

>> WE NOW MOVE TO THE FORTH AND

FINAL CASE ON TODAY'S DOCKET.

140 ASSOCIATESSES LIMITED VERSUS

SEACOAST NATIONAL BANK.

>> GOOD AFTERNOON, MAY IT

PLEASE THE COURT.

ROBERT SWEETAPPLE FROM

BOCA RATON FOR

THE APPELLANTS.

>> WOULD YOU FIRST ADDRESS HOW

WE HAVE JURISDICTION IN THIS

CASE?

>> YES, YOUR HONOR.

I THINK WHAT THE FOURTH

DISTRICT COURT OF APPEAL HAS DONE

IT EFFECTIVELY VALIDATED A FLORIDA

STATUTE PASSED BY THE FLORIDA

LEGISLATURE TO REGULATE --

>> WHY IS THIS, WOULD CONVEY ON

THIS COURT JURISDICTION ANY

TIME THAT A LOWER COURT HOLDS

THAT A FLORIDA STATUTE IS

PREEMPTED THEN?

>> IF, I BELIEVE, YOUR HONOR,

THAT PREEMPTION TO THE EXTENT

THAT IT PRACTICALLY INVALIDATES  
THE LAW TO A CLASS OF PARTIES  
IS, THAT WOULD BE THE CASE.

THIS IS PREEMPTION --

>> DO WE HAVE ANY CASES WHERE  
WE HAVE SAID THAT?

>> NO.

THERE ARE NO CASES THAT SAY AND  
HAVE BEEN CITED BY THE APPELLEE  
THAT SAY THAT THE COURT HAS TO  
SPECIFICALLY SAY I'M

INVALIDATING A STATE STATUTE.

THAT THE EFFECT OF THE RULING  
IS TO INVALIDATE IT WHICH --

>> I'M NOT SO SURE I AGREE WITH  
THAT. MY UNDERSTANDING OF OUR  
JURISPRUDENCE IS IT CAN NOT BE  
IMPLIED INVALIDATION.

IT MUST BE A SPECIFIC  
INVALIDATION.

>> THIS IS AN EXPRESS  
INVALIDATION.

THE COURT EXPRESSLY STATED THAT  
THE FLORIDA LEGISLATURE --

>> SPEND A LOT OF TIME,

I UNDERSTAND WHAT YOU'RE  
ARGUING.

>> REALLY THE --

>> BUT BEFORE WE LEAVE THAT,  
IT DIDN'T INVALIDATE THAT  
STATUTE PER SE.

IT SAID THAT STATUTE WAS NOT  
APPLICABLE TO NATIONAL BANK?

>> THAT'S CORRECT.

THAT PORTION OF THE STATUTE.

NOW WHAT'S PARTICULARLY --

>> IF THE ALTERNATIVE HOLDING

IS, AND LET'S, LET'S SAY IF IT

IS EXPRESSED PREEMPTION, I

DON'T KNOW IF WE HAVE CASE LAW

ON IT THAT MAKES THE STATUTE

INVALID BUT ISN'T THE

ALTERNATIVE READING OF THE

STATUTE IS THAT IT JUST DOESN'T

APPLY TO NATIONAL BANKS?

IF IT JUST DOESN'T APPLY THEN

THERE CERTAINLY IS NO

JURISDICTION FOR US?

>> THAT ARE ARGUMENT IS

ADVANCED BY THE APPELLEE AND

THEY MAKE REFERENCE TO THE  
STATUTE SAYING OTHER STATUTES,  
OTHER STATUTES HAVE BEEN PASSED BY  
THE FLORIDA LEGISLATURE.

IF THE INTENT OF THE FLORIDA  
LEGISLATURE WAS TO DEFER TO  
OTHER CODE PROVISIONS OR  
ENACTMENT OF THE FEDERAL  
GOVERNMENT I THINK THAT WOULD  
BE STATED.

SO THE READING THAT THE  
APPELLEE HAS GIVEN TO THAT  
SECTION OF THE STATUTE I DON'T  
THINK IS CORRECT.

>> BUT YOU'RE SAYING THAT  
NATIONAL BANKS UNDER FLORIDA  
LAW ARE REQUIRED TO OBTAIN A  
CERTIFICATE OF AUTHORITY WITH  
THE DEPARTMENT OF STATE IN  
ORDER TO OPERATE?

AND IF THEY DON'T OBTAIN A  
CERTIFICATE OF AUTHORITY, THEN  
THEY CAN NOT OPERATE IN THE  
STATE OF FLORIDA?

>> NOT CORRECT AT ALL.

THAT'S NOT WHAT I'M SAYING.

>> THEN WHAT IS, I THOUGHT THE  
STATUTE ONLY HAD TO DO WITH  
WHETHER THEY NEED TO GET A  
CERTIFICATE?

>> THEY CLEARLY OPERATE.  
WHEN YOU UNDERSTAND THE  
STATUTE --

>> WHAT YOU'RE SAYING THEY  
CAN'T GO INTO COURT?  
THEY CAN GIVE LOANS BUT CAN'T  
GO TO COURT TO ENFORCE THEM?

>> UNLESS THEY, UNLESS THEY  
DEFER TO THE FLORIDA  
LEGISLATURE'S DICTATES ON  
ACCESS TO THE COURTS OF THE  
STATE.

THIS IS WHAT THIS CASE IS ABOUT  
IN A NUTSHELL.

>> PERSPECTIVELY THOUGH THEY  
CAN'T OPERATE IF THEY CAN'T GO  
TO COURT TO ENFORCE OBLIGATIONS  
THAT AND THEY'RE RIGHT, CAN THEY?

>> YES. AND IN FACT THE LAW OF THE  
STATE HAS ALWAYS BEEN A

DUALITY.

>> WHAT WOULD THE BANKING  
REGULATORS THINK ABOUT THAT?

A BANK OPERATING --

>> COMPTROLLER OF THE CURRENCY  
SAYS NOTHING AND THE FEDERAL  
BANK ACT SAYS NOTHING ABOUT  
MAKING LOANS, USURY RATES,  
REPOSSESSING PROPERTY, ACCESS  
TO COURTS.

>> THE FEDERAL BANK ACT DOES  
SAY THEY CAN SUE IN ANY COURT,  
DOESN'T IT?

>> NO, IT SAYS --

>> AS NATURAL PERSON.

>> YES, IT DOES. THAT'S THE POINT.

>> THAT'S A TOTAL FICTION  
BECAUSE --

>> THAT'S THE LAW OF THE UNITED  
STATES.

>> THAT'S THE LAW REGARDING  
EVERY CORPORATION IN AMERICA.  
EVERY CORPORATION IN AMERICA,  
WHAT'S HAPPENED HERE, YOUR  
HONOR, QUITE CURIOUSLY IS, IN

ORDER TO GET AROUND THE  
DICTATES OF THE FLORIDA  
LEGISLATURE, WHICH HAS SAID ONE  
THING AND ONE THING ONLY.

IF YOU WANT TO COME INTO THE  
FLORIDA COURTS AS A  
CORPORATION, EITHER DOMESTIC OR  
FOREIGN, YOU MUST DESIGNATE A  
REGISTERED AGENT TO SERVE IN  
THIS STATE.

YOU MUST DESIGNATE ONE AND PAY  
A FEE TO HAVE ACCESS TO THE  
COURTS AS A PLAINTIFF.

THEY SAY YOU HAVE TO REGISTER  
TO DO BUSINESS.

THEY SAY IN SUBPART FIVE, THAT  
EVERYTHING YOU DO AS A  
CORPORATION IS RATIFIED.

THERE IS NO, LET'S NOT PRETEND  
THAT SEACOAST BANK HASN'T BEEN  
CONDUCTING ITSELF FOR 50 YEARS  
WITH ANY REAL IMPAIRMENT.

THEY HAVE BEEN CONDUCTING  
THEMSELVES FOR 50 YEARS WITHOUT  
PAYING WHAT THE LEGISLATURE

SAYS THEY HAVE TO PAY USING OUR

COURTS DAY IN, DAY OUT.

HERE'S THE POINT.

HERE'S THE RUB IN THIS CASE.

>> HOW MUCH, WE'RE TALKING

ABOUT --

>> I BELIEVE \$70 TO REGISTER.

>> A YEAR?

>> THEN 150 EACH YEAR.

>> YOU THINK THAT IS GOING TO

HELP THE COURTS OF THIS STATE

TO, TO STAVE OFF THE, I MEAN IN

OTHER WORDS,

YOU'RE MAKING AN INTERESTING

ARGUMENT.

AND AS FAR AS WHAT, NOW YOU'RE

SAYING WHAT THE LEGISLATURE

INTENDED AND THEN THE QUESTION

WAS, WHAT DOES NATIONAL BANKING

ACT SAYS IS SOMETHING ELSE.

BUT IN TERMS OF THE, I GUESS

WHAT ISN'T GRABBING ME HERE IT

SEEMS LIKE THE CERTIFICATE OF

AUTHORITY ARE YOU JUST

>> YOU PAY YOUR \$70,

WHATEVER IT IS AND  
GIVEN THAT PAPER, THEY'RE  
MINISTERIAL, YOUR HONOR.  
NOT FOR ME TO SAY WHETHER OR  
NOT THE LEGISLATURE IS ASKING  
FOR ENOUGH MONEY FOR THEIR  
FEES.

THE POINT I'M MAKING IS, THE  
LEGISLATURE CAN DETERMINE WHAT  
THE FILING FEES ARE FOR  
LAWSUIT.

THEY CAN RAISE THEM TENFOLD.

WE'VE SEEN THAT.

>> DOES THIS BANK NEED TO PAY A  
FILING FEE?

>> OF COURSE.

>> SO, YOU'RE MAKING A VERY --

>> OF COURSE.

>> YOU WERE TRYING TO MAKE A  
COMPELLING POLICY ARGUMENT AND

I'M SIMPLY FINDING SOME  
DIFFICULTY WITH ACCEPTING THAT  
THIS IS A STRONG POLICY  
ARGUMENT THAT THE STATE OF  
FLORIDA FELT THAT IN ORDER TO

ALLOW BANKS OR TO USE THE  
COURTS OF THIS STATE, THAT THEY  
NEEDED TO HAVE A CERTIFICATE OF  
AUTHORITY AS OPPOSED TO THAT  
THEY PAY FILING FEES LIKE  
EVERYONE ELSE.

AND THEY'RE NOT, YOU KNOW, AND  
THEN THE QUESTION GOES BACK TO,  
HOW DOES THIS CONFLICT WITH,  
WHICH IS WHY I GUESS WHY WE'RE  
HERE, NATIONAL BANKING ACT.

>> THAT IS WHAT I LIKE  
OPPORTUNITY TO ADDRESS IF I  
COULD.

IT IS SOMEWHAT COMPLEX AND I'M  
ARGUING FOR A PARADIGM IN THE  
WAY WE LOOK AT THESE LAWS AND  
IF PERMITTED I CAN PERSUADE  
YOU.

>> LET ME AND I WILL LET YOU GO  
ON WITH YOUR ARGUMENT.

>> THANK YOU.

>> LET ME ASK ONE QUESTION/ AT  
THE BEGINNING YOU TALK ABOUT A  
PARADIGM SHIFT.

>> SURE.

>> I WANT TO MAKE SURE I

UNDERSTAND HERE.

HAVE YOU CITED US ANY CASE FROM  
ANYWHERE THAT HOLD A CERTIFICATE  
OF AUTHORITY LAW SUCH AS THIS  
IS NOT A PREEMPTED FEDERAL BANK  
ACT?

>> I HAVE NOT.

>> SO TO YOUR KNOWLEDGE THERE  
IS NO AUTHORITY THAT WOULD  
SPECIFICALLY SUPPORT THE  
POSITION, DIRECTLY SUPPORT THE  
POSITION YOU'RE ADVOCATING?

>> THERE IS ONE SUPREME COURT  
CASE I THINK FROM MISSISSIPPI  
ON THIS TOPIC AT ALL AND I'M  
GOING TO SHOW YOU QUICKLY WHY  
LIMA, HIBERNIA AND THE FOURTH  
DISTRICT COURT OF APPEAL ARE  
CLEARLY IN ERROR.

IT IS VERY SIMPLE.

THE MODEL BANK ACT, WHAT THE  
COURT DID IT SEIZED ON SOME  
EXPRESS PREEMPTION.

PRETENDED CONGRESS CONTROLLED

ACCESS TO OUR COURTS.

IT DOESN'T.

WHEN THEY REALIZED THEY

COULDN'T GO THERE, WELL IT SAYS

THE POWER AND SUE AS

INDIVIDUALS.

THEREFORE THEY MORPHED INTO

INDIVIDUALS.

THEY CAN WALK INTO COURT AS

INDIVIDUALS.

FRANKLY, YOUR HONOR, WITH ALL

DUE RESPECT THAT IS UTTER

NONSENSE.

IT IS LEGAL NONSENSE.

THE FLORIDA, THE FLORIDA

CORPORATE ACT, IF YOU LOOK

AT --

>> BEFORE YOU MOVE TO THE

FLORIDA ACT, THAT NATIONAL ACT,

WHAT DOES THAT LANGUAGE MEAN

THEN?

>> I'M GOING TO TELL YOU.

>> THAT NATIONAL BANK CAN SUE

OR BE SUED IN ANY COURT?

>> IT SAYS EXACTLY WHAT JUSTICE

BLACHFORD SAID.

IT SAYS EXACTLY WHAT ABBOTT

CORPORATION SAYS.

WE CAME TO A POINT IN CORPORATE

LAW WHERE WE RECOGNIZED THAT

CORPORATIONS IN THE PROCEEDING

COULD MAKE THE SAME CLAIMS AND

HAVE THE SAME CLAIMS BROUGHT

AGAINST THEM.

THAT DOESN'T WORK THAT INTO

CORPORATIONS.

FLORIDA STATUTE 607 --

>> THIS IS A FRIENDLY QUESTION.

I MEAN, THEY CAN SUE OR BE SUED

BUT NOTHING IN THE NATIONAL

BANKING ASSOCIATION SAYS THAT

STATES CAN'T, CHARGE FILING

FEES WHEN BANKS COME INTO

COURT, CORRECT?

>> THERE IS NO EXPRESS, THERE

IS NO MENTION OF ANY COURTS.

THERE IS NO MENTION OF ANY

REGISTRATION.

AND WE'VE TAKEN, WE'VE

MISCONSTRUED THIS STATEMENT.

>> LET ME HELP YOU OUT HERE.

>> OKAY.

>> SO YOUR ARGUMENT IS THERE IS

NOTHING INCONSISTENT ABOUT

REQUIRING A CERTIFICATE OF

AUTHORITY.

THERE IS NOTHING INCONSISTENT

WITH THAT JUST LIKE THERE'S

NOTHING INCONSISTENT WITH A

FILING FEE IN TERMS OF ALLOWING

BANKS TO SUE OR BE SUED?

NO BIG HARDSHIP ON A BANK TO

HAVE TO REGISTER WITH THE

SECRETARY OF STATE?

IS THAT YOUR ARGUMENT?

>> YES, THAT IS ONE OF MY

ARGUMENTS.

BUT MORE IMPORTANTLY --

>> COULDN'T IT BE CORRECTED IN

THE COURSE OF A LAWSUIT?

>> ABSOLUTELY.

THE COURT'S CLOSED.

THE COURT'S CLOSED.

I CAN'T WAIVE THAT.

NO ONE CAN WAIVE THAT.

THE LEGISLATURE SAID, LOOK, THIS  
IS IMPORTANT.

>> I THINK THEY OFFERED IT  
TOGETHER.

>> THE RECORD IS CLOSED AND  
THEY DECIDED NOT TO.

LET ME POINT YOU TO SOMETHING  
THAT'S SO TELLING THIS IS WHAT  
FLORIDA STATUTE 607 SAYS ABOUT  
EVERY CORPORATION.

607.0302.

THEY HAVE THE SAME RIGHT TO SUE  
AS AN INDIVIDUAL,  
NOT-FOR-PROFIT, EXACTLY SAME  
EXTENDED TO NATURAL PERSONS.  
THIS HAS BEEN ADOPTED IN ALL 50  
STATES.

EVERY CORPORATION IN THE  
COUNTRY AS SINCE THE MID-1800s  
IS RECOGNIZED HAVING POWER TO  
BE SUED AND BE SUED SAME AS  
AN INDIVIDUAL.

HOW COULD THE INTENT OF  
CONGRESS TO USE THAT LANGUAGE

BE TO PREVENT REGISTRATION WHEN  
EVERY STATE IN THIS COUNTRY'S  
LEGISLATURE HAS ADOPTED THAT  
VERY LANGUAGE AS THE PREFACE  
AND INTENT TO ITS REGISTRATION  
OF CORPORATIONS? CORPORATIONS  
ARE REGISTERED IN EVERY STATE  
AND THEY ALL HAVE THE RIGHT TO  
DO BUSINESS AS NATURAL PERSONS  
AND TO SUE AND TO BE SUED AS  
NATURAL PERSONS.

SO WHEN YOU READ THE VERY ACT  
THAT WE LITIGATE UNDER, THE  
COURTS ARE SAYING, OH, WELL, THE  
CONGRESS MEANT TO MAKE THESE  
CORPORATIONS SOMEHOW SPECIAL.

>> SEACOAST HAS BEEN OPERATING  
IN FLORIDA FOR 50 YEARS?

>> NO. THEY WERE OPERATING  
SINCE 1933 ORIGINALLY  
AS A NATIONAL BANK.

AND THEN IN THE '50s THEY  
BECAME A FEDERAL BANK.

AND THEY JUST STOPPED PAYING.

THERE WAS NO PRECEDENT IN THE

STATE.

>> BUT THEY CONTINUED TO  
OPERATE IN THIS STATE?

>> ONLY IN THE STATE WITHOUT  
EVER, IN STEALTH-LIKE MANNER  
NEVER SHOWING WHO THEIR  
REGISTERED AGENT WAS IN THE  
REPOSITORY OF THE STATE.

>> STEALTH-LIKE MANNER.

I DON'T KNOW THIS BANK. DO THEY  
HAVE ONE BRANCH?

>> THEY HAVE NUMEROUS BRANCHES  
BUT WE DON'T KNOW WHO THE  
REGISTERED AGENT IS.

>> SINCE YOU WERE SUED, YOUR  
CLIENTS WERE SUED THEY DIDN'T  
PAY THEIR LOANS.

>> WE'RE THE DEFENDANT IN THAT  
CASE.

>> MAKE SURE WE'RE IN THE RIGHT  
LAWSUIT HERE.

>> YES, YOUR HONOR.

>> YOU AREN'T TRYING TO SUE  
THESE BANKS, YOUR CLIENTS ARE  
TRYING TO AVOID PAYING

LEGITIMATE LOANS THAT THEY HAD  
TAKEN OUT FROM THE BANK?

>> ABSOLUTELY.

BUT THAT IS NOT MY POINT.

MY POINT IS POLICY ARGUMENT WE  
GOT TO BEFORE.

PERHAPS THE FLORIDA LEGISLATURE  
SAID TO THESE CORPORATE  
ENTITIES, LOOK, YOU'RE WELCOME  
AS A FOREIGN CORPORATION.

>> JUST WHEN YOU USE WORDS LIKE  
STEALTH OPERATION, YOU'RE, I  
THINK THAT YOU'RE, THAT'S MY  
CONCERN IS --

>> LET ME EXPLAIN THAT.

>> MAYBE YOU CAN USE LESS  
COLORFUL LANGUAGE TO GIVE, WHAT  
YOU'RE SAYING REQUIRING A  
CERTIFICATE OF AUTHORITY DOES  
NOT CONFLICT WITH THE POWER TO  
SUE AND BE SUED?

>> I'M SAYING MUCH MORE THAN  
THAT.

I'M SAYING IF YOU ARE A  
NATIONAL BANK IN NEBRASKA AND

YOU ARE DOING BUSINESS IN  
FLORIDA, THAT THE LEGISLATURE  
HAS SAID YOU CAN COME INTO OUR  
COURTS AS A PLAINTIFF BUT FIRST  
YOU HAVE TO TELL THE CITIZENS  
OF THIS STATE WHERE YOU'RE  
LOCATED, WHO ARE YOUR OFFICERS.

WE NEED A REGISTERED AGENT IN  
THIS STATE SO THAT YOU CAN BE  
SUED AND SERVED IN THIS STATE.

YOU CAN NOT OPERATE IN NEBRASKA  
OR NORTH DAKOTA AND COME IN  
HERE AND NOT PUT THIS  
INFORMATION ON --

>> IF YOU WERE TRYING TO SUE  
THEM I COULD SEE THIS BEING A  
PROBLEM.

BUT SINCE YOU'RE BEING SUED AND  
SINCE THEY PAID THEIR FILING  
FEE AND SINCE THEY ARE A,  
YOU KNOW, DULY AUTHORIZED BANK,  
WHERE'S THE, YOU KNOW, WHY  
WOULD A CASE HAVE TO BE  
DISMISSED?

MAYBE IT'S THE REMEDY THEN THAT

IS THAT I QUESTION, YOU KNOW,  
THAT MAYBE THE FOURTH DISTRICT  
WASN'T COMPLETELY RIGHT BUT THE  
REMEDY, IN THIS CASE WHERE  
YOU'RE THE ONE THAT IS BEING  
SUED DOESN'T SEEM TO HAVE ANY  
RELATIONSHIP TO THE CERTIFICATE  
OF AUTHORITY THAT YOU'RE SAYING  
WAS SO CRITICAL THAT THEY  
OBTAIN.

>> BECAUSE THE FLORIDA  
LEGISLATURE HAS SAID  
UNEQUIVOCALLY AND THEY'RE THE  
ONLY ONES THAT HAVE THE RIGHT  
TO DICTATE WHAT HAPPENS WITH  
OUR COURTS.

THEY HAVE SAID A FOREIGN  
CORPORATION, TRANSACTING  
BUSINESS IN THE STATE WITHOUT A  
CERTIFICATE MAY NOT MAINTAIN A  
PROCEEDING.

THAT'S NOT FOR THIS COURT TO  
ALTER.

THAT'S NOT FOR ME TO ALTER.

THAT'S NOT FOR THE UNITED

STATES CONGRESS TO ALTER.

THE ISSUE IN THIS CASES, DOES  
THE FLORIDA LEGISLATURE HAVE  
THE RIGHT TO CONTROL THE ACCESS  
TO THE FLORIDA COURTS BY STATE  
AND FOREIGN CORPORATIONS?

>> I THOUGHT, I THOUGHT, WELL,  
I THINK THAT YOUR BASIC  
PROPOSITION IS CORRECT.

I MEAN I THOUGHT THIS WHOLE  
CASE WAS ABOUT WHETHER THE  
FEDERAL STATUTORY SCHEME  
PREEMPTED THAT.

>> AND THEY SAY --

>> NOT A DISPUTE ABOUT WHAT  
FLORIDA LAW SAYS. WE ALL HAVE TO  
AGREE WITH YOU. IT'S THERE IN  
THE STATUTE.

HOW DOES IT APPLY, HOWEVER,  
WHEN YOU HAVE A FEDERAL STATUTE  
IN THIS SITUATION?

SO THAT'S WHERE I THINK YOU  
NEED TO GO.

>> THAT'S WHERE I'M GOING.  
WHERE I'M GOING IS TWOFOLD.

ONE, THERE IS NO EXPRESS

PREEMPTION.

>> YOU'RE GOING THERE IN YOUR

REBUTTAL TIME.

YOU MAY DO THAT BUT I WANTED TO

YOU DOWN TO --

>> I WILL GO THERE IN MY

REBUTTAL TIME, THANK YOU.

>> MAY IT PLEASE THE COURT.

MY NAME IS JACK PELZER

REPRESENTING SEACOAST NATIONAL

BANK. NEXT TO ME IS

RICK KUPFER WHO IS REPRESENTING

TJC.

I WILL BE ADDRESSING THE

PREEMPTION ARGUMENT.

BEFORE GETTING TO THAT I LIKE

TO GET TO THE JURISDICTIONAL

ISSUE JUSTICE LEWIS BROUGHT UP

AND THAT IS, THAT THERE IS NO

DECLARATION OF INVALIDTY

WITHIN THE FOUR CORNERS OF THE

FOURTH DISTRICT COURT OF APPEAL

OPINION.

>> WAS THERE A MOTION TO

DISFILED?

>> YES, THERE WAS, YOUR HONOR?

>> DID YOU DENY THAT?

>> YES, IT WAS DENIED, YOUR  
HONOR.

BUT WE RAISED IT AGAIN IN THE  
BRIEFS ON THE MERITS AND, NOT  
WITH DISRESPECT TO THIS COURT'S  
PRIOR OPINION OR PRIOR RULING  
BUT WE RULED THAT A PRELIMINARY  
RULING.

>> WE'VE BEEN KNOWN TO REVISIT  
SUCH RULINGS.

>> YES, YOUR HONOR.

>> BY SAYING THIS STATUTE IS  
INAPPLICABLE TO NATIONAL BANKS  
THAT IS IN ESSENCE WHAT THE  
FOURTH DISTRICT SAID?

>> THAT'S CORRECT, YOUR HONOR.

>> IS THAT PARTIAL DECLARATION  
OF INVALIDITY?

>> NO, YOUR HONOR, IT IS NOT.  
COUNSEL SAID AND I THINK I  
WROTE HIS WORDS DOWN EXACTLY  
EFFECTIVELY INVALIDATES THAT

PORTION OF THE STATUTE BUT THE  
RULES AND THIS COURT'S  
JURISDICTION DOES NOT DEPEND  
UPON EFFECTIVE INVALIDATION.  
DEPENDS UPON A DECLARATION THAT  
STATUTE IS INVALID.

THERE IS NO SUCH DECLARATION  
IN THE FOUR CORNERS OF THIS  
OPINION.

FOR THAT REASON I SUGGEST THIS  
COURT DOES LACK JURISDICTION.

>> ONE OF THE REASONS FOR THE  
MOTION TO DISMISS YOU SAID IT  
WAS MOOT BECAUSE THE PROPERTY  
HAD BEEN FORECLOSED UPON AND  
SOLD AT AUCTION ABOUT TWO YEARS  
AGO.

>> THAT'S RIGHT, YOUR HONOR.  
IT WAS PRIOR TO THE COMPLETION  
OF THE APPEAL.

>> IS IT, I THINK THAT JUST,  
GOING TO BE INTERESTING AS FAR  
AS THIS ISSUE OF INVALIDITY AND  
WHETHER IT APPLIES TO  
PREEMPTION BUT LET'S GO WITH

THE REASONING OF THE FOURTH  
DISTRICT.

TELL ME WHY IT'S NOT CORRECT  
THAT IF, POWER TO SUE OR BE  
SUED IS THE STATEMENT, WE ALL  
AGREE THAT THE STATE CAN  
REQUIRE, IN ORDER TO CONDITION  
ACCESS TO COURTS ON PAYING,  
EVERYONE PAYING FILING FEES.

>> ABSOLUTELY.

>> THAT DOESN'T INTERFERE WITH  
THE POWER OF --

THE NATIONAL BANK ACT DOESN'T  
SAY THEY CAN COME INTO COURT  
WITHOUT PAYING FILING FEES,  
CORRECT?

>> ABSOLUTELY. RIGHT.

ANY FEE A LEGISLATURE  
CHOOSES TO IMPOSE ON NATURAL  
PERSON CAN BE IMPOSED ON A  
NATIONAL BANK.

>> WHERE IS THE PROBLEM, THE  
POLICY PROBLEM IN TERMS OF  
CONFLICT WITH THE NATIONAL  
BANKING ACT IN REQUIRING THE

CERTIFICATE OF AUTHORITY AND  
IN REQUIRING A RESIDENT  
AGENT? CERTAINLY WE NOW HAVE  
BANKS THAT ARE, THEY'RE NOT  
ALWAYS THE GOOD GUYS.  
THEY HAVE BEEN, SOME ARE DOING  
THINGS THAT HAVE BEEN CALLED  
INTO QUESTION AND WE OUGHT TO  
HAVE A PLACE WHERE SOMEONE CAN  
LOOK TO SAY, HERE'S WHO IS  
REGISTERED, TO DO BUSINESS IN  
THIS STATE.

HERE IS THEIR RESIDENT AGENT  
AND I'M GOING TO SUE THEM.

WE'RE TALKING ABOUT IF THIS IS  
CORRECT, \$70, \$100 A YEAR.

I'M SURE YOUR BANK DOES QUITE  
IN EXCESS OF THAT.

SO, I'M NOT SEEING WHERE THE  
CONFLICT IS.

>> YOUR HONOR --

>> CONFLICT WITH THE FEDERAL  
LAW.

>> OKAY. I WILL NOT TRY TO  
CONVINCE THIS COURT TODAY THAT

THESE FEES ARE INSURMOUNTABLE  
OR IMPOSE IMPENETRABLE BURDEN  
TO MY CLIENT TO COME INTO COURT  
NOR ARE THEY --

>> ARE THEY IN THE HUNDREDS OR  
ARE THEY IN THE HUNDREDS OF  
THOUSANDS?

>> WELL IF WE GET INTO PAST  
PENALTIES I THINK IT WOULD,  
GOING BACK AS LONG AS SEACOAST  
HAS BEEN AROUND COULD GET UP  
PRETTY HIGH.

HAVEN'T CALCULATED IT.

>> THE STATE ISN'T TRYING TO  
GET MONEY FROM YOU, RIGHT?

>> NO, NO.

>> THE ONLY ISSUE WHETHER THAT  
STATUTE WHICH REQUIRES, SEEMS  
ON ITS FACE REQUIRES YOU TO  
OBTAIN A CERTIFICATE OF  
AUTHORITY AND DESIGNATE A  
RESIDENT AGENT IS IN CONFLICT  
WITH THE FEDERAL STATUTE THAT  
SAYS THAT YOU HAVE THE POWER TO  
SUE AND BE SUED.

>> PRECISELY, YOUR HONOR.

>> HOW IS IT?

>> IT IS IN CONFLICT BECAUSE IT

ADDS ADDITIONAL BURDENS.

>> HOW MUCH MORE OF A BURDEN

IS IT THAN -- WE RAISED FILING

FEEES ON MORTGAGE FORECLOSURES.

WE REQUIRE MEDIATION.

YOU KNOW, THAT IS, YOU'VE,

BANKS ARE FILING HUNDREDS OF

THOUSANDS OF, YOU KNOW,

FORECLOSURES IN STATE.

>> AND ALL THOSE FILING FEES

APPLY TO NATURAL PERSONS JUST

AS MUCH AS THEY DO TO NATIONAL

BANKS.

IT IS THE DISCREPANCY BETWEEN

THE TREATMENT BETWEEN A

NATIONAL BANK AND A, AND A

NATURAL PERSON THAT IS THE

CRITICAL DISTINCTION HERE.

NOT WHETHER THE COURTS HAVE THE

RIGHT TO, OR FLORIDA HAS A

RIGHT TO CHARGE FILING FEES.

>> WHAT SHOWS IN THE FEDERAL

LAW THAT THEY WOULD NOT THAT IT  
IS IN CONFLICT THAT, A BANK HAS  
TO REGISTER JUST LIKE ANY OTHER  
CORPORATION, THAT IS GOING TO  
GO INTO COURT.

>> BECAUSE IT SAYS, AS FULLY  
AS NATURAL PERSONS.

AND ANYTHING THAT DETRACTS FROM  
AS FULLY AS NATURAL PERSONS IS  
AN ALTERATION OF THAT SCHEME.  
AND GOES AGAINST CONGRESS'S  
INTENT.

CONGRESS HAS SPECIFICALLY  
DESCRIBED HOW NATIONAL BANKS  
ARE TO BE TREATED IN STATE  
COURT SYSTEMS AND THAT IS AS  
FULLY AS NATURAL PERSONS.

ANYTHING THAT DEVIATES FROM  
THAT IS EXPRESSLY PREEMPTED BY  
24.SECTION 4.

>> HOW DOES SOMEONE SUE A BANK  
THAT HASN'T REGISTERED?

WHERE DO YOU GO SUE THEM?

>> HOW DO YOU SERVE THEM?

>> YES.

>> NORMALLY THEY SERVE AN

OFFICER AT BRANCH.

THAT IS THE COMMON PRACTICE.

>> IS THAT WHAT GOES ON IN

ACTUALITY?

THIS BANK HAS BEEN HERE OVER 50

YEARS, CERTAINLY THERE MUST HAVE

BEEN SOME KIND OF LITIGATION

WITH SEACOAST BEFORE NOW?

>> OH, ABSOLUTELY.

>> AND THEY ARE SERVED AT

WHATEVER BRANCH THE PERSON MAY

HAVE GOTTEN THEIR LOAN FROM?

>> OR ANY OTHER BRANCH.

THAT IS VERY COMMON, YOUR

HONOR.

PROCESS SERVER COMES INTO THE

BRANCH, ASKS FOR A MANAGER AND

HANDS THEM THE PAPERS.

>> YOU DON'T GO INTO COURT AND

SAY YOU DIDN'T SERVE MY

RESIDENT AGENT SO YOU SHOULD BE

THROWN OUT OF COURT?

>> NO, YOUR HONOR.

>> OKAY. SO, DO YOU, IS THERE

ANY EVIDENCE ONE WAY OR ANOTHER  
THAT THE FLORIDA LEGISLATURE  
INTENDED TO INCLUDE OR EXCLUDE  
BANKS FROM THE REQUIREMENT OF A  
CERTIFICATE OF AUTHORITY?

>> FRANKLY, YOUR HONOR, SINCE  
THIS IS THE MODEL BUSINESS  
CORPORATION ACT WHICH IS  
UNIFORM THROUGH, I BELIEVE IT  
IS ALL 50 STATES NOW, MANY OF  
WHICH HAVE CONSIDERED THIS  
QUESTION AND REACHED EXACT SAME  
CONCLUSION PROBABLY WASN'T  
WITHIN THE FLORIDA  
LEGISLATURE'S PARTICULAR  
CONTEMPLATION AT ALL AND IN  
FACT THAT'S EXACTLY WHY WE HAVE  
THE USUAL RULE, IF THESE WERE  
TWO STATE STATUTES, WE WOULD  
HAVE A SPECIFIC STATUTE THAT  
WOULD CONTROL OVER A GENERAL  
ONE.  
BUT IN FACT HERE WE HAVE NOT  
TWO STATE STATUTES.  
ONE IS AN ACT OF CONGRESS WHICH

HAS THE SUPREMACY.

>> SO UNDER THE NATIONAL  
BUSINESS ACT THAT IS ENACTED,  
ARE YOU SAYING THAT IT'S IN  
CONFLICT OR JUST DOESN'T APPLY  
TO BANKS?

>> WELL, SOME COURTS HAVE TAKEN  
THE POSITION THAT SIMPLY  
DOESN'T APPLY.

THE LEGISLATURES DIDN'T MEAN  
THAT. OTHER COURTS --

>> UNDER THAT CIRCUMSTANCE IT  
DOESN'T APPLY WHERE THERE IS NO  
JURISDICTION AT ALL.

>> EXACTLY.

>> UNDER THAT SITUATION.

>> THAT'S RIGHT, YOUR HONOR.  
OF COURSE THE FOURTH DISTRICT  
SAYS IT IS EXPRESSLY PREEMPTED  
AND IT IS INCONSISTENT AND I  
THINK THIS IS THE REASON WHY  
THE FOURTH DISTRICT SAID THAT.  
I THINK THEY'RE QUITE RIGHT.  
IT IS INCONSISTENT TO SAY IF  
CONGRESS INTENDED NATIONAL

BANKS TO BE TREATED AS NATURAL PERSONS, AND IT IS FULLY NATURAL PERSONS AND AT THE SAME TIME, IMPOSE ADDITIONAL REQUIREMENTS ON THEM THAT ARE NOT REQUIRED OF NATURAL PERSONS. AND THAT IS AN EXPRESS CONFLICT.

YOU COULD ALSO SAY THAT THIS IS AN IMPLIED CONFLICT.

THIS IS THE PRINCIPLE CRITICISM THAT MY COLLEAGUE MR. ^SWEETAPPLE LEVELS AGAINST ALL THE OTHER CASES AGAINST HIM THAT THEY DON'T DO SUFFICIENT ANALYSIS OR SUFFICIENTLY LABEL THE EXACT PREEMPTION THEORY THAT THEY'RE USING.

I WOULD SAY THE SUPREME COURT OF MISSISSIPPI IS RIGHT WHEN THEY SAID THE REASON WHY THE ANALYSIS IS SHORT IS BECAUSE THE ANSWER IS CLEAR. THAT THERE IS INTENDED PREEMPTION.

IF WHICH GET TO A CONFLICT

IMPLIED PREEMPTION, THERE'S

ALSO THAT IMPLIED PREEMPTION.

EXCUSE ME.

BECAUSE THE, BANK OF AMERICA

VERSUS LEHMAN CASE, HIBERNIA

CASE INVOLVES IT IS REPUGNANT

TO THE NATIONAL BANKING ACT AND

ITS REQUIREMENTS THAT NATIONAL

BANKS BE TREATED AS NATURAL

PERSONS TO IMPOSE ADDITIONAL

REQUIREMENTS.

THEREFORE THERE IS THAT IMPLIED

CONFLICT.

AND THE RECENT CASE LAST MONTH,

THE 11th CIRCUIT DECIDED

BAPTIST VERSUS JPMORGAN CASE

PROVIDED SUPPLEMENTAL AUTHORITY

LAST WEEK, IN THAT CASE THE

COURT EXPRESSLY APPLIED AN

IMPLIED CONFLICT PREEMPTION

ANALYSIS TO A STATE REGULATION

OF A NATIONAL BANK AND

CONCLUDED THAT THE, IT WAS NOT

A RIGHT TO SUE AND BE SUED BUT

FOUND THAT IT WAS IMPLIED  
PREEMPTED UNDER A CONFLICT  
ANALYSIS.

IN THAT CASE THE STATE  
PURPORTED TO PRECLUDE A  
NATIONAL BANK FROM CHARGING A  
NONDEPOSITER A FEE FOR CASHING  
A BANK'S CHECK.

THE OFFICE OF THE COMPTROLLER  
OF CURRENCY SPECIFICALLY  
AUTHORIZED THAT.

NOW THE COURT FOUND AND THIS  
GETS TO YOUR OTHER QUESTION  
JUSTICE PARIENTE, THAT IT WAS  
POSSIBLE FOR THE BANK TO COMPLY  
WITH BOTH BECAUSE THE OFFICE OF  
THE COMPTROLLER OF THE CURRENCY  
DIDN'T REQUIRE THE CHARGING OF  
THE FEE.

IT MERELY PERMITTED IT BUT THE  
11th CIRCUIT DECIDED BY  
DECREASING THE BANK'S OPTIONS  
IN THAT CIRCUMSTANCE, THAT  
CREATED CONFLICT PREEMPTION AND  
FOR THAT REASON THEY SAID THAT

THE STATE STATUTE THAT  
PRECLUDED THE CHARGING OF THE  
FEE WAS PREEMPTED AND THE  
IMPLIED CONFLICT PREEMPTION  
ANALYSIS.

WE COULD EVEN FIND THAT THIS IS  
A FIELD PREEMPTION AND THIS  
GETS TO THE COX VERSUS  
RECONSTRUCT BANK FOR THE COURT  
FOUND THAT THE FEDERAL  
REGULATION AND GOVERNANCE OF  
THE POWER OF NATIONAL BANKS TO  
SUE AND BE SUED WAS SO COMPLETE  
THAT IT ACTUALLY CREATED  
FEDERAL QUESTION JURISDICTION  
FOR REMOVAL PURPOSES IN A CASE  
WHERE THERE HAD NOT BEEN ACTUALLY  
NO FEDERAL CLAIM PLED AT ALL.

YOU COULD SEEN SAY UNDER THAT  
ANALYSIS EVEN FIELD PREEMPTION  
IN THIS CASE.

ONE OF THE OTHER POINTS I WOULD  
LIKE TO RELY ON BRIEF AND YIELD  
REMAINDER OF THE TIME TO MY  
COLLEAGUE.

>> MAY IT PLEASE THE COURT.

RICK KUPFER, REPRESENTING THE  
FLORIDA LAND TRUST WHICH STANDS  
IN THE SAME POSITION AS  
SEACOAST NATIONAL BANK AND  
NATURALLY I AGREE WITH  
EVERYTHING MR. ^PELZER JUST  
SAID.

I'M NOT GOING TO REPEAT  
ANYTHING HE SAID BUT THERE IS  
ONE POINT I'D LIKE TO MAKE ON  
THE FEDERAL PREEMPTION ISSUE  
BEFORE I MOVE ONTO A SEPARATE  
ISSUE THAT ONLY AFFECTS MY  
CLIENT.

THERE IS A SEPARATE STATUTE,  
FLORIDA STATUTE IN THE  
FLORIDA'S BUSINESS CORPORATION  
ACT.

IT IS SECTION 607.0301.

IT PROVIDES THAT THE GENERAL  
CORPORATION ACT IN FLORIDA  
APPLIES TO ALL CORPORATIONS  
EXCEPT WHEN  
OTHER SPECIAL STATUTES ARE

MEANT TO CONTROL CERTAIN TYPES  
OF BUSINESS AND THEY'RE IN  
CONFLICT, THEN THE FLORIDA  
STATUTES EXPRESSLY DEFERS TO  
THE OTHER SPECIAL STATUTES.  
THE NATIONAL BANKING ACT IS,  
THAT TYPE OF A SPECIAL STATUTE  
WHICH IS IN CONFLICT BECAUSE OF  
THIS REQUIREMENT THAT FOR  
ACCESS TO COURTS NO STATE CAN  
REGULATE A, CAN DENY ACCESS TO  
THE COURTS BY REQUIRING A  
FEDERAL, A NATIONAL BANKING  
ASSOCIATION TO FIRST BE  
LICENSED BY, AT THE STATE LEVEL  
AND PAY AN ANNUAL FILING FEE  
WHICH IS IN ESSENCE A TAX TO  
THE STATE OF FLORIDA.  
SO, YOU REALLY DON'T EVEN NEED  
TO RELY ON EXPRESSED FEDERAL  
PREEMPTION PRINCIPLES BECAUSE  
FLORIDA'S STATUTE EXPRESSLY  
DEFERS BACK AGAIN TO THE  
FEDERAL ACT.  
>> WHAT'S THE CITE ON THAT?

>> THE CITE ON THAT IS SECTION  
607.0301.

>> WHY DID THE, I DON'T RECALL  
THAT --

>> FOURTH DISTRICT DIDN'T  
MENTION IT.

WE DID ARGUE IT IN THE BRIEF.  
THE FOURTH DISTRICT DID NOT  
PICK UP ON THAT STATUTE.

>> THAT LOOKS LIKE A PRETTY  
GOOD ARGUMENT.

>> THAT'S WHY I TRIED TO  
SQUEEZE IT IN.

HAVING DONE THAT I WANT TO --

>> MUST NOT BE THAT GOOD  
THOUGH.

>> I WANT TO, I WANT TO MOVE TO  
A SEPARATE PROCEDURAL ISSUE  
THAT WE HAVE RAISED BEFORE THE  
FOURTH DCA AND  
THE FOURTH DCA ALSO DIDN'T  
SPEAK TO THIS ISSUE.

THERE'S AN ALTERNATIVE  
PROCEDURAL REASON TO AFFIRM  
HERE BECAUSE THIS ENTIRE

DEFENSE THAT THEY'RE RAISING,  
THAT THE WASN'T QUALIFIED TO DO  
BUSINESS IN FLORIDA, OR AND  
NEVER, ^OBTAINED A CERTIFICATE  
OF AUTHORITY, THAT WAS NEVER  
RAISED IN ANY INITIAL PLEADING.  
IT WAS NEVER RAISED IN ANY  
AMENDED PLEADING.  
IT WAS NEVER RAISED AS AN  
AFFIRMATIVE DEFENSE.  
WHEN IT WAS RAISED IN RESPONSE  
TO THE BANK'S MOTION FOR  
SUMMARY JUDGMENT.  
IT WAS RAISED IN THE VERY LAST  
DOCUMENT THAT WAS FILED IN THE  
CASE JUST BEFORE THE SUMMARY  
JUDGMENT HEARING.  
AND WE DID, AT THE SUMMARY  
JUDGEMENT HEARING, WE MENTIONED  
THE FACT, THE BANK'S ATTORNEY  
MENTIONED THE FACT THIS IS 11th  
HOUR DEFENSE WHICH IS SUDDENLY  
COMING OUT OF NOWHERE.  
THIS COURT'S RULE OF PROCEDURE,  
1.120 AND CASES DECIDED UNDER

WHICH WE CITED IN OUR BRIEF AT  
PAGE 19, PROVIDE THAT WHENEVER  
A PARTY WISHES TO CHALLENGE THE  
LEGAL CAPACITY OF ANOTHER PARTY  
TO EITHER SUE OR BE SUED IN  
STATE COURTS IT HAS TO BE  
RAISED IN THE PLEADINGS.

EITHER INITIALLY IN A MOTION TO  
DISMISS THE COMPLAINT OR AS AN  
AFFIRMATIVE DEFENSE OR ELSE  
IT'S WAIVED.

NOW MR. ^SWEETAPPLE HAS  
RESPONDED TO THAT AND HE HAS  
SAID, WELL, WE'RE RAISING A  
DEFENSE THOUGH THAT GOES TO THE  
SUBJECT MATTER JURISDICTION OF  
THE CIRCUIT COURT AND WE'RE  
ALLOWED TO RAISE THAT ANY TIME.

THAT'S INCORRECT.

THIS IS, THIS IS NOT AN ISSUE,  
THIS HAS NO IMPACT AT ALL ON  
THE CIRCUIT SUBJECT MATTER  
JURISDICTION.

WE'RE TALKING ABOUT A FLORIDA  
STATUTE THAT CREATES A LEGAL

DISABILITY ON THE PART OF ANY  
NONCOMPLIANT FOREIGN  
CORPORATION THAT DOES NOT  
REGISTER WITH THE STATE, WITH  
THE DEPARTMENT OF STATE.

IT DOESN'T IMPACT THE COURT'S  
JURISDICTION.

THE CIRCUIT COURT, IT'S A  
PERSONAL DISABILITY ON BEHALF  
OF THE CORPORATION THAT IS  
NONCOMPLIANT.

IN FACT THE STATUTE EVEN SAYS  
THAT THE CIRCUIT COURT CAN STAY  
THE CASE UNTIL THE FOREIGN  
CORPORATION OBTAINS THE PROPER  
LICENSING.

IF THE COURT DIDN'T HAVE  
SUBJECT MATTER JURISDICTION TO  
BEGIN WITH, IT CAN'T STAY THE  
CASE IT CAN DO NOTHING BUT  
DISMISS IT FOR LACK OF SUBJECT  
MATTER JURISDICTION.

>>> YOU'RE SAYING IF THEY HAD  
RAISED THROUGH MOTION TO  
DISMISS, THE BANK COULD HAVE

MOVED, AND IT WAS SOMETHING  
WHERE IT WAS A CORPORATION, NOT  
A BANK AND THEY GO, OOPS, OUR  
CERTIFICATE OF AUTHORITY HAD  
ELAPSED OR DIDN'T REALIZE IT OR  
WHATEVER --

>> HAD TIME TO ACT.

>> ALL YOU HAD TO DO WAS GO GET  
IT.

>> THE FIRST CHANCE WE EVEN HAD  
A CHANCE TO RESPOND TO THIS  
ARGUMENT BECAUSE OF WHEN IT WAS  
RAISED WAS RIGHT AT THE SUMMARY  
JUDGEMENT HEARING ITSELF AND,  
THERE WAS A STATEMENT MADE BY  
THE BANK'S ATTORNEY, WELL, WE CAN  
GO OUT AND GET IT.

AT THAT POINT THERE WAS NO TIME  
TO GET IT.

THE CIRCUIT JUDGE DID ASK THE  
PARTIES BECAUSE THIS WAS  
SOMETHING BRAND NEW BEING  
ARGUED AND HE ASKED THE PARTIES  
TO SUBMIT SUPPLEMENTAL  
BRIEFING ON THIS NEW ISSUE. THAT

CAME AROUND AND WE ISSUED A  
SUPPLEMENTAL BRIEFING.

I WOULD SUGGEST EVEN IF YOU  
DISAGREE WITH THE FOURTH DCA  
AND THE WAY IT DECIDED THE  
FEDERAL PREEMPTION ISSUE THERE  
IS STILL AN ALTERNATIVE REASON  
TO UPHOLD THE SUMMARY  
JUDGEMENT.

SO WE WOULD ASK THIS COURT TO  
APPROVE THE FOURTH DISTRICT'S  
DECISION WHETHER IT IS BASED ON  
THE REASONING USED BY THE  
FOURTH DISTRICT OR AN  
ALTERNATIVE REASON WHICH LEADS  
TO THE STAPLE END RESULT.

>> LET ME ASK YOU, IS IT YOUR  
POSITION THOUGH WE DON'T HAVE  
JURISDICTION?

>> IT IS.

IT WAS MY POSITION WHEN I FILED  
THE MOTION TO DISMISS.

AND IT STILL IS  
CONSTITUTIONAL, I'M SORRY.

>> ARE THERE ANY OTHER

CIRCUMSTANCES, CERTAINLY, THE  
FILING TO PROCURE A CERTIFICATE  
OF AUTHORITY IS, I MEAN IT'S  
WELL-KNOWN.

IT'S BEEN ESTABLISHED FOR YEARS  
AND APPLIES IN NUMEROUS KINDS  
OF SETTINGS.

HAVE THE FLORIDA COURTS NEVER  
ADDRESSED THAT ISSUE IN ANY  
CONTEXT ANYWHERE WITH REGARD TO  
NATIONAL BANKS?

>> WE HAVEN'T BEEN, I DON'T  
THINK EITHER PARTY HAS FOUND  
ANY FLORIDA --

>> IS THIS SOMETHING NEW?

>> NO, NO.

>> THIS HAS BEEN THERE FOREVER.

>> IT HAS BEEN THERE FOREVER.

>> THERE MUST BE REASONS OTHER  
THAN LAWSUITS, CORRECT?

>> YES. AND I DON'T, I COMMEND  
MR. ^SWEETAPPLE FOR THINKING  
OUTSIDE THE BOX HERE.

>> YOU'RE SAYING HE THOUGHT  
OUTSIDE THE BOX A LITTLE TOO

LATE.

>> A LITTLE TOO LATE.

>> AND TOO FAR.

>> TOO FAR, RIGHT.

BUT, BECAUSE, AGAIN I'M LOOKING

AT 1502 AND IT SAYS

SPECIFICALLY THAT THE COURT CAN

STAY A PROCEEDING UNTIL THEY

DETERMINE WHETHER THE FOREIGN

CORPORATION IS REQUIRED TO HAVE

THE CERTIFICATE AND IF THEY

ARE, UNTIL THEY OBTAIN IT.

>> CORRECT.

>> WHICH SEEMS TO SHOW, AS YOU,

SORT OF AS I LOOK AT THAT,

SEEMS EVEN MORE APPARENT THIS

IS NOTHING, THIS IS REALLY NOT

OF CONSEQUENCE FOR PROCEEDINGS

IN COURTS OF LAW THAT WE

SHOULD, YOU KNOW, THAT EVEN IF

IT WERE IN CONFLICT, I MEAN IF

IT WASN'T IN CONFLICT THERE WAS

AN EASY REMEDY FOR THIS BANK, I

GUESS WHICH WAS TO OBTAIN IT.

ALTHOUGH THEY DON'T WANT --

>> IF THE ISSUE HAD BEEN TIMELY  
RAISED.

>> IF THE ISSUE HAD BEEN TIMELY  
RAISED AND IF WE WERE TALKING  
ABOUT IMPLIED PREEMPTION THAT  
WOULD BE CRITERIA HOW DIFFICULT  
IT WOULD BE TO COMPLY.

>> APPARENTLY SOMEONE IS GOING  
TO COME AFTER THEM FOR 50 YEARS  
OF BACK FEES OR PENALTIES.

>> NOT ONLY THAT BUT BECAUSE A  
LOT OF NATIONAL BANKS IN  
FLORIDA THAT ARE SIMILARLY  
SITUATED.

AS FAR AS I KNOW EVERYONE OF  
THEM.

AND IF THIS COURT WERE TO BE  
THE FIRST ONE IN 150 YEARS OF  
THE NATIONAL BANKING ACT TO  
HOLD THAT NATIONAL BANKS GOT TO  
COMPLY WITH LOCAL REGISTRATION  
AND LICENSING REQUIREMENTS, IT  
WOULD HAVE REVERBERATIONS  
THROUGHOUT THE COUNTRY.

>> I GUESS WE WOULD CERTAINLY

GET THAT ONE UP TO THE UNITED STATES SUPREME COURT, HUH?

>> YES. DON'T DO THAT.

THANK YOU.

>> THANK YOU.

FIRST OF ALL, THE KEYS TO THE CIRCUIT COURT ARE IN THE HANDS OF THE LEGISLATURE.

>> CAN I, CAN YOU ADDRESS 607.030?

>> YES. EXCEPT OF SPECIAL STATUTES FOR REGULATION CONTROL OF TYPES OF BUSINESS AND CORPORATIONS SHALL CONTROL WHEN IN CONFLICT HERE WITH.

FIRST OF ALL THAT'S A REFERENCE TO FLORIDA STATUTES.

SECOND OF ALL THERE IS NOTHING IN CONFLICT.

THE NATIONAL BANK ACT --

>> HOW DO WE KNOW THAT'S JUST IN REFERENCE TO FLORIDA STATUTES?

>> WELL, BECAUSE IT REFERS TO STATUTES.

>> WELL THE UNITED STATES HAS  
STATUTES.

>> WELL, THE BANK THEN ABANDONS  
THAT ARGUMENT. OKAY.

THERE IS NOTHING IN THE  
NATIONAL BANK ACT THAT IS IN  
CONFLICT.

THE NATIONAL BANK ACT HAS  
ALWAYS RECOGNIZED DUALITY AND  
THERE'S NO DISPUTE THAT  
CONTRACTS, DEBT COLLECTION,  
TORTS, CRIMINAL LAW, ZONING,  
ACQUISITION OF PROPERTY, ACCESS  
TO COURTS HAVE ALWAYS BEEN  
ADMINISTERED BY FLORIDA.

>> I GUESS WHAT HE, WHAT HIS  
ARGUMENT WHICH I FOUND, TELL ME  
THIS.

THAT THE NATIONAL BANKING  
ACT SAYS YOU MUST TREAT BANKS  
NO DIFFERENTLY THAN  
INDIVIDUALS.

>> IT DOESN'T.

THIS ARGUMENT OF THE FOURTH  
DISTRICT HAS UTTERED AND ISSUED

WILL DESTROY THE ENTIRE  
CORPORATE BANKING ACT.  
YET IF TO SUE AND BE SUED AS A  
NATURAL PERSON MEANS YOU'RE AN  
INDIVIDUAL AND YOU DON'T HAVE  
TO REGISTER LET'S TELL ALL THE  
FLORIDA CORPORATIONS AND ALL OF  
THE FOREIGN CORPORATIONS --

>> TALKING ABOUT NATIONAL BANKS  
HERE.

WE'RE NOT TALKING ABOUT EVERY  
FOREIGN CORPORATION.

>> THIS IS THE SAME LANGUAGE.

THIS IS THE EXACT SAME  
LANGUAGE.

THE FLORIDA STATUTES --

>> WE DON'T KNOW IT IS THE  
EXACT SAME LANGUAGE.

WHAT WE HAVE HERE IS A NATIONAL  
BANK ACT THAT USES THAT  
LANGUAGE.

SO, WE'RE REALLY TALKING ABOUT  
NATIONAL BANKS WHETHER THEY ARE  
PREEMPTED, NOT EVERY FOREIGN  
CORPORATION THAT DOES BUSINESS

IN FLORIDA.

>> WITH ALL DUE RESPECT THE  
FLORIDA LEGISLATURE AND FLORIDA  
STATUTE 607.0302 HAS SAID ALL  
FLORIDA CORPORATIONS CAN SUE  
THE SAME AS INDIVIDUALS, IN  
NOT-FOR-PROFIT STATUTE THEY SAY  
TO THE SAME EXTENT.

>> ALL FLORIDA CORPORATIONS  
CAN?

>> ALL FLORIDA CORPORATIONS  
CAN.

ALSO NOT-FOR-PROFIT CAN SUE THE  
SAME AS NATURAL PERSONS.

THIS LANGUAGE IS NOT SOME  
LANGUAGE THAT THE CONGRESS  
ORIGINATED FOR NATIONAL BANKS.

SO IF NATIONAL BANKS ARE OR  
INDIVIDUALS MORPHED INTO  
INDIVIDUALS BECAUSE OF THIS  
LANGUAGE EVERY FLORIDA  
CORPORATION IS NOW AN  
INDIVIDUAL, NO ONE HAS TO  
REGISTER.

SO THERE'S NOTHING IN THE

NATIONAL BANK ACT THAT EVEN  
PRETENDS TO DISCUSS THE ISSUE  
OF ACCESS TO COURTS BEING  
SPECIAL FOR THESE CORPORATIONS.

THE FEDERAL GOVERNMENT COULD  
HAVE SET UP A SYSTEM OF FEDERAL  
COURT JURISPRUDENCE.

THESE FEDERAL BANKS ARE COMING  
INTO OUR COURTS, USING OUR  
COURTS AND OUR LEGISLATURE IS  
UNIFORMLY DICTATING TO ALL  
FOREIGN CORPORATIONS, NO DOUBT  
THEY'RE FOREIGN, NO DOUBT  
THEY'RE DOING BUSINESS.

>> SO IS YOUR ARGUMENT THAT  
LANGUAGE THAT WE'VE ALL BEEN  
TALKING ABOUT FROM THE NATIONAL  
BANK ACT HAS NO MEANING?

>> NO, IT MEANS EXACTLY WHAT  
JUSTICE BLACHFORD AND WHAT  
ABBOTT AND CORPORATION SAID.

IT DOESN'T MORPH YOU INTO A AN  
INDIVIDUAL.

WHEN YOU'RE IN THE PROCEEDING  
YOU HAVE THE SAME RIGHTS AND

SAME DEFENSES --

>> TO GET RID OF THAT

HISTORICAL PREJUDICE AGAINST

CORPORATE ENTITIES AND THAT WAS

PUT IN.

>> RIGHT.

>> I DON'T KNOW HOW MANY,

WHETHER 100 YEARS AGO BUT

PROBABLY 70 TO 100 YEARS AGO.

>> LET'S KEEP IN MIND.

THIS IS NOT A SITUATION WHERE I

CAN STIPULATE WITH THE BANK,

PAY ME TEN YEARS WORTH OF YOUR

FILING FEES.

EVEN THOUGH JUDGE COOK KNOWS

YOU HAVEN'T COMPLIED WITH THE

STATUTE, LET'S GIVE THEM AN

AGREED ORDER HE CAN HEAR THIS.

IT'S, IT'S NOT, IT'S NOT

PERSUASIVE TO PRETEND THAT I

CAN STIPULATE THAT I COULD

WAIVE THIS.

THE LEGISLATURE HAS SAID, THIS

IS IMPORTANT TO US.

>> DOES SEEM TO ME THAT THERE

IS, IN ALLOWING THE JUDGE TO  
STAY IT, THAT IF THE  
LEGISLATURE, IF THE DEPARTMENT  
OF STATE THOUGHT BANKS SHOULD  
BE COVERED, REALLY UP TO THEM  
TO WORRY ABOUT COLLECTING, YOU  
KNOW, FINING AND PENALIZING,  
NOT FOR THE COURTS.

BECAUSE IT IS NOT IMPACTING THE  
COURTS BECAUSE THE MONEY IS,  
THEY'RE STILL PAYING FILING  
FEES JUST LIKE EVERYBODY ELSE  
IS.

>> I THINK THAT'S CORRECT.

I THINK THE LEGISLATURE HAS,  
FIRST OF ALL THERE IS --

>> I DON'T SEE HOW THERE IS  
ANY, WHY YOU DIDN'T WAIVE IT BY  
NOT FILING A MOTION TO  
DISMISS?

WHAT ABOUT THAT ARGUMENT?

>> BECAUSE THE, THIS IS A HUGE  
RED LIGHT.

WHAT THE, WHAT THE  
LEGISLATURE SAID IS, JUDGE,

WHEN YOU LEARN THAT THIS  
CORPORATION HASN'T PAID, THE  
COURTHOUSE IS CLOSED, NO ACTION  
CAN BE MAINTAINED. STOP IT.

DO AN INQUIRY.

FIND OUT WHETHER OR NOT THEY  
ARE DOING BUSINESS.

ANSWER, YES.

>> LET ME MAKE SURE I

UNDERSTAND THE FULL SCOPE WHAT  
YOU'RE SUGGESTING.

ARE YOU SUGGESTING THAT BECAUSE  
THE COURT LACKED JURISDICTION  
THAT ESSENTIALLY ANY JUDGMENT  
ENTERED INTO IN FAVOR OF A  
NATIONAL BANK THAT DID NOT HAVE  
THE CERTIFICATE OF AUTHORITY  
WOULD BE A VOID JUDGMENT?

>> NO, I'M NOT.

>> THAT SOUNDED LIKE THAT'S  
WHAT YOU WERE SUGGESTING.

>> BECAUSE OF A RULE VESTING  
THIS COURT IS WELL FAMILIAR  
WITH.

THIS WOULD AFFECT VESTED

RIGHTS.

THIS OPINION WOULD ONLY HAVE  
PERSPECTIVE EFFECT BECAUSE OF  
THE FACT IT DOES AFFECT VESTED  
RIGHTS.

BUT CLEARLY, CLEARLY I DON'T  
THINK THERE IS ANY DOUBT THAT  
ANY JUDGE WHO ENTERED A  
JUDGMENT WHEN THE LEGISLATURE  
TOLD HIM NOT TO PROCEED IN  
FAVOR OF A NATIONAL BANK THAT  
ADMITTED IT WAS DOING BUSINESS  
AND WASN'T REGISTERED, ACTED  
WITHOUT AUTHORITY.

HE WAS TOLD THE ACTION COULD  
NOT BE MAINTAINED.

I CAN NOT STIPULATE TO HAVE HIM  
DO THAT.

AND I DON'T BELIEVE THAT THE  
EVEN THE UNITED STATES CONGRESS  
CAN TELL THE LEGISLATURE THAT  
THEY CAN'T, THAT THEY CAN'T DO  
THIS.

AND THEN WE GET INTO IMPLIED  
PREEMPTION.

THE STANDARD FOR IMPLIED  
PREEMPTION WHICH IS EVERYTHING,  
THEY HAVE, AND SUBJECT MATTER  
JURISDICTION WOULD BE VOID,  
YES.

THE COURT SHOULDN'T, THERE WAS  
A BIG RED LIGHT.  
STOP, HOLD INJURY.

>> RED LIGHT HERE.

BUT I'LL GIVE YOU ANOTHER  
MINUTE TO SUM UP.

>> THANK YOU, THANK YOU VERY  
MUCH.

WITH REGARD TO IMPLIED  
PREEMPTION WHICH EVERYTHING  
ELSE THEY NOW RUN TO EVEN  
THOUGH THEY SAY THAT'S NOT WHAT  
WAS AT THE COURT BEFORE, NO  
RECORD OF ANY SUBSTANTIAL  
IMPAIRMENT AT ALL.

THEY DIDN'T PUT ANY ON ANY  
REGARD OF THAT.

THERE IS NO SUBSTANTIAL  
IMPAIRMENT.

THE COX CASE, THAT DEALT WITH

AN OPINION BY THE COURT SOMEHOW  
THE STATE MIGHT NOT GIVE A  
CERTIFICATE.

THIS IS A MINISTERIAL ACT.

JUST A REGISTRATION.

AND THE STANDARD IS CLEAR

THAT ANY IMPLIED PREEMPTION HAS  
TO BE A SUBSTANTIAL IMPAIRMENT.

THERE IS NO SUBSTANTIAL  
IMPAIRMENT.

THESE FEES AND THIS FORM IS A  
FRACTION OF ONE FILING FEE AND  
LESS QUESTIONS THAN ON THE  
CIVIL COVER SHEET.

AND IT'S FOR A VALID PUBLIC  
PURPOSE.

BUT THESE CASES YOU SEE ARE  
WRONGLY DECIDED WHEN THEY  
MISCONSTRUE SUE AND BE SUED.  
THEY'RE WRONGLY DECIDED WHEN  
OUT OF THIN AIR A COURT FINDS  
SOME SUBSTANTIAL IMPAIRMENT.

THEY JUST DON'T EXIST.

THIS COURT SHOULD GIVE  
DEFERENCE TO THE FLORIDA

LEGISLATURE AND THIS COURT  
SHOULD ALLOW THE FLORIDA  
LEGISLATURE TO CONTINUE TO  
PROTECT AND DETERMINE THE TERMS  
OF ACCESS TO OUR COURTS AND NO  
ONE ELSE AS LONG AS THEY COMPLY  
WITH THE FLORIDA CONSTITUTION  
AND THE UNITED STATES  
CONSTITUTION.

THANK YOU FOR HEARING ME.

IT'S BEEN A PLEASURE.

>> THANK YOU.

WE THANK BOTH SIDES FOR YOUR  
ARGUMENT.

THAT BEING THE FINAL CASE ON  
TODAY'S DOCKET, THE COURT WILL  
IT NOW BE ADJOURNED.

>> ALL RISE.