

.  
>> NEXT CASE WE WILL CONSIDER  
TODAY THE PUBLIC HEALTH TRUST  
OF PRIME DADE COUNTY VERSUS  
ACANDA.

>> MAY IT PLEASE THE COURT,  
URNS.

I'M ERIC GRESSMAN.

ASSISTANT COUNTY ATTORNEY AND  
REPRESENT THE PUBLIC HEALTH  
TRUST OF THE MIAMI-DADE COUNTY.

>> WHAT IS THE ROLE OF  
FINANCIAL SERVICES IN PAYING  
CLAIMS INCURRED BY THIS --  
INCURRED BY THIS PUBLIC HEALTH  
TRUST?

>> YOUR HONOR I BELIEVE THE  
STATUTE --

>> I'M ASKING YOU WHAT THE  
PURPOSE IS.

DO THEY HAVE A ROLE IN PAYING  
CLAIMS BY THE PUBLIC HEALTH  
TRUST?

>> THEY DO NOT PAY CLAIMS, YOUR  
HONOR.

>> OKAY.

AND WHAT IS THE, FROM YOUR  
POINT OF VIEW, AS THE DEFENDANT  
IN THIS CASE, WHAT IS THE  
PURPOSE OF SUBSECTION 7 THAT  
APPEARS TO REQUIRE SERVICE OF  
PROCESS ON THE DEPARTMENT OF  
FINANCIAL SERVICES?

>> IT IS A STATUTORY  
REQUIREMENT.

>> I'M ASKING YOU, FROM YOUR POINT OF VIEW AS A DEFENDANT WHAT IS THE PURPOSE OF SUBSECTION 7?

>> THE PURPOSE, AS THE DEFENDANT IS TO BE PROPER^PROPERLY SERVED.

>> YOU'RE TAKING FATAL TO SERVICE ON PUBLIC HEALTH TRUST?

>> YES, IT IS FATAL, YOUR HONOR.

>> FATAL AS SERVICE OF PROCESS.

>> IT IS FATAL AS TO THE CLAIM, YOUR HONOR.

>> LET'S GO OVER THAT.

YOU PLED THE TRUST HAD NOT WAIVED SOVEREIGN IMMUNITY AND THE COMPLAINT FAILED TO STATE A CAUTION BECAUSE THE PLAINTIFF HAD FAILED TO SERVICE PRO PROCESS IN CONFORMITY WITH SECTION 768.28.

ARE YOU SAYING THAT SERVICE ON THE PUBLIC HEALTH TRUST IS AN ELEMENT OF THE CAUSE OF ACTION?

>> PROOF OF COMPLIANCE WITH EVERY PROVISION --

>> I MEAN SERVICE ON THE DEPARTMENT?

>> INCLUDING SERVICE, PROCESS UPON THE DEPARTMENT IS FUNDAMENTAL TO WAIVER OF SOVEREIGN IMMUNITY.

THAT IS WHAT WAS {PLAED}.

>> WHY SUBSECTION 6, WHICH IS ONLY ONE THAT SEEMS TO HAVE A TIME LIMIT, SAYS SPECIFICALLY THAT NOTICE TO THE AGERY ARE CONDITIONS PRECEDENT BUT ARE NOT DEEMED ELEMENTS OF CAUSE OF ACTION.

>> THAT IS SUBSECTION 6.

>> 7 DOESN'T EVEN REQUIRE AS A CONDITION PRECEDENT.

>> IT DOES NOT HAVE THOSE WORDS.

>> NOT A CONDITION PRECEDENT?

>> I IT IS A REQUIREMENT OF SERVICE.

IT IS NOT A CONDITION PRECEDENT.

NO YOUR HONOR, IT IS NOT A CONDITION PRECEDENT.

>> IT IS A AN ELEMENT OF THE CAUSE OF ACTION.

>> PART OF STATUTORY WAIVER.

>> I'M ASKING YOU --

>> NO, YOUR HONOR.

IT IS PART OF THE STATUTORY SCHEME.

>> THEREFORE YOU SAID, WHAT YOU PUT ON NOTICE WAS THAT IT FAILED TO STATE A CAUTION? CAUSE OF ACTION.

IT DOESN'T FAIL TO SATE A CAUSE OF ACTION.

WHAT I'M CONCERNED ABOUT HERE THERE DOES SEEM TO THIS BE REQUIREMENT THERE HAS TO BE

PROCESS SERVED.

>> YES, YOUR HONOR.

>> AS JUDGE GRIFFIN SAID IN THE  
1994 IT IS A MYSTERY WHY  
BECAUSE THE DFS DOESN'T GET  
INVOLVED IN THESE CLAIMS.

THEY'RE NOT A PARTY {DEESTD}.  
THEY DEFENDANT THEY DON'T  
DEFEND YOUR CLAIM.

YOU CAN'T CLAIM PREJUDICE FOR  
FAILURE TO SERVE.

I DON'T UNDERSTAND WHY THIS  
WASN'T WAIVED BY FAILURE TO  
PROPERLY ASSERT THIS IN EITHER  
AT AS A CONDITION DENIAL OF THE  
CONDITION PRECEDENT IF THAT IS  
WHAT YOU SAID IT WAS OR FAILURE  
OF SERVICE OF PROCESS?

>> WE DENIED THEY COMPLIED WITH  
THE STATUTORY SOVEREIGN  
IMMUNITY PROVISIONS AND WE  
SPECIFICALLY PUT THEM ON NOTICE  
IN THE PLEADINGS.

YOUR HONOR RECOGNIZED THEY  
HADN'T DONE IT AND THEY DIDN'T  
DO IT.

THEY DIDN'T DO IT AT THE TIME  
OF RESTING.

THEY DIDN'T -- THE THIRD  
DISTRICT OPINION IS  
FUNDAMENTALLY FLAWED AND I  
UNDERSTAND YOUR HONOR'S  
CONCERNS AND YOUR QUESTIONS --

>> LET'S GO TO THE PRACTICAL  
THING.

YOU HAVE NOT AND CAN NOT GIVE

ONE REASON WHY THE PUBLIC  
HEALTH TRUST WOULD BE  
PREJUDICED BY FAILING TO SERVE  
THE DEPARTMENT OF FINANCIAL  
SERVICES?  
THEY, CAN YOU GIVE ME TODAY ONE  
POLICY REASON, ONE ARGUMENT,  
HOW YOU WOULD BE PREJUDICED BY  
FAILING TO SERVE THEM AT THE  
END OF THE CLOSE OF THE CASE OR  
EVEN INTO YOUR CASE?  
BECAUSE WE DEFENDED IT THAT  
WAY, YOUR HONOR.  
AND WE LOST THIS CASE.  
THAT IS HOW WE WERE PREJUDICED.

>> THAT IS HOW YOU LOST THE  
CASE?  
YOU LOST THE CASE BECAUSE THE  
DEPARTMENT OF FINANCIAL  
SERVICES WASN'T SERVED?  
>> WE DEFENDED --  
>> WHAT YOU'RE SAYING YOU WERE  
COUNTING ON THE GOTCHA.  
>> NO YOUR HONOR, THERE WAS NO  
GOTCHA.  
WE GAVE THEM NOTICE.  
>> WHAT DID YOU MEAN YOU  
DEFENDED IT THAT WAY?  
THAT IS WHAT PUZZLES ME.  
>> WE DEFENDED ON THE BASIS OF  
FAILURE --  
>> THE ONLY THING YOU WERE  
GOING TO ULTIMATELY NEED TO  
SHOW WAS THAT THEY DIDN'T SERVE  
THE DEPARTMENT OF FINANCIAL

SERVICES?

>> NO, THAT'S NOT THE ONLY  
THING, YOUR HONOR.

THERE ARE OTHER GROUND EVEN ON  
THIS APPEAL IN WAYS WE DEFENDED  
IT.

IT IS NO THE ONLY GROUNDS.

>> WHAT DID YOU FILE A MOTION  
TO DISMISS OR MOTION FOR  
SUMMARY JUDGMENT.

>> UNDER THE BRODEA CASE UNDER  
PRESS DEPTH WE SHOULD RAISE AT  
A POINT OF MOTION FOR DIRECTED  
VERDICT.

THAT IS WHAT WAS DONE.

THAT WAS APPROPRIATE TIME TO  
MOVE FOR A DIRECTED VERDICT.  
THEY DID NOT COMPLY AT THAT  
POINT.

>> SEEMS TO ME LIKE THIS  
PARTICULAR STATUTE DOESN'T  
PREJUDICE YOU.

HAD YOU FILED A MOTION TO  
DISMISS, AND THE JUDGE WOULD  
HAVE GRANTED IT, OR MOTION FOR  
SUMMARY JUDGEMENT AND GRANTED  
OR, PERHAPS THERE WOULD HAVE  
BEEN SOME PERIOD, ABATEMENT OF  
THE PROCEEDINGS LIKE IT WAS  
DONE PREVIOUSLY BY DISTRICT  
COURTS IN THE OLD STATUTE,  
WHERE THE PLAINTIFFS WOULD HAVE  
GIVEN AN OPPORTUNITY TO COMPLY  
WITH THE STATUTE, AND THEN THE  
DEPARTMENT OF FINANCIAL  
SERVICES WOULD HAVE BEEN WHICH

THIS PLAINTIFF PLED.

SUBSECTION 7 IS A MYSTERY.

IT IS A MYSTERY AS TO WHY  
SERVICE OF PROCESS NEEDS TO BE  
MADE ON THE DEPARTMENT OF  
FINANCIAL SERVICES.

BUT LET'S ASSUME THAT THERE, IT  
IS IN THERE AS A SHOUT.

WHAT EARTHLY PURPOSE WOULD  
THERE BE IN ALLOWING THE RULES  
OF CIVIL PROCEDURE TO SAY EVEN  
THOUGH CONDITIONS PRECEDENT  
NEED TO BE, IF THEY'RE DENIED,  
WITH SPECIFICITY AND SERVICE OF  
PROCESS NEEDS TO BE RAISED  
SPECIFICALLY, THAT YOU WOULD  
HAVE SOMETHING THAT WOULD WAIT  
UNTIL, THAT YOU SHOULD BE  
FILING THAT AT THE POINT OF  
MOTION FOR DIRECTED VERDICT TO  
SEE IF YOU COULD GET THEM, IN  
SOMETHING THAT REALLY WAS VERY  
EASY FOR THEM TO SERVE IF THEY  
HAD KNOWN THAT THEY HAD FAILED  
TO SERVE IT?

WHAT IS, I DON'T UNDERSTAND IN  
THE SCHEME OF BOTH THE  
LEGISLATURE, OUR COURT SYSTEM  
AND WHAT WE'RE ABOUT, WHAT,  
WHAT, I THINK WE WOULD BE  
LAUGHED AT IF WE WROTE A  
DECISION THAT SAID THIS WAS  
FATAL TO THE CAUSE OF ACTION.  
TELL ME AS A GOOD LAWYER, WHAT  
YOU COULD POSSIBLY SAY THAT  
WOULD, THAT WOULD CONVINC ME

OTHERWISE BASED ON THE STATUTE  
AND THE STATUTORY SCHEME AND  
OUR CASE LAW?

>> YOUR HONOR, THE STATUTE SAYS  
THE LEGISLATURE CAUSE OF ACTION  
THE LEGISLATURE STATED THEY  
MUST SERVE THE DEPARTMENT OF  
FINANCIAL SERVICES.

THAT IS A GIVEN.

>> THAT IS A GIVEN.

>> YES.

>> THERE WAS NO LIGHT NOTICE,  
YOU WERE USING LEVINE,  
SUBSECTION 6 IS A NOTICE  
REQUIREMENT AND IT IS JUST LIKE  
THE STATUTE OF LIMITATIONS IT  
CAN BAR A CAUTION.

IT IS STATED CAUTION.

CAUSE OF ACTION.

IT WAS NOT AN ELEMENT EVER THE  
CAUSE OF ACTION.

THAT'S WHAT I SAY FOR YOU TO  
SAY THAT SUBSECTION 7, THAT IT  
FAILED TO STATE A CAUSE OF  
ACTION, I DON'T THINK THAT YOU  
EVEN PUT THEM ON NOTICE OF A  
PROPER DEFENSE BECAUSE IT  
DOESN'T FAIL TO STATE A CAUSE  
OF ACTION.

>> WILL, WE SAID THEY HAD TO  
SERVE.

THEY FAILED TO SERVE.

AT THAT POINT THEY WERE ON  
NOTICE THEY HAD TO SERVE.

UNDER VOLPE THEY HAD SO TOUGH.

>> WHAT CASE?

>> VOLPE.

IT IS A NOTICE DEFENSE.

IT IS THEIR REQUIREMENT, THEIR  
BURDEN OF PROOF AND WE PUT THEM  
ON NOTICE THERE WAS A PROBLEM.

>> WHO NEEDS, IS IT THE  
DEPARTMENT, WHAT NEED DOES THE  
DEPARTMENT OF FINANCIAL  
SERVICES HAVE FOR SERVICE OF  
PROCESS IF THEY HAVE BEEN  
NOTIFIED THROUGH THE PROPER,  
AND YOU AGREED THEY WERE  
PROPERLY NOTICED, WHAT IS THE  
NEED OF THE LEGISLATURE TO PUT,  
FOR THE DEPARTMENT OF FINANCIAL  
SERVICES THAT THEY COME IN  
AFTER THEY WERE SERVED AND SAID  
LISTEN, THIS IS A DEFICIENT  
CASE BECAUSE WE WERE GOING TO  
DO THIS?

IS THERE ANY EVIDENCE THAT  
THEY, THAT THEY'RE NOT A PARTY  
TO THIS?

WHAT'S THE PURPOSE?

>> THE PURPOSE IS STATISTICAL  
AS I UNDERSTAND IT, YOUR HONOR.

>> MAKE SURE YOU'RE SAYING THE  
PURPOSE IS TO STATISTICAL?

WHAT DOES THAT MEAN?

>> THAT MEANS THAT THE  
DEPARTMENT OF FINANCIAL  
SERVICES KEEPS THESE RECORDS,  
KEEPS STATISTICS ON THIS.

>> SO ON THE BASIS OF A LEGISLATIVE MEASURE, THAT IS DESIGNED TO OBTAIN STATISTICS FOR THE STATE TO USE, YOU CLAIM THAT YOU SHOULD PREVAIL IN THIS CASE ON A DIRECTED VERDICT?

I DON'T SEE THE CONNECTION THERE.

WOULD YOU EXPLAIN THAT TO ME?

>> YES, YOUR HONOR --

>> ISN'T THE REAL ANSWER, THIS PROVISION IS FOR STATE AGENCIES, NOT MUNICIPALITIES OR CHARTER COUNTIES?

ISN'T THAT REALLY THE SIMPLE ANSWER?

>> NO, YOUR HONOR THE PUBLIC HEALTH TRUST IS A SUBDIVISION OF THE STATE AND THEREFORE IT'S A REQUIREMENT THAT THE DEPARTMENT OF FINANCIAL SERVICES BE SERVED.

THEY HAVE TO PROVE THAT --

>> MAKE THAT ARGUMENT WITH A STRAIGHT FACE TROUBLES ME.

>> WOULD YOU GO BACK AND ANSWER MY QUESTION ABOUT THE STATISTICS AND WHY YOU SHOULD PREVAIL HERE.

THE STATE STATUTE THAT IS DESIGNED TO OBTAIN STATISTICS AND YOU'RE GETTING A DIRECTED VERDICT.

BECAUSE I JUST DON'T SEE ANY CONNECTION BETWEEN THE STATE STATUTE TO GET STATISTICS AND

YOU'RE GETTING A DIRECTED  
VERDICT.

>> YOUR HONOR, THE SAME PROBLEM  
AROSE IN LEVINE AND THE COURT  
DECIDED BECAUSE THE STATUTE IS  
PURPOSEFUL THAT STILL YOU'RE  
ENTITLED TO SUMMARY JUDGEMENT  
OR DIRECTED VERDICT BASED ON  
SUBSECTION 6.

THIS IS BEFORE THE STATUTORY  
CHANGE.

>> YEAH BUT I DON'T THINK  
YOU'RE ACTUALLY ANSWERING THE  
QUESTION.

I'VE ALREADY AGREED WITH YOU  
THAT 6 IS DIFFERENT THAN 7 AND  
IT HAS BEEN A DISTINCTIONS ARE  
IN THE STATUTE.

ONE IS SUBJECT TO A TIME FRAME  
OF THREE YEARS AND THE OTHER  
HAS NO TIME FRAME.

SO, AGAIN, PLEASE ANSWER  
JUSTICE CANADY'S QUESTION AS TO  
WHAT WOULD BE THE REASON TO  
ENTER A DIRECTED VERDICT ON A  
SERVICE OF PROCESS REQUIREMENT  
THAT IS TO ENABLE THE STATE TO  
KEEP STATISTICS AS TO THE  
AMOUNT OF TIME THAT THEY HAVE  
BEEN SUED?

>> BECAUSE IT IS IN THE WAIVER  
OF SOVEREIGN IMMUNITY STATUTE.

AND IT MUST BE COMPLIED WITH  
STRICTLY IN ORDER TO TRIGGER  
SOVEREIGN IMMUNITY.

THE A WAIVER OF SOVEREIGN  
IMMUNITY.

>> GUESS WHAT?

THAT IS NOT WHAT SUBSECTION 7  
IS ABOUT.

IT IS NOT A PREREQUISITE AND  
NOT CONDITION PRECEDENT AND NOT  
AN ELEMENT OF THE CAUSE OF  
ACTION.

>> YOUR HONOR, IT MUST BE  
SOMETHING THAT MUST BE COMPLIED  
WITH BY THE PLAINTIFF AND MUST  
BE SHOWN TO BE COMPLIED WITH AT  
THE TIME OF THE MOTION FOR  
DIRECTED VERDICT.

>> [INAUDIBLE].

NOTICE HAD ACTUALLY BEEN GIVEN  
TO THE DEPARTMENT OF FINANCIAL  
SERVICES AND THAT YOU DID NOT  
DISPUTE THAT?

IS THAT TRUE?

>> YOUR HONOR, APPARENTLY 6 WAS  
COMPLIED WITH.

>> IT WAS?

>> YES.

AND 7 WAS NOT.

>> NOTICE WAS GIVEN TO THE  
DEPARTMENT OF FINANCIAL  
SERVICES?

>> BUT THERE WAS NO SERVICE OF  
PROCESS UPON THE COMPLAINT.  
AND THAT WAS THE BASIS FOR THE  
MOTION FOR DIRECTED VERDICT.

>> AND THEY CAN'T DRAW  
STATISTICS FROM A NOTICE BUT  
THEY CAN DRAW IT FROM SERVICE?

>> THEY CAN'T SAY THAT, THIS IS MY UNDERSTANDING. IT IS NOT THE PURPOSE OF THE STATUTE THAT I WOULD URGE YOUR HONORS TO LOOK AT BUT THE WORDING OF THE STATUTE AND THE REQUIREMENT --

>> LET'S GO BACK. WE ARE INTERESTED IN THE PURPOSE OF THE STATUTE BECAUSE EVEN THE LEGISLATURE WHEN WE'RE TRYING TO CONSTRUE PURPOSES WE WANT TO GIVE EFFECT TO LEGISLATIVE INTENT. THAT'S WHAT WE WANT TO DO HERE.

IF THE ONLY PURPOSE IS STATISTICS AND THROUGH SERVICE OF PROCESS THEY FEEL THAT'S GOING TO BE, THEN THEY CAN PUT THAT INTO THEIR COMPUTER, IF IT'S DONE ANY TIME DURING THE COURSE OF THE LITIGATION, IT'S FULFILLED THE PURPOSE. WHERE IS, AND I ASK YOU, THE REASON I KEEP ON ASKING YOU ABOUT PREJUDICE TO THE DEFENDANT IS BECAUSE THE CASE THAT YOU CITE AS CONFLICT, SILVER, VERSUS WHATEVER IT IS, SILBER, VERSUS SOMETHING INDUSTRIES OF JACKSONVILLE, IT WAS AN ELEMENT OF THE CASE. EVEN WHEN THEY CAME DOWN TO WHAT THE REMEDY WOULD BE, THEY SAID, WELL OUR RULING IN THIS

CASE DOESN'T NECESSARILY  
REQUIRE REVERSAL AND DISMISSAL  
OF THE ENTIRE CASE BECAUSE THE  
ONLY PREJUDICE SUFFERED BY THE  
APPELLANT WAS SOME INCREASED  
ATTORNEY'S FEES.  
HERE YOU DON'T EVEN HAVE THAT.

YOU'RE URGING US, AND I MAKE,  
YOU'RE URGING US TO DISMISS  
THIS CASE.

>> I AM, YOUR HONOR.

AND THE REASON BEING IS, GOES  
BACK TO NUMBER ONE, THE BASIS  
OF THE THIRD DISTRICT DECISION  
IS THAT THE PLAINTIFF, HAD NOT  
RESTED.

>> SO WHAT YOU'RE ASKING,  
YOU'RE ASKING FOR A DISMISSAL  
OF THE CASE AND A, DISMISSAL,  
NOT A NEW TRIAL?

>> WELL, YOUR HONOR, IN THE  
ALTERNATIVE WE HAVE ASKED FOR  
THE NEW TRIAL.

>> I SEE, OKAY.

AND THE NEW TRIAL THEN YOU  
WOULD NOW HAVE THE DEPARTMENT  
OF FINANCIAL SERVICES SERVED  
AND --

>> YES, YOUR HONOR.

THAT IS NOT THE BASIS FOR NEW  
TRIAL.

IF YOU LOOK AT THE CLOSING  
ARGUMENTS --

>> I'M JUST ASKING THE RELIEF  
TO DO WITH THE SERVICE OF

PROCESS.

WHAT IS THE RELIEF YOU SEEK AS FAR AS IF WE JUST DECIDE THAT ISSUE?

>> A DIRECTED VERDICT.

WHICH WOULD BE THE END OF THE CASE.

>> THE END OF THE CASE, SO WE WOULD WILL BE IN CONFLICT WITH SILBER, BASIL PER SAYS IT WOULD BE THE A, IT DOESN'T REQUIRE REVERSAL BECAUSE THERE IS NO, UNLESS THERE IS PREJUDICE.

WHERE'S YOUR PREJUDICE?

>> SEALS LIKE YOU'RE REALLY ARGUING THAT DEPARTMENT OF --

[INAUDIBLE]

I THEY THE REQUIREMENTS HERE --

>> WAIVER OF SOVEREIGN IMMUNITY STATUTE.

I'M NOT TRYING TO PRESENT TO YOUR HONORS THAT THEY ARE A PARTY TO THIS ACTION.

I AM SAYING THAT THE PUBLIC HEALTH TRUST IS A SUBDIVISION OF THE STATE.

THE WAIVER OF SOVEREIGN IMMUNITY STATUTE HAS TO BE CONSTRUED STRICTLY.

IT DOESN'T PREJUDICE, DOESN'T MATTER.

THE PURPOSE OF THE STATUTE IS, I UNDERSTAND THE COURT'S CONCERN.

HOWEVER, THEY NEED TO COMPLY

WITH IT.

THEY CLAIM THEY COMPLIED WITH  
IT.

THE BASIS FOR THE THIRD  
DISTRICT OPINION --

>> WELL THERE IS COMPLIANCE  
UNDER SUBSECTION 6 --

[INAUDIBLE]

CLAIM AND SO FORTH BUT THAT IS  
NOT IN DISPUTE BECAUSE THAT WAS  
POSITED.

THE SUBSECTION 7 ENEXT TIFFLY  
GETS THEM INTO THE CASE SOME  
WAY.

FOR YOU TO ARGUE THE THEM  
FAILURE TO BE IN THE CASE  
SOMEHOW DEFEATS THE RIGHT TO  
BRING THE CASE.

THEN THEY HAVE TO, SEEMS TO ME  
YOU HAVE TO MAKE AN ARGUMENT  
THAT THEY'RE AN INDISPENSABLE  
PARTY SOME WAY BUT I HAVEN'T  
HEARD A ARGUMENT TO THAT  
EFFECT.

I'M AT A LOSS WHY THE CASE  
SHOULD GO AWAY UNDER SUBSECTION  
7 AS WELL.

>> THEY WERE REQUIRED TO SERVE  
THE DEPARTMENT OF FINANCIAL  
SERVICES AND THEY DIDN'T.  
THAT IS PART OF THEIR  
OBLIGATION, THE PLAINTIFF'S  
OBLIGATION UNDER THE WAIVER OF  
SOVEREIGN IMMUNITY STATUTE.

IF THEY DON'T DO THAT, THEN  
THEY HAVEN'T, THEN PUBLIC

HEALTH TRUST HAS SOVEREIGN  
IMMUNITY.

>> BUT THEY DID DO IT.

THEY DID IT.

WHETHER THEY DID IT THROUGH  
REOPENING THE CASE OR THROUGH  
THE FACT YOU HADN'T RESTED,  
EVEN THOUGH IT'S A NONSENSICAL  
REQUIREMENT THEY DID IT.

THEY WERE ABLE TO DO IT  
OVERNIGHT AND NOTHING CHANGED  
IN THE CASE.

THE DEPARTMENT OF FINANCIALS  
SERVICE DIDN'T COME RUNNING IN  
SAYING OH, MY GOODNESS, WE  
DIDN'T REALIZE THIS CASE WAS  
GOING ON.

WE'RE NOT HAPPY WITH THE WAY IT  
IS BEING DEFENDED.

WE BETTER BE LOOKING AT THAT,  
CORRECT?

NOTHING HAPPENED?

>> FIRST OF ALL THE JUDGE DID  
NOT ALLOW THEM TO REOPEN.

705 OF THE TRANSCRIPT, THE  
JUDGE DENIED THAT MOTION TO  
REOPEN.

SECONDLY, THEY HAD RESTED.

ON THE, THERE WAS AN ALLEGATION  
OR, CLAIM BY THE PLAINTIFF  
THAT, GOTCHA.

WHAT THE PLAINTIFF'S ATTORNEY  
SAID THAT NIGHT, YOUR HONOR, I  
NEED TO CHECK MY FILE, TO SEE  
IF THERE IS SERVICE OF PROCESS.

I NEED TO CHECK THE CASE LAW.  
THEN SHE GOES BACK OVERNIGHT  
AND SERVES.

>> TRIAL COURT RESERVE RULING  
ON SOME ISSUE INVOLVING THE  
MORTALITY TABLES?

>> RIGHT.

>> AND SAID I WILL LOOK AT  
THOSE TONIGHT.

>> RIGHT.

>> AND I WILL COME BACK  
TOMORROW.

NOW, HAD THE JUDGE COME IN THE  
NEXT DAY SAID THERE WAS A  
PROBLEM WITH THE MORTALITY  
TABLES, I AM NOT GOING TO,  
ADMIT THEM INTO EVIDENCE.

AT THAT POINT IN TIME COUNSEL  
COULD HAVE ASKED, I NEED TO  
CALL A WITNESS TO FIX THAT  
WITHOUT HAVING TO REOPEN THE  
CASE BECAUSE THE JUDGE TOOK IT  
UNDER CONSIDERATION.

THERE HAD BEEN NO RESTING YET.

>> WELL --, AS WAS POINTED OUT  
IN THE THIRD DISTRICT, THE  
JUDGE ALSO SAID, WHEN THE JUDGE  
RESERVED ON THERE, ON THAT, ON  
THE 8th, THE JUDGE SAID, ALSO,  
ASSUMING THEY RESTED, ASSUMING  
THEY RESTED, I WANT TO HEAR THE  
MOTION, ARE THERE ANY MOTIONS  
TO BE HEARD?

YOU'RE PUTTING THE DEFENSE IN A  
POSITION WHERE THEY EITHER SAY,

NO, I DON'T HAVE A MOTION FOR DIRECTED VERDICT OR YES I DO.  
>> I'M GOING TO WAIT UNTIL YOU REST, THEN I WILL MAKE MY MOTION?  
>> YOU'RE NOW DOWN TO LESS THAN TWO MINUTES.  
YOU CAN PROCEED IF YOU LIKE.  
>> YOUR HONOR I HAVE ONLY TWO MINUTES FOR REBUTTAL?  
>> YOU SEE THE CLOCK THERE, DON'T YOU?  
>> YES, YOUR HONOR.  
>> YOUR HONORS, I WOULD URGE THE COURT UNDER SAVANNAH, TO LOOK AT OTHER ISSUES UP CONCLUDING THE FACT THAT CAP TABLE OF THE SHIP DOCTRINE, LOOK AT THE CLOSING ARGUMENT. IT WAS FUNDAMENTALLY ERRONEOUS.

LOCALITY OF RULE.  
AND ALSO DURING VOIR DIRE THERE WAS A VERY SERIOUS STATEMENT MADE THAT DEFENSE COUNSEL WOULD PUNISH A JUROR IF THEY CAME OUT THE WRONG WAY ON A CASE, ON THIS CASE.  
THE AND, SOME OF THE JURY HAD HEARD THAT DESPITE MOTION TO STRIKE THE PANEL THEY WERE ON THE PANEL.  
I UNDERSTAND YOUR HONORS FEELINGS ABOUT FLORIDA STATUTE STATUTE SECTION 7868.27, SUBSECTION 7.

I RESPECTFULLY DISAGREE.

THERE WAS PREJUDICE ON THE TRIAL.

WE ASK IN THE ALTERNATIVE FOR A NEW TRIAL.

I HAVE VERY LITTLE TIME.

I LIKE TO SAVE SOME FOR REBUTTAL.

>> THANK YOU, MAY IT PLEASE THE COURT.

I'M BARBARA GREEN AND I REPRESENT THE PLAINTIFF, THE RESPONDENT.

>> MISS GREEN, IN CONNECTION WITH THE SATISFACTION OF SUBSECTION 6, NOTIFICATION TO THE DEPARTMENT OF FINANCIAL SERVICES, WAS IT EXPLORED IN THIS CASE WHERE THEY SENT BACK THEIR STANDARD LETTER WHEN THEY DON'T HAVE AN INTEREST IN THE CASE, TELLING THE PLAINTIFF, WE HAVE NO INTEREST IN THIS CASE SO I DON'T NEED TO, IT IS BEEN MY EXPERIENCE HAS BEEN A TOTAL, IT IS A FORM LETTER THAT COMES OUT IN ALL OF THESE CASES.

SO WAS THAT EXPLORED?

>> YOUR HONOR, IT WAS NOT EXPLORED IN THE RECORD.

>> OKAY.

>> WHAT WAS EXPLORED TO SOME EXTENT IN THE RECORD, AFTER THIS ISSUE OF SERVICE WAS RAISED, PLAINTIFFS COUNCIL EXPLAINED TO THE COURT THAT HE

HAD BEEN ASKING DEFENSE  
COUNSEL, DO WE HAVE NOTICE  
PROBLEMS?

DO WE HAVE NOTICE PROBLEMS?  
AND DEFENSE COUNSEL HAD BEEN  
SAYING, NO.

>> WHAT ABOUT THE ANSWER THAT  
WAS FILED HERE WHERE THEY SAY  
THAT WE, BESIDES THE POINT  
WHETHER IT WAS A CAUSE OF  
ACTION OR NOT, BUT THEY DO SAY  
THERE WAS NO PROPER SERVICE OF  
PROCESS?

SO WHY DIDN'T COUNSEL AT THAT  
POINT LOOK IN HIS FILE AND SAY  
YOU'RE RIGHT, WE HAVEN'T  
TECHNICALLY FOLLOWED SUBSECTION  
7 AND SERVICE OF PROCESS LIKE  
THEY DID THE NIGHT, THE ALL  
CAME UP?

>> YOUR HONOR, I DON'T KNOW  
EXACTLY, WHAT THINKS HIS  
THINKING WAS, WHETHER IT WAS  
OVERSIGHT OR NOT.

BUT IF YOU LOOK AT IT AND SAYS  
THE COMPLAINT FAILS TO STATE A  
CAUSE OF ACTION, FOR FAILING TO  
DO THIS SERVICE.

AND, TO ME, THAT'S NOT  
SOMETHING THAT YOU PLEAD TO  
STATE YOUR CAUTION BECAUSE YOU  
DON'T SERVE THE COMPLAINT UNTIL  
AFTER YOU FILED IT.

SO YOU CAN'T FILE A COMPLAINT  
THAT SAYS, WE SERVED THE  
DEPARTMENT OF FINANCIAL

SERVICES WITH PROCESS, BECAUSE YOU HAVEN'T DONE THAT YET. SO THAT WOULD BE NOT TELLING THE TRUTH.

SO THE RULES OF CIVIL PROCEDURE HAVE WHAT YOU DO TO SERVE PROCESS.

AND WHAT YOU DO TO SERVE PROCESS IS, AFTER IT IS FILED, YOU SERVE IT, AND THEN UNDER 1.07-B YOU PROVED YOU SERVED IT BY FILING AN AFFIDAVIT OF SERVICE.

THAT'S WHAT THEY DID.

THEY DID IT DURING THE TRIAL.

THEY DID IT AFTER THE DEFENSE MOVED FOR A DIRECTED VERDICT.

BUT THEY DID IT AND THEY DID IT BEFORE THE COURT RULED AND THEY DID IT BEFORE THE PLAINTIFF'S EVIDENCE --

>> DON'T WE EVEN HAVE IN THESE CASE, I GUESS, IF WE'RE GOING TO KEEP THE CASE, THAT WE OUGHT TO STRAIGHTEN OUT WHAT THIS IS ABOUT?

THEY SEEM TO CONCEDE TODAY, THERE IS NO PURPOSE OTHER THAN STATISTICS.

IS THERE ANY SITUATION THAT YOU'RE AWARE OF WHERE IF THERE IS, DEPARTMENT OF FINANCIAL SERVICES IF THEY'RE NOT A PARTY, WOULD HAVE A RIGHT TO PLEAD?

>> ALL OF THE CASES SAY THEY'RE

NOT A PARTY.

>> SO THIS ISSUE THAT THEY HAVE  
30 DAYS TO PLEAD, CAN'T EVEN,  
DOES IT REFER TO THEM?

>> I THINK NO, IT DOESN'T.

I THINK IT REFERS TO WHATEVER  
DEPARTMENT OF THE AGENCY.  
ONE OF THE CASES AND I THINK IT  
IS THE FIFTH DISTRICT CASE AND  
THE NAME ESCAPES ME AT THE  
MOMENT, ONE OF THE CASES EVEN  
SAYS THAT.

BUT IF IT IS STATISTICS, IF IT  
IS FOR RECORD-KEEPING THEY HAVE  
GOT THEIR RECORD.

>> REALLY THE THIRD DISTRICT  
WENT OFF ON A WHOLE ANOTHER  
SERIES OF CASES SEEM TO SAY  
EVEN IF IT IS DONE AT THE END  
OF THE CASE, IT COULD BE FATAL.

I MEAN I WOULD THINK, WE OUGHT  
TO HOLD THAT THIS IS A  
TECHNICAL REQUIREMENT.

THAT AS LONG AS IT IS DONE AT  
SOME POINT BEFORE, I DON'T  
KNOW, THAT IT'S, IT IS NOT TO  
STATE A CAUSE OF ACTION.

IT IS NOT AN ELEMENT.

IT IS NOT FATAL TO SERVICE OF  
PROCESS ON A DEFENDANT, WHAT WE  
WOULD BE CONCERNED, IT IS NOT A  
CONDITION PRECEDENT.

>> EXACTLY.

IT IS NONE OF THOSE THINGS,  
YOUR HONOR.

WE WOULD ALL BE REALLY GRATEFUL  
IF THE COURT WOULD CLARIFY IT  
WHEN YOU HAVE TO DO IT.

RIGHT NOW THE CASES JUST SAY  
YOU HAVE TO DO IT BEFORE THE  
JUDGMENT'S ENTERED.

>> DO YOU THINK, I GUESS WE'RE  
HERE AND WE COULD AFFIRM ON ANY  
GROUND, THAT THEIR ANSWER, WHEN  
THEY SAID IT FAILED TO STATE A  
CAUSE OF ACTION, REALLY BECAUSE  
THERE WASN'T SERVICE OF PROCESS  
THEY COULD LOOK BACK AND SAY,  
WELL WE SERVED THIS DEFENDANT.

SO THAT IS THE ONLY DEFENDANT.

WE KNOW WE HAD NOTICE UNDER 6.

THAT DIDN'T EVEN PUT THEM ON  
NOTICE THAT THAT WAS WHAT THE,  
THE PUBLIC HEALTH TRUST WAS  
STATING?

THAT WE SHOULD MAKE, THAT THEY  
SHOULD HAVE TO BE, DEFENDANT  
SHOULD HAVE TO BE MORE  
SPECIFIC?

>> I THINK THE COURT COULD FIND  
THAT MISLEADING AND FOR THE  
REASON I SAID.

IT IS NOT PART OF STATING A  
CAUSE OF ACTION.

IT IS NOT SOMETHING YOU PLEAD  
BECAUSE YOU HAVEN'T DONE IT AT  
THE TIME YOU FILED THE  
COMPLAINT.

>> IT LOOKS TO ME IN THIS SITUATION I DON'T UNDERSTAND IF WE'RE DEALING WITH WAS WHO WAS TRIAL COUNSEL, IF THIS PUBLIC HEALTH TRUST COULDN'T WAIT UNTIL THEY CLOSED THE CASE BECAUSE THEY WERE SO, THEY THOUGHT, THIS IS, THIS IS OUR TICKET OUT OF HERE.

LET'S WAIT UNTIL THEY CLOSE THE CASE.

THEN WE'RE GOING TO SAY THAT THEY DIDN'T COMPLY WITH THIS TECHNICAL REQUIREMENT.

IT LOOKS LIKE THEY DIDN'T WANT IT BROUGHT UP BEFOREHAND.

>> I WOULDN'T CAST AS PERSIANS ON THEIR -- AS PERSIANS ON THEIR MOTIVE I THINK IT WAS TELLING THAT IS HOW WE TRIED THE CASE.

JUSTICE CANADY NAIL I HAD RESPECTFULLY, THEY RELIED ON THE GOTCHA.

THEY WON BUN MUCHES OF THESE CASES BEFORE WITH THE GOTCHA.

>> BECAUSE THEY WAIT UNTIL --

>> THEY WAIT UNTIL AFTER?

>> THEY DON'T CALL IT UP FOR HEARING.

THERE IS A THIRD DISTRICT CASE THAT SAYS THEY DON'T HAVE TO CALL IT UP FOR HEARING.

AND IF IT IS PART OF SERVICE OF PROCESS, I MEAN, OF COURSE YOU'VE GOT TO CALL IT UP FOR

HEARING.

>> I THINK IF THEY HAD, LET'S  
GO TO WHERE IT WOULD BE.  
IF YOU HAVE A SITUATION WHERE  
THIS AFFECTED SERVICE OF  
PROCESS, THIS, DOES FIVE  
ADEQUATELY PUT SOMEONE ON  
NOTICE THERE IS DEFECT IN  
SERVICE OF PROCESS?

>> DOES?

>> LET'S GO AND SAY THE  
DEFENDANT, DOESN'T, HELP ME  
WITH MYSELF PROCEDURE.  
IT'S BEEN A WHILE.  
THAT THERE IS A, THAT THEY  
DIDN'T SERVE PROCESS SAY ON THE  
RIGHT PERSON, YOU KNOW?  
THERE IS ISSUES WHETHER YOU  
SERVE THE HEAD OR, AND THEY SAY  
THERE, DOESN'T STATE A CAUTION  
BECAUSE THEY FAILED TO SERVE  
PROCESS.  
THEY GO AHEAD AND ANSWER AND  
THEY GO THROUGH THE WHOLE CASE.

THEN AT THE CLOSE OF THE  
PLAINTIFF'S CASE THEY SAY, YOU  
KNOW, WE REALLY, THEY SHOULD  
HAVE SERVED MR.^MARTIN AND  
INSTEAD STEAD THEY SERVED  
MR.^JONES.  
WHAT WOULD HAPPEN IN THE REAL  
WORLD?  
WOULD THAT CASE GET DISMISSED?  
>> NO, THE CASE WOULDN'T GET  
DISMISSED.

THEY WOULD SEND HIM OUT TO GO  
SERVE MR. ^JONES.

>> LET ME ASK, AGAIN I'M  
FOLLOWING THIS, THERE IS NO  
ARGUMENT.

AND I USED TO PRACTICE IN THIS  
AREA AND THIS IS THE TYPE OF  
THING THAT KEPT ME UP AT NIGHT.

DID I MISS SOMETHING ON ONE OF  
THE 80 CASES I GOT IN THE MY  
FILE CABINET.

YOU HEAR WHAT I'M SAYING?

>> I UNDERSTAND THAT VERY WELL,  
YOUR HONOR.

>> YOU HAVE AFFIRMATIVE DEFENSE  
5 AND, TO BE SURE, IT DOESN'T  
SAY YOU MISSED SERVING THE  
DEPARTMENT OF FINANCIAL  
SERVICES.

DID YOU BY TELLS US THERE IS  
PROBLEM WITH THE SERVICE.

>> EXTRA SCOURING OF THE FILE  
TO SEE WHAT THEY WERE TALKING  
ABOUT.

BUT THAT DIDN'T HAPPEN HERE.

BUT IT DID HAPPEN BEFORE THE  
COURT RULED ON THE MOTION FOR  
DIRECTED VERDICT.

AND THE AFFIDAVIT, WHICH IS HOW  
YOU PROVE SERVICE OF PROCESS  
WAS IN THE COURT FILE AND  
PRESENTED TO COURT, BEFORE THE  
COURT RULED ON THE MOTION FOR  
DIRECTED VERDICT.

AND, JUST A WORD ABOUT THE

REOPENING.

WHAT THE COURT DENIED ABOUT THE REOPENING WAS, TO BRING PROCESS SERVER DOWN TO TESTIFY ABOUT HAVING DONE THE SERVICE, YOU KNOW, UNLESS THERE IS DISPUTE ABOUT HOW THE SERVICE WAS ACCOMPLISHED WHICH THERE WASN'T HERE, THAT IS, NOT HOW YOU PROVE SERVICE.

YOU PROVE SERVICE WITH A AFFIDAVIT OF THE PROCESS.

>> IF WE WERE TO HOLD THAT SUBSECTION 7 HAS TO, IS A STATISTICAL REQUIREMENT ONLY. THAT THEY'RE NOT, THEY'RE NOT, WHERE THEY'RE NOT A PARTY OTHERWISE, AND THAT, IT HAS TO BE BROUGHT TO THE TRIAL COURT'S ATTENTION, WHEN THE DEFENDANT IS AWARE, THERE HASN'T BEEN THAT SERVICE ON THE DEPARTMENT OF FINANCIAL SERVICES, WOULD WE BE IN VIOLATION OF THE STATUTE ITSELF.

IF WOULD WE BE FRUSTRATING LEGISLATIVE INTENT?

>> I DON'T THINK YOU'RE FRUSTRATING LEGISLATIVE INTENT AS LONG AS YOU'RE SERVED AT SOME POINT.

I DID NOT KNOW UNTIL JUST A FEW MINUTES AGO THAT THEIR POSITION IS, THAT SUGGESTED THAT WAS THE PURPOSE?

>> JUDGE {FRIF} BEGIN

HYPOTHESIZED THAT MAYBE WAS THE PURPOSE -- GRIFFIN.

>> THE ONLY PURPOSES I COULD THINK OF WERE THE STATISTICS IF SOMEHOW THERE WAS SOME KIND OF INTERACTION BETWEEN THE DEFENDANT AND THE DEPARTMENT OF FINANCIALS -- FINANCIAL SERVICES AND THE DEFENDANT.

A, HE SAYS THERE ISN'T ANYTHING LIKE THAT.

I HAVE NO KNOWLEDGE OF IT AND THERE IS NOTHING IN THE RECORD.

AND B, IN THIS CASE, IT WAS {VIG} RUGSLY DEFENDED.

-- VIGOROUSLY DEFENDED.

>> NOT ONLY WOULDN'T IT FRUSTRATE LEGISLATIVE INTENT, BUT IT SEEMS LIKE IF WE WOULD DISMISS THE CASE IT WOULD BE CONTRARY TO LEGISLATIVE INTENT.

THE NOTICE PROVISION WHICH IS JURISDICTIONAL, SPECIFICALLY SAYS IT IS NOT A ELEMENT OF THE CAUSE OF ACTION.

IT IS A CONDITION PRECEDENT WHICH WOULD HAVE TO BE DENIED WITH SPECIFICITY, YOUR CLIENT CLAIMED COMPLIANCE WITH ALL CONDITIONS PRECEDENT.

>> WITH ALL CONDITIONS PRECEDENT AND WITH ALL STATUTORY REQUIREMENTS, YES THEY DID PLEAD THAT.

SO I THINK IT WAS INCUMBENT  
UPON THEM TO SAY, LOOK YOU'VE  
GOT TO SERVE THE DEPARTMENT OF  
FINANCIAL SERVICES.

>> [INAUDIBLE].

>> ANSWER THE COMPLAINT DENIED  
ALL CONDITIONS PRESEIZE DENT  
HAD BEEN MET BUT PLAINTIFF  
NOTES THERE WAS FAILURE TO  
SERVE.

HAVE THAT CORRECT?

>> THEY DID MENTION THE  
STATUTE.

THEY DID MENTION THE SPECIFIC  
SUBSECTION OF THE STATUTE.  
THEY DID SAY, LET'S MAKE SURE.

MAYBE WE'RE CROSSING HAIRS  
HERE.

YOU HAVE NOT ARGUED, IT WAS ME  
THAT SAID I THOUGHT THIS WAS  
LIKE A SNEAKY, YOU KNOW,  
PARAGRAPH OR OR SOMEONE SAID  
THAT BECAUSE IT SAID FAILED TO  
STATE A CAUSE OF ACTION.

SO IT REALLY, LEAVES YOU  
QUESTIONING WHAT IS IT THEY DID  
PROPERLY SERVE THE PUBLIC  
HEALTH TRUST.

THERE IS NO QUESTION ABOUT  
THAT.

AND THEY PUT THEM ON NOTICE.  
WOULDN'T WE BE IN CONFLICT WITH  
SILBER IF WE WERE ACTUALLY TO  
SAY THAT THE PROPER REMEDY  
WOULD BE DISMISSAL OF THIS

CAUSE OF ACTION?

>> WELL, SURE, BECAUSE IN SILBER, THE REMEDY WAS TO GIVE THE PLAINTIFF A CHOICE NUMBER ONE.

SILBER IS THE CASE THAT INVOLVED THE DOC STAMPS OR STAMPS OF SOME KIND ON, AND IN THE COURT SAID, SOMETHING HAPPENED WHERE THEY HAD THE STAMPS HAD NOT BEEN PAID AND HAD NOT BEEN PUT ON AND THEN THERE WAS A RECESS AND DURING THE RECESS, THE PLAINTIFF PAID THE STAMPS.

AND WHAT THE COURT OF APPEALS SAID IN SILBER WAS, YOU'VE GOT TWO CHOICES.

NUMBER ONE, YOU CAN DISMISS WITHOUT PREJUDICE AND BRING IT AGAIN, NOW THAT THE STAMPS HAVE BEEN PAID.

OR, NUMBER TWO, THERE WAS AN ISSUE OF COURT AWARDED FEES, AND THE COURT SAID, YOU KNOW, IT WOULD BE TERRIBLY UNFAIR TO THE DEFENDANT TO MAKE THEM PAY COURT AWARDED FEES FOR THE TIME PERIOD DURING WHICH THE STAMPS HAD NOT BEEN PAID FOR.

SO YOU CAN GET YOUR JUDGMENT, PLAINTIFF, BUT YOU WON'T GET YOUR ATTORNEY FEES FOR THE WORK THAT YOU PUT IN BEFORE THE STAMPS WERE PAID FOR.

>> HELP ME ON THIS.

I MAY HAVE BEEN THE ONLY PERSON  
TO THINK THERE WASN'T  
JURISDICTION HERE.

JUST TAKE, SINCE WE'RE ALMOST  
OUT OF TIME FOR THE OTHER SIDE,  
WHAT'S THE BEST CASE THAT YOU  
THINK THEY HAVE TO SHOW, TO  
SHOW CONFLICT?

>> I DON'T THINK WE'RE HERE ON,  
ON CONFLICT.

I CAN'T IMAGINE THAT THERE'S  
CONFLICT WITH ANY OF THESE  
CASES.

I DON'T THINK THERE IS,  
BECAUSE, NONE OF THE CASES HAVE  
ANYTHING TO DO WITH EXACT FACT  
PATTERN HERE WHERE THERE IS --

>> I UNDERSTAND YOU DON'T THINK  
WE'RE HERE ON IT.

IF WE'RE NOT HERE ON CONFLICT,  
WHAT ARE WE HERE ON?

>> PERHAPS, I DON'T KNOW,  
AFFECTING A CLASS OF  
CONSTITUTIONAL OR STATE  
OFFICERS?

BUT IF YOU'RE GOING TO DO THAT,  
THEN, ANY CASE INVOLVING  
SOVEREIGN IMMUNITY IS GOING TO  
BE A CASE THAT AFFECTS A CLASS  
OF CONSTITUTIONAL OR STATE  
OFFICERS.

THAT'S WHAT IT SAID ON THE  
DOCKET WAS THE BASIS.

>> WAS IT AFFECTING A CLASS  
EVER CONSTITUTIONAL OFFICERS?

>> YES.

AND, THAT IS SORT OF WHAT I ASSUMED.

I CAN'T THINK OF A CASE THAT THIS CONFLICTS WITH, YOUR HONOR.

I REALLY DON'T, I REALLY DON'T THINK IT CONFLICTS WITH ANY OF THEM.

BECAUSE HERE THEY HAVE THE PROOF OF SERVICE BEFORE THE COURT RULED ON THE MOTION.

IF WE KEEP IT --

>> IF WE KEEP IT, YOU THINK THE LINE OF THIRD DISTRICT CASES WHERE THEY ACTUALLY GO FARTHER?

THEY TALK ABOUT IT BEING A MORE IMPORTANT CONDITION THAN, SAY THE FOURTH DISTRICT.

WE SHOULD CLARIFY THAT?

>> OH, I WISH THE COURT WOULD CLARIFY IT.

I MEAN THERE IS EVEN, I THINK THERE'S A NEW RULE OF CIVIL PROCEDURE FOR WHEN YOU HAVE TO SERVE THE ATTORNEY GENERAL, WHEN YOU'RE CHALLENGING THE CONSTITUTIONALITY OF THE STATUTE.

AND, YOU KNOW, IF THE COURT WOULD GIVE US SOME GUIDANCE, I DON'T KNOW THAT WE NEED A RULE OF CIVIL PROCEDURE FOR THIS, BUT, THE COUNTY'S POSITION APPARENTLY IS THAT YOU'VE GOT TO PUT ON TESTIMONY AT TRIAL,

THAT YOU HAVE DONE THIS  
SERVICE.  
AND THERE'S NO CASE THAT HOLDS  
THAT.  
NONE OF THE CASES REQUIRE THAT.

IF THE COURT DOESN'T HAVE ANY  
OTHER QUESTIONS, I'M SORRY,  
YOUR HONOR, I HAD --  
>> IF THE COURT DOESN'T HAVE  
ANY OTHER QUESTIONS, WE WOULD  
ASK THE COURT TO AFFIRM.

>> THANK YOU.

>> THANKS.

>> MR. ^GERSMAN YOU HAVE 36  
SECONDS.

I WILL GIVE YOU A ADDITIONAL  
MINUTE BEYOND THAT.

>> APPRECIATE IT, YOUR HONOR.  
THE ANSWER TO THE QUESTION WAS  
THE CONFLICT, ENI INCORPORATED  
STATES VERY CLEARLY THAT WAIVER  
IS A CONFLICT.

THEY WAIVED THE TIMING OF THE  
MOTION, ON THE MOTION FOR  
DIRECTED VERDICT.

SEE WHAT I'M SAYING.

SHE HAD ALREADY DONE THIS AT  
THE TIME THAT THE MOTION FOR  
DIRECTED VERDICT WAS RULED  
UPON.

AT THE TIME THE MOTION FOR  
DIRECTED VERDICT WAS MADE, AT  
THE TIME THEY RESTED, THIS WAS  
NOT DONE.

AND THIS WAS A REQUIREMENT.

THERE WAS SUFFICIENT NOTICE.  
AND YOUR HONORS, IF YOU ARE  
GOING TO START WRITING WORDS  
INTO THE STATUTE, I DO BELIEVE  
THAT LEGISLATURE TO SAY THAT  
THE STATUTE SAYS IT'S A  
REQUIREMENT THAT THEY NEED TO  
BE SERVED, AND THEN TO SAY NO  
IT IS NOT REALLY A REQUIREMENT

--

>> DOES IT SAY, DOES THE  
STATUTE GIVE A TIME LIMIT?

>> THERE IS NO TIME IN THE  
STATUTE BUT THE STATUTE HAS TO  
BE COMPLIED WITH.

>> AND DOES THE STATUTE  
SPECIFICALLY AS TO 6 SAY IT IS  
NOT AN ELEMENT OF THE CAUSE OF  
ACTION.

THAT IT IS CONDITION PRECEDENT  
AS TO ZIXIT SAYS IT AS TO SIX  
AND DOESN'T SAY IT TO THE 7  
WOULDN'T THE RULE OF STATUTORY  
CONSTRUCTION NEITHER ELEMENT OF  
CAUSE OF ACTION OR CONDITION  
PRE --

I DON'T THINK IT REALLY MATTERS  
BECAUSE IT IS PART OF THE  
STATUTORY WAIVER OF SOVEREIGN  
IMMUNITY.

IT HAS TO BE DONE.

THINK ADMITTED IN THE BRIEF HAS  
TO BE DONE AND PLAINTIFF HAS TO  
DO IT.

THEY WERE ON NOTICE THROUGH THE  
ANSWER THAT IT HAS TO BE DONE

AND THERE WAS A DEFECT.  
YOUR HONORS I WOULD URGE THE  
COURT TO LOOK AT ALL THE  
GROUNDS FOR A NEW TRIAL.  
>> IS THE, IS IT REALLY THE  
COUNTY'S POSITION THAT YOU HAVE  
TO PUT ON A WITNESS TO TESTIFY  
ABOUT THIS?  
COUNTIES POSITION?  
>> IN THE KING CASE, WHICH IS  
DCA I UNDERSTAND THAT.  
>> SO IT IS, OKAY.  
>> WELL, IT IS THE, IT IS THE  
PUBLIC HEALTH SERVICE'S  
POSITION THEY HAVE TO DO IT BY  
THE TIME OF RESTING.  
THEY HAVE TO PRESENT EVIDENCE  
OF.  
>> MY POINT WAS A WITNESS.  
IF YOU NEED TO BRING IN A  
WITNESS.  
>> WHAT IS NOT FAIR HERE  
THEY'RE REQUIRED TO LIST EVERY  
EXHIBIT THEY'RE GOING TO  
PRESENT AT TRIAL.  
EVERY WITNESS.  
WE DIDN'T HAVE ANY OPPORTUNITY  
TO DISPUTE IT ONE WAY OR THE  
OTHER, YOUR HONOR.  
THAT IS THE REASON IT SHOULD  
HAVE BEEN.  
THANK YOU YOUR HONORS.  
>> WE THANK BOTH SIDES.  
COURT IS ADJOURNED FOR THE DAY.  
>> PLEASE RISE.