>> ALL RISE.

THE SUPREME COURT OF FLORIDA

IS NOW IN SESSION.

PLEASE BE SEATED.

WE NOW COME TO THE THIRD AND

FINAL CASE ON TODAY'S DOCKET

SOUTHWEST FLOATING DOCKS

VERSES AUTO-OWNERS INSURANCE

CORP..

>> I WOULD LIKE TO HAVE A

PRELIMINARY QUESTION.

IF YOU'RE SUCCESSFUL AND WE

ANSWER THESE QUESTIONS IN

YOUR FAVOR, WHAT ATTORNEY'S

FEES WOULD YOU BE SEEKING?

>> ONLY THE FEES THAT WERE

INCURRED AFTER THE OFFER WAS

MADE.

>> OKAY, SO THIS ISSUE OF

THIS RELATION BACK THING,

AND I ASKED THE OTHER SIDE

THE QUESTION THAT IF THERE

HAD BEEN IN THIS CASE A

SECOND TRIAL, AND THE SECOND

TRIAL HAD RESULTS IN A

$900,000 VERDICT, AND YOU

WOULD BE GETTING THOSE FEES

WITH THAT TRIAL.

SO THE SIGNIFICANCE, THE

FACT THAT THE JUDGMENT IS

MORE FAVORABLE OCCURRED

BECAUSE THE 11TH CIRCUIT --

>> RE REINSTATED THE ARNL --

>> BUT WHEN YOU FILED THE

OFTEN OF JUDGMENT, THERE WAS

ZERO VERDICT AND THE JUDGE

HAD TAKEN IT AWAY.

>> WHEN WE FILED THE OFFER,

THE VERDICT HAD BEEN

REVERSED AND A NEW TRIAL

ORDER HAD BEEN ENTERED

SETTING A NEW TRIAL SOME 8

MONTHS HENCE.

INCLUDINGED WITH THAT NEW

TRIAL ORDER WAS A CASE

MANAGEMENT ORDER THAT

REESTABLISHED DISCOVERY

DEADLINES AND MOTION

DEADLINES, IT WAS A TOTAL

RESTART, AND THERE WAS

NOTHING PENDING.

THERE WAS NO APPEAL PENDING

NOR IN THE FEDERAL RULES WAS

THERE AN APPEALABLE ISSUE --

>> THAT'S WHY I DON'T --

WHY ARE WE HAVING TO DEAL

WITH THIS RELATION BACK

QUESTION?

>> BECAUSE THE DISTRICT

COURT SAID SO.

PART OF THE DISTRICT COURT'S

ORDER DENYING OUR MOTION FOR

FEES --

>> SO, BUT I'M STRUGGLING

WITH, HOW IN THE WORLD,

USUALLY WHEN YOU HAVE AN

OFFER OF JUDGE IT'S BEFORE

IT GOES TO TRIAL, CORRECT?

SO HOW IN THE WORLD COULD

THESE PEOPLE HAVE HAD AN

OPPORTUNITY TO EVALUATE THIS

OFFER OF JUDGMENT BEFORE THE

ACTUAL JUDGEMENT THAT WAS

FINALLY ENTERED BEFORE YOU

WENT TO TRIAL ON THAT?

I MEAN, BECAUSE IT WAS MADE

SOMEWHERE DOWN THE LINE, HOW

IN THE WORLD DID THEY HAVE

AN OPPORTUNITY TO EVALUATE

THAT BEFORE THE ACTUAL

VERDICT THAT IS NOW THE

VERDICT IN >> AT --

>> AT THE TIME THE OFFER WAS

MADE, THERE WAS NO JUDGMENT.

>> A JUDGMENT, WHEN IT'S

FINAL IN ALL REHEARINGS AND

ALL APPEALS HAVE OCCURRED,

AND THEN IT BECOMES FINAL.

THE FACT THAT THERE WAS A

JUDGMENT ENTERED AFTER THE

TRIAL, IT WAS SET ASIDE.

IT'S GONE FLP IS NO --

IT'S GONE, THERE IS NO

LONGER A JUDGMENT.

>> THE JUDGMENT NOW IS NOW

THE JUDGMENT THAT WAS

ENTERED AFTER THE APPELLANT

MANDATE.

>> BUT IT'S THE SAME

JUDGMENT THAT WAS ENTERED

BEFORE IN THESE APPEALS,

CORRECT?

>> IT'S NO LIABILITY, BUT

IT'S NOT THE SAME JUDGEMENT.

>> IT MAY NOT BE THE SAME

JUDGMENT, BUT IN MY MIND, IT

IS THE SAME --

YOUR CLIENT ENDED UP WINNING

BACK BEFORE ANY OF THIS

APPELLANT PROCEEDING --

>> WE ONLY WON AFTER THE

APPELLANT COURT REINSTATED

THE VERDICT.

>> I MISSTATED, THE FIRST

TRIAL YOU HAD --

THIS IS A CLAIM, AND THE

FIRST TRIAL FOUND THAT

AUTO-OWNERS ACTED IN BAD

FAITH.

>> NO DUTY TO INDEMNIFY.

AND THE JUDGE TOOK THAT

AWAY, SET ANOTHER TRIAL, AND

SUBSEQUENTLY OFFERED SUMMARY

JUDGMENT FOR AUTO-OWNERS.

>> PRIOR TO THE NEW TRIAL.

>> AND THEN GAVE THEM A

JUDGMENT.

>> OF $1.2 MILLION.

>> AND AFTER THAT THE 11TH

CIRCUIT SAY NO, THAT'S

WRONG, WE'RE REINSTATING THE

FIRST JUDGMENT AND A

JUDGMENT OF NO LIABILITY WAS

ENTERED AFTER THAT.

AND AT THAT TIME, YOU HAD

THE $2 --

$300,000, THAT LOOKED LIKE A

GENEROUS OFFER, THEY WERE

FACED WITH NO --

GETTING NOTHING, AND YOU

DIDN'T KNOW IF YOU WOULD BE

LIABLE OR NOT.

>> WE WEREN'T MAKING A

NOMINAL $10 OFFER.

>> AND NO ONE IS MAKING AN

ARGUMENT THIS OFFER WAS MADE

IN BAD FAITH --

>> AND THE 11TH CIRCUIT

FOUND --

THERE WERE MANY MORE GROUNDS

THAT AUTO OWNERS RAISED IN

OPPOSITION TO OUR FEE

MOTION.

AND ONE OF THEM THAT WAS IT

WAS MADE IN BAD FAITH.

AND THE 11TH CIRCUIT FOUND

THAT IT WAS NOT MADE IN BAD

FAITH, AND THAT'S NOT ONE OF

THE THREE QUESTIONS THAT

CERTIFIED.

>> THE QUESTION, THE THIRD

QUESTION, HAD ME --

I HAVE SOME QUESTIONS ABOUT

THE THIRD QUESTION.

THAT IS WHETHER THIS IS A

CONTRACT --

>> SUBSTANTIVE LAW --

>> AND THEY AGREE THAT THE

SUBSTANTIVE LAW OF MICHIGAN

WOULD APPLY?

>> YES.

>> AND ASSUMING THAT

MICHIGAN DOESN'T HAVE AN

OFFER OF JUDGMENT.

>> IT DOES NOT, NOR DOES IT
HAVE A RECIPROCAL STATUTE
FOR ATTORNEY'S FEES LIKE IN
571057.
>> DID YOU PROVIDE IN THE
CONTRACT FOR THE PREVAILING
PARTY ATTORNEY'S FEES?
>> NO THE CONTRACT PROVIDES
ONLY FOR AN AWARD OF FEES TO
AUTO-OWNERS.
>> NOW IN THE CONFLICT OF
ALL QUESTIONS IN TERMS OF --
THERE'S A PROCEDURAL ASPECT
OR STATUTE WHICH IS A RULE
OF FLORIDA PROCEDURE, 1.422
THAT EFFECTS THE TIMING, AND
THEN THERE IS A SUBSTANTIVE
ASPECT, FOR THE CONFLICT OF
LAW SERVICES, EXPLAIN HOW
THE VISION OF THE 11TH
CIRCUIT'S PREVIOUS DECISION
THAT WAS OVERTURNED, THE
McMAHON VERSES --
NOT OVERTURNED, >> McMAHON
VERSES TOTO.

>> WHY ISN'T THAT CORRECT?

>> IT IS, BUT THERE WAS

McMAHON ONE AND McMAHON

TWO.

THE 11TH CIRCUIT CONSIDERED

THIS STATUTE IN A CONFLICT

OF LAW'S SITUATION AND

MCMAHAN WON.

AND THEY SAY IF WE'RE

PROVIDING THE SUBSTANTIVE

LAW OF THE STATE, 768779

DOES NOT APPLY.

AT THE TIME, THERE WERE NO

FLORIDA DISTRICT COURT OR

SUPREME COURT DECISIONS ON

POINT.

THE DAY AFTER, OR WITHIN A

VERY SHORT TIME AFTER

MACMAHAN WAS ISSUED, THE

FOURTH DISTRICT CONSIDERED

THE --

>> I UNDERSTAND THAT, BUT

WHAT I'M ASKING YOU IS

WHAT'S WRONG WITH THE

REASONING OF MACMAHAN ONE.

>> IT'S THE REASONING SET

FORTH BY THE 4TH DISTRICT

NOW ADOPTED BY THE 5TH

DISTRICT.

AND THE REASONING IS THE

LEGISLATURE HAS CLEARLY

STATED THE PUBLIC POLICY.

THAT THIS STATUTE IS TO BE

APPLIED IN ANY ACTION IN THE

COURTS OF THE STATE.

IT DOESN'T SAY ANY ACTION IN

THE COURTS OF THIS STATE

THAT'S ONLY APPLYING FLORIDA

LAW.

AND THE PROCEDURAL, AND

THAT'S WHAT THEY SAID, THEY

DON'T EVEN ENGAGE IN THE

CHOICE OF LAW ANALYSIS.

IT'S A CLEAR LEGISLATIVE

INTENT THAT IT APPLIES TO

ALL LAWS.

AND THE POLICY DISTINCTION

THAT I SEE, IS GO BACK TO,

FOR EXAMPLE, 57105.

AS 571051 FOR SUITS AND

TACTICS.

AND THE COURTS HELD THAT

EVEN WHEN THE SUBSTANTIVE

LAW OF ANOTHER STATE APPLIES

BECAUSE FLORIDA IS

PROTECTING THE JUDICIAL

MACHINERY AND OPERATION OF

THE COURTS.

>> WHICH IS IRONIC THAT THE

PARTIES AGREE TO BE BOUND BY

MICHIGAN LAWS, AND THEIR

ATTORNEY'S FEES IS A

SUBSTANTIVE RIGHT GENERALLY,

AND THE JUDICIAL RESOURCES

OF THE FEDERAL COURTS ARE

NOT OUR CONCERN, SO WHY IN

THAT SITUATION IS IT POLICY

THAT MICHIGAN LAW OUGHT TO

APPLY.

AND I'M ASKING THIS MORE AS

A, I'M JUST NOT SURE, AND I

REALIZE THE CASE SAYS IT HAS

TO APPLY TO ALL OF THE

CASES.

>> THE FLORIDA COURTS

INTERESTING THE STATUTE HAVE

SAID ALL COURTS OF THIS

STATE DOESN'T JUST MEAN THE

FLORIDA STATE COURTS.

IT MEANS FEDERAL COURTS AS

WELL.

>> HOW CAN THE LEGISLATURE

HAVE A POLICY FOR WHAT'S

HAPPENING IN LITIGATION IN

THE FEDERAL COURTS?

>> BECAUSE IT JUST IMPACTS

THE CITIZENS OF THE STATE OF

FLORIDA AND THE JUDICIAL

MACHINERY IN THE STATE.

>> BUT IT REALLY, HOW DOES

--

I MEAN THE FEDERAL COURTS,

THE RESOURCE OF THE FEDERAL

COURTS, WE MIGHT NOT NEED

768 TO BEGIN WITH.

IT'S APPLES AND ORANGES FOR

WHAT HAPPENS IN FEDERAL

COURTS AND WHAT IS FUNDED BY

THE FEDERAL GOVERNMENT AND

WHAT HAPPENS TO THE STATE

COURT SYSTEM.

>> THE CITIZENS OF THE STATE

OF FLORIDA HAVE TO GO TO

FEDERAL COURT, AND IF THE

IDEA BEHIND THE POLICY IS TO

SHORTEN LITIGATION.

AND LIGHTEN THE COURT LOAD

BY GIVEN GREATER ACCESS AND

HAVING PEOPLE COME THROUGH

THE SYSTEM FATHER IN STATE

COURT OR FEDERAL COURT IS

THE SAME.

YOU DON'T WANT TO BE TIED UP

IN FEDERAL COURT BECAUSE

EVERYTHING THERE IS TURNING

DOWN UNREASONABLE OFFERS.

>> WHAT DOES RULE 68, IF YOU

WERE BOUND BY THE FEDERAL

RULES, WHAT IS THEIR

COMPARABLE OFFER OF

JUDGMENT.

>> THEY HAVE TO DEAL WITH

COSTS.

IT'S SUBSTANTIALLY SIMILAR.

IT'S ONLY COSTS, IT'S NOT

ATTORNEY'S FEES.

>> SO THAT IS THAT WHAT

REFLECTS THE POLICY --

THAT ATTORNEY'S FEES ARE

REQUIRED IN ORDER TO --

FOR RULE 146 SANCTIONS,.

>> THEY APPLY 76879.

AND AFTER BDO WAS DECIDED BY

THE 4TH DISTRICT, THEY

REVERSE MACMAHAN-TOTO ONE.

>> THE SUBSTANTIVE STATUTE,

I'M TALKING WITH A CASE THAT

ARRIVES IN FLORIDA.

I'M JUST TALKING ABOUT THE

CHOICE OF LAW, YOU'RE

SAIDING THERE'S A STRONG

PUBLIC POLICY FOR THE

STATUTE, AND I AM TAKING

ISSUE WITH THAT.

>> THEY HAVE GONE BEYOND

THAT PREPONDERATE FEDERAL

COURTS HAVE NOW ALSO SAID

THAT NOT ONLY DOES 76879.122

APPLY IN FEDERAL COURT

CASES, BECAUSE THE

LEGISLATURE SAYS SO, BUT THE

LEGISLATURE CANNOT

DISCRIMINATE IN THE FEDERAL

COURT SYSTEM.

IT'S A MATTER OF

CONSTITUTIONAL --

THAT THE LEGISLATURE COULD

NOT LIMIT THE APPLICATION OF

THE STATUTE ONLY TO THE

STATE COURTS AND NOT HAVE IT

APPLY IN THE FEDERAL COURT

THAT'S ARE WITHIN THE STATE.

IT SEEMS LIKE THEY WOULD

ONLY COME INTO PLAY FOR A

LOSS.

IT'S LIKE A CHICKEN AND AN

EGG TYPE ARGUMENT.

>> NO, BECAUSE 76879 SAYS IN

ANY CIVIL ACTION FOR DAMAGES

FILED IN THE COURTS OF THIS

STATE.

IT DOESN'T SAY --

>> BUT YOU ONLY LOOK AT 768

IF YOU'RE APPLYING FOR THE

LAW.

LET ME ASK YOU THIS ON THE

CHOICE OF LAW PROVISION.

WHAT DOES THE CHOICE OF LAW

PROVISION IN THE RELATED

CONTRACT SAY?

WHAT DOES THE SPECIFIC

LANGUAGE STATE?

>> SPECIFIC LANGUAGE JUST

SAYS THE PARTIES SHALL APPLY

TO THE LAWS OF THE STATE OF

MICHIGAN >> YOU DON'T

REMEMBER THE REST?

>> MY QUESTION IS IS IT

UNCONTESTED THAT THE CHOICE

OF LAW PROVISION ACTUALLY

APPLIES WHEN YOU'RE USING

THIS TYPE OF SITUATION OF AN

OFFER OF JUDGMENT RULE.

>> IT DON'T.

>> THE SCOPE OF THE CHOICE

OF LAW PROVISION IS LIMITED

SO IT'S NOT REALLY

APPLICABLE.

>> I DIDN'T REALLY FOCUS ON

THE LANGUAGE OF THAT.

>> I'M SURE WITH ALL OF THE

LITIGATION, YOU WOULD HAVE

POINTED IT OUT, I WOULD

HOPE.

>> WELL I LOOKED AT IT,

OKAY, THE CONTRACT SAYS

MICHIGAN LAW APPLIES,

MICHIGAN LAW APPLIES.

BUT THE 4TH AND 5TH DISTRICT

COURTS OF APPEAL, AND NOW,

AND THE 11TH CIRCUIT SAID

EVEN UNDER THAT

CIRCUMSTANCE, THIS STATUTE

APPLIES EVEN THOUGH THE

SUBSTANTIVE LAW, THEY

DISCARDED THE STATUTE OF

SUBSTANTIVE VERSES

PROCEDURAL FOR DICTATING THE

RESULTS.

THEY'VE GONE BEYOND THAT.

>> BUT WHEN YOU FILED AN

OFFER FOR OBJECTION, DID

THEY FILE TO STRIKE

ANYTHING, YOUR CONTRACT

TRUMPS --

>> THEY FILED A MOTION TO

STRIKE SAYING IT DID NOT

APPLY AND WAS PRE-EMPTED BY

RULE 68, BUT NOT BY CHOICE

OF LAW OR ANY OF THE THINGS

RAISED.

AS SOON AS WE FILED IT --

THE DISTRICT COURT NEVER

ACTED ON IT.

EVEN THAT MOTION TO STRIKE

SHOULD NOT HAVE BEEN FILED

UNTIL LATER.

BUT IT WAS THE BEGINNING OF

THE OFFER TO THE COURT PRIOR

TO THE SECOND TRIAL.

BUT, WHAT RANG LOUD AND TRUE

TO ME FROM THE PREVIOUS

ARGUMENT, IS YOUR STATEMENT,

THAT YOU'RE BEING ASKED TO

REWRITE THE STATUTE OUT OF

THIN AIR.

AND THAT'S REALLY WHAT

AUTO-OWNERS IS ASKING YOU TO

DO HERE.

AND ANSWERING THE FIRST

QUESTION REGARDING NEW

TRIALS, THEY'RE ASKING YOU

TO REWRITE 1.422B1 TO SAY

THIS STATUTE DOESN'T APPLY

IN THE A CIRCUMSTANCE WHERE

A NEW TRIAL IS ORDERED.

AND IN THE SECOND PART

THEY'RE ASKING YOU TO

REWRITE 768791 WHERE THE

STATUTE SAYS THAT IT APPLIES

IN ANY CASE IN THE

JUDGEMENT.

THEY'RE WANTING YOU TO TACK

ON TO THE STATUTE.

THE JUDGMENT FROM A TRIAL

THAT WAS SET WHEN YOU MADE

THE OFFER.

THERE'S ONLY ONE JUDGMENT

THAT ULTIMATELY COMES OUT OF

THE CASE.

AND THAT JUDGMENT WAS ONE OF

NO LIABILITY.

WE MADE IT MORE THAN 90 DAYS

AFTER THOSE TWO HAD BEEN

FILED, AND MORE THAN 45 DAYS

BEFORE THE RETRIAL.

THIS WERE NO APPEALS

PENDING.

THERE'S ONLY ONE JUDGMENT

AND WE GOT THAT JUDGMENT

AFTER THE APPEAL.

AND IN THE SECOND QUESTION,

WHICH WE HAVE NOT DISCUSSED,

THEY'RE ASKING YOU TO

REWRITE 1.442A AND C WHERE

IT SAYS AN OFFER CAN BE MADE

BY ONE OR MORE PARTIES TO

APPLY A BENEFITS TEST.

THERE IS NO BENEFIT'S TEST

IN THE STATUTE.

>> THERE IS SOMETHING THEY

SAID THAT STRUCK ME AND I

THINK THERE'S AN ANSWER TO

IT.

THEY SAY IF WE INTERPRET THE

RULES, THE WAY THIS IS NOT A

JOINT OFFER, THERE COULD BE

COLUITION THAT AN OFFER

COULD BE MADE BY THE DRIVER

FOR 100,000, AND THE

REQUIREMENT FOR THE

CORPORATION.

BUT, LET ME TELL YOU

SOMETHING, IF YOU ACCEPT IT

AND THEY DON'T PAY IT, THERE

MUST BE SOME WAY THAT IT'S A

SHAM OFFER.

>> THE SHAM IS IN BAD FAITH,

BUT IN THIS CIRCUMSTANCE,

IT'S NOT ADDRESSED BY THE

RECENT AMENDMENT THAT ADDS

WHERE THEY'RE LIABILITY --

YOU CAN MAKE AN

UNDIFFERENTIATED --

THE PARTIES ARE JOINTLY AND

SEVERABLELY LIABLE.

IF SOUTHEAST LOADING DOCKS

EYES A DOLLAR, SIMPSON EYES

A DOLLAR.

>> FOR LITIGATING ATTORNEY'S

FEES?

EVER SINCE YOU GOT YOUR

JUDGMENT, THE WHOLE ISSUE

THAT HAS BEEN CLOGGING THE

COURTS IS THE OFFER OF

JUDGMENT ISSUE.

>> IT'S ENTITLEMENT, WE'RE

ONLY DEALING WITH

ENTITLEMENT.

WE WOULD BE SEEKING FEES FOR

ARGUING THE ENTITLEMENT

FEES, BUT SUBSEQUENT --

>> WE'RE DOWN TO 2 MINUTES.

>>LY --

I WILL REST, THANK YOU.

>> MAY IT PLEASE THE COURT,

I REPRESENTATIVE AUTO-OWNERS

INSURANCE IN THIS CASE.

THE FIRST ISSUE THAT HAS

BEEN CERTIFIED IS WE'RE

ASKING THIS COURT TO

DETERMINE THAT A VALID OFFER

OF JUDGMENT MAY BE FOR ANY

TRIAL SETTING SO LONG IS

THERE IS A NEXUS BETWEEN THE

JUDGMENT THAT IS THE BASIS

FOR THE FEE AWARD AND

TIMELINESS.

>> THE NEXUS --

NEXUS IS YOUR LANGUAGE?

>> YES.

>> IF THE OFFER WAS MADE,

INSTEAD OF THIS CORKY

UNIQUE, THERE HAD BEEN A

SECOND TRIAL THAT PREVAILED,

AND THEN A JUDGMENT WAS

ENTERED, ANY QUESTION THAT

THAT OFFER WOULD BE A VALID

OFFER OF JUDGMENT?

>> I THINK BASED ON READING

ALL OF THE CASES AND THE

RULES, THAT WOULD BE A VALID

LOSER --

OFFER.

SO THIS DOESN'T HAPPEN.

IN THIS PARTICULAR

SITUATION.

THEY'RE ASKING US IN THIS

UNIQUE SITUATION, I THOUGHT

THAT THE ISSUE WAS JUST IF

YOU HAD ONE CHANCE TO MAKE

AN OFFER, AND IF YOU HAD A

SECOND TRIAL, YOU COULDN'T

MAKE ANOTHER OFFER.

WHY SHOULD THEY BE WORSE OFF

IF THE --

IF YOU CALCULATED THE ONE --

THE TIME WHEN THEY MADE THIS

OFFER, YOU THOUGHT THEY HAD

ALREADY HAD A VERDICT OF NO

LIABILITY, THAT HAD BEEN SET

ASIDE, YOU'RE HOPING TO GET

$1 MILLION, BUT YOU'RE

OFFERING $300,000.

HOW ARE YOU IN A SITUATION

WHERE OH MY GOODNESS THIS IS

UNFAIR FOR ME TO DECIDE IF I

SHOULD ACCEPT THIS $300,000.

I'M JUST HAVING DIFFICULT

SEEING WHY THE FACT THAT THE

FIRST TRIAL OCCURRED, BUT

THE VERDICT HAD BEEN SET

ASIDE, COULD NUT IN ANY

DIFFERENT SITUATION IF THEY

HAD DONE TO A SECOND TRIAL

AND DONE IT AGAIN.

>> IT IS DIFFERENT BECAUSE

WHEN THERE'S A NEW TRIAL

PENDING AND THERE'S AN OFFER

OF JUDGMENT PRESENTED TO THE

PARTIES, YOU'RE THINKING
ABOUT WHAT WILL OCCUR IN THE
FUTURE.
>> WELL YES, BUT DID YOU
THINK ABOUT THE POSSIBILITY
OF WHAT MIGHT OCCUR IN THE
FUTURE THAT THE 11TH CIRCUIT
MIGHT HAVE FOUND THAT THE
TRIAL JUDGE SET ASIDE THE
VERDICT TO BEGIN WITH, ISN'T
THAT SOMETHING YOU WOULD
ADVICE YOUR CLIENT?
WE DON'T HAVE A CLEAN SHOT
HERE, THEY HAD A VERDICT IN
THEIR FAVOR, THAT COULD
HAPPEN AGAIN.
>> IT COULD BE, BUT FIRST OF
ALL, THE RULE TALKS IN TERMS
OF LOOKING TOWARD THE NEXT
TRIAL SETTING.
AND IT COULD BE A SUMMARY
JUDGMENT, BUT THE THOUGHT
PROCESS, IF YOU LOOK AT THE
RULE, THERE'S NOTHING ABOUT
AFTER AN APPEAL, SO THE

WHOLE PROCESS IS TO TAKE

PLACE BEFORE THE TRIAL, NOT

AFTER APPEAL AND A SECOND

TRIAL.

AND THE REALITY IS THIS, THE

LAWYERS OF FLORIDA HAD SOME

DIFFICULT PREDICTING WHAT

JURIES WILL DO,

UNDERSTANDABLY.

IT'S EVEN MORE DIFFICULT TO

HAVE PREDICTED THE YOU KNOW,

THE CERTIFIED QUESTION SAID

SOMETHING, WHICH I THINK IS

ACTUALLY IS INCORRECT.

IS SAYS IT MAY HAVE --

IT MAY OFFER --

THE OFFICE OF JUDGMENT IN A

SEPARATE, SECOND TRIAL.

AND YOU ALREADY, I THINK,

SAID YOU AGREE THAT IT DOES.

>> CORRECT.

>> OKAY, AND IF SO MAY OFFER

IT BEING VALID IN INSTANCES

WHERE AN APPELLANT COURT HAS

A JUDGMENT --

>> DO YOU AGREE THERE WAS NO

JUDGMENT AFTER THE FIRST

TRIAL?

>> I AGREE THE MEASURE OF

WHAT SUCCESS OCCURRED IN THE

FIRST TRIAL, AND NOT AFTER

THE --

>> I'M ASKING IF THERE WAS

NO JUDGMENT DRVE THEY --

--

THEY DIDN'T REINSTATE THE

JUDGMENT.

>> IT OCCURRED AFTER THE

11TH CIRCUIT REVERSED WHAT

THE TRIAL COURT DID.

>> BUT THE ISSUE OF THE

AWARD IS BASED ON WHAT JURY

DID.

CHRONOLOGICALLY --

>> YOU KNOW, YOU'RE MOUTHING

THE WORDS AND I'M HEARING

THEM, BUT THEY JUST ARE NOT

PENETRATING TO WHERE IT

MAKES ANY SENSE IN THE

INTERPRETATION OF STATUTE --

THE STATUTE OR A RULE --

>> I THINK IT'S INTERPRETING

THE RULE, YOUR OWN RULE, THE

RULE OF THIS COURT, AND THE

QUESTIONING IS WHEN DO WE

HAVE WHAT I LIKE TO CALL THE

BLACK-OUT PERIODS WHERE YOU

CAN'T MAKE THIS OFFERS.

YOU CAN'T MAKE AN OFFER IN

THE FIRST 90 DAYS OR 45 DAYS

AFTER TRIAL.

>> BUT IF THEY MAKE THE

OFFER AT A VALID TIME, AND

YOU'RE SAYING SOMETHING

OCCURRED BECAUSE THEY DIDN'T

HAVE TO GO THROUGH A SECOND

TRIAL AND YET BECAUSE THE

FIRST TRIAL VERDICT WAS

REINSTATED, THEY DON'T GET

ATTORNEY'S FEES.

>> AND DON'T YOU THINK THE

ISSUE THERE, IF THEY'RE

TRYING TO GET ATTORNEY'S

FEES, THEY'RE TRYING TO GET

THEM TO THE FIRST TRIAL, AND

THEN --

BUT THEY'RE NOT.

AND THE MORE YOU ARGUE THIS,

AND THE ATTORNEY'S FEES ARE

JUST MOUNDING UP HERE.

>> THE FOREIGN'S FEES ARE

ESSENTIALLY JUST FOR THE

APPEALS PROCESS, AND THE

COURTS OF FLORIDA HELD THAT

YOU CANNOT USE IT FOR THAT

PURPOSE.

OUR PROBLEM IS, THERE WAS NO

NEXUS BETWEEN THE JUDGMENT

THAT GAVE THEM THE AWARD AND

THE POTENTIAL RIGHT TO FEES,

AND THE TIMES --

TIMING OF THE OFFER.

AND THE WHOLE PURPOSE IS TO

GIVE PARTIES AN OPPORTUNITY

TO THINK ABOUT WHAT WILL

HAPPEN IN THE FUTURE.

ONE OF THE POINTS OF THE

DISTRICT COURT WAS THAT THE

JUDGMENT THAT WAS ENTERED

THAT WOULD HAVE BEEN TIMELY,

IF A SUMMARY JUDGMENT FOR

AUTO OWNERS, SO THAT UNDER

ONCE, AUTO OWNERS WOULD HAVE

BEEN ENTITLED TO FEES IF

THEY MADE THE OFFER.

SO THERE'S GOT TO BE A

NEXUS, YOU HAVE TO SECT THE

ULTIMATE JUDGMENT --

CONNECT THE ULTIMATE

JUDGMENT TO THE TIMING OF

THE OFFER.

AND IF YOU DON'T DO THAT,

PARTIES CAN ARGUE ABOUT

WHETHER IT WAS TIMING OR

NOT.

LET ME GIVE --

>> ONE POINT TO CLARIFY.

WE HAVE THE FIRST TRIAL, IT

IS OVER, AND WE HAVE ORDERED

A NEW TRIAL, CORRECT?

>> CORRECT.

>> AND THE PARTIES ARE

GETTING READY TO GO TO TRIAL

ON THAT.

THAT'S WHEN THE OFFER IS

MADE MORE THAN 45 DAYS

BEFORE THAT SECOND TRIAL.

AFTER THE OFFER WAS MADE,

THE SUMMARY JUDGMENT,

AGAINST THE OFFERING PARTY,

WAS ENTERED, AND THAT --

IS THAT A DEAL THAT THEN,

SAYS NO, WE'RE GOING TO GO

ALL OF THE WAY BACK AND RE

INSTATE THE FIRST JUNCTION.

SO WHERE IS THE STATUTE THAT

YOU CAN MAKE THAT OFFER

EFFECTIVE, INEFFECT IFIVE,

VOID, OR WHATEVER, WHAT IS

THE LANGUAGE IN THE RULE OR

THE STATUTES TO HELP ME

UNDERSTAND.

>> SIR, IT'S JUST AN

INTERPRET OF THE LANGUAGE OF

THE RULE.

>> IT SAYS YOU HAVE TO BE 45

DAYS BEFORE THE TRIAL.

THE QUESTION IS, WHAT TRIAL

ARE WE TALKING ABOUT.

COULD IT BE ANY TRIAL?

SO THAT --

>> YOUR POSITION IS THAT

ANYTHING --

POSITION IS THAT ANYTHING

THAT EVER COME UP THAT COULD

CHANGE OR ALTER AFTER AN

APPEAL, THE ONLY ONE THAT

CAN BE ENFORCED IS ONE

THAT'S 45 DAYS BEFORE THE

PART OF THE TRIAL.

>> THERE HAS TO BE A NEXUS

--

NEXUS --

THE ULTIMATE JUDGMENT COULD

BE THE SUMMARY JUDGMENT.

>> YOU'RE SAYING IT HAS TO

BE 45 DAYS BEFORE A TRIAL

THAT ACTUALLY TAKES PLACE.

456 DAYS BEFORE A TRIAL THAT

WAS A POSSIBILITY, BUT WHICH

NEVER MATERIALIZED.

>> THAT'S EXACTLY CORRECT.

>> HOW ABOUT A CASE THAT

NEVER MAKE IT'S TO TRIAL AND

IS DONE BY SUMMARY JUDGMENT,

IS THAT VOID THEN?

>> UNDER THE LANGUAGE OF THE

RULE IT TALKS ABOUT TRIAL,

BUT IF YOU HAD IT 465 DAYS

BEFORE THE SUMMARY JUDGMENT

WAS ENTERED, THAT WOULD

SUFFICE FOR THE ADVANCED

PURPOSE OF THE RULE.

>> WHY WOULDN'T THAT APPLY

IN THIS DISMAST IT WAS

ENTERED LESS THAN 45 DAYS IS

THAT WHAT YOU'RE SAYING.

>> SO IT WAS ENTERED FOR MY

CLIENT.

I UNDERSTAND, BUT AGAIN, I

TRYING TO UNDERSTAND HOW WE

HAVE THIS RULE.

>> I THINK IT'S RELATIVELY

SIMPLE IF YOU SAY THERE HAS

TO BE A NEXUS BETWEEN THE

TIMING AND THE JUDGMENT --

>> ISN'T THAT NO LIABILITY.

>> THE VERDICT OF THE JURY

THAT FOUND NO LIABILITY.

>> BUT WASN'T IT ALL WIPED

OUT --

WIPED OUT WHEN THEY GRANTED

A NEW TRIAL.

>> BASICALLY, ALL OF THE

11TH CIRCUIT SAID IS THAT WE

AGREE WITH THE FIRST GUY, NO

LIABILITY, AND GRANTED A

SUMMARY JUDGMENT.

WOULDN'T THAT MAKE MORE

SENSE?

RATHER THAN TO SAY BECAUSE

THE SECOND TRIAL SAID YOU

HAVE TO RELAY BACK TO THE

FIRST TRIAL?

>> I THINK THAT YOU WANT TO

USE, AS THE BENCHMARK, THE

JUDGMENT THAT GAVE THE

RIGHT.

>> YOU USED THAT AS A

BENCHMARK BUT THAT WAS WIPED

OUT.

>> I'M SURE AT THE TIME IT

WAS MADE, AUTO-OWNERS WAS

THINKING ABOUT A SUMMARY

JUDGMENT AS WELL.

>> BUT YOU'RE SAYING THE
SUMMARY JUDGMENT, BUT FOR
THE FIRST TRIAL, WOULD HAVE
BEEN, THE TRIAL, IT WOULD
HAVE EFFECTED THE TRIAL FOR
THE PURPOSES OF APPLYING THE
STATUTE?
>> WHAT I'M SAYING IS, IF
AUTO-OWNERS MADE AN OFFER OF
JUDGMENT, IT WOULD HAVE HAD
TO WAIT 45 DAYS BEFORE
SUMMARY JUDGMENT WAS ENTERED
IF THAT WAS GOING TO BE THE
TRIGGERING EVENT TO GIVE THE
AWARD A FEE.
>> YOU COULD HAVE FILED AN
OFFER OF JUDGMENT IN THAT
PERIOD, IS THAT CORRECT?
>> THAT'S CORRECT.
>> AND IF ULTIMATELY YOUR
SUMMARY JUDGMENT WAS UPHELD,
YOU WOULD HAVE BEEN ABLE TO
RECOVER FEES FROM THEM.
>> RIGHT BECAUSE THE
ULTIMATE JUDGMENT WAS A

SUMMARY JUDGMENT, THAT IS

CORRECT.

>> BUT HERE, AND AGAIN, I

REALIZE THIS IS --

I DON'T RECALL INFORM

FLORIDA, MAYBE THIS

HAPPENED, BUT THIS IS LIKE

SUCH A UNIQUE CASE, IT'S

AMAZING TO ME WHAT 11TH

CIRCUIT --

THEY'RE AS CLOSE AS WE ARE

TO FIGURE THIS OUT IF THEY

WANT TO DO THESE FEES OR

NOT.

SO HERE, WE JUST ARE REALLY

TALKING ABOUT SOME VERY

NARROW SITUATION THAT

PROBABLY COMES UP, YOU KNOW,

--

HAVE YOU BEEN IN THIS

SITUATION BEFORE?

>> NO, I THINK THE SITUATION

IS GOING TO BE IN A

BIFURCATED TRIAL.

>> AND NOBODY, AGAIN, WHAT

YOU --

YOU MADE AN IMPORTANT

CONCESSION, I DON'T MEAN

THAT IN A NEGATIVE WAY, BUT

IF THE SECOND TRIAL IS

TAKING PLACE, THERE WASN'T

ANY QUESTION THAT YOU WOULD

BE ON THE HOOK AND THE

VERDICT, YOU WOULD BE ON THE

HOOK FOR THE ATTORNEY'S

FEES, I GUESS THE WAY I SEE

THIS BEING MITIGATED IS

HERE, YOU HAD A CHANCE AT

THAT POINT IN TIME, WHEN YOU

OFFER THE AMOUNT, TO

EVALUATE IT IN A WAY THAT

WASN'T UNFAIR TO YOU, YOU

COULD TELL YOUR CLIENTS, YOU

KNOW, $300,000, A THIRD OF A

LOAF.

WE MAY GET TO LOAF, OR WE

MAY GET THE WHOLE LOAF.

I THINK $500,000 IS FAIR,

BUT $300,000 WOULD END IT

ALL NOW.

ATTORNEYS FEES ARE ANOTHER

$100,000, SO ONCE YOU CUT

YOUR LOSSES, YOU MAKE THAT

DECISION.

INSTEAD, THEY SAID NOPE,

ZERO, WE DID IT NOT ON THE

BASIS THAT IT WAS UNTIMELY,

WE DID IT ON THE BASIS THAT

RULE 68 SHOULD APPLY.

>> ONE OF THE REASONS, AND I

DON'T BELIEVE IT COMPLETELY

ANALYZED.

>> FROM THAT POINT ON AND

CONTINUING UNTIL NOW WE HAVE

ARGUED ABOUT ONE THING.

WHO GETS THE ATTORNEYS FEES,

AND THE MORE YOU ARGUE AND

THE MORE --

YOU'RE ENTITLED TO DO THAT,

MORE THE ATTORNEY'S FEES

KEEP ON RUNNING UP, AND SO,

ISN'T THAT STILL PROMOTING

ONE OF THE PURPOSES, WHICH

IS TO PROMOTE SETTLEMENT OF

DISPUTES.

I MEAN, YOU'RE NOT CAUGHT --

>> I THINK IT IS UNFAIR.

AT THAT POINT THE

CIRCUMSTANCE WAS CHANGED.

AUTO OWNERS WAS NOT THINKING

ABOUT THE POSSIBILITY THAT

IT COULD GO UP ON APPEAL, >>

THIS IS AUTO-OWNERS, THIS

ISN'T LIKE JOE SMITH, THIS

IS AUTO OWNERS INSURANCE.

>> BUT THE MOST IMMEDIATE

THING ON THE HORIZON WAS A

POSSIBILITY OF SUMMARY

JUDGMENT.

>> THE WHOLE LOAF.

>> THAT'S WHAT I SAID.

>> YOU COULD GET THE WHOLE

LOAF, NO LOAF, OR A THIRD OF

THE LOAF.

THAT'S WHY SETTLEMENTS OCCUR

BECAUSE YOU TELL YOUR CAN

CLIENTS YOU MIGHT BE IN A

WORSE OR BETTER POSITION.

THIS IS A FAIR SETTLEMENT OR

LESS MAKE OUR OWN OFFER FOR

500,000 AND LET'S SEE WHAT

HAPPENS.

>> AND YOU SEE THAT MAYBE

FACTUALLY THIS IS A LITTLE

CONVOLUTED.

IT'S CLEAR TO THE PAR TIFFS

KNOW THERE ARE CERTAIN BLACK

OUT PERIODS.

YOU HAVE TO AVOID THESE

BLACK OUT PERIODS, AND THE

EASY WAY TO APPLY THE RULE

IS TO HAVE A CONNECTION

BETWEEN THE JUDGMENT AND THE

TIMING.

>> SO IT YOUR ULTIMATE ARGUE

HERE IS WHEN SHOULD --

LET ME ASK A DIFFERENT WAY.

WHEN SHOULD AN OFFER OF

JUDGMENT HAVE BEEN MADE IN

THIS CASE UNDER YOUR

SCENARIO?

AS I UNDERSTAND YOUR

ARGUMENT, IT WOULD HAVE HAD

TO HAVE BEEN MADE BEFORE THE

FIRST JURY TRIAL.

IS THAT WHAT YOU ULTIMATELY

ARE SAYING?

>> THEY COULD HAVE MADE IT

ANY TIME MORE THAN 90 DAYS

AFTER THEY'RE IN SERVICE, OR

ANY TIME BEFORE 45 DAYS

BEFORE THE FIRST JURY TRIAL.

AND ONCE THAT WINDOW OF

OPPORTUNITY WAS MISSED THEY

COULDN'T MAKE AN OFFER OF

JUDGMENT FOR THE FIRST

TRIAL.

HAD THERE BEEN A SECOND

TRIAL, THERE'S NO REASON

THEY COULDN'T HAVE MADE IT

AT THAT TIME AS WELL.

I'M TRYING TO GET CLARITY IN

THE RULES SO LAWYERS KNOW

THAT THERE ARE CERTAIN BLACK

OUT PERIODS.

>> IF WE TRY TO REWRITE THAT

RULE, AND PUT A NEXUS

REQUIREMENT IN, DO YOU KNOW

WHAT WOULD --

DO YOU KNOW WHAT WOULD

HAPPEN TO THE LITIGATION ON

THE RULE THAT IS ALREADY

RIDICULOUS.

I CAN APPRECIATE WHAT YOU'RE

SAYING IS THAT THIS THAT WE

CAN SAY THIS UNIQUE

CERTIFIED QUESTION, BUT TO

PUT A NEXUS REQUIREMENT IN,

OH MY GOODNESS AND ON THE

THIRD ISSUE, TO TALK ABOUT

THE LAW, ARE YOU CONCEDING

THAT IT APPLIES?

>> NO,ILY TALK ABOUT THE

CONFLICT OF LAWS A LITTLE

BIT.

THAT ISSUE BASED ON THE

BDOK'S BASICALLY LAWYERS

HAVE GIVEN UP ARGUING ABOUT

THE CONFLICT OF LAWS.

AND I THINK IN A COMMERCIAL

SETTING, THINGS ARE

DIFFERENT IN THE PARTIES

HAVE A CONTRACT BEFORE THEY

FILE SUIT THAT SELECTS A

PARTICULAR JURISDICTION AS

THE LAW THAT IS TO BE
APPLICABLE, THAT THIS COURT
SHOULD, THE COURT SHOULD BE
ABLE TO LOOK AT THAT AND SEE
IF THE CONFLICT OF LAWS IS
GOING TO MAKE A CHANGE, AND
WOULD CHANGE THE RESULT.
UP TO THIS POINT, EVEN THE
FEDERAL COURTS AS WAS
POINTED OUT, WHERE THERE IS
NO STRONG FLORIDA STATE
POLICY, JUST SAID, WELL, I
GUESS THAT'S THE END OF THE
STORY, WE WILL NOT EVEN
APPLY THE CONFLICT OF LAW
ANALYSIS CASES.
THE INVOLVEMENT WITH THE
STATUTE IN FLORIDA THAT
HEALTH THAT WHEN THERE IS A
CONTRACT THAT SELECTS THE
LAW OF A DIFFERENT STATE,
THE FLORIDA STATUTE ON
ATTORNEY'S FEES DOES NOT
APPLY, AND THAT MAKES A LOT
OF SENSE.

ALL I AM SUGGESTING IS THAT
BECAUSE THERE ARE CERTAINLY
THE LAW IN THIS STATE SHOWS
THAT THE RIGHT TO ATTORNEY'S
FEES IS A SUBSTANTIVE RIGHT,
AND THE RULE IMPLYING IT IS
THE PROCEDURAL ASPECT.
SINCE IT IS SUBSTANTIVE, NEW
RIGHT WHERE IT CHANGES THE
AMERICAN RULE, THE COURT
SHOULD NOT BE ALLOWED TO DO
AN ANALYSIS ON THE CHOICE OF
LAW.
IT DOESN'T MEAN THAT WE WILL
NEVER APPLY THE STATUTE OR
WE ARE GOING TO APPLY THE
STATUTE, BUT CERTAINLY WHEN
YOU HAVE TWO PARTIES OF
EQUAL BARGAINING POWER IN A
SPECIAL SETTING, THEY WILL
SELECT THE LAW OF A
DIFFERENT JURISDICTION, AND
IF THEY SO CHOOSE, JUST LIKE
THEY CAN GET OUT OF THE LAWS
OF FLORIDA, YOU CAN GET OUT

OF THE STATUTE OF

LIMITATIONS OF FLORIDA,

BASED ON THE AUTHORITIES OF

THIS COURT, THEY SHOULD BE

ABLE TO WRITE A CONTRACT SO

THE OFFER OF JUDGMENT

STATUTE WOULD NOT APPLY.

>> DID YOU WRITE THAT IN THE

CONTRACT?

>> IT DIDN'T SAY IT WOULD

APPLY.

>> WHAT DID IT SAY?

>> IT TALKED ABOUT WHO HAD

THE RIGHT TO ATTORNEY'S

FEES.

IN THE CONTRACT, AUTO-OWNERS

WAS THE OWNER WITH A RIGHT

TO ATTORNEY'S FEES.

>> AUTO-OWNERS, BUT NOT THE

INSURED.

>> RIGHT, OR >> OR THE

INDEMNITOR.

>> RIGHT, OKAY, THEY COVERED

THE --

>> RIGHT, SO A LAW OF THIS

STATE, IF THIS HAD NOT BEEN

A COMMERCIAL.

>> SO EQUAL BARGAINING

POWERS, UNILATERAL

BARGAINING POWERS TO ONE,

THAT'S EQUAL.

>> RIGHT, YOU COULD OPT OUT

OF IT BY SELECTING THE LAW

OF A DIFFERENT JURISDICTION.

THE CASES OF FLORIDA HELD

THAT.

THE QUESTION IS SHOULD THAT

BE EXPANDED OR CLARIFIED FOR

THE OFFER OF JUDGMENT

STATUTE.

>> YOU SAID THERE COULD BE

COLUTION, BUT IF THE

UNENINSURED MAKES AN OFFER,

AND DOESN'T HAVE THE MONEY

TO BACK IT UP, THAT'S GOING

TO BE REJECTED AS BEING IN

BAD FAITH, ISN'T IT?

>> IT COULD BE.

>> HOW COULD IT NOT BE.

IF SOMEBODY SAYS I'M GOING

TO PAY $100,000, JUST

KIDDING, I DON'T HAVE THE

MONEY.

THAT'S GOOD FAITH?

>> THAT MAY BE THE SITUATION

UNLESS IT WAS A PROPOSAL

THAT PAID OUT OVERTIME AND

THE PARTIES ARE BACK IN

COURT.

LET ME TALK WITH YOU ABOUT

ANOTHER TWO PROBLEMS.

THE ONE IS WHERE IF THIS, IF

YOU CAN SIMPLY WRITE WHAT

WOULD ORDINARILY BE A JOINT

PROPOSAL WITHOUT SPECIFIED

THE AMOUNT BEING OFFERED FOR

EACH, THEY CAN MAKE AN END

RUN AROUND THE RULE EVERY

TIME.

YOU HAVE A COUPLE DEFENDANTS

SAYING YOU CAN HAVE THE

MONEY AND MAKE THE OFFER ON

YOUR BEHALF.

AND THE REASON WE WROTE THE

RULE AND THE COURT ADOPTED

RULES THAT SAID YOU HAVE TO
SPECIFY THE AMOUNT OFFERED
FOR EACH, IS HOW WILL YOU
DETERMINE LATER DOWN THE
ROAD WHO IS THE PREVAILING
PARTY
And the problem, why this court
adopted rules like in Lamb that
said you have to specify the
amount being offered for each
is, how are you going to
determine later down the road
who was the prevailing party?
That was a big issue in Lamb
because you could have a
situation where, for example, if
you have a party that offers
$3000 to settle, but it is on
behalf of one defendant that
this but this tagalong defendant
needs to be dismissed too, so if
the judge comes back for $2000
from each defendant or a total
of $4000, a total of $4000 from
both defendants, does that mean

that the offering defendant
prevailed because they did
better than the $3000, or does
it mean that the plaintiff made
the correct decision not to
accept it because the total was
$4000.
>> The whole rule frankly has
not done what the court ever
thought, which is settlement and
every time I hear about --
We have one of these cases I
just think 18 years is
frustration because always
trying to apply and never seems
to be able to get there.
>> And I understand that, judge
and I have read a number of your
cases.
>> If you could wind up here in
about 30 seconds.
>> Alright.
Basically, we are asking the
courts that we put in our brief
where asking how these questions

can be answered.

The whole thing these rules

would be clarified by answering

in this fashion and if any of

these rules are answers, any of

these questions are answered in

a way that is the way we are

asked than we should prevail in

this case.

Thank you for your time.

>> If you want to add

insurmountable and additional

confusion to this rule, and just

judicially write in a nexus test

trying to express it, or a

benefits test.

Because what you will be saying

is I every offer of judgment

where there are multiple parties

even if it is strictly one party

making one offer, somebody is

going to come in and say, well

it benefited him.

It is really a joint offer.

It is not a single party offer.

And the choice of law, even the
Florida law applied, and we had
no right to attorneys fees under
the American law, if we serve an
offer of judgment that would
entitle us to our fees.
>> But if you say that the
statute is a substantive
provision.
>> Yes, and the contract says
that the laws Michigan shall
apply, why would you not look to
the laws Michigan and not the
law of Florida?
>> The analysis by the majority
and the concurring opinion in
BDO goes into it.
But also the Weatherly case.
I go back to the Weatherly case.
57105 creates a right to fees.
It is substantive.
However, it still applies to
cases where those substantive
foreign laws apply because it
deals with the operation of the

judicial machinery within the
state.
And the legislature -- and that
is another policy where the
legislature says don't file
frivolous suits or you are going
to be sanctioned, even if the
law of another state applies.
>> You think a statute that
deals with frivolous lawsuits
is -- that is absolutely
analogous to the offer of
judgment and statute between the
parties to promote settlements
for each other?
>> 57.105 is trying to make
settlements.
>> No question this is a valid
claim.
Each of you has a valid point of
view.
I mean, you are good advocates
in the cases.
>> Both of those cases discuss
each other.

They are related.

That is why there is is across

colonization in the opinions

where they refer to each other

and we are not just seeking fees

for appeal.

After the new trial was ordered

there was substantial activity

in the trial case.

There was a resetting of the

clout.

There were several requests for

production.

There were several intervening

motions.

There was a motion for summary

judgment.

There were re-hearings.

We had about eight full months

of additional litigation and the

District Court before the

summary judgment was entered.

We are not just seeking our fees

on appeal.

We are seeking the fees after

the offer was made.

All of which would have been

avoided had they accepted the

offer.

Come back with one that we would

have accepted.

>> Thank you.

>> Thank you both.

>> That is the last case on

today's docket.

The court is now adjourned.

>> All rise.