADE AND THE BANKRUPTCY WILL REACH OUT AND PULL THOSE BACK IN AND IT HAS TO BE CERTAIN ALLEGATIONS, PREFERENTIAL PAYMENT OR SOMETHING LIKE THAT.

IS THAT A -- DOES THAT HAPPEN.

THAT DOES HAPPEN BUT THAT IS... [INAUDIBLE]... TEXTRON WAS A FULLY SECURED CREDITOR AND FULLY SECURED CREDITORS IN BANKRUPTCY CANNOT AS A MATTER OF LAW RECEIVE PREFERENTIAL PAYMENTS.

EVEN IF THESE PEOPLE, MAKE THE ASSUMPTION THEY -- THE LOAN WAS SECURED BY THESE MEMBERSHIPS.

IT WAS SECURED BY ALL OF THE ASSETS OF THE DEBTOR. IN BANKRUPTCY.

YES.

AND IN SOME FASHION ONE OF THE MEMBERSHIPS, THE VALUE OF THE MONEY FOR THE MEMBERSHIP, COMES INTO QUESTION.

YOU ARE SAYING THAT UNDER NO CIRCUMSTANCES, A MEMBER COULD TRACE THAT OR GO AGAINST TEXTRON WHO HAS THE MONEY, CLEARLY, RELATED TO THE MEMBERSHIP, AND THERE IS NO WAY THAT THAT CAN HAPPEN.

THAT COULD NOT HAPPEN HERE, ON THE FACTS BEFORE THIS COURT, BECAUSE THE FUNDS WERE TRANSFERRED PRE-BANKRUPTCY.

IF YOU LOOK AT THE FEDERAL DISTRICT COURT'S DECISION IT EXPLICITLY HELD BECAUSE THE FUNDS WERE TRANSFERRED PRE-BANKRUPTCY --

I UNDERSTAND THAT.

THEY LOST THE CHARACTER AS PROMPT OF THE ESTATE.

2ND DCA.

IN ITS OPINION SAID THE PETITIONER'S... TO APPEAL THE RULING --

YOUR POSITION IS A BANKRUPTCY OR A FEDERAL COURT, BANKRUPTCY IS PART OF THE FEDERAL COURT SYSTEM AND THE STATUTE APPLIES TO THE FEDERAL COURT SYSTEM.

IN MY BRIEF, IN A FOOTNOTE I IDENTIFIED THE CASE LAW IS SPLIT ON WHETHER BANKRUPTCY COURTS HAVE THE POWER TO EXERCISE SUPPLEMENTAL JURISDICTION AND I WILL REPRESENT TO YOUR HONOR I'M UNAWARE OF CONTROLLING CASE LAW, FROM THE SUPREME COURT, THE 11th CIRCUIT, I'M TELLING YOU THE CASE --

I READ YOUR BRIEF, I UNDERSTAND, I UNDERSTAND, YOU DID A FINE JOB IN POINTING THESE OUT.

THANK YOU, SIR.

BUT THE QUESTION, WE ARE

COMING DOWN TO, IS IT SEEMS TO ME THE FUNDAMENTAL PRINCIPLE, ARE YOU SAYING THAT IF A FEDERAL COURT, NOT BANKRUPTCY, MAKES A DETERMINATION, THAT CLAIMANT HAS NO CLAIM, THAT THAT IS A MATTER -- AS A MATTER OF LAW ELIMINATES APPLICATION OF THE TOLLING STATUTE.

NO, I'M SAYING BECAUSE THERE IS NO SUBJECT MATTER JURISDICTION RELATED TO SUBJECT MATTER JURISDICTION IN BANKRUPTCY COURT THERE COULDN'T BE ANY ORIGINAL JURISDICTION IN SUBSECTION A OF --

YOU ARE SAYING AS FAR AS SUBJECT MATTER, IF A FEDERAL COURT REFUSES TO TAKE JURISDICTION, AND SAYS WE DON'T HAVE JURISDICTION, THEN THAT ELIMINATES APPLICABILITY OF THE TOLLING SECTION.

EXACTLY --

I'M -- IT SEEMS TO ME THE STATUTE, THE TOLLING STATUTE IS PRECISELY FOR THAT PURPOSE. AND THAT IF IT IS DISMISSED IT ALLOWS THE MERITS OF THE CLAIM TO BE DECIDED AND NOT PUSHED ASIDE ON A PROCEDURAL MANEUVER.

IT IS NOT A PROCEDURAL MANEUVER, JUDGE, CAN I BRIEFLY GIVE YOUR HONOR CONTEXT? THIS LAWSUIT STARTED IN STATE COURT.

AND, CONTRARY TO MY -- PRESENT COUNSEL'S UNDERSTANDING, MY UNDERSTANDING IS THAT BOTH... FILED SUIT AGAINST BOTH RESPONDENTS, FOOTNOTE ONE OF THE JURISDICTIONAL BRIEF FILED BY PETITIONERS, THEY SAID UPON THE BANKRUPTCY FILING, THE STATE

COURT LOST JURISDICTION.
THAT IS SIMPLY WRONG AS A MATTER
OF FEDERAL BANKRUPTCY LAW.
THE AUTOMATIC STAY HAS NO
APPLICATION, WHATSOEVER, TO
TEXTRON.

I UNDERSTAND.

BUT, TO THE BANKRUPT -- THE
BANKRUPTCY IT DOES.

BUT, YOUR HONOR, I'LL ANSWER
YOUR QUESTION, I PROMISE, BUT I
HAVE TO MAKE CLEAR THERE WAS
ABSOLUTELY NOTHING ABOUT THE
BANKRUPTCY FILING THAT REQUIRED
THE DISMISSAL OF THE STATE SUIT
AGAINST TEXTRON TO BRINGING IT
TO FEDERAL COURT.

THEY COULD HAVE CONTINUED
PROSECUTING --

PROHIBITING IT, BUT,
INITIALLY, BUT, INITIALLY, IF
THERE IS A GOOD FAITH CLAIM MADE
THAT TEXTRON SOMEHOW HAS ASSETS
THAT BELONG TO THE -- THEY
OBTAINED THROUGH THE BANKRUPT,
THAT BELONG TO THE CLAIMANT THEY
CANNOT MAKE THE CLAIM THROUGH --
I DIDN'T SAY THEY COULDN'T --
I'M SAYING CAN THEY, THAT IS
THE POINT.

BECAUSE ONE, IT IS NOT MADE, NOT
A VALID CLAIM AND COMES DOWN TO,
THAT YOU HAVE TO HAVE, IF YOU
HAVE AN ADJUDICATION THAT THE
FEDERAL COURT IS NOT GOING TO
HEAR THE CLAIM, IF THAT
ELIMINATES THE TOLLING STATUTE,
IT SEEMS TO ME THERE IS NO
REASON FOR A TOLLING STATUTE.

SIR, THERE WAS AN ABSENCE OF
SUBJECT MATTER JURISDICTION HERE
AND THIS IS IMPORTANT FOR
BANKRUPTCY PURPOSE.

THE DETERMINATION OF WHAT

PROPERTY DOES OR DOESN'T
CONSTITUTE PROPERTY THE BANKRUPT
STATE MADE, PRIOR TO THE
PETITION 8 THE FUNDS WERE
TRANSFERRED, THE CLAIM SHOULD
HAVE BEEN ASSERTED IN STATE
COURT AND THEY SHOULD HAVE
KEPT... SORRY, YOUR HONOR,
SHOULD HAVE MAINTAINED
PROSECUTING THE STATE CLAIM IN
STATE COURT.

THERE IS NO REASON FOR THEM TO
COME INTO FEDERAL COURT.

THEY MADE AN ERROR AS TO
WHERE -- THE LAWYER MADE AN AIR
ROAR PRESUMABLY IN GOOD FAITH TO
FILE AS IT -- A RELATED CLAIM IN
BANKRUPTCY, WHAT YEAR WAS THAT
CLAIM -- WHAT YEAR DID THEY
FILE, I ASSUME DISMISS OUT
PREJUDICE AND REFILE THE CLAIM
IN BANKRUPTCY.

THE INITIAL STATE COURT
LAWSUIT WAS JUNE OF 1999.
AND WHEN WAS THE BANKRUPTCY
INITIATED?

I BELIEVE IT WAS EARLY 2000
BUT I'M NOT --

AFTER THE BANKRUPTCY
PROCEEDING --
HAD BEGUN AND TEXTRON
IMMEDIATELY MOVED TO DISMISS FOR
LACK OF SUBJECT MATTER
JURISDICTION.

WE MOVED FOR SUMMARY
JUDGMENT.

WHAT YEAR WAS THAT.

2000, YOUR HONOR.

2000.

I BELIEVE SO.

AND YOU MOVED FOR SUMMARY
JUDGMENT RATHER THAN MOTION TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION.

THAT IS CORRECT, YOUR HONOR.
WELL, THAT IS... MY QUESTION
IS, IF THIS IS ALSO CLEAR,
COULDN'T BE A COLORABLE CLAIM,
WHY WOULDN'T TEXTRON MOVED TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION IMMEDIATELY
AFTER THE CLAIM WAS FILED, WHY
NOT MOVE ON THE MERITS OF THE
CLAIM ITSELF, WHETHER THERE
COULD BE IN JUST ENRICHMENT OR
CONSTRUCTIVE TRUST?

YOUR HONOR, A FAIR POINT WE
SHOULD HAVE MOVED ON THAT BASIS
ORIGINALLY BUT AS YOUR HONOR
KNOWS, SUBJECT MATTER
JURISDICTION CAN BE RAISED AT
ANY POINT IN THE PROCEEDINGS.

I'M AGAIN REALLY LOOKING -- I
MEAN, THERE IS -- THE TOLLING
STATUTE, THE FEDERAL TOLLING
STATUTE, AGAIN, SEEMS TO HAVE
EQUITABLE PURPOSES, SO THAT A
PLAINTIFF WHO IS FILING A CASE
IS NOT LOST IN TERMS OF A
STATUTE OF LIMITATIONS.

AND TEXTRON NOTICED, THE
WHOLE ISSUE OF STATUTE OF
LIMITATIONS, MAKE SURE YOU'RE ON
NOTICE OF THE CLAIM.

SO THAT YOU ARE ON NOTICE OF THE
CLAIM, CERTAINLY, FILED IN STATE
COURT AND WHEN IT WAS REFILED,
IN FEDERAL COURT.

SO, WHY ISN'T THE BETTER PART OF
INTERPRETING THE STATUTE, TO
INTERPRET IT BROADLY TO ALLOW IT
BE TOLLED, WHILE THE ISSUE OF
WHETHER THERE IS JURISDICTION OR
THE CLAIM HAS MERIT, IS PENDING
IN FEDERAL COURT.

STATUTE 1367-A REQUIRES
ORIGINAL JURISDICTION.

AND THAT WAS LACKING IN THIS

CASE.

THAT'S WHY.

LET ME ASK YOU, A QUESTION.

THE FIRST -- FIRST YOU SAID IT'S NOT A CLAIM BECAUSE THE PAYMENTS HAD BEEN MADE TO THE CREDITOR, PRE-BANKRUPTCY.

YOUR HONOR I DIDN'T SAY IT

WAS NOT A COLORABLE CLAIM, I SAID THERE WAS NO JURISDICTION OF THE BANKRUPTCY COURT TO DECIDE IT.

IT WAS BETWEEN TWO NONDEBTORS IN THE -- BECAUSE THE PROPERTY WAS TRANSFERRED.

I MISUNDERSTOOD THEN, THE

FIRST QUESTION WAS, IS IT A CLAIM AND YOU SAID NO AND I THOUGHT THE ANSWER WAS BECAUSE THE PAYMENT WAS MADE TO THE CREDITOR.

IT IS NOT COLORABLE TO

JUSTICE LEWIS'S CLAIM, WHETHER IT COULD BE A PREFERENTIAL TRANSFER.

REALLY THE QUESTION IS, THE

DEBTOR WOULD NOT REALLY BE IN A POSITION TO KNOW WHETHER THE PAYMENTS WERE MADE TO THE CREDITOR, WOULD THEY.

I CAN'T SPEAK FOR THE DEBTOR.

I DON'T KNOW WHAT -- WE REPRESENTED OBVIOUSLY TEXTRON, THE SECURED CREDITOR.

WE HAD A CREDITOR --

THAT IS NOT SOMETHING THEY'D

TYPICALLY KNOW WHAT WAS --

THEY WERE PAYING MONIES DOWN

AND IN THE AFFIDAVIT, MR. LEE'S AFFIDAVIT, HE SAID TEXTRON HAD NO KNOWLEDGE THAT THE FUNDS, THEY RECEIVED, IN PART, WERE DERIVED FROM THE PROCEEDS OF THE SALE OF THE PETITIONER'S GOLF

MEMBERSHIPS.

LET ME ASK YOU THIS:

YOU WERE IN EXCHANGES OF ANSWERING QUESTIONS A WHILE AGO AND MADE A POINT ABOUT THE DEBTOR FILED A STATE COURT ACTION, RIGHT?

NO, SIR.

THE PETITIONERS FILED THE STATE COURT ACTION AGAINST TEXTRON AND THE DEBTOR, TWIN EAGLES.

OKAY?

AND WHAT HAPPENED WAS, SUBSEQUENTLY THE -- TWIN EAGLES AND THE AFFILIATES FILED THE BANKRUPTCY CASES.

THEN PETITIONERS DISMISSED THE SUIT AND BROUGHT IT IN FEDERAL COURT, FOOTNOTE ONE OF THE ADDITIONAL JURISDICTIONAL BELIEVE, THEY SAID THE BANKRUPTCY FILING CAUSED THE STATE COURTS TO LOSE JURISDICTION AND I'M EXPLAINING THAT IS FUNDAMENTALLY WRONG UNDER FEDERAL BANKRUPTCY LAW AND THEY COULD HAVE KEPT, THERE IS NOTHING ABOUT THE BANKRUPTCY FILING THAT PROHIBITED THE PETITIONERS FROM CONTINUING THEIR LAWSUIT AGAINST TEXTRON. NOTHING, THERE WAS NOT A -- THEY VOLUNTARILY DISMISSED THE SUIT AND SHOULD NOT HAVE.

YES.

AND THAT... [INAUDIBLE] TEXTRON DIDN'T REMOVE IT UNDER THE STATUTE IN FEDERAL COURT, THEY VOLUNTARILY --

THE DEBTOR, IT STOPPED AS TO THE DEBTOR.

IT DID STOP IT AS TO THE DEBTOR.

SUBJECT TO THE MODIFICATION

--

EXACTLY.
NOT TEXTRON.
OKAY.

WHY IS THE END RELATIONSHIP
BETWEEN THE... [INAUDIBLE]
DISMISSED THE STATE COURT ACTION
AND SHOULD NOT HAVE AND THE
INTERPRETATION OF THE FEDERAL...
[INAUDIBLE].

THE NEXUS, YOUR HONOR, IS
THAT THIS ISN'T A TYPICAL CASE
WHERE YOU START IN FEDERAL COURT
AND GO BACK TO STATE COURT.
THEY START IN STATE COURT AND
THERE IS NO BASIS OR NEED FOR
THEM TO MOVE TO FEDERAL COURT.
AND THAT GOES TO WHAT I SUGGEST
IS THE APROPOS REFERENCE TO THE
VOLUNTARY BUT... FOR RAY IN THE
LANGUAGE QUOTED BY THE 7TH DCA
ABOUT THE DECISION BY THE 4TH
DCA AND IT IS A VOLUNTARY MATTER
AND TEXTRON DID NOT DRAG THESE
PEOPLE INTO FEDERAL COURT.

THERE IS A WAIVER, THE
VOLUNTARY DISMISSAL, THE STATE
COURT ACTION, THERE IS NO
WAIVER, IS THERE.

I DON'T KNOW -- I'M
SUGGESTING IT SUPPORTS AND GIVES
CONTEXT TO AND SUPPORTS THE
DECISION AT THE SECOND DCA, THAT
IS WHAT I'M SUGGESTING TO YOUR
HONOR.

LET ME ASK YOU THIS, AND I --
CAN THE -- CAN AN ACTION LIE IN
BANKRUPTCY COURT AGAINST A
CREDITOR IF THE ALLEGATION IS
BEING MADE THAT A TRANSFER FROM
THE CREDITOR TO THE DEBTOR MADE
BEFORE THE BANKRUPTCY PETITION
IS FILED, IT WAS DOESN'T, IN
BANKRUPTCY.

IT GOES TO JUST LEWIS'S

QUESTION ABOUT WHETHER IT COULD BE A PREFERENTIAL PAYMENT AND SECTION 547 OF THE BANKRUPT CODE BUT THAT WOULD NOT STAND HERE, TEXTRON WAS A FULLY SECURED CREDITOR.

NEVER BE --

TRANSFER IN CONTEMPLATION OF BANKRUPTCY, TO A SECURE CREDITOR, IS THAT RIGHT?

YOU COULD HAVE A TRANSFER BUT IT COULDN'T BE AVOIDED AS A PREFERENCE, BECAUSE THEY ARE A FULLY SECURED CREDITOR.

WOULD THE CONVERSE BE TRUE AT THE... GOLF COURSE PAID KRAUSE AND BAUTSCH, THAT WOULD HAVE BEEN A PREFERENTIAL PAYMENT, WOULD IT NOT.

IT COULD HAVE BEEN.

THERE WAS NEVER MONEY OWNED BY, AS I UNDERSTAND... THIS MONEY, ALWAYS, 90% BELONGED TO THE PEOPLE, IT WAS NOT THE MONEY, GOLF COURSE, OWN 10% WAS.

I DON'T DISAGREE WITH THAT, SIR.

I DON'T UNDERSTAND YOUR LAST ANSWER, THEN.

I'M NOT SURE I FOLLOW THE QUESTION.

THE MONEY THEY -- THEY WERE DUE THE MONEY BUT, AGAIN IT WAS TRANSFERRED PRE-BANKRUPTCY AND THAT IS WHY THEY SHOULD HAVE KEPT, CONTINUING THEIR LAWSUIT IN STATE COURT AND SAID -- INSTEAD OF BRINGING IT TO -- I WANT --

BUT, BECAUSE THERE IS THIS WHOLE NOTION THAT YOU CAN AT LEAST ALLEGE THIS WAS MADE IN CONTEMPLATION OF BANKRUPTCY, I'M NOT SURE OF WHY THIS WOULDN'T IN

FACT HAVE BEEN A CLAIM THAT WAS IN FACT SOMEWHAT RELATED TO THE BANKRUPTCY PETITION.

I DON'T KNOW THAT IT WOULDN'T BE A COLORABLE CLAIM, I'LL TELLING YOU AS A MATTER OF SUBSTANCE IT WOULD FAIL, UNDER LAW, SECURED CREDITORS CANNOT RECEIVE PREFERENCES, AND IN PUTTING ASIDE THE ISSUE OF...

JUST ANSWER THIS, WHY IN FACT, DID THE BANKRUPTCY COURT THEN TRY TO AJUDE INDICATE THE SITUATION?

FRANKLY, YOUR HONOR, I THINK WE ALL MISS THE ISSUE OF THE LACK OF SUBJECT MATTER JURISDICTION.

BUT, WHAT THE DISTRICT COURT SAID IN ITS OPINION, THE TRANSFER OF PRE-BANKRUPTCY... [INAUDIBLE] SECOND DCA NOTED PETITIONERS FAILED TO APPEAL THE RULING AND OUTCOME IS DETERMINATIVE AND THERE IS ANOTHER REASON WHY THERE IS A LACK OF SUBJECT MATTER JURISDICTION WHICH AGAIN GOES TO THE INAPPLICABILITY OF...

[INAUDIBLE] IN PETITIONERS BRIEF THEY POSITED A CIRCUMSTANCE WHERE THE PETITIONERS WOULD HAVE BEEN SUCCESSFUL AND TEXTRON WOULD HAVE PAID THEM X DOLLARS, WHATEVER X WAS AND THEREFORE TEXTRON THE AMOUNT OF THE CLAIM WOULD HAVE INCREASED.

AND IN THE BANKRUPTCY CASE AND WOULD HAVE HAD, A CONCEIVABLE EFFECT AND THEREFORE SATISFIED THE RELATED TO SUBJECT MATTER, JURISDICTIONAL AGREEMENT.

AND WHAT PETITIONERS FAILED TO DO WAS THE SECOND HALF OF THE

EQUATION, AS TEXTRON'S CLAIM IN THEIR SCENARIO WOULD HAVE INCREASED THE PETITIONER'S CLAIM, AGAINST THE ESTATE, WOULD HAVE DECREASED, AND PROPORTIONATELY, DOLLAR FOR DOLLAR WOULD HAVE BEEN A REVENUE NEUTRAL TRANSACTION AND THERE WOULD HAVE BEEN NO EFFECT ON THE ESTATE AND THAT IS WHAT THE TEST SAYS, CAN THERE BE A CONCEIVABLE EFFECT HOPE TO ESTATE, TO GIVE THE BANKRUPTCY COURT SUBJECT MATTER JURISDICTION AND THERE COULD BE NONE AS A FACTUAL MATTER AND FORGET THE LEGAL MATTER AND THEIR FAILURE TO APPEAL THE DISTRICT COURT'S RULING.

DO YOU KNOW THAT, HOW DOES A CLAIMANT KNOW THAT?

YOU DON'T KNOW THAT UNTIL YOU START LINING UP ASSETS AND DEBTS.

NO, IT DOES APPLY HERE, YOUR HONOR.

I DIDN'T SAY IT DOESN'T APPLY.

HOW DO YOU KNOW AT THE OUTSET AND HOW DOES THE CLAIMANT KNOW? YOU CAN'T KNOW, UNTIL YOU ADD THEM UP AND BALANCE THEM.

I RESPECTFULLY DISAGREE, YOUR HONOR.

HOW --

THE BANKRUPTCY COURT DIDN'T KNOW, OBVIOUSLY, OR THEY WOULD HAVE DISMISSED IT.

I UNDERSTAND, I'M RESPONDING TO THE SITUATION COUNSEL POSITED IN HIS PAPERS AS TO WHY THERE WAS -- RELATED TO JURISDICTION.

I'M SUGGESTING THAT IT IS -- AS A FACTUAL MATTER IT IS

IMPOSSIBLE AND IF THEY WERE SUCCESSFUL, ANY CLAIM OF TEXTRON WOULD HAVE BEEN REDUCED BUT THEIR CLAIM, EXCUSE ME, INCREASED AND THEIR CLAIM WOULD HAVE BEEN REDUCED BECAUSE THEY WOULD HAVE BEEN PAID. DIDN'T GET DOUBLE RECOVERY. THERE WAS NO ASSESSMENT ON THE BANKRUPTCY ESTATE.

I'M STILL TROUBLED WITH THE

-- WHAT IN THE WORLD WE HAVE THE TOLLING PROVISION FOR, IF IT IS AS YOU DESCRIBE.

I GO INTO THE BANKRUPTCY COURT, AND FILED A CLAIM, AND IT'S A GOOD AND VALID CLAIM, IT STAYS THERE AND IS LITIGATED.

HOWEVER, IF I GO INTO THE BANKRUPTCY CLAIM AND I DON'T NEED TO TOLL BECAUSE IT WILL BE LITIGATED.

IF I GO INTO BANKRUPTCY COURT, ANY FEDERAL COURT AND IT IS DISMISSED.

SEEMS TO ME THAT THAT IS WHAT THE STATUTE IS FOR.

IF YOU ARE DISMISSED IN THE FEDERAL COURT SYSTEM, IT COMES BACK AND IT IS NONSENSICAL.

TO HAVE THE STATUTE IF IT NEVER APPLIES.

YOUR HONOR'S QUESTION

RESPECTFULLY PRESUMES THERE IS SUBJECT MATTER JURISDICTION AND THERE WAS NONE IN THIS CASE AND AGAIN, I'M RELYING ON THE STATUTE, SUBSECTION A, IT SPECIFICALLY EXPLICITLY REQUIRES A -- ORIGINAL JURISDICTION AND IT WAS LACKING INTO THIS CASE...

WHAT YOU ARE SAYING IS THAT, IS THAT THE -- THE ADJUDICATION OF THAT.

WHAT IF THE INTERPRETATION IS,
IS THAT YOU FILE IT AS WITHIN
THEIR ORIGINAL JURISDICTION, BUT
YOU ARE WRONG?
AND IT IS DISMISSED?
YOUR HONOR, THE ISSUE HERE IS
PROPERTY OF ESTATE AND THAT IS
DETERMINED AT THE PETITION DATE.
SO...

IF IT IS WITHIN THE SUBJECT
MATTERS JURISDICTION, OF A
BANKRUPTCY COURT OR A FEDERAL
COURT, DO THEY KEEP IT?
LITIGATE IT.

NO, THEY ARE NOT SUPPOSED TO,
THEY ARE SUPPOSED TO DISMISS.
IT WASN'T -- IT WAS NEVER WITHIN
THE BANKRUPTCY COURT'S
JURISDICTION.

YOU ASSUME WITH ME FOR A
MOMENT, WHATEVER THE CLAIMS, IS
WITHIN THE SUBJECT MATTER
JURISDICTION OF THE BANKRUPTCY
COURT OR FEDERAL COURT.

YES, AND --

AND THEN THAT COURT KEEPS THE
CASE, THE ACTION, AND
ADJUDICATES IT, CORRECT -- AND
YOU DON'T NEED THE TOLLING
STATUTE FOR ANYTHING, DO YOU?
BECAUSE YOU HAVE ALREADY
ADJUDICATED IT, IN THE
BANKRUPTCY AND THE FEDERAL
SYSTEM.

CORRECT?

CORRECT.

AND --

SO THE ONLY TIME YOU NEED IT,
IS IF THE FEDERAL COURT IS NOT
GOING TO ACT ON THE ACTION THAT
HAS BEEN FILED THERE.

BUT ON NONSUBJECT MATTERS
JURISDICTIONAL GROUNDS.
THAT IS THE DIFFERENCE.

I HEAR YOUR ARGUMENT?
ISN'T THAT WHAT SCARFO DISCUSSES
IN THEIR... FEDERAL COURT
DETERMINED THAT THEY DID NOT
HAVE SUBJECT MATTER
JURISDICTION?

THAT'S CORRECT.

AND IT WASN'T APPEALED.
IN THE SCARFO CASE HE CAME IN AND STATED
IT WAS... THAT THESE -- THE
TOLLING STATUTE APPLIED BECAUSE
IT WAS ONLY AFTER THE
DETERMINATION AS TO WHETHER OR
NOT THERE WAS SUBJECT MATTER
JURISDICTION THAT THE CASE WAS
DISMISSED.

AND THAT HE NEEDED -- THAT IS
WHY YOU HAVE THE TOLLING, UNTIL
WHATEVER IS AT ISSUE, THAT IS
WHETHER YOU WILL ACCEPT
JURISDICTION OR DON'T HAVE
JURISDICTION, IS DETERMINED.
TOLD FOR THAT PERIOD.

SO SOMEBODY ISN'T CAUGHT IN A
SITUATION WHERE THEY ARE TRYING
TO LITIGATE IN TWO DIFFERENT
FORUMS.

I'M -- TWO POINTS, SCARFO IS
FACTUALLY... THERE WAS A TRIAL
ON THE MERITS WHETHER THE
DEFENDANTS WERE EMPLOYERS FOR
TITLE 7 PURPOSES AND AFTER THE
DECISION WAS MADE, IT WAS
APPEALED, AFFIRMED.
AND THERE WAS... A DISMISSAL,
NOT IN SUBJECT MATTER
JURISDICTION GROUNDS BUT BECAUSE
THE PLAINTIFFS DIDN'T STATE A
CLAIM AGAINST DEFENDANTS, THAT
IS WHAT DISTINGUISHES THAT CASE
FROM THIS CASE, THIS CASE WAS
DISMISSED ON SUBJECT MATTER
JURISDICTION GROUNDS.

AND TO THE STATEMENT MADE BY THE

COURTS THERE, WHICH I SEE YOU ARE READING THE OPINION, THEY SAID THEY DISAGREE THAT A DISMISSAL ON SUBJECT MATTER JURISDICTIONAL GROUNDS MAKES THE TOLLING POSITION OF 1367-D IN APPLICABLE AND I'M SUGGESTING TO YOUR HONOR RESPECTFULLY THE STATEMENT WHICH IS DICTUM WAS INCORRECT BECAUSE IT DISREGARDS THE REQUIREMENT IN SUBSECTION A OF 1367 THAT THERE BE ORIGINAL JURISDICTION.

LACKING.

HERE IS LACKING.

WITH THAT YOU HAVE EXCEEDED YOUR TIME.

THANK YOU VERY MUCH.

YOU HAVE A MINUTE OR SO, FOR REBUTTAL.

DO YOU AGREE THAT YOU COULD HAVE CONTINUED YOUR CLAIM AGAINST TEXTRON, IN STATE COURT AT THE TIME THAT THE TWIN EAGLES FILED FOR BANKRUPTCY?

THERE SIMPLY WASN'T A PLAN AGAINST TEXTRON EXISTING IN THE STATE COURT.

THERE WAS A CLAIM FILED AGAINST TWIN EAGLES BY MR. BAUTSCH, THAT IS IT.

OKAY.

WE HAVE TO LOOK AT THE RECORD. YOU SAY WHAT HE SAID WHICH IS THAT BOTH PETITIONERS FILED A CLAIM AGAINST BOTH TEXTRON AND TWIN EAGLES IS NOT CORRECT.

THAT'S INCORRECT AND REALLY THE ONLY -- RECORD WILL NOT CONTAIN THE INFORMATION.

WE COULD SEND YOU THE COMPLAINT FROM THE CIRCUIT COURT WHICH I HAVE TO SHOW YOU, BUT THAT IS A MISSTATEMENT OF THE FACTS.

I DISAGREE WITH HIS CHARACTERIZATION IN SCARFO. SCARFO CLEARLY BY ITS TERMS AT THE FEDERAL AND STATE LEVEL TURNED ON THE ISSUE OF SUBJECT MATTER JURISDICTION.

THERE WAS A FINDING THAT THE FEDERAL COURT DID NOT HAVE SUBJECT MATTER JURISDICTION, THERE WAS A REQUIREMENT OF AT LEAST 15 EMPLOYEES AND THE THRESHOLD REQUIREMENT IS NOT MET, ERGO, NO SUBJECT MATTER JURISDICTION AND WHEN THE MATTER WAS SUMMARY JUDGMENT GRANTED AND THE STATE CLAIMS WERE DISMISSED, THERE WERE REFILED WITHIN THE 30 DAYS AND THE SCARFO COURT SAID, LACK OF SUBJECT MATTER JURISDICTION, DOESN'T MAKE ANY DIFFERENCE.

THESE CLAIMS WERE FILED, FILED TIMELY, AND ENTITLED TO THE TOLLING.

I GUESS THE DISTINCTION IS, AT LEAST JUDGE FARMER SAYS, THERE HAD TO BE A RESOLUTION OF THE FACTUAL DISPUTE BEFORE IT WAS DISMISSED AND WHAT RESPONDENT'S COUNSEL IS SAYING THERE WAS NO FACTUAL DISPUTE AND NEVER COULD HAVE BEEN RELATED TO THE BANKRUPTCY CASE.

RIGHT, HE WOULD LIKE TO ARGUE THAT.

IT IS HARD TO OVERLOOK THE FACT THAT NOTHING OCCURRED WITH REGARD TO JURISDICTION UNTIL AFTER THE BANKRUPT DEBTOR WAS DISMISSED BY PRIOR COUNSEL. THAT WAS THE TRIGGERING EVENTS.

ANY OTHER QUESTIONS.

THANK YOU, ALSO, FOR YOUR ARGUMENTS HERE TODAY.

THANK YOU.
THANK YOU FOR YOUR COURTESY.