

>> ALL 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, YOU
SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA,
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
OUR FIRST CASE OF THE DAY IS
VISITING NURSE ASSOCIATION OF
FLORIDA, INC. VERSUS JUPITER
MEDICAL CENTER.
YOU MAY PROCEED, COUNSEL.
>> MAY IT PLEASE THE COURT, MY
NAME IS DAVID EARLE OF
STEWART, FLORIDA.
I'M HERE WITH MY COLLEAGUES,
THOMAS GALLAGHER AND JOHN
KERRIGAN.
ALSO PRESENT IS THE CEO OF THE
VNA, DONALD CROW.
I HAVE RESERVED FIVE MINUTES
OF MY TIME FOR REBUTTAL.
JUDGE JUSTICES, THE ISSUE
HERE IS THAT THE 4TH DISTRICT
COURT OF APPEAL IN THE CASE
BELOW HAS RULED AND CREATED A
NONSTATUTORY REVIEW AUTHORITY
FOR THE MERITS DETERMINATION
OF ARBITRATORS.
IN ADDITION, THE 4TH DISTRICT
OPINED THAT ARBITRATORS CANNOT
DETERMINE ILLEGALITY ON THE
CONTRACT AS A WHOLE AS A
MATTER OF LAW.
THIS DECISION IS NOT THE LAW
OF FLORIDA PURSUANT TO STATUTE
682.13 AND PURSUANT TO THE LAW
AS ANNOUNCED BY THIS COURT IN
CASES LIKE SNERMACHER.
RESPECTFULLY, THE ISSUE IS
SHOULD ARBITRATOR'S DECISIONS
ON THE MERITS STAND AND BE

ONLY SET ASIDE BASED ON THE STATUTORY GROUNDS SET FORTH IN 682.13.

>> I GUESS I WAS THE FACTS OF THIS CASE, FRANKLY, ARE NOT ALL THAT SYMPATHETIC TO JUPITER MEDICAL CENTER IF YOU LOOK AT BUCKEYE, YOU HAD SOMEBODY WHO WAS IN A CONTRACT THAT THAT THEY DIDN'T IT WAS UNEQUAL BARGAINING POWER. BUT HERE AS I UNDERSTAND IT, THEY DIDN'T EVEN THIS ISSUE OF THE ILLEGALITY, WHATEVER IT IS, WASN'T EVEN RAISED BEFORE THE ARBITRATORS UNTIL AFTER THE AWARD WAS ENTERED?

>> JUSTICE PARIENTE, YOU'RE CORRECT.

THE ISSUE OF ILLEGALITY AS RAISED IN THIS APPEAL DID NOT ARISE UNTIL A 1.25 MILLION AWARD WAS ENTERED.

>> SO DO WE HAVE THE SQUARE CONFLICT IS THAT NO MATTER WHAT THE NATURE OF THE ILLEGALITY THIS IS MY CONCERN ABOUT THE BROADNESS. NO MATTER WHAT NATURE OF THE ILLEGALITY, THE COURTS THAT ONCE YOU AGREE TO ARBITRATE IT, IT'S NEVER A DECISION FOR THE COURT.

>> I THINK SNERMACHER SAYS ARBITRATORS MERITS DETERMINATIONS, WHETHER THEY MAKE A MISTAKE AS TO FACT OR LAW IS NOT SET FORTH IN 682.13.

IF YOU TAKE THAT BODY OF LAW AND COMPARE IT TO THE BUCKEYE CASES THAT THIS COURT HAS PASSED UPON, WHICH STATE PRETTY CLEARLY THAT ISSUES OF ILLEGALITY TO THE CONTRACT AS A WHOLE ARE FOR THE ARBITRATORS TO DECIDE.

>> BUT THAT BRINGS ME TO THE QUESTION OF WHAT WAS JUPITER REALLY ARGUING?

WERE THEY ARGUING THAT IT WAS AN ILLEGAL CONTRACT AS A WHOLE OR WERE THEY REALLY ARGUING THAT THE ARBITRATORS ACTUALLY INTERPRETED THE CONTRACT IN AN ILLEGAL MANNER?

AND IF IT'S THE LATTER, WHEN DO YOU EVER GET AN OPPORTUNITY TO RAISE THAT KIND OF ISSUE?

>> IT'S BEEN DIFFICULT IN SOME SENSES, AND I'LL BE FRANK, TO DECIPHER THAT ARGUMENT, BUT I BELIEVE BASED UPON THE DOCUMENTS THAT HAVE BEEN FILED BY JMC THROUGHOUT THIS CASE POSTARBITRATION, THAT THEY'RE ATTACKING THE DETERMINATIONS ON THE MERITS OF THE ARBITRATORS.

THEY'RE SAYING THE ARBITRATORS GOT THE CONTRACT WRONG AND THE WAY THEY INTERPRETED IT IS ILLEGAL.

>> COULD I ASK YOU THIS. DID THE ARBITRATORS INTERPRET THE CONTRACT IN THE MANNER THAT WAS URGED BY YOUR CLIENT?

>> YES.

>> WELL, WHY WOULDN'T IT BE THE CASE THAT WHEN YOU'RE BRINGING THAT THOSE ARGUMENTS UP, THAT IT WOULDN'T THE BURDEN WOULDN'T BE ON THEM THEN TO SAY, NO, IF IT'S INTERPRETED IN THAT MANNER, THAT WOULD BE ILLEGAL?

DID ANYTHING LIKE THAT HAPPEN? IN THE ARBITRATION.

>> THE ANSWER IS NO.

>> WELL, DO WE ACTUALLY HAVE A RECORD OF WHAT ACTUALLY HAPPENS IN THE ARBITRATION?

>> THERE'S NO RECORD OF THE ARBITRATION

>> I MEAN, THIS IS TWO PARTIES THAT ARE EQUAL BARGAINING PARTIES, AGREE TO ARBITRATE.

>> YES.

>> AND NOW IT SEEMS TO ME JUPITER MEDICAL DOESN'T LIKE

THE RESULT AND NOW THEY'RE TRYING TO SAY IT WAS ILLEGAL. THAT'S WHY I SAY I GUESS IT'S A CONFLICT BECAUSE I THINK THIS BROAD HOLDING OF THE 4TH DISTRICT IS IN CONFLICT. BUT IT SEEMS TO ME THE FACTS OF THIS REALLY AND THIS IS DON'T SEEM TO BE VERY LEGALLY SYMPATHETIC TO THE JUPITER MEDICAL. BUT WE DON'T REALLY KNOW WHEN THEY RAISED IT IN THE ARBITRATION, IF THEY ARGUED THAT TO THE ARBITRATORS, BECAUSE THERE'S NO RECORD. >> WELL, I THINK THE RECORD AS DEVELOPED BY THE ARGUMENTS AND THE BRIEFS OF THE PARTIES SHOW THAT THE THIS CONTRACT WAS DRAFTED WITH BY BOTH BOTH ENTITIES BEING SOPHISTICATED HEALTH CARE ENTITIES. JUPITER HAD A HEALTH CARE ATTORNEY. THIS AGREEMENT, THE CONTRACT, WAS DRAFTED TO COMPLY WITH ALL OF THE FEDERAL AND STATE STATUTES THAT >> DOESN'T EVEN MAKE ANY DIFFERENCE, DOES IT? THE POINT OF THE EXERCISE HERE, SEEMS TO ME, IS THAT WHEN YOU DECIDE YOU'RE GOING TO GO TO ARBITRATION, YOU LOSE CERTAIN ACCESS TO COURTS. >> I AGREE WITH THAT. >> AND, I MEAN, IF WE GO DOWN THE PATH HERE OF PERMITTING ATTACKS ON ARBITRATION AWARDS ON THE BASIS THAT WHAT THE ARBITRATORS DID PRODUCED A WRONG LEGAL LEGALLY WRONG RESULT, IS THAT WE'RE JUST USING ARBITRATION AS A STEP THEN TO GO IN AND LITIGATE AGAIN. >> THAT'S WHAT I'VE ARGUED, JUDGE.

>> WELL, I UNDERSTAND.
I MEAN, THAT'S THE SIMPLE,
DIRECT ANSWER IN THESE CASES,
IS IF WE PERMIT A PARTY TO
ASSERT THAT THE DECISION IS
LEGALLY WRONG, THEN THEN
WE'VE TURNED THIS WHOLE SYSTEM
ON ITS HEAD.

AND IT'S NOT THAT I AGREE WITH
THE ORIGINAL POINT, BECAUSE I
THINK COURTS OUGHT TO.
BUT THAT'S NOT THE LAW.

>> JUDGE, THAT'S WHAT I'VE
ARGUED IN MY BRIEF.
AND AT THE RISK OF SOUNDING A
LITTLE NONNUANCED, FLORIDA'S
PUBLIC POLICY OF ARBITRATION
AND THIS COURT'S
DETERMINATIONS AND DECISIONS
WITH REGARD TO CASES THAT
ARISE IN THE CONTEXT AFTER
ARBITRATORS HAVE RECEIVED A
DULY SUBMITTED DISPUTE FROM
PARTIES LIKE THIS IN A
COMMERCIAL CONTEXT WHO KNOW
THEY'RE AN EQUAL BARGAINING
POWER AND THEY KNOW WHAT THEIR
AGREEMENT IS.

IF AN ARBITRATOR MAKES A
DETERMINATION ON THE MERITS,
VERY, VERY LIMITED SCOPE OF
REVIEW FOR VACATION, WHY ARGUE
THAT NONE OF THE GROUNDS IN
THIS APPEAL BY JUPITER MEDICAL
CENTER FIT INTO THOSE
CRITERIA.

YOU CAN'T THE ISSUES THAT
THEY TRY TO RAISE I THINK
EXTEND THE LAW BEYOND WHERE
THIS COURT HAS EVER GONE.

>> SO YOUR ANSWER TO THE
PREVIOUS QUESTION OF IF IN
FACT THERE IS SOME ISSUE OR
THERE WAS IN FACT AN
INTERPRETATION OF THE CONTRACT
THAT MADE IT ILLEGAL, THERE'S
NOTHING YOU CAN DO.
THERE'S NO REMEDY.

>> WELL, ACTUALLY, I THINK
WITHIN THE CONTEXT OF THE

ARBITRATION, THERE IS, AND JUPITER MEDICAL CENTER TOOK ADVANTAGE OF IT.

THEY FILED A MOTION TO REOPEN THE PROCEEDING.

THEY RAISED EVERY ISSUE THAT IS BEFORE THIS COURT, THAT WAS BEFORE THE FEDERAL COURT, THAT WAS BEFORE THE CIRCUIT COURT AND THE APPELLATE COURT.

THE ARBITRATORS ACCEPTED THEIR BRIEFS WITH REGARD TO THAT, REVIEWED THEM AND DENIED THEM. AND THAT DECISION IS IN THE RECORD, AS YOU KNOW.

>> YOU SAID FEDERAL COURT? WAS THIS ALSO IN FEDERAL COURT?

>> YES, MA'AM.

THE FACTS IN THE RECORD WILL SHOW THAT AFTER THIS ARBITRATION AWARD WAS ENTERED AND AFTER THE MOTION TO REOPEN WAS DENIED BY THE ARBITRATORS, JUPITER MEDICAL CENTER FILED A MOTION TO VACATE IN FEDERAL COURT.

WITHIN 90 DAYS OF THAT INTERIM AWARD THAT RESOLVED ALL THE MERITS OF THIS CASE, ONLY LEAVING ATTORNEYS' FEES. AND WE FILED A MOTION TO DISMISS BECAUSE WE THOUGHT IT WAS IMPROVIDENTLY FILED. AND THE FEDERAL JUDGE REVIEWED ALL THESE ARGUMENTS AND DISMISSED THE FEDERAL PROCEEDING BECAUSE HE FOUND THAT THERE WAS NO JURISDICTION.

AND IN DOING SO, HE CHARACTERIZED THE DISPUTE THAT WAS RAISED BY JMC AS AN ARGUMENT OVER THE ARBITRATOR'S CONSTRUCTION OF A CONTRACT AND THAT IS A MATTER OF STATE LAW. AND WE SUBMIT TO YOU THE CONSTRUCTION OF A CONTRACT IS A MATTER FOR THE ARBITRATORS.

>> AND THAT'S WHY I'M MY

CONCERN IS AND I REALIZE WE HAVE BUCKEYE THAT THE 4TH DISTRICT MADE SUCH A BROAD STATEMENT, TO SAY THAT YOU COULD HAVE A CONTRACT, UNEQUAL BARGAINING POWER, AND IT IS CLEARLY ILLEGAL UNDER THE LAW OF THE STATE OF FLORIDA AND A CONSUMER COULD BE BROUGHT INTO THE ARBITRATION AND THERE'S NOTHING THAT CAN BE DONE ABOUT IT.

AND IT MAY BE THAT CAN HAPPEN. BUT THIS CASE SEEMS LIKE IT'S THE OPPOSITE OF EVERYTHING, WHICH IS AS HEAR YOU SAYING IS THAT THIS IS SOMETHING THAT WASN'T HAPPY WITH THE CONSTRUCTION OF A CONTRACT, DIDN'T LIKE THE AWARD OF DAMAGES.

BUT WE HAVE TO BUT THE 4TH DISTRICT'S STATEMENT IS SO OVERLY BECAUSE, THEY DIDN'T MAKE A DETERMINATION WHETHER IT WAS ILLEGAL.

THEY JUST SAID ILLEGALITY CAN BE RAISED.

IS THAT CORRECT?

>> THAT'S CORRECT, JUDGE.

WHAT THE 4TH DISTRICT DID WAS INCREDIBLY BROAD.

AND FROM THE STANDPOINT OF I FEEL LIKE I NEED TO DEFEND ARBITRATION A LITTLE BIT.

FROM THE STANDPOINT OF ARBITRATION, IF THAT TYPE OF BROAD DECISION WERE ALLOWED TO STAND, AS THE JUSTICES OF THIS COURT KNOW, WE'VE GOT MANY LAWYERS IN FLORIDA WHO ARE CREATIVE, SMART, AGGRESSIVE.

IF THERE WERE AN EXTRA JUDICIAL REVIEW PROCESS FOR ARBITRATORS' MERIT DETERMINATIONS, CAN YOU IMAGINE THE FLOODGATES OF CHALLENGES TO ARBITRATION AWARDS THAT WOULD FLOW?

>> THAT BEING SAID, LET ME ASK

YOU THIS.
HAS TROUBLED ME EVER SINCE
BUCKEYE.
LET'S ASSUME WE HAD A CONTRACT
FOR SOMETHING MUCH MORE
EGREGIOUS WITH REGARD TO
ILLEGALITY, CONTRACT FOR
PROSTITUTION SERVICE OR A
CONTRACT FOR SALE OF CHILDREN.
AND ONE PARTY DIDN'T PERFORM
AND HAS AN ARBITRATION CLAUSE.
AND YOU GO TO ARBITRATION AND
THE ARBITRATORS AWARD MONEY
FOR THE FAILURE TO PRODUCE THE
PROSTITUTES OR THE FAILURE TO
PRODUCE THE CHILDREN AND THE
ARBITRATORS AWARD DAMAGES.
WHAT HAPPENS THEN?
BECAUSE I LOOK AT THE U.S.
SUPREME COURT DECISION AND IT
SAYS THE ARBITRATORS MAKE THAT
DECISION, IT SEEMS TO ME.
THAT JUST DOESN'T SOUND RIGHT.
>> THE SUPREME COURT DECISION
ADOPTED BY THIS COURT DOES SAY
THAT ARBITRATORS DEAL WITH
ISSUES OF ILLEGALITY.
SO THERE'S A COMPETING PUBLIC
POLICY HERE.
>> I UNDERSTAND.
SO YOUR ANSWER IS THAT'S WHAT
BUCKEYE SAYS, EVEN FOR THOSE
MOST EGREGIOUS CIRCUMSTANCES?
>> NO.
JUSTICE LEWIS, I THINK I'D
LIKE TO ANSWER IT THIS WAY IF I
COULD.
I WANT TO PUT MY FAITH AND
TRUST IN ARBITRATORS.
THIS COURT RECENTLY
CHARACTERIZED ARBITRATORS AS
ADJURERS.
BASICALLY WE'VE CREATED AN
ALTERNATIVE DISPUTE METHOD
>> I DON'T WANT YOU TO
PONTIFICATE ON THE MERITS
BECAUSE YOU'LL NEVER WIN ME
OVER ON THAT.
MY QUESTION IS WHAT DO WE DO
AS A MATTER OF LAW WITH THOSE?

>> IF THERE'S AN ARBITRATION AGREEMENT THAT COMPELS AN ARBITRATOR TO APPLY NOT APPLY FLORIDA LAW IN A CERTAIN WAY AND THAT'S IN THE ARBITRATION AGREEMENT, BUCKEYE CONTEMPLATES THAT ARBITRATION AGREEMENTS CAN BE ADDRESSED AND THIS COURT HAS DONE THAT IN THE CONTEXT OF ARBITRATION AGREEMENTS WHICH TRY TO IN THE ARBITRATION CLAUSE ITSELF WRITE OFF CERTAIN AREAS OF FLORIDA LAW.

AND THE SUPREME COURT HAS ALLOWED THAT.

THIS COURT HAS FOLLOWED THAT.

>> WE DON'T HAVE A CHOICE, DO WE?

>> YES, SIR.

I AGREE.

>> SO ARE YOU SAYING THAT THE ARBITRATORS THAT'S WHAT HAPPENS.

THAT'S THE END RESULT IN THOSE CASES.

>> I THINK THE ARBITRATORS SHOULD GET IT RIGHT.

I THINK IT WOULD BE THE CLEAR ODD CASE FOR IT TO FALL THE WAY YOU'RE SUGGESTING.

BUT UNDER THE EXISTING STATE OF THE LAW

>> THAT SEEMS

>> ILLEGALITY IS DECIDED BY THE ARBITRATOR.

>> BUT ISN'T IT ALWAYS ISN'T IT ALWAYS AS A PRACTICAL MATTER THE CASE THAT WHERE THIS COMES UP AS AN ISSUE IS WHERE THERE ARE GRAY AREAS.

YOU KNOW, MAYBE IT'S ILLEGAL, MAYBE IT'S NOT, WHERE THE LINE BETWEEN LEGALITY AND ILLEGALITY MAY BE NUANCED.

AND IT'S NOT GOING TO COME UP. I MEAN, TYPICALLY PARTIES THAT ARE INVOLVED IN PROSTITUTION

I MEAN, WELL, I WOULD SAY UNIVERSALLY PARTIES THAT ARE

INVOLVED IN CLEARLY ILLEGAL ACTS SUCH AS PROSTITUTION OR TRAFFICKING IN CHILDREN, THEY DON'T HAVE THEY DON'T ENTER WRITTEN CONTRACTS WITH ARBITRATION PROVISIONS. THAT JUST DOESN'T HAPPEN. BECAUSE THEY THEY WOULD BE CREATING EVIDENCE WHICH WOULD, YOU KNOW, ESTABLISH THEIR LIABILITY UNDER THE CRIMINAL LAW.

SO THAT'S JUST THOSE KIND OF THINGS DON'T JUST ARE NOT PART OF THE REAL WORLD. BUT WHEN THESE ISSUES COME UP AND IN BUCKEYE, ISN'T IT THE CASE THAT IF YOUR OPPONENT'S POSITION PREVAILED HERE, IN BUCKEYE WHAT THE ARBITRATORS DID THERE IF THEY DETERMINED THAT IT WAS NOT AN USURIOUS CONTRACT, AN ISSUE OF LEGALITY, THAT WOULD HAVE JUST BEEN THE FIRST STEP AND THEN IT WOULD HAVE BEEN OFF TO COURT IF THE IF YOUR OPPONENT'S POSITION PREVAILED. AND THAT IS OBVIOUSLY NOT WHAT THE SUPREME COURT HAD IN MIND IN BUCKEYE.

ISN'T THAT CORRECT?

>> YES, SIR.

I AGREE WITH THAT.

>> LET'S CHANGE IT.

YOU TRY TO USE EXAMPLES THAT ARE CLEAR.

IN THE FIELD OF MEDICAL REIMBURSEMENT THERE'S NO DOUBT GOING ON ALL ACROSS THIS COUNTRY A GREAT DEAL OF SOLICITATION OF PATIENTS TO TAKE ADVANTAGE OF THE GOVERNMENT SYSTEMS.

ALL RIGHT?

YOU'RE IN THE MEDICAL FIELD. YOU KNOW WHAT I'M TALKING ABOUT.

YOU CAN'T HAVE THINGS THAT ARE CLEARLY CONTRARY TO THE LAW

WRITTEN INTO CONTRACTS.
AND I JUST USE THOSE TWO AS AN
EXAMPLE, THAT ARE SO VERY
CLEAR.
BUT IT SEEMS AS THOUGH WHEN
THE ARBITRATORS MAKE THAT
DECISION, THE COURT'S HANDS
ARE TIED.

>> IN THAT CONTEXT AND I AGREE
ABOUT WHAT JUSTICE CANADY SAID
WITH THE OTHER EXAMPLE WITH
PROSTITUTION OR COCAINE SALES.
THOSE ARE OUTLIER CASES.
>> ILLEGALLY IS ILLEGALITY.
BUT THE QUESTION IS WHAT POWER
THE COURTS HAVE TO BECOME
INVOLVED NOW THAT THE U.S.
SUPREME COURT HAS TAKEN ITS
VIEW, EXPRESSED ITS VIEW, IS
THAT THE COURTS ARE TIED.
>> I THINK THAT THE POWER OF
THE COURT IS AND IF YOU
FOLLOW THE BUCKEYE RULE AND
IF YOU ALSO FOLLOW THE CASE
LAW THAT THIS COURT HAS
PROMULGATED OVER THE YEARS
REGARDING ARBITRATION THAT
GOES TO THE ISSUES OF
MERITORIOUS DETERMINATION OF
ARBITRATORS THAT SAYS THEY
MAKE A MISTAKE OF LAW, THEY
MAKE A MISTAKE OF FACT, A CASE
WHERE SOMEBODY WAS MADE TO PAY
SOMETHING IN TAX IN OPPOSITE
TO WHAT WAS REQUIRED IN
STATUTE AND THE FUNDAMENTAL
POLICY DECISIONS OF THE COURT
ARE IF THEY MAKE THAT MISTAKE,
THE ARBITRATION HAS TO STAND
BECAUSE THE OVERRIDING POLICY
IS IF PARTIES BARGAIN FOR A
DISPUTE RESOLUTION METHOD
THAT'S QUICKER, MORE
EXPEDIENT, LESS EXPENSIVE AND
IS AN ALTERNATIVE DISPUTE
RESOLUTION METHOD THAT
RELIEVES THE COURT SYSTEM, THE
PARTIES HAVE BARGAINED FOR
THAT PROCESS AND THAT'S THE

WAY THE PROCESS IS DELIVERED.

>> YOU'RE IN YOUR REBUTTAL TIME.

>> THANK YOU, JUDGE.

I'LL SIT DOWN AND I'LL

>> MAY IT PLEASE THE COURT, MICHAEL AUSTIN ON BEHALF OF THE APPELLEE, JUPITER MEDICAL CENTER, ALONG WITH COUNSEL MATTHEW GROSACK.

FIRST OF ALL, THIS IS NOT THE ORDINARY CASE WHERE JUPITER MEDICAL CENTER IS SIMPLY UPSET OR NOT HAPPY WITH THE ULTIMATE ARBITRATION AWARD.

THIS IS A VERY UNIQUE SITUATION WHERE THE ARBITRATOR CONSTRUED THE AGREEMENT, AN AGREEMENT WHICH HAD PROVISIONS THAT SAID YOU CANNOT CONSTRUE THIS IN VIOLATION OF FEDERAL OR STATE LAWS.

THE ARBITRATOR CONSTRUED IT IN SUCH A MANNER AS TO IMPOSE ILLEGAL CONTRACTUAL OBLIGATIONS UPON JUPITER MEDICAL CENTER AND CONVERTED THIS DOCUMENT WHICH OUR CLIENTS DURING THE UNDERLYING ARBITRATION THOUGHT WAS A LEGAL CONTRACT INTO A CLEARLY FACIALLY ILLEGAL CONTRACT.

IN THE AWARD WHICH THE ARBITRATOR ARBITRATION PANEL DRAFTED IN THIS CASE WAS A 15PAGE AWARD.

IT WASN'T SIMPLY A MONETARY NUMBER.

>> BUT ARBITRATION AWARDS HAPPEN EVERY DAY WHERE THE LOSING SIDE WOULD HAVE AN ARGUMENT TO SAY AS A MATTER OF LAW THIS AWARD IS WRONG. BUT UNDER OUR ARBITRATION LAW YOU DON'T GET TO MAKE THAT ARGUMENT TO OVERTURN IT.

>> I UNDERSTAND IT.

OUR ARGUMENT IS THAT THE AWARD IS FACIALLY ILLEGAL.

>> AREN'T YOU ARGUING THAT

IT'S LAWFULLY INVALID?

>> I'M ARGUING THAT IT CANNOT BE JUDICIALLY CONDONED BY THE STATE OF FLORIDA.

>> AS A MATTER OF LAW.

>> AS A MATTER OF LAW

>> IT'S ERRONEOUS AS A MATTER OF LAW.

>> NO.

IT'S NOT IT'S MORE NUANCED THAN THAT.

THE ISSUE IS WE'RE GOING TO ACCEPT THE ARBITRATOR'S CONSTRUCTION.

THAT'S THEIR CONSTRUCTION.

WE'RE NOT CHALLENGING THEIR CONSTRUCTION.

THE QUESTION NOW COMES, AS JUSTICE LEWIS RAISED, WHAT DO YOU DO NOW THAT WE HAVE AN ARBITRATOR WHO ISSUED A 15PAGE AWARD AND THE ILLEGALITY JUMPS OFF THE PAGE.

>> BUT HOW IS THIS ANY DIFFERENT THAN IN BUCKEYE THE ARBITRATOR HAD MADE A MISTAKE AND DECIDED THAT THERE WAS NOT USURY WHEN IN FACT THERE WAS.

HOW IS THAT ANY DIFFERENT? WOULDN'T THAT HAVE BEEN THE END OF THE MATTER?

>> WELL, LET'S TALK ABOUT BUCKEYE.

BUCKEYE, WHAT THE SUPREME COURT SAID AND I THINK IT'S BEING STRETCHED THAN WHAT THE SUPREME COURT ACTUALLY SAID. THEY WERE TRYING TO NOT BE COMPELLED TO ARBITRATION.

THE U.S. SUPREME COURT SAID IT IS THE DUTY OF THE ARBITRATOR IN THE FIRST INSTANCE TO DETERMINE THE ILLEGALITY ISSUE.

WHEN THEY SAY IN THE FIRST INSTANCE THAT OBVIOUSLY MEANS THAT THERE'S SOME COURT SYSTEM THAT WOULD LOOK AT IT IN THE SECOND INSTANCE.

THIS IS NOT A VAGUE PUBLIC
POLICY ARGUMENT.

THE QUESTION IS WHEN THIS
COMES INTO THE COURT'S LAP,
AND YOU'RE PUTTING A STAMP ON
IT, A TRIAL COURT'S GOING TO
PUT A STAMP ON AN ARBITRATION
AWARD, CAN WE JUST RUBBER
STAMP AN ILLEGAL ARBITRATION
AWARD?

>> WHAT HAPPENS TO FLORIDA'S
ARBITRATION STATUTE THAT SAYS
LIST THE GROUNDS THAT ARE FOR
THE JUDGE TO DECIDE?

AND IT'S LIMITED.

SEE, YOU THINK THIS IS WORSE
THAN BUCKEYE.

I THINK THIS IS SORT OF A
SITUATION WHERE YOU'RE NOT
YOU KNOW, RESPECTFULLY, YOU'RE
NOT HAPPY WITH THE AWARD AND
YOU'RE DOING WHAT A GOOD
LAWYER WOULD DO, IS TRYING
EVERY WHICH WAY TO GET IT
OVERTURNED.

BUT HOW IS WHERE DOES THE
LISTING OF WHAT THE COURT CAN
DECIDE, WOULDN'T WE BY YOU
SAYING IF AN ARBITRATION AWARD
IS INTERPRETED IN A WAY THAT
MAKES IT ILLEGAL, THAT THAT'S
ANOTHER GROUND?

WHERE IS THAT IN THE STATUTE?

>> THE ARBITRATION STATUTE IN
682.13 DID NOT DISPLACE THE
OBLIGATION OF THE JUDICIARY TO
ENSURE THAT IT IS NOT
ENFORCING ILLEGAL AWARDS.

>> SO WE WOULD BE REWRITING
THE STATUTE.

>> NO.

YOU WOULDN'T BE REWRITING THE
STATUTE.

IT'S A PRINCIPLE OF THE LEGAL
SYSTEM THAT COURTS CANNOT
ENFORCE LEGAL CONTRACTS.

ARBITRATION IS A
CONTRACTUALBASED DISPUTE
RESOLUTION MECHANISM.

UNDER JUSTICE LEWIS'S ANALOGY

OR HYPOTHETICAL, THIS SITUATION WOULD ARISE IF PARTIES KNOWINGLY ENTER INTO ILLEGAL CONTRACTS, HAVE AN ARBITRATION PROVISION WHICH SAYS YOU CANNOT STRIKE THIS DOWN BECAUSE IT'S AN ILLEGAL CONTRACT, THEY GET AN ENFORCEABLE AWARD, BRING IT UP FOR CONFIRMATION AND TRIAL COURTS AND FLORIDA COURTS WOULD HAVE TO RUBBER STAMP AN ILLEGAL AWARD.

THAT'S EFFECTIVELY WHAT WE HAVE IN THIS SITUATION.

>> BUT FROM A MATTER OF PUBLIC POLICY, THAT SOUNDS HORRIBLE, OKAY?

I UNDERSTAND THAT.

BUT IT LEAVES OUT OF THE DISCUSSION AND OUT OF CONSIDERATION FROM THE PUBLIC POLICY PERSPECTIVE THE REALITY OF REGULATORY INVOLVEMENT AND CRIMINAL PROSECUTORIAL INVOLVEMENT.

NOW, IF SOMETHING ILLEGAL IS GOING ON THAT VIOLATES THE REGULATIONS, THERE ARE REGULATORS WHO WILL COME AND KNOCK ON YOUR DOORS.

AND THERE'S NO QUESTION ABOUT THAT.

AND IF IT'S A CRIMINAL OFFENSE, THERE ARE PROSECUTORS, FEDERAL AND STATE, WHO WILL COME KNOCKING ON YOUR DOOR.

SO THE NOTION THAT SOMEHOW THIS MATTER OF ILLEGAL CONDUCT BEING CONDONED IS GOING TO THAT WHAT THE ARBITRATOR SAYS, ASSUMING THAT THE ARBITRATOR DOES MAKE A MISTAKE, THAT THAT'S GOING TO BE THE END OF THE MATTER SEEMS TO ME TO BE FANCIFUL.

>> THERE ARE PROSECUTION RISKS.

IN THIS CASE WE HAVE AN AWARD

WHICH IMPOSES ILLEGAL OBLIGATIONS UPON THE PARTY WHICH THEY'RE ASKING THE FLORIDA JUDICIARY TO SUPPORT. IT'S GOING TO PUT JUPITER AT RISK FOR VIOLATIONS.

WE ENTERED INTO A CONTRACT THAT WAS LEGAL AND IT WAS NOT FOR THE SALE OF REFERRAL OF PATIENTS.

>> ARE YOU SUGGESTING THAT THE REGULATORS, THE OTHER SIDE RECEIVING MONEY, NOT RECEIVING THE ACTUAL SERVICES UNDER THE CONTRACT, SO YOU MEAN REGULATORS AND CRIMINAL PROSECUTORS, THAT BECAUSE THEY RECEIVE THE AMOUNT OF MONEY IN THE EQUIVALENCY, THAT THAT'S A CRIME?

BECAUSE THE ACT HASN'T BEEN PERFORMED.

THAT'S THE REASON THEY GOT DAMAGES.

>> WELL, IF YOUR ANALYSIS IS WE ARE HAVING TO PAY MONEY FOR NOT HAVING VIOLATED THE LAW, IT BRINGS US BACK TO THE POSITION THAT THE ARBITRATOR CONSTRUE THE AGREEMENT IN A WAY TO IMPOSE ILLEGAL OBLIGATIONS UPON THE PARTIES. YOU ASKED ABOUT WHAT STATUTORY EXCEPTION COULD APPLY.

IF WE'RE LOOKING AT THE STATUTORY PROVISIONS, IN ADDITION TO THE BETTER OFF PRINCIPLES THAT COURTS CANNOT JUDICIARY CONDONE, THERE'S THE EXCEEDING POWERS ELEMENTS. AN ARBITRATOR EXCEEDS HIS OR HER POWERS IF THEY ISSUE AN AWARD WHICH IS ILLEGAL.

YOU CANNOT ARBITRATE A FELONY. WE HAVE THESE CASES CITED IN OUR BRIEF, IN OUR MEMORANDUM.

>> SHOULD YOUR REMEDY BE TO GET THE LEGISLATURE TO INCLUDE SOMETHING IN THE I MEAN, I FIND IT TROUBLING THAT IF IN

FACT THERE IS SOMETHING
ILLEGAL ABOUT THE CONTRACT AND
THE ARBITRATOR MAKES THAT
DETERMINATION AND THEN IT'S
NOT REVIEWABLE BY THE COURT,
THAT THERE MIGHT BE SOMETHING
WRONG WITH THAT.

BUT ISN'T YOUR REMEDY HERE TO
ASK THE LEGISLATURE TO INCLUDE
SOMETHING IN THE STATUTE TO
COVER THOSE KINDS OF
SITUATIONS?

>> I DON'T THINK THAT'S
NECESSARY.

MY UNDERSTANDING IS UNDER THE
STATUTE EXCEEDING POWERS,
WHICH IS CURRENTLY THERE, IS A
STATUTORY BASIS TO VACATE AN
ILLEGAL AWARD.

BUT THERE'S ALSO

>> DOESN'T THE FEDERAL
ARBITRATION ACT ACTUALLY
CONTROL THIS?

>> THE FEDERAL ARBITRATION ACT
DOES NOT CONTROL.

>> WHY NOT?

>> THE FEDERAL COURT DECIDED
THAT THEY DID NOT HAVE SUBJECT
MATTER JURISDICTION.

>> THE FEDERAL DISMISSED IT
BECAUSE THEY DIDN'T HAVE
SUBJECT MATTER JURISDICTION.
THAT'S A MATTER OF FEDERAL
ARBITRATION LAW.

>> THE POSITION THEY'VE BEEN
TAKING IN THIS CASE AND THAT
WE'VE BEEN TAKING IS THAT THE
FLORIDA ARBITRATION CODE
APPLIES TO THIS SITUATION.
THERE IS OVERLAP, BUT THE
PUBLIC POLICY

>> WHY IS THERE NOT INTERSTATE
COMMERCE HERE?

>> THESE WERE FLORIDABASED
THERE WAS MEDICARE MONIES
EXCHANGED, BUT THESE WERE ALL
FLORIDABASED HOME HEALTH
SERVICES.

>> IS IT YOUR CONTENTION
THERE'S NO INTERSTATE

COMMERCE?

>> NO.

THAT IS NOT MY CONTENTION.

I'M SAYING THERE IS

>> THERE IS INTERSTATE
COMMERCE.

>> THERE IS INTERSTATE
COMMERCE.

>> SO WITH THAT DOESN'T THE
FEDERAL ARBITRATION ACT APPLY?

>> OUR POSITION IS THAT THE
FLORIDA ARBITRATION CODE
APPLIES.

BUT I THINK THE ANALYSIS DOES
NOT CHANGE REGARDLESS OF WHICH
CODE APPLIES.

THE U.S. SUPREME COURT CASE
APPLIES THE EXACT SAME

>> SO UNDER TITLE 9 YOU WOULD
AGREE WOULD BE THE SAME AS THE
FLORIDA.

>> THE SAME ESSENTIALLY THE
SAME.

THEY BOTH HAVE THE EXCEEDING
POWERS GROUNDS.

>> HASN'T THE JURISPRUDENCE IN
THAT AREA BEEN THAT THAT
REFERS TO ARBITRATORS DECIDING
SOMETHING THAT HAS NOT BEEN
SUBMITTED TO ARBITRATION?
NOT MAKING MISTAKES OR
DECISIONS THAT ARE CONTRARY TO
LAW.

>> THIS IS AN IMPORTANT ISSUE
THAT'S BEING OVERLOOKED AS
WELL.

>> ISN'T IT?

>> THE DISTINGUISHING CASE IS
THE ILLEGALITY OF THIS
CONTRACT AS THEY CORRECTLY
NOTED WAS NOT IN DISPUTE IN
THE UNDERLYING ARBITRATION.
BOTH PARTIES THOUGHT THIS WAS
A LEGAL CONTRACT.

>> I THOUGHT THAT YOU LOOK TO
THE ARBITRATION CLAUSE TO
DETERMINE WHAT IS TO BE
ARBITRATED AND IN THIS CASE
DOESN'T IT SAY ANY DISPUTE
BETWEEN THE PARTIES?

>> ANY DISPUTE BETWEEN THE PARTIES, BUT THE GOVERNING DOCUMENT, THE PURCHASE AGREEMENT, HAS LIMITED LANGUAGE IN IT. IT LIMITS THE ARBITRATORS ABILITY TO CONSTRUE THE AMENDMENT AGREEMENT. IT SAYS IT HAS TO BE CONSTRUED IN COMPLIANCE WITH THOSE SAME LAWS. THE ARBITRATOR DID NOT HAVE THE POWER TO IMPOSE AN ILLEGAL ARRANGEMENT ON THESE PARTIES. BUCKEYE WAS A VERY DIFFERENT SITUATION WHERE THE PARTY WAS RESISTING ARBITRATION IN THE FIRST INSTANCE.

>> LET ME ASK YOU THIS. THE LAST SENTENCE IN(1), WHERE IT LISTS THE FIVE FACTORS, BASIS FOR NEGATING AN ARBITRATION AWARD, THE LAST SENTENCE SAYS BUT THE FACT THAT THE RELIEF WAS SUCH THAT IT WOULD NOT BE GRANTED BY A COURT OF LAW OR EQUITY IS NOT GROUND FOR VACATING OR REFUSING TO CONFIRM THE AWARD. DOESN'T THAT NEGATE YOUR ARGUMENT?

>> NO.

>> ARE YOU ARGUING SOME POLICY DECISION REASON FOR BASICALLY AGREEING WITH YOU? THAT SEEMS TO NEGATE THAT.

>> AND WE'RE NOT QUESTIONING THE RELIEF. THE ONLY RELIEF THEY AWARDED IS MONETARY RELIEF. WHAT WE'RE CHALLENGING IS THE EFFORT TO IMPOSE AN ILLEGAL ARRANGEMENT UPON THE PARTIES. NOW, THE ILLEGALITY JUMPS OFF THE PAGE OF THE ARBITRATION AWARD. AND ALL WE'RE ASKING IS FOR SOMEONE TO CONSIDER THIS. WE WANT THE TRIAL COURT TO CONSIDER THIS.

THE ARBITRATOR DIDN'T CONSIDER THIS.

THE AWARD IS WHAT BRINGS THE ILLEGALITY OF FACE.

IF THIS WAS A CONTRACT FOR THE SALE OF A PROSTITUTION AND IN AN UNDERLYING ARBITRATION WE RAISED THAT ILLEGALITY ISSUE, SOMEONE WOULD DECIDE T. THE ARBITRATOR.

IN THIS CASE THEY'VE ADMITTED IN THEIR PAPERS THAT JMC STIPULATED THAT THE CONTRACT WHICH HAS THE PROVISION THAT SAYS THIS SHALL NOT BE CONSTRUED ILLEGALLY WAS STIPULATED TO BE A LEGAL CONTRACT.

THE ILLEGALITY ISSUE DID NOT ARISE UNTIL THE AWARD WAS ISSUED.

>> AND THEN YOU BROUGHT IT UP TO THEM AND THEY DENIED IT.

>> THEY SUMMARILY DENIED IT.

>> IS THAT NOT DENYING IT ON THE MERITS?

>> THE CHALLENGE WAS TO THEIR ARBITRATION TO THEIR ARBITRATION AWARD.

>> SEE, YOU GIVE UP WHEN YOU AGREE TO ARBITRATION SOME CERTAIN RIGHTS, AND AS JUSTICE LEWIS SAID, NOT ONLY RIGHT OF ACCESS TO THE COURTS, BUT RIGHT TO AN APPEAL.

AND I THINK THIS CASE IS AN EXAMPLE OF, YOU KNOW, THE OLD ADAGE, YOU KNOW, YOU MAKE YOUR BED, YOU LIE IN IT.

YOU DON'T I MEAN, RESPECTFULLY AND I REALIZE THAT AS I SAID, YOU'RE ADVOCATING FOR YOUR CLIENT. YOU DON'T LIKE THIS AWARD. AND NOW YOU'RE TRYING TO TURN IT INTO THAT THEY VIOLATED FEDERAL AND STATE LAW.

AND THAT'S THE SEEMS TO ME, BECAUSE YOU HAVEN'T REALLY EXPLAINED AND MAYBE THAT'S

NOT THE ISSUE HERE EVEN HOW
IT DOES VIOLATE STATE OR
FEDERAL LAW.
IT DOESN'T JUMP OUT, YOU KNOW,
AT LEAST TO ME.
SO WHY ISN'T THAT WHAT YOU'RE
DOING?
YOU ARE SEEKING AN APPEAL OF
AN AWARD THAT YOU DISAGREE
WITH, NOT ON THE GROUND LISTED
IN THE STATUTE.
>> AND LET ME ADDRESS YOUR
ISSUE.
FIRST OF ALL, WHY IT JUMPS OUT
AND WHY IT'S ILLEGAL?
THE ARBITRATION AWARD HAS
MULTIPLE REFERENCES
SPECIFICALLY SAYING THAT THE
VNA BASED ITS DETERMINATION TO
PURCHASE ON RECEIVING 45 TO 50
REFERRALS PER MONTH.
>> WHEN YOU READ THE CONTRACT,
THOUGH, IT SEEMS TO ME THAT
THAT'S THE WHOLE THING, WHAT
THEY WERE BUYING, IS THE
STREAM OF PATIENTS.
I LOOKED AT THIS THING UP AND
DOWN.
YOU'RE YELLING THAT IT'S
ILLEGAL, BUT IT LOOKS LIKE
FROM THE OUTSET IF THIS IS
WHAT THEY'RE TALKING ABOUT,
THEY WERE HAVING ACCESS TO THE
HOSPITAL, THE PATIENTS FLOWING
THROUGH THE DISCHARGE PROCESS
AND IT'S EXACTLY WHAT WAS
CONTEMPLATED.
LOOKS TO ME LIKE THAT THE
ARBITRATOR ENFORCED.
SO I JUST THIS WHOLE THING
TO ME IS JUST A MYSTERY.
>> IF YOU LOOK AT THE ASSET
PURCHASE AGREEMENT, IT WAS A
\$639,000 PURCHASE PRICE TOTAL
FOR THE EXISTING PATIENTS THAT
THEY HAD AND EXISTING ASSETS.
>> DID THEY NOT LEASE SPACE?
>> THEY LEASED SPACE.
>> IT'S SMART BUSINESS.
YOU WANT THE FLOW OF THE

PATIENTS FOR REFERRALS.
>> IF THE PATIENTS END UP THERE, THAT'S FINE.
THEY CANNOT HAVE AN OBLIGATION FOR US TO REFER PATIENTS.
>> BUT IN THE CONTRACT DIDN'T IT SAY THAT AS PART OF THE DISCHARGE PROCESS THAT IF AFTER FOLLOWING THE PROCEDURES THAT THEY WENT THROUGH IN THE DISCHARGE PROCESS THE PATIENT EXPRESSES NO PREFERENCE, JMC WILL INFORM THE PATIENT OF ITS RELATIONSHIP WITH THE VNA. ISN'T THAT RIGHT IN THERE?
>> IT WILL INFORM THEM OF THEIR RELATIONSHIP.
IT DOESN'T SAY THEY WILL REFER PATIENTS.
>> OKAY.
WE GET TO A PRETTY FINE DISTINCTION HERE.
BUT IT SEEMS LIKE THAT IS LETTING THEM KNOW THAT THESE FOLKS ARE DOWN THE HALLWAY.
AND IF YOU GOT NO OTHER PREFERENCE, HERE THEY ARE.
AND SO THIS NOTION NOW, WHETHER THAT'S AN ILLEGAL REFERRAL, I DON'T KNOW.
BUT APPARENTLY IT WAS YOUR POSITION THAT THAT'S NOT.
>> IT'S OUR POSITION THAT THAT DOES NOT REQUIRE THE REFERRAL TO BE MADE.
IT WAS THE ARBITRATOR'S POSITION THAT THAT REQUIRED THE FUTURE STREAM OF REFERRALS.
NOW, FOR A \$639,000 PURCHASE PRICE, HOW COULD VNA HAVE EXPECTED TO MAKE \$7 MILLION?
>> TO TELL THEM YOU'VE GOT AN OBLIGATION HERE TO TELL THEM THAT THE VNA IS DOWN THE HALL, RIGHT?
>> YES.
BUT THAT'S WHERE THE OBLIGATION THE ARBITRATOR CONSTRUED THAT AS AN

OBLIGATION AND REQUIREMENT TO
SEND EVERY REFERRAL THAT
DOESN'T MAKE A DECISION TO
VNA.

>> WELL, IT'S WHERE THE
PATIENT WANTS TO GO,
ULTIMATELY.

AND I'M JUST IT'S KIND OF
IT'S A VERY SUBTLE
DISTINCTION.

>> THEIR ENTIRE DAMAGE AWARD
THE AWARD IS BASED UPON
LOSS OF THOSE ILLEGAL
REFERRALS.

THEY SAID YOU SHOULD HAVE SENT
THEM 50 A MONTH.

YOU DIDN'T.

THEREFORE THEY'RE ENTITLED
AND THERE'S SOME DISCOUNT
FACTOR THEY ADDED IN.

>> I THINK I'M LOOKING AT THE
BIG PICTURE HERE AND WHAT
REALLY CONCERNS ME IN A
CERTAIN WAY IS THAT THIS ISN'T
A CONTRACT WHERE AN ARGUMENT
CAN ARGUE THEY DID NOT KNOW
THEY WERE GETTING INTO
ARBITRATION, LIKE A PERSON WHO
ACQUIRES A CREDIT CARD AND THE
FIRST TIME YOU USE IT YOU
AGREE TO ARBITRATION.

THAT PERSON COULD ARGUE I
DIDN'T KNOW I WAS GIVING UP
ALL THESE COURT RIGHTS.

THESE TWO PARTIES HERE, BOTH
SIDES, NEGOTIATED THIS
CONTRACT.

YOU AGREED TO ARBITRATION IN
THIS CONTRACT.

IT WAS RIGHT THERE IN FRONT OF
YOU THE WHOLE TIME.

AND NOW YOU DON'T GET AN AWARD
THAT YOU DON'T YOU GET AN
AWARD THAT YOU DON'T LIKE AND
SUDDENLY, OH, YOU KNOW WHAT?
THIS CONTRACT WAS BAD BECAUSE
IT WAS ILLEGAL.

AND I THINK THAT'S BASICALLY
THE ELEPHANT IN THE ROOM, SO
TO SPEAK.

>> AND I RESPECTFULLY
DISAGREE.
THE ISSUE IS WE'RE NOT
SAYING THAT WE WERE TRICKED
INTO ARBITRATION.
THE QUESTION IS WHAT IS THE
JUDICIAL WHAT HAPPENS IS
THE ARBITRATION PROCESS
HAPPENS OUTSIDE OF COURTS, BUT
THEY BRING IT BACK INTO THE
COURT SYSTEM WHEN THEY ASK THE
JUDICIARY TO STAMP AND CONFIRM
AN AWARD.
WHAT THEY'RE SAYING IS WE NEED
TO BALANCE THAT THE
JUDICIARY'S HANDS ARE TIED.
IF YOU LOOK AT AN AWARD AND
SUA+SPONTE THE COURT SAYS THIS
IS ILLEGAL.
LET'S JUST SAY THAT THE TRIAL
COURT UNDERSTOOD THE RELEVANT
HEALTH CARE LAWS AND SAW HOW
ILLEGAL IT WAS AND THEN
DECIDED TO BRING THAT ISSUE UP
SUA+SPONTE, SAYS I'M NOT GOING
TO RUBBER STAMP AN ILLEGAL
AWARD.
ACCORDING TO THEM, THIS PUBLIC
POLICY, THIS RESISTANCE OF
COURTS TO JUDICIALLY CONDONE
ILLEGAL ACTS, HAVE BEEN
ABROGATED BECAUSE IT'S NOT
SPECIFICALLY INCLUDED IN THE
GROUNDS FOR MOTION TO VACATE.
THIS ISSUE IS NOT ABOUT JMC
BEING DISAPPOINTED.
IT'S ABOUT TYING THE HANDS OF
THE JUDICIARY AND SAYING YOU
CANNOT LOOK AT THE
ARBITRATOR'S ILLEGAL AWARD AND
TAKE ANY ACTION UNDER ANY
CIRCUMSTANCES.
>> AND THE AWARD ITSELF IS
JUST FOR DAMAGES, RIGHT?
THERE'S NO INJUNCTIVE RELIEF?
>> IT'S FOR DAMAGES.
IF THEY WOULD HAVE JUST WROTE
A NUMBER AND SAID \$600,000,
THEY WROTE THE OPINION WHICH
SAID THAT INTERPRETED THE

PARTIES' AGREEMENT AS
REQUIRING OBLIGATIONS OF JMC
TO MAKE THESE FUTURE ILLEGAL
REFERRALS.

SO THE CONCEPT THAT THEY'RE
JUST DISAPPOINTED WITH IT, IT
REALLY ISN'T AND I
UNDERSTAND.

I ARBITRATE A LOT AND I
UNDERSTAND THE ISSUE.

>> YOUR ARGUMENT IS THAT IT'S
REQUIRING FUTURE ACTIONS ON
YOUR PART THAT WOULD BE
ILLEGAL UNDER FEDERAL LAW.

>> YES, EVEN HAVING PAID
BEING A PARTY TO THIS
AGREEMENT AS THEY'VE CONSTRUED
IT IS ILLEGAL UNDER FEDERAL
AND STATE LAW.

>> WHAT'S THE STATE OF THE
AGREEMENT NOW?
IS IT OVER?

>> IT'S BEEN OVER SINCE
LITIGATION.

>> SO THIS IS REALLY JUST
ABOUT MONEY.

IT'S JUST ABOUT MONEY.
THIS ISN'T ABOUT FUTURE
CONDUCT UNDER THE AGREEMENT.
THE AGREEMENT IS OVER.

>> YOU MEAN ANY FUTURE DUTIES
UNDER THE AGREEMENT?

NO, OTHER THAN THE CONDUCT OR
THE AGREEMENT ITSELF WOULD
OBVIOUSLY BE IN EXISTENCE AT
THE TIME THE PAYMENTS WERE
BEING OBLIGATED FOR.

>> THIS IS ABOUT THINGS THAT
HAVE ALREADY HAPPENED, NOT
ABOUT ANY RELATIONSHIP THAT
GOES INTO THE FUTURE.

>> THERE IS NO SPECIFIC
PERFORMANCE REQUIREMENTS TO DO
ANYTHING IN THE FUTURE.
THE PROBLEM IS THERE SHOULD BE
NO DISTINCTION.

>> IS THE CONTRACT STILL IN
EFFECT?

>> IT IS NOT IN EFFECT.

>> THAT'S WHAT I WAS TRYING TO

ASK.

DOES IT GOVERN FUTURE CONDUCT
OR NOT?

IT'S ONE THING SUE TO SAY
THAT YOUR DAMAGES MAY INCLUDE
DAMAGES TO VALUE THE WHOLE
THING AT THE TIME, WHICH I
GUESS THAT'S IN YOUR
CIRCUMSTANCE NOW, I SUPPOSE.
BUT IF THE CONTRACT IS OVER
AND NO PARTY IS PERFORMING
UNDER THE CONTRACT, THERE IS
NO FUTURE PERFORMANCE IN THE
CONTRACT.

IS THAT WHERE WE ARE?

>> THERE'S NO FUTURE
PERFORMANCE, BUT THE PAST
PERFORMANCE, PAST ILLEGAL
ACTS, THAT DOESN'T ALLEVIATE
THE REGULATORY OR CRIMINAL
CONCERNS.

IF THE ARBITRATOR HAS
CONSTRUED THIS AS AN ILLEGAL
ARRANGEMENT YOU CAN'T
COMMIT A CRIME AND SAY I'M NOT
GOING TO COMMIT A CRIME IN THE
FUTURE, THEREFORE MY HANDS ARE
CLEAN.

>> IT WOULD SEEM TO ME IF YOU
HAD AN ARBITRATION AWARD THAT
REQUIRED INJUNCTIVE RELIEF AND
IT WAS ILLEGAL UNDER FEDERAL
LAW, THERE WOULD BE NOTHING TO
BAR YOU FROM WALKING INTO A
FEDERAL COURT WITH A
DECLARATORY ACTION.

BUT THAT'S NOT WHAT WE HAVE
HERE.

>> I THINK THE ANALYSIS WOULD
BE IDENTICAL.

IF THEY REQUIRED US TO
SPECIFICALLY REFER THESE
SPECIFICALLY PERFORM AND REFER
PATIENTS, UNDER THEIR ANALYSIS
AND THE POSITION THEY'RE
ARGUING TODAY, THAT'S NOT ONE
OF THE STATUTORY GROUNDS TO
VACATE THE AWARD.

THAT AWARD WOULD BE IN GOOD
STANDING.

>> JUSTICE POLSTON IS REFERRING TO THE FACT THAT YOU COULD GO INTO A COURT AND GET RELIEF FOR AN INVALID CONTRACT, NOT SOMETHING TO INVALIDATE THE AWARD, BUT GOING FORWARD. THAT'S NOT HERE.

>> THE CONTRACT WOULD HAVE ALREADY BEEN DETERMINED VALID BY THE ARBITRATOR. IF IN THE UNDERLYING ARBITRATION WHICH SAYS YOU NEED TO DO THIS ILLEGAL ACT GOING FORWARD, UNDER THE ANALYSIS THEY'RE ADVANCING, THE COURT WOULD NOT BE ABLE TO DO ANYTHING BECAUSE THERE IS NO STATUTORY BASIS TO CHALLENGE THAT.

SO I THINK THAT'S A GOOD QUESTION ON YOUR PART. I THINK THAT FOCUSES OUR CONCERN, OUR OVERALL CONCERN. THIS ISN'T SOUR GRAPES. IT REALLY ISN'T.

THIS IS AN ISSUE THAT'S AN IMPORTANT ISSUE FOR THE JUDICIARY AND I THINK THAT'S WHY WE'RE HERE TODAY. BUT WHAT HAPPENS WHEN THAT ARBITRATION AWARD COMES UP AND REQUIRES SPECIFIC PERFORMANCE? IF THIS COURT TODAY ISSUES OR IN THIS CASE ISSUES THE AWARD THAT THERE'S NO WAY TO CHALLENGE AN ARBITRATOR'S RULING OR AWARD AS TO THE ILLEGALITY CONCEPT, THEN THERE'S NOTHING THAT CAN BE DONE.

>> I THINK THERE IS. MY QUESTION DIDN'T HELP YOU. BUT YOU'RE OUT OF TIME. IF YOU COULD SUM UP. YOU'RE OUT OF TIME.

>> SURE. THE POSITION IS THERE IS NOT ONLY A STATUTORY BASIS, WHICH IS THE EXCEEDING POWERS

ARGUMENT, BUT ALSO THIS
FUNDAMENTAL PRINCIPLE THAT A
COURT SHOULD NOT CONDONE AN
ILLEGAL CONTRACT OR
ARBITRATION AWARD.
THIS IS NOT BUCKEYE.
EVEN IN BUCKEYE THEY SAID THAT
THE ARBITRATOR SAID CONSIDER
THE ILLEGALITY ISSUE IN THE
FIRST INSTANCE.
I THINK BY SAYING FIRST
INSTANCE THEY SPECIFICALLY
ACKNOWLEDGED THAT THE COURT
WOULD BE THE PERSON LOOKING AT
THE ILLEGALITY ISSUE IN THE
SECOND INSTANCE.
THIS IS OUTSIDE THE TYPICAL
CHALLENGES.
THE CONCEPT ABOUT FLOODGATES
IS A RED HERRING.
THIS IS A RARE SITUATION WHERE
YOU HAVE A PANEL THAT HAS A
15PAGE AWARD WHICH CREATES
THE ILLEGALITY.
IT'S A VERY UNIQUE SITUATION.
I DON'T THINK ALL OF THE
CONCERNS ABOUT FINALITY AND
EFFICIENCY SHOULD OVERWHELM
THE IMPORTANT CONCERN ABOUT
MAINTAINING THE INTEGRITY OF
THE JUDICIAL FORUM AND USING
THE JUDICIAL FORUM TO
APPROPRIATELY MONITOR THESE
VERY, VERY NARROW SITUATIONS
WHERE THE ILLEGALITY ISSUE IS
RAISED ON THE FACE OF THE
AWARD AND ON THE FACE OF THE
CONTRACT.
>> THANK YOU.
>> THANK YOU.
>> REBUTTAL?
>> I THINK COUNSEL
MISAPPREHENDS THE ARBITRATOR'S
AWARD.
NOTHING IN THE ARBITRATOR'S
AWARD IF YOU READ IT AS A
WHOLE SPECIFIES, DIRECTS,
ENFORCES OR SAYS AND
CONTEMPLATES THAT REFERRALS
MUST BE MADE.

MOREOVER, EQUALLY IMPORTANTLY,
THERE'S NOTHING IN THE
CONTRACT BETWEEN THESE
PARTIES, BOTH SOPHISTICATED
HEALTH CARE ENTITIES,
REPRESENTED BY COUNSEL.
IN FACT, JMC'S COUNSEL.
THAT REQUIRES THE REFERRAL OF
PATIENTS TO VNA.

>> SO WHERE IS THE \$1.2
MILLION IN DAMAGE COME FROM?

>> THIS WAS THE PURCHASE OF A
BUSINESS.

IT WAS MULTITIERED, JUSTICE
PARIENTE.

>> IT DOESN'T REPRESENT THE
LOSS OF BUSINESS, OF PATIENTS
THAT SHOULD HAVE BEEN TOLD VNA
WAS DOWN THE HALL?

>> WHAT IT REPRESENTS,
JUSTICE, IS WHEN YOU BUY A
GOING CONCERN, AND THIS WAS A
LONGTERM, INHOUSE HEALTH
CARE AGENCY THAT WAS
PURCHASED.

YOU DO YOUR DUE DILIGENCE.
THAT'S THE WAY BUSINESS IS
DONE.

AND YOU DETERMINE WHAT THAT
AGENCY THAT YOU'RE PURCHASING
HAS CREATED IN TERMS OF
INCOME.

JMC UNDISPUTEDLY RAN THIS
COMPANY WITHIN THAT HOSPITAL
IN COMPLIANCE WITH ALL
GOVERNMENT REGULATIONS FOR
YEARS.

>> JUSTICE ASKED A SPECIFIC
QUESTION, WHETHER OR NOT A
PART OF THE AWARD WAS FOR THE
FACT THAT JMC DID NOT SEND THE
PATIENTS THERE.

>> NO.

THE DAMAGE AWARD

>> SO YOU'RE NOT EVEN WE'RE
NOT EVEN AGREEING ON WHAT THE
NATURE OF THE DAMAGES ARE.
YOU DON'T EVEN AGREE WITH THIS
ARGUMENT THAT THE DAMAGES
REPRESENT SOMETHING THAT SO

WHAT'S SO JMC ISN'T ANY PART OF THIS ABOUT THE JMC WAS SUPPOSED TO TELL THE PATIENTS AT DISCHARGE IF THEY HADN'T DESIGNATED THAT VNA IS RIGHT DOWN THE HALL?

>> TWO PARTS OF THIS CONTRACT FOUND AS BREACH WHICH ARE NOT DISPUTED IN JMC'S ARGUMENT. THE MULTITIERED ARGUMENT PROVIDED FOR AN INHOSPITAL LEASE SIMILAR TO WHAT JMC HAD HAD.

OUR ADMISSION SPECIALISTS WERE IN THE HOSPITAL.

IT ALSO SET FORTH IN EXHIBIT D, WHICH WE'VE REFERENCED IN THE BREACH OR IN THE BRIEFS THE DISCHARGE PROTOCOL IN COMPLIANCE WITH FEDERAL AND STATE REGULATIONS THAT JUSTICE CANADY REPRESENTED AFTER THESE PROCEDURES IN COMPLIANCE WITH ALL FEDERAL AND STATE REGULATIONS HAD BEEN COMPLIED WITH IF THE PATIENT STILL EXPRESSES NO PREFERENCE, INFORMATION IS TO BE GIVEN.

>> AND YOU'RE SAYING THEY DIDN'T DO THAT.

>> THEY DIDN'T DO THAT.

>> SO YOU GOT DAMAGES FOR THEM NOT DOING THAT.

>> WE GOT DAMAGES FOR BREACH OF THE CONTRACT.

>> SO IT WAS NOT A, QUOTE, A NOT BECAUSE THEY DIDN'T REFER, BUT BECAUSE THEY DIDN'T TELL THE PATIENT LET'S JUST SINCE ALL OF US HAVE BEEN IN HOSPITALS AND STUFF, IF YOU DON'T HAVE A PREFERENCE AND SOMEONE IS RIGHT DOWN THE HALL, YOU'LL PROBABLY GO THERE.

SO THAT'S WHAT THEY AWARDED DAMAGES FOR.

>> THAT WAS ONE OF THE THINGS THEY FOUND BREACH FOR AND THEY AWARDED DAMAGES FOR.

AND THE DAMAGES IN THIS CASE
WERE NOT BASED ON THE
REQUIREMENT TO REFER, BUT WERE
BASED UPON

>> NOT TELLING.

>> WELL, THAT WAS THE BREACH.
THE DAMAGES WERE BASED ON THE
EVIDENCE THAT WE PERSUADE THE
THE ARBITRATORS TO ACCEPT
REGARDING HOW MUCH MONEY JMC
HAD BEEN ABLE TO MAKE WITH ITS
OWN HEALTH CARE AGENCY

>> SO IT'S DAMAGES FOR NOT
TELLING THEM ABOUT VNA.

I DON'T KNOW WHAT'S SO HARD
ABOUT THIS QUESTION.

>> IN PART, IT IS.

>> BECAUSE IF IT WAS ABOUT A
LEASE AND PURCHASE AGREEMENT
WE WOULDN'T BE HERE IF THE
DAMAGES CAME OUT OF SOMETHING
ELSE.

BUT IT CAME OUT OF THEIR
YOU'RE SAYING THAT THEY
BREACHED THE OBLIGATION TO
TELL PATIENTS WHO DIDN'T HAVE
A PREFERENCE IN DISCHARGE
PLANNING THAT VNA WAS RIGHT
THERE.

>> AND THEY UNILATERALLY
REMOVED US FROM THE HOSPITAL
PREMISES AND CUT OFF ACCESS TO
THE FOLKS WHO WERE THE
REFERRING AUTHORITIES.
THAT WAS BARGAINED FOR IN THIS
AGREEMENT.

>> THANK YOU FOR YOUR
ARGUMENTS.

>> THANK YOU.