

>> 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 AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
THE FIRST CASE FOR THE DAY IS
YOUNG VERSUS ACHENBAUCH.
YOU MAY PROCEED.
>> GOOD MORNING AND MAY IT
PLEASE THE COURT, I'M JOHN
MILLS ON BEHALF OF THE
PETITIONER, FLIGHT ATTENDANTS,
MEDICAL RESEARCH INSTITUTE,
ALSO KNOWN AS FAMRI, AND I
WILL BE SPEAKING TODAY ON
BEHALF OF ALL THREE
PETITIONERS.
THE ISSUE PRESENTED TODAY IS
UNDER WHAT CIRCUMSTANCES, IF
ANY, A FLORIDA LAWYER SHOULD
BE ALLOWED TO TAKE ACTION
AGAINST CURRENT CLIENTS OR
AGAINST THEIR INTERESTS IN
CLOSELYRELATED MATTERS.
THE DISTRICT COURT'S DECISION
OVERTURNED THE TRIAL COURT'S
DECISION AND FOUND THAT THE
TRIAL COURT DEPARTED FROM THE
SEE SEVENTEEN ESSENTIAL
REQUIREMENT OF THE LAW.
THE DISTRICT COURT SAID THAT
THAT WAS A DEPARTURE FROM THE
ESSENTIAL REQUIREMENTS OF THE
LAW BECAUSE THIS COURT'S RULES
AND PRECEDENTS ARE INADEQUATE
IN THE CONTEXT OF CLASS
ACTIONS.
FIRST OFF, THE DISTRICT COURT
HAS NO AUTHORITY TO FIND THIS
COURT PRECEDENTS INADEQUATE.

THE COURT HAS MADE IT CLEAR THAT THE CONFLICT OF RULES TEST GOVERN MOTIONS TO DISQUALIFY AND IT IS ALSO MADE CLEAR THOSE RULES APPLY IN THE CONTEXT OF CLASS ACTIONS. BUT THIS COURT OF COURSE HAS THE AUTHORITY TO SAY THAT IT MADE A MISTAKE OR TO CHANGE THE RULES TO ADJUST THEM FOR UNIQUE CIRCUMSTANCES OF CLASS ACTIONS.

THE REASON THAT THE DISTRICT COURT FOUND THESE RULES TO BE INADEQUATE WAS BASED ON FEDERAL LAW AND IT ADOPTED A FEDERAL BALANCING TEST, WHICH IT SOUND THE TRIAL COURT ABUSED ITS AUTHORITY BY NOT APPLYING THIS NEW FEDERAL BALANCING TEST.

BUT THE FEDERAL BALANCING TEST ARISES IN CIRCUMSTANCES THAT ARE JUST NOT PRESENT IN THIS CASE.

THAT CASE LAW ADDRESSES MOTIONS TO DISQUALIFY CLASS COUNSEL WHEN COUNSEL HAS BEEN REPRESENTING THE CLASS FOR MANY YEARS, NEGOTIATES A SETTLEMENT AND AT THE SETTLEMENT PROCEEDINGS A MINORITY OF THE CLASS MEMBERS OBJECT AND MOVE TO DISQUALIFY THE TRIAL LAWYER.

THE FEDERAL COURTS SAY THAT ALLOWS A MINORITY OF THE CLASS TO HIJACK CLASS COUNSEL AND THAT IT'S NOT WORKABLE AND THEREFORE THERE SHOULD BE A BALANCING TEST THAT BALANCES THE ACTUAL PREJUDICE AND ANY CONFIDENCES THAT WERE DISCLOSED BY THIS MINORITY OF CLASS REPRESENTATIVES AGAINST THE RIGHT OF THE MAJORITY TO HAVE THE SAME COUNSEL.

THAT DOESN'T APPLY HERE.

MR. †GERSIN AND HUNTER NEVER REPRESENT ADD CLASS.

THEY NEVER NEGOTIATED A SETTLEMENT AGREEMENT. THIS CASE DOES ARISE FROM A CLASS ACTION, BUT THAT CLASS ACTION WAS SETTLED LONG AGO AND DISMISSED WITH PREJUDICE.

>> SO WHO ARE THESE THE ATTORNEYS WHO ARE BEING DISQUALIFIED OR ASKED TO BE DISQUALIFIED ARE REPRESENTING INDIVIDUAL MEMBERS WHO WERE A PART OF THIS CLASS.

>> THAT'S CORRECT.

>> AND THEY THOSE MEMBERS WERE A PART OF THE SETTLEMENT AGREEMENT.

IS THAT CORRECT?

>> WELL, THE CLASS WAS A PARTY TO THE SETTLEMENT AGREEMENT, SO, YES, AS MEMBERS OF THE CLASS THEY WERE MEMBERS TO THE SETTLEMENT AGREEMENT.

>> AND WERE THESE ATTORNEYS REPRESENTING THOSE PARTICULAR MEMBERS AT THE TIME THE SETTLEMENT WAS REACHED?

>> NO, THEY WERE NOT. STANLEY AND SUSAN NEGOTIATED A SETTLEMENT AGREEMENT THAT PROVIDED FOR ACTIONS THAT THE COURT IS FAMILIAR WITH IN ENGLE WHERE THE CLASS WAS THROWN OUT AND INDIVIDUALS WERE ALLOWED TO BRING INDIVIDUAL LAWSUITS WHERE THEY HAVE TO PROVE UP THEIR CLAIMS. THEY GAVE UP THE RIGHT TO EXCHANGE PUNITIVE DAMAGES IN EXCHANGE FOR GIVING UP THE STATUTE OF LIMITATIONS DEFENSE.

>> BUT AS MEMBERS OF THAT CLASS, THEY AGREED TO THIS SETTLEMENT WHICH FORMED THE FOUNDATION.

>> YES.

THAT'S CORRECT.

NOTICE WENT OUT TO ALL CLASS MEMBERS WITH AN OPPORTUNITY TO OBJECT.

A VERY SMALL HANDFUL DID OBJECT MAINLY BASED ON THE FACT THEY WEREN'T GETTING ANY MONEY.

WE HAVE THE RAMOS OPINION THAT SAYS THAT DOESN'T MATTER.

>> MY CONCERN IS GREATER THAN WHAT TESS APPLIED.

IT APPEARS IT'S NOT JUST AN ISSUE OF THESE ATTORNEYS AND THEIR CLIENTS REPRESENTING SOMEBODY WHO NOW IS SUING SOMEONE THEY REPRESENTED, BASICALLY, BUT THAT THE COURSE OF CONDUCT THAT THE ATTORNEYS ARE INVOLVED IN SOUNDS LIKE IT IS DESTRUCTIVE OF THE SETTLEMENT AGREEMENT.

SO WAS THAT PART OF THE CALCULATION?

BECAUSE YOU BRING IN ALL THESE OTHER THINGS THAT CONCERN ME GREATLY.

WAS THAT PART OF THE LITIGATION TO DISQUALIFY THESE ATTORNEYS IN THE TRIAL COURT? AND HOW DID THE 3RD DISTRICT ADDRESS THAT?

>> SURE.

>> BECAUSE THIS IS DIFFERENT THAN YOUR ORDINARY CONFLICT.

>> ABSOLUTELY.

ABSOLUTELY IT IS.

AND I THINK THESE OTHER ASPECTS OF MISCONDUCT IN THIS CASE WE'RE NOT THROWING THEM OUT THERE TO BESMIRCH ANYBODY.

THEY ARE RELEVANT TO THE DISQUALIFICATION ISSUE.

THE TRIAL COURT FOUND CONFLICTS WITH CURRENT CLIENTS AND ALSO WITH FORMER CLIENTS. SO LET'S TALK ABOUT THE CURRENT CLIENTS.

THERE ARE FOUR CATEGORIES OF CURRENT CLIENTS AND IT'S THE LAST CATEGORY WHERE ALL OF THAT STUFF BECOMES SO RELEVANT.

BUT IF I COULD BUILD UP TO THAT.

BUT THE FIRST CATEGORY IS OF COURSE THERE ARE CLIENTS WHO FILED AFFIDAVITS IN THIS CASE. WE HAD CHAMBERS AND OTHERS.

>> THIS IS WHAT YOU SET FORTH IN YOUR REPLY BRIEF.

>> OKAY.

>> YOU CAN GO OVER IT, BUT I SO IF YOU

>> WELL, THE LAST THE LAST THE LAST CATEGORY IS THEIR OWN CLIENTS, THEIR OWN DIRECT CLIENTS.

EVEN IF YOU PUT ASIDE ALL THIS TEAM APPROACH THAT THE LAWYERS HAD A TEAM APPROACH, PUT ALL OF THAT ASIDE.

WE KNOW THAT THEY ASKED THEIR OWN CLIENTS TO AUTHORIZE THIS PETITION BELATEDLY.

THE MAJORITY OF THEIR CLIENTS DECLINED TO DO SO.

BUT A SUBSTANTIAL MINORITY SIGNED THIS LETTER WHICH IS IN THE RECORD AGREEING TO COME IN.

BUT THERE'S A CONFLICT EVEN AS TO THOSE PEOPLE WHO AUTHORIZED THIS SUIT, BECAUSE TO WAIVE A CONFLICT YOU HAVE TO HAVE INFORMED CONSENT.

AND THE WAY WE KNOW THEIR CONSENT WAS NOT INFORMED IS BECAUSE THEY WERE ADVISED OF THIS IN A SOLICITATION LETTER, A STATUS LETTER, IN THEIR INDIVIDUAL LAWSUITS.

>> SO I GUESS MAYBE THIS IS MY OVERARCHING QUESTION.

SO YOU FIND THEY FIND A LAWYER THAT HASN'T BEEN REPRESENTING THE CLASS OR DIDN'T REPRESENT PEOPLE AT THE TIME OF THE SETTLEMENT OR SUBSEQUENTLY TO BRING THIS LAWSUIT.

>> RIGHT.

AND THEY HAVE DONE THAT.

THERE IS A SEPARATE LAWSUIT
NOW THROUGH A NEW LAWYER.

>> ALL RIGHT.

SO IT'S REALLY NOT THE
PROPRIETY OF THE LAWSUIT, BUT
THE FACT OF WHO THEY
REPRESENTED BEFORE THAT SHOULD
BE BEFORE US.

SO I GUESS THAT'S

>> WELL, THAT IS TRUE, BUT THE
REASON THAT IS RELEVANT IS
BECAUSE THEIR OWN CLIENTS,
WHEN THEY GOT THEIR OWN
CLIENTS TO WAIVE THIS CONFLICT
IT WAS NOT INFORMED BECAUSE
THE ADVICE THEY GAVE IS SO
RIFE WITH FALSE STATEMENTS AND
MISLEADING STATEMENTS.

THERE ARE NO MERITS OF THE
CASE.

IT SHOWS WHY WHEN THESE
CLIENTS SIGNED THE LETTER
SAYING, OKAY, GO AHEAD, THAT'S
NOT INFORMED CONSENT.

>> WELL, HOW DO WE KNOW THAT
IN THIS RECORD?

>> WE KNOW THAT FROM THE
LETTERS THEMSELVES WERE FILED.
AND WHAT HAPPENED WAS THEY
FILED THE PETITION WE HAD
THE BACKGROUND THAT FOR ABOUT
A YEAR LEADING UP TO THE
PETITION, BEGINNING EARLY IN
2010, THE PETITION WAS FILED
THE END OF 2010, MR. HUNTER
AND MR. GERSON ENGAGED IN THIS
MORE AND MORE AGGRESSIVE OF
APPROACH OF TRYING TO
LIQUIDATE FAMRI, DIFFERENT
WAYS WE CAN GET MONEY OUT OF
FAMRI.

FAMRI SAID WE CAN'T DO THAT.
WE HAVE TAX LAWS THAT PREVENT
US FROM GIVING MONEY OUT.

WE'RE A NONPROFIT.

AND WE HAVE A SETTLEMENT
AGREEMENT THAT THE 3rd
DISTRICT MADE CLEAR.

WE CAN'T PAY MONEY TO THESE
INDIVIDUALS.

SO THEY FILED A PETITION.
AFTER THEY FILED THE PETITION
WHERE THEY DON'T NAME ANYONE
YOU REPRESENT.

YOU CAN'T TELL ANYONE IN THE
TRIAL COURT WHO THEY
REPRESENTED.

IN THIS THEY DON'T LIST WHO
THEIR CLIENTS ARE RIGHT NOW.
BUT THEY DID IN THE DISTRICT
COURT.

AND THOSE ARE PEOPLE WHO
SIGNED THESE SOLICITATION
LETTERS AFTER IT HAD ALREADY
BEEN FILED.

THE SOLICITATION LETTER SAYS
IF YOU'LL SIGN THAT, THAT WILL
AUTHORIZE US TO SIGN A
PETITION.

DOESN'T TELL THEM THEY'VE
ALREADY FILED A PETITION
PURPORTEDLY ON BEHALF OF THESE
PEOPLE, THE MAJORITY OF WHOM
DID NOT AUTHORIZE IT EVEN
BELATEDLY.

>> BUT THAT SHOWS FURTHER
QUESTIONABLE CONDUCT WHICH I'M
SURE THERE'S ANOTHER
EXPLANATION, SO NOT ACCEPTING
YOU KNOW, I UNDERSTAND WHAT
YOU'RE SAYING.

BUT HOW DOES THAT AFFECT THE
THRESHOLD ISSUE OF THE
CONFLICT OF INTEREST?

>> WELL, THE THRESHOLD ISSUE

>> BECAUSE FILING SOMETHING
WITHOUT THE AUTHORITY OF YOUR
CLIENT IS A WHOLE OTHER ISSUE
THAT WOULD GIVE RISE TO
ETHICAL VIOLATIONS.

SO WHAT IS THE HOW DOES
THAT RELATE

>> IT'S RELEVANT TO SHOW WHAT
THEY'RE DOING RIGHT NOW IS
ADVERSE TO THESE CURRENT
CLIENTS.

IT'S ADVERSE TO THE MEMBERS OF
THE BOARD BECAUSE THEY'RE THE
ONES BEING ACCUSED OF

MISCONDUCT.

IT'S ADVERSE TO THE PEOPLE WHO FILED AFFIDAVITS WHO EXPLAINED WHY THEY DON'T WANT FAMRI TAKEN AWAY FROM THEM.

BUT TO UNDERSTAND WHY IT'S A CONFLICT EVEN AS TO THEIR EXISTING CLIENTS TODAY, THAT'S NOT APPARENT FROM THE RECORD.

>> BUT YOU'RE SAYING ANOTHER GROUP OF LAWYERS HAVE FILED AN IDENTICAL LAWSUIT; IS THAT CORRECT?

>> YES.

THEY HAVE GOTTEN ANOTHER LAW FIRM HAS FILED A LAWSUIT.

>> SO THE SAME PROBLEMS WILL ARISE.

YOU'RE JUST SAYING THESE LAWYERS SO THEIR PARTICULAR STATUS CAN'T BE THE ONES TO PROSECUTE THE CASE.

>> THAT'S RIGHT.

AND IT WAS A SMALLER SUBSET OF THESE CURRENT CLIENTS WHO FILED THAT LAWSUIT.

AND, YES, ONE OF THEIR CLIENTS COULD DETERMINE I'M NOT GETTING ANYTHING OUT OF THESE LAWSUITS.

I DO WANT TO RAID FAMRI.

THEY'RE ENTITLED TO DO THAT AND THERE WOULDN'T BE A CONFLICT IN THAT POINT.

>> LET ME ASK YOU THIS ABOUT THE FAMILY FOUNDATION.

I THOUGHT† IT WAS MY UNDERSTANDING THAT IF IF THE FUNDS THAT GO INTO THAT FOUNDATION ARE NOT USED FOR THE PURPOSE MEDICAL RESEARCH, ISN'T THAT WHAT THE PURPOSE WAS, THAT THE WHOLE SETTLEMENT FALLS APART?

AND SO HOW DOES IT BENEFIT THESE CLIENTS TO DO THIS?

>> IT DOESN'T BENEFIT THEM.

IF THE MONEY IF FAMRI WERE

IF THIS PETITION WERE

SUCCESSFUL AND THEIR LAWYERS

GOT WHAT THEY'RE DEMANDING,
WHICH IS AN ORDER THAT FAMRI
SEND FUNDS TO THESE PEOPLE,
THE TOBACCO COMPANIES, THEY
HAVE ALREADY FILED A RESPONSE
THAT SAID YOU CAN'T DO THAT.
THE SETTLEMENT AGREEMENT
ITSELF SAYS IF YOU MODIFY IT,
IT BECOMES VOID AND THE
PARTIES RETURN TO THE STATUS
QUO.

SO THEY WILL NOT GET THE
MONEY.

IF IT GETS UNDONE, THE MONEY
WOULD GO BACK I GUESS TO THE
TOBACCO COMPANIES.

THAT WILL NEVER HAPPEN.

IT'S A MERITLESS LAWSUIT.

THERE'S NOTHING THAT'S EVER
GOING TO HAPPEN.

BUT IF YOU TAKE THEIR
ALLEGATIONS AND WHAT THEY'RE
SEEKING TO ITS NATURAL
CONCLUSION, THAT'S WHAT
HAPPENS.

AND THAT'S AGAINST ALL OF
THEIR CLIENTS' INTEREST
BECAUSE NOW THEY LOSE THE
INDIVIDUAL BENEFITS OF THESE
INDIVIDUAL LAWSUITS WHERE THEY
ARE ALLOWED TO SUE THE TOBACCO
COMPANIES BECAUSE THE TOBACCO
COMPANY SOLD SOMEBODY ELSE
CIGARETTES.

>> THE DISCRETE ISSUE IN FRONT
OF US, I GUESS THESE FACTS
SHOW WHY YOU'RE URGING US NOT
TO APPLY THE FEDERAL BALANCING
TEST BECAUSE IT'S NOT
WARRANTED UNDER THE FACTS OF
THIS CASE.

>> CORRECT.

>> IS THAT WHAT I UNDERSTAND?

>> YES.

>> BUT AS FAR AS WHETHER THIS
IS A MERITLESS LAWSUIT, THAT
IS NOT AN ISSUE BEFORE US.

>> THAT'S RIGHT.

IT IS NOT AN ISSUE BEFORE YOU.
AGAIN, AND I DON'T WANT TO

KEEP ARGUING.

IF YOU DON'T WANT TO HEAR ANY
MORE ABOUT IT I'LL BE QUIET
ABOUT IT.

>> NO.

I ASKED YOU SOME QUESTIONS
ABOUT IT BECAUSE IT CONCERNED
ME THAT THE EFFECT OF THIS
COULD BE WHAT YOU JUST
EXPLAINED TO US COULD BE, BUT
YOU ALSO SAID THERE'S ANOTHER
LAWSUIT GOING ON.

WHAT IS THE STATUS OF THIS
PARTICULAR LAWSUIT?

>> THIS PARTICULAR LAWSUIT, A
PETITION HAS BEEN FILED.

WE FILED I THINK A MOTION TO
DISMISS IT, ARGUING WHY
THERE'S NO BALANCING

>> BECAUSE RIGHT NOW THEY'RE
IN THE CASE; IS THAT CORRECT?

>> THEIR CLIENTS ARE.

BEFORE RULING ON THE MOTION TO
DISMISS, WE HAD A MOTION TO
DISQUALIFY THEIR COUNSEL.
THAT WAS GRANTED.

THESE LAWYERS THERE'S AN
ORDER THAT SAYS THEY CAN'T
REPRESENT THE CLIENTS IN THIS
CASE.

THAT ORDER HAS NEVER BEEN
STAYED.

THEY'RE VIOLATING IT BY BEING
HERE TODAY.

>> ISN'T THAT WHAT THE 3rd
DISTRICT REVERSED?

>> YOU GRANTED IT.

YOU DID.

SO THE TRIAL COURT'S ORDER IS
NOT STAYED.

THE TRIAL COURT'S ORDER SAYS
THEY DON'T GET TO PARTICIPATE
IN THIS.

NOW, AT THE TRIAL COURT THEY
HAD AN INDEPENDENT LAWYER
REPRESENTING THEM.

MR. TRAOS REPRESENTED THEM IN
THE TRIAL COURT.

BUT HE ISN'T WITH THEM
ANYMORE.

THESE LAWYERS FILED THE
PETITION ON BEHALF OF THE
CLIENTS.
A COURT ORDER SAYS THEY CANNOT
REPRESENT.
THEY FILED A PETITION IN THE
3rd DISTRICT.
IT WAS GRANTED.
WE PETITIONED HERE.
YOU STAYED THE DECISION AND
THE STAY ORDER MAKES VERY
CLEAR THAT THAT
DISQUALIFICATION ORDER IS
STILL IN PLACE.
IF THESE CLIENTS REALLY WANT
THESE LAWYERS HERE AS OPPOSED
TO THE OTHER LAWSUIT, ALL THEY
NEED TO DO IS HIRE A LAWYER,
MR. †RAOS OR WHOEVER HERE IF
THEY CAN FIND ANYONE WHO
THINKS THERE'S ANY MERIT, THEY
CAN HIRE THEM.
THEY DID NOT DO THAT.
THERE IS NO BASIS FOR THEIR
CLAIMS HERE.
THIS IS CLEAR.
YOU SHOULDN'T EVEN HAVE TO GET
TO THE FORMER CLIENTS.
BUT THE 3rd DISTRICT DID SAY
THEY DON'T HAVE ANY CURRENT
CLIENTS WITH CONFLICTS.
THE 3rd DISTRICT TOOK A VERY
NARROW VIEW, DID NOT LOOK AT
THE IMPACTS TO THE OTHER
PEOPLE, JUST LOOKED AT MISS
YOUNG AND MISS †BISSARD.
THEY DROPPED HER AS A CLIENT.
YOU DON'T EVER NEED TO GET
THERE FOR A LOT OF REASONS.
BUT IF YOU DO, THESE CASES ARE
SUBSTANTIALLY RELATED.
ALL YOU HAVE TO DO IS LOOK AT
THEIR PETITION.
THE PETITION IN THIS CASE A
WHOLE SECTION IS DEVOTED TO
THE INDIVIDUAL LAWSUITS AND
WHY THEY SAY THEIR CLIENTS
CAN'T WIN THE INDIVIDUAL
LAWSUITS BECAUSE THEIR CLAIMS
CAN'T BE PROVEN.

SO THEY'RE COMING IN HERE,
FILING A PETITION, THROWING
ALL THE INDIVIDUAL LITIGATION
UNDER THE BUS AND SAYING
THAT'S A REASON THEY SHOULD
GET MORE MONEY UNDER THE
SETTLEMENT AGREEMENT.
THAT'S WHAT WE'RE HERE.
IT'S THROUGH THE LOOKING
GLASS.
I'LL RESERVE THE REST OF MY
TIME.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS PHILLIP GERSON.

I REPRESENT THE 260 FLIGHT
ATTENDANCE WHO WERE CLASS
MEMBERS WHO WERE NAMED IN THE
PETITION FOR CERTIORI.

>> HOW MANY CLASS MEMBERS WERE
THERE?

>> THAT'S NEVER BEEN MADE
CLEAR.

>> WELL, IS THIS A MAJORITY OF
THEM THAT YOU REPRESENT OR
THAT YOU CURRENTLY REPRESENT?

>> IT'S WELL, I FILED
APPROXIMATELY 600 LAWSUITS.

>> BUT I GUESS AND THE
QUESTION CAN YOU ADDRESS
THE FACT IF THE ORDER WAS NOT
STAYED PREVENTING YOU
YOU'RE ONE OF THE LAWYERS THAT
WAS PRECLUDED FROM
REPRESENTING THESE CLIENTS?
IS THAT CORRECT?

>> THAT'S CORRECT.

>> HOW ARE YOU STILL
REPRESENTING THEM BEFORE US?

>> WELL, THAT ORDER WAS
APPEALED.

>> BUT IS MR. MILLS CORRECT
THAT THE ORDER WAS STAYED?

>> WELL, HERE'S A MORE
ACCURATE PROCEDURAL HISTORY.
A PETITION FOR CERTIORI WAS
GRANTED AND THE 3rd DISTRICT
GRANTED THE PETITION.

AFTER THE PETITION WAS
GRANTED, THE RESPONDENTS MOVED

FOR A STAY ORDER.
THE 3rd DISTRICT GRANTED THEIR
MOTION AND ENTERED THE STAY
ORDER.
THEN THIS OTHER LAWSUIT WAS
FILED BY ANOTHER LAWYER I
DON'T KNOW.
SINCE MY HANDS WERE TIED BY
JUDGE BAGLEY'S ORDER, I'VE
DONE NOTHING MORE IN THE TRIAL
COURT, NOR HAS MR. HUNTER.
BUT ANOTHER LAWYER FILED AN
ACTION ON BEHALF OF THE ENTIRE
CLASS AND THAT CASE WENT
BEFORE JUDGE BAGLEY.
JUDGE BAGLEY DISMISSED THAT
CASE.
I KNOW NOTHING ABOUT IT.
THAT IS ON APPEAL.
>> BUT HOW DOES THAT HOW
DOES THAT AFFECT THIS CASE?
BECAUSE WE'RE HERE ON THIS
CASE, AND IN THIS CASE IT
SEEMS THAT YOU WERE
DISQUALIFIED AND THAT THAT
ORDER OF YOUR DISQUALIFICATION
IS STILL IN EFFECT, SINCE WE
STAYED THE 3rd DISTRICT'S
OPINION THAT SAID YOU WERE NOT
DISQUALIFIED.
SO THAT'S WHY I'M TRYING
HOW DOES THE SUBSEQUENT
LAWSUIT AFFECT YOUR
DISQUALIFICATION?
>> WELL, WHAT I WAS ABOUT TO
SAY IS THAT AFTER THE 3rd
ENTERED THAT STAY ORDER, WE
LEARNED THAT THIS OTHER
LAWSUIT HAD BEEN DISMISSED
BASED ON WHAT WOULD HAPPEN IN
THIS CASE AND WE BROUGHT THAT
TO THE ATTENTION OF THE 3rd
AND THE 3rd LIFTED ITS STAY.
AFTER THEY LIFTED THEIR STAY,
THEN THE MOVING PARTIES ASKED
THIS COURT TO ENTER ANOTHER
STAY.
>> LET ME GET YOU TO THE
MERITS.
WHY DON'T YOU HAVE A DIRECT

CONFLICT HERE?

>> WELL, PLAIN AND SIMPLE, I DON'T REPRESENT, NOR WAS THERE ANY REASONABLE BASIS FOR CONCLUDING THAT I EVER REPRESENTED MISS†BISSARD OR MISS†YOUNG.

THE ONE CLIENT OF MINE WHO IS DIRECTLY FOCUSED ON BY THEM LET ME KNOW THAT SHE DIDN'T WANT ME TO GO FORWARD FROM THIS, SO I WITHDREW FROM HER CASE.

WHAT'S BEEN CALLED THE SOLICITATION LETTER IS SIMPLY A LETTER THAT SAYS PRIVILEGED AND CONFIDENTIAL THAT I SENT TO MY CLIENTS.

HOW IT GOT INTO THEIR HANDS, I DON'T KNOW.

THAT WAS NEVER MADE CLEAR.

AND IT POINTED OUT THE WEAKNESSES IN THE LITIGATION BEFORE THE AGAINST THE TOBACCO COMPANIES.

AND INSTEAD OF TAKING THAT LETTER TO THE TRIAL JUDGE AND SAYING, JUDGE, BY WHATEVER MEANS WE'VE COME ACROSS THIS LETTER, THEY JUST PUBLISHED IT IN THE RECORD AND SERVED IT ON THE TOBACCO COMPANIES.

THE

>> THE QUALIFIED LAWYERS DO NOT HAVE MEMBERS IN THE CLASS THAT ENTERED INTO THE SETTLEMENT AGREEMENT?

>> NO.

WE DO HAVE CLIENTS WHO ENTERED IN THE SETTLEMENT AGREEMENT THAT WERE A PART OF THE CLASS THAT WAS COVERED BY THE SETTLEMENT AGREEMENT.

BUT THEY'RE NOT GETTING WHAT THEY WERE PROMISED IN THE SETTLEMENT AGREEMENT.

>> DID YOU HAVE DISCUSSIONS WITH THE OTHER LAWYERS WHO REPRESENTED MEMBERS OF THE CLASS WHILE THAT WAS

LITIGATION WAS GOING ON?

>> NOT THE CLASS LITIGATION,
NO.

THE SUBSEQUENT LAWSUIT, NO.
HAD NO CONTACT WITH THEM AT
ALL.

DON'T EVEN KNOW WHO THEY ARE.

>> WHILE THE CLASS LITIGATION
WAS GOING ON BEFORE THE
SETTLEMENT, YOU HAD NO
DISCUSSIONS WITH THE OTHER
LAWYERS AT ALL?

>> NONE.

>> NO TEAM APPROACH.

>> WELL, I'M NOT SURE WHAT
YOU'RE ASKING ME, JUSTICE.

I WAS NOT INVOLVED AT ALL
UNTIL THE YEAR 2000, LONG
AFTER THIS WAS ALL DONE.

SO I HAD NO DISCUSSIONS WITH
ANYBODY.

THE SUBSEQUENT CASE AFTER OUR
DISQUALIFICATION THAT WAS
FILED IN CIRCUIT COURT THAT
WENT BACK TO JUDGE BAGLEY WAS
DISMISSED BY JUDGE BAGLEY, IS
NOW ON APPEAL TO THE 3rd
DISTRICT COURT OF APPEALS,
I'VE NEVER HAD A CONVERSATION
WITH THAT LAWYER.

>> IT SEEMS IF YOU'RE
REPRESENTING CLIENTS AND
ENGAGE IN CONVERSATIONS WITH
CLIENTS WHO ARE IN THE CLASS
SAME AS YOUR CLIENTS AND
YOU'RE HAVING COMMUNICATION
WITH THEM ABOUT STRATEGY AND
WHAT'S GOING ON IN THE
LITIGATION, THEN YOU USED THAT
INFORMATION SUBSEQUENTLY TO
THE HARM OF YOUR FORMER
CLIENTS.

THAT SEEMS TO ME TO BE
PROBLEMATIC.

IS THAT NOT WHAT HAPPENED
HERE?

>> NO.

THAT'S NOT WHAT HAPPENED.
WE DIDN'T USE ANY INFORMATION
TO THE HARM OF ANY OF OUR

FORMER CLIENTS.

>> THAT'S NOT THE TEST.
THE TEST IS WHETHER
CONFIDENCES WERE SHARED.
AND THE TRIAL COURT IN QUOTING
FROM THE AFFIDAVIT OF BLISSARD
DID YOU REPRESENT HER?

>> NO, I DIDN'T.

>> SHE SAID THESE ATTORNEYS
ACTED AS A TEAM AND OTHER
CLASS REPRESENTATIVES, PATTI
YOUNG AND LANE, SHARED MANY
CONFIDENCES WITH THEM ABOUT
OURSELVES AND FAMRI.
I WORKED MOST CLOSELY WITH
STEVE HUNTER, ALSO BUT GERSON
AND WEINSTEIN AS I TRUSTED
THESE MEMBERS OF MY LEGAL
TEAM.

NOW, YOU'RE CONTESTING THAT,
BUT THE JUDGE MADE THOSE
DETERMINATIONS IN AN ORDER AND
I DIDN'T FIND THAT THE 3rd
DISTRICT FOUND THAT THOSE WERE
LACKING IN THE RECORD.

NO ONE OFFERED TO PUT IN I
MEAN, YOU DIDN'T PUT IN A
COUNTERAFFIDAVIT, SO AREN'T
WE LEFT WITH THIS AS BEING THE
TEAM APPROACH?

THAT THERE WERE CONFIDENCES
SHARED, THAT THESE ACTIONS
WERE DIRECTLY CONTRARY TO THE
WISHES OF SOME OF THE PEOPLE
WHO YOU WHO SHARED
CONFIDENCES WITH YOU AND MR.
HUNTER.

>> THERE WERE CONTRADICTIONARY
AFFIDAVITS AND THEY'RE CITED
EXTENSIVELY IN OUR BRIEF ON
THE MERITS IN THIS COURT AND
ALL OF THOSE ALLEGATIONS WERE
DISPUTED AND REFUTED.

>> BUT TWO THINGS.
FIRST OF ALL, THERE'S NO
EVIDENTIARY HEARING, SO THIS
IDEA THAT THERE'S CONFLICTING
AFFIDAVIT, NOBODY ASKED FOR AN
EVIDENTIARY HEARING.
MORE IMPORTANTLY THE LAW ON

CONFLICT OF INTEREST AND THE ETHICAL CONDUCT RULES DO NOT REQUIRE THERE BE ACTUAL HARM DEMONSTRATED IN ORDER TO BE ABLE TO REPRESENT A CLIENT WHO OR AGAINST A CLIENT WHO OBJECTS TO THE REPRESENTATION. AM I MISSING SOMETHING? DOES THERE HAVE TO BE ACTUAL HARM?

>> THERE DOES HAVE TO BE ACTUAL HARM. AND IN THIS CASE THERE IS NONE.

NOR WAS ANY EVER DEMONSTRATED. >> YOU'RE SAYING THE CONFLICT OF INTEREST RULES ALLOW YOU TO REPRESENT AGAINST A FORMER CLIENT WHO IS WHO WAS YOUR CLIENT AND YOU CAN REPRESENT THAT PERSON EVEN THOUGH THERE'S A CONFLICT OF INTEREST AS LONG AS THERE'S NO ACTUAL HARM TO THE CLIENT, THAT THE CLIENT HAS TO DEMONSTRATE THERE WERE CONFIDENCES SHARED THAT WOULD HARM THAT PERSON. WHERE IS THAT TEST?

>> NO.
NO.

I'M NOT SAYING THAT. I'M SAYING I NEVER REPRESENTED BRISSARD OR YOUNG, DESPITE WHAT'S IN THEIR AFFIDAVIT. AND THERE WAS A CONFLICTING AFFIDAVIT THAT I FILED THAT SET FORTH OUR FACTUAL POSITION.

WE HAD NO BURDEN OF PROOF ON THE MOTION TO DISQUALIFY. IF THERE WERE CONFLICTING FACTUAL POSITIONS THAT WERE PRESENTED TO THE TRIAL COURT, IT WASN'T OUR RESPONSIBILITY TO INSIST THAT TESTIMONY BE TAKEN.

OUR POSITION WAS THAT AS A MATTER OF LAW THE MOTION TO DISQUALIFY US WAS FLAWED AND SHOULD BE DENIED.

>> DID YOU FILE A LAWSUIT FOR
EITHER OF THEM?

>> NO.

>> THAT YOU JUST MENTIONED?

>> NO.

I NEVER FILED A LAWSUIT.

I NEVER APPEARED IN ANY OF
THEIR LAWSUITS.

I NEVER HAD A PHONE CALL WITH
ANY OF THEM.

ALL I EVER DID WAS HAVE CASUAL
CONVERSATIONS WITH THEM AT A
COUPLE OF MR. ROSENBLAT'S
WEDDINGS AND WE'VE CITED THE
CASES THAT SUPPORT THAT THAT
IS NOT AN ADEQUATE BASIS FOR
AN ATTORNEY/CLIENT
RELATIONSHIP TO BE INFERRED BY
AN APPELLATE COURT.

THAT'S BARTHOLOMEW, EGGERS
CASE.

>> BUT THAT'S NOT THE 3rd
DISTRICT DIDN'T QUASH THE
TRIAL COURT'S ORDER ON THE
BASIS THAT THERE WAS NEVER
REPRESENTATION.

THEY WENT MUCH BROADER AND
TALKED ABOUT EVEN IF THERE'S
REPRESENTATION, THERE IS A
BALANCING TEST.

SO THAT'S WHAT I'M HAVING I
MEAN, DID YOU WHAT WAS YOUR
POSITION BEFORE THE 3rd
DISTRICT?

>> OUR POSITION BEFORE THE 3rd
DISTRICT WAS THAT THEY WERE
NOT OUR CLIENTS.

THERE WAS NO REASONABLE BELIEF
ON THEIR PART EVER THAT I
REPRESENTED ANY OF THEM.
MERELY BECAUSE I MET WITH
LAWYERS WHO HAD A COMMON
INTEREST.

>> DID HUNTER EVER REPRESENT
THEM?

>> I BEG YOUR PARDON?

>> DID HUNTER EVER REPRESENT
THEM?

>> YES.

HE WAS HER ATTORNEY OF RECORD

FOR I GUESS TEN YEARS.

>> OKAY.

>> OKAY.

BUT I NEVER REPRESENTED EITHER ONE OF THEM AT ANY TIME.

AND I NEVER WITHDREW FROM THEIR REPRESENTATION BEFORE I NEVER APPEARED ON THEIR BEHALF.

>> SO IS YOUR POSITION DIFFERENT THAN MR. HUNTER'S POSITION?

ARE YOU NOW SAYING IT WAS WRONG AS TO YOU BUT NOT AS TO MR. HUNTER?

>> WELL, WHAT I DIDN'T SAY IS THAT I WANT TO SAVE HALF THE TIME FOR OUR SIDE FOR MR. HUNTER TO STATE HIS OWN POSITION, BUT MY POSITION AS TO MYSELF IS I WAS NEVER ATTORNEY FOR EITHER ONE OF THEM.

>> IS HE GOING TO ARGUE?

>> YES.

>> LET'S HEAR FROM HIM.

>> OKAY.

GERSON.

>> JUSTICE POLSTON AND PARIENTE AND QUINCE ASKED THE QUESTIONS, ALSO JUSTICE PERRY. BUT LET ME GIVE A HISTORICAL EXPLANATION HERE BECAUSE I KNOW FROM READING THE 3rd DISTRICT OPINION IT MAY NOT BE CLEAR TO YOU.

THE CLASS ACTION WAS SETTLED IN 1997 AND THERE WAS A PRELIMINARY FAIRNESS HEARING FOLLOWING THE SETTLEMENT AGREEMENT BEFORE JUDGE KAY AND THEN THERE WAS A THERE WERE OBJECTIVES THERE WAS JUDGE KAY APPROVED THE SETTLEMENT, OBJECTORS CAME FORWARD AND THEN THAT WAS THE RAMOS DECISION.

RAMOS OVERRULED THE OBJECTION AND AFFIRMED THE SETTLEMENT AND THEY MODIFIED THE

SETTLEMENT.

BUT IT'S THE RAMOS OPINION
THAT THIS CASE IS ALL ABOUT.
WE'RE TRYING TO ENFORCE THE
MANDATE IN THE RAMOS DECISION.
NOW, 19 THAT WAS IN ABOUT
1998, '99.

I FORGET THE DATE OF RAMOS.
NONE OF US WERE INVOLVED.
NONE OF THE LAWYERS MR.
GERSON, MYSELF, MR.†ALVAREZ,
NONE OF THE LAWYERS.
THE OTHER LAWYERS WERE
DISQUALIFIED WAS MR.†ABIDEAN,
MR.†SMITH.

NONE OF THESE LAWYERS HAD
ANYTHING TO DO WITH THE
CLIENTS.

IN THE YEAR 2000, AS A RESULT
OF THE SETTLEMENT AGREEMENT
WHICH ALLOWED INDIVIDUAL
FLIGHT ATTENDANTS TO GO
FORWARD WITH INDIVIDUAL CASE
THAT'S WOULD INVOLVE MEDICAL
CAUSATION AND DAMAGES, WE
UNDERTOOK TO REPRESENT THOSE
CLIENTS IN THOSE PERSONAL
INJURY CASES AGAINST TOBACCO.
AND SIMILAR TO THE ENGLE
CASES, THE ONLY THING
>> YOU SAY WE.

WHO IS WE?

IDENTIFY

>> WELL, MR.†GERSON AND I.
MR.†ALVAREZ AND SOME OTHER
LAWYERS.

BUT THERE WAS A TEAM OF
LAWYERS.

NOW, THE TEAM APPROACH THAT'S
BEEN REFERENCED IN THE BRIEFS
WAS A TEAM APPROACH IN OUR
CASES AGAINST TOBACCO.

SO WE WE SHARED INFORMATION
IN CASES AGAINST TOBACCO.
WE WERE TRYING TO MOVE MEDICAL
CAUSATION AND DAMAGES.
AND MEDICAL CAUSATION IN A
SECONDHAND SMOKE CASE IS
EXTREMELY DIFFICULT AND IT WAS
VERY HARD FOR US AND WE WERE

TOTALLY UNSUCCESSFUL.
WE WON ONE AND WE LOST TEN.
BECAUSE IT'S NOT LIKE A DIRECT
SMOKING CASE.
TO PROVE MEDICAL CAUSATION FOR
A SPECIFIC PERSON IS
MONUMENTAL AND WE LOST ALL THE
TIME.
I HATE TO SAY THAT, BUT WE
DID.
WE COULDN'T WIN THEM.
NOW, DURING THAT
REPRESENTATION, DURING THAT
PERIOD OF TIME WHERE WE WERE
REPRESENTING THESE CLIENTS IN
THEIR INDIVIDUAL CASES AGAINST
TOBACCO, IT HAD NOTHING TO DO
WITH WHAT WE'RE HERE FOR.
IT HAD NOTHING TO DO WITH THE
FUND OR ANYTHING EXCEPT
PROVING CASES AGAINST TOBACCO.
SOME OF THE LAWYERS INVOLVED
IN REPRESENTING THE PEOPLE
AGAINST TOBACCO BEGAN TO
THINK, BOY, WE'RE NOT DOING
WELL HERE.
LET'S SEE IF THERE'S A WAY WE
CAN GET WHAT'S ALWAYS BEEN
EVERYBODY'S DESIRE AND THAT IS
TO GET MONEY INTO THE HANDS OF
OUR CLIENTS.
AND THAT STARTED OUT IN THE
RECORD
>> AND THAT WAY TO GET THE
MONEY INTO THE HANDS OF YOUR
CLIENT WAS TO DISRUPT THE
SETTLEMENT AND GET THE MONEY
THAT WAS IN THE SETTLEMENT TO
GET TO YOUR CLIENTS?
>> WELL, IT WAS NEVER
FORMULATED.
THE ORIGINAL THE ORIGINAL
DESIGNER OF THE PLAN WAS MR.
MCGRAIN, AND AS HE SAYS IN HIS
BRIEF, HE THE WAY HE
DESCRIBES HIS EFFORTS HE
WAS THIS WAS NOT MY IDEA.
IT WAS MR. MCGRAIN'S IDEA.
AND WHAT HE SAYS IN HIS BRIEF
IS DURING THE EXTENSIVE

PREPETITION PERIOD AND
THIS IS HIS BRIEF IN
REPRESENTING MISS†YOUNG.
HE SAYS DURING THE EXTENSIVE
PREPETITION PERIOD WHILE THE
UNDERSIGNED COUNSEL WAS PART
OF A TEAM OF FLIGHT
ATTENDANTS' COUNSEL SEEKING A
WAY TO END LITIGATION THROUGH
DISBURSEMENTS FROM FAMRI.
NOW, I DIDN'T COME UP WITH
THIS.

>> I THOUGHT WE WERE HERE
BECAUSE YOU GUYS ARE TRYING TO
GET MONEY FROM THE FAMRI OR
WHATEVER IT IS THAT THE
SETTLEMENT

>> WELL, THAT'S THE WAY IT'S
BEEN CHARACTERIZED.

>> THAT'S NOT WHAT YOU WERE
TRYING TO DO?

>> NO.

LET ME BE VERY CLEAR ABOUT
THIS.

>> LET ME ASK YOU ANOTHER
QUESTION BEFORE YOU ANSWER
THAT.

WAS NOT MISS†BLISSARD AND MISS
YOUNG BOARD MEMBERS OF THIS
NONPROFIT?

>> YES.

>> THAT YOU WERE TRYING TO
DISMANTLE.

>> NO.

I'M NOT TRYING TO DISMANTLE
THEM.

>> WELL, IF YOU GET MONEY FROM
THEM, THE LAWSUIT GOES AWAY.
ISN'T THAT THE CRUX OF THIS
MATTER?

>> NO.

THE CRUX OF THE MATTER IS TO
ENFORCE THE MANDATE FROM RAMOS
WHICH REQUIRED MEDICAL
TREATMENT FOR OUR CLIENTS,
WHICH HAS NEVER BEEN GIVEN TO
THEM, AND TO RESTRICT THE
RESEARCH FOR THE BENEFIT OF
FLIGHT ATTENDANTS AS OPPOSED
TO OTHER GOOD WORKS, SUCH AS

PEOPLE IN HAITI FROM SUFFERED FROM THE EARTHQUAKE, TO NARROW THE RESEARCH.

>> YOU'RE TELLING AN IMPORTANT HISTORY AND I WANT TO MAKE SURE YOU THAT I UNDERSTAND WHAT YOU'RE SAYING.

ARE YOU SAYING BECAUSE YOU ONLY REPRESENTED MISS†BLISSARD AND OTHERS IN SUING TOBACCO IS THAT THERE IS NO CONFLICT EVEN THOUGH THESE FORMER CLIENTS DON'T WANT YOU TO SUE FAMRI AND YOU'RE SUING FAMRI?

IS THAT WHAT I'M UNDERSTANDING?

YOU'RE SAYING THERE'S A DISTINCT ISSUE THAT SHOULDN'T EVER GIVE RISE TO A CONFLICT OF INTEREST?

>> FIRST OF ALL, I'VE NEVER SUED FAMRI.

I'M NOT SUING FAMRI.

I JUST FILED A PETITION TO ENFORCE THE MANDATE.

>> BUT THEY'RE THE OPPOSING PARTIES HERE.

THEY'RE THE ONES THAT SOUGHT TO I'M ASKING YOU THAT QUESTION.

ARE YOU SAYING BECAUSE YOU WEREN'T WITH THE ROSENBLATZ PRE1997 IN NEGOTIATING THE SETTLEMENT FOR THE CLASS, THAT

AND YOU ONLY SUED ON BEHALF OF INDIVIDUAL MEMBERS, EVEN THOUGH SOME OF THOSE INDIVIDUAL MEMBERS NOW OBJECT TO YOU OBJECT TO WHAT YOU'RE DOING, THAT THEY'RE BECAUSE THERE'S NOT A RELATIONSHIP, THAT THERE'S NO CONFLICT OF INTEREST?

>> I REPRESENT INDIVIDUAL PEOPLE.

>> BUT YOU DID YOU REPRESENT MISS†BLISSARD?

>> YES, I DID.

>> WHY IS THERE NOT A CONFLICT OF INTEREST IN HER OBJECT TO

GO WHAT YOU'RE DOING, WHICH SHE SEES AS BEING ADVERSE TO THE POSITION THAT SHE WANTS TO TAKE?

>> BECAUSE I FAITHFULLY ADHERED TO OUR RULES OF CONDUCT CONCERNING A CONFLICT WHICH ARISES WHEN YOU REPRESENT MULTIPLE CLIENTS AND UNFORESEEN TO YOU A CONFLICT ARISES WITH ONE OF THEM. THE COMMENTS TO OUR RULES SAY THAT THE FIRST THING IS LAWYER SHOULD DO IS WITHDRAW FROM THE OBJECTING CLIENT, WHICH IS EXACTLY WHAT I DID.

IT WASN'T UNTIL MANY, MANY MONTHS LATER I'M SORRY.

>> SO YEAH.

SO YOU'RE SAYING THE 3rd DISTRICT SHOULD HAVE FOUND THERE WAS NO CONFLICT EVEN UNDER OUR RULES.

IS THAT YOUR POSITION?

>> YES.

WELL, I THINK THEY DID APPLY OUR RULES.

>> I'M SURE YOU WOULD NOT KNOW THIS IS SOMETHING THAT I'M HEARING YOU TALK ABOUT IT, BUT THE TRIAL JUDGE FOUND THERE WAS A CONFLICT.

AND I'M JUST REALLY HAVING A HARD TIME UNDERSTANDING WHY THAT JUDGE'S ORDER ISN'T A CORRECT STATEMENT OF AN INTERPRETATION OF OUR RULES OF PROFESSIONAL CONDUCT.

>> LET ME ANSWER THAT QUESTION SPECIFICALLY.

THE TRIAL COURT'S ORDER, THE STANDARD THE TRIAL COURT'S ORDER IS CLEARLY HAS CLEARLY ERRONEOUS FACTUAL FINDINGS.

AND I UNDERSTAND FOR THIS COURT TO OVERTURN THE TRIAL COURT'S FINDINGS OF FACT YOU HAVE TO USE A CLEARLY ERRONEOUS STANDARD AND SHOW

THAT THERE'S A PALPABLE
MISCONCEPTION OF THE FACTS ON
THE PART OF THE TRIAL COURT.
BUT THE TRIAL COURT'S
REASONING, THAT OUR
REPRESENTATION OF OUR CLIENTS
AGAINST TOBACCO IN THE MEDICAL
CAUSATION AND DAMAGES
REPRESENTATION, WE SAID THAT
WAS TOTALLY UNRELATED TO
ANYTHING NOW THAT IS
PROCEEDING BEFORE THIS COURT.
THE TRIAL COURT HERE'S WHAT
THE TRIAL COURT WROTE IN HIS
ORDER, 11817 OF THIS RECORD.
AT THE CORE OF PETITIONER'S
COUNSEL'S PRIOR REPRESENTATION
OF BLISSARD AND YOUNG ARE THE
FUNDS CENTRAL TO THE CURRENT
LITIGATION.

NOW, THAT'S JUST WRONG.
MY REPRESENTATION OF MISS
BLISSARD HAD TO DO WITH HER
SUIT AGAINST TOBACCO, HAD
NOTHING TO DO WITH THE FUND,
FAMRI, HER POSITION AS A
MEMBER OF THE BOARD.
SHE WAS REPRESENTED BY MR.
PETRI.

I HAD NOTHING TO DO WITH
FAMRI.
I'VE NEVER DONE ANYTHING WITH
THEM.

I DON'T KNOW ANYTHING ABOUT
THEM.

I'M NOT ATTACKING THEM.
>> SHE NEVER SHARED
INFORMATION WITH
YOU ABOUT HER WORK WITH FAMRI
DURING THE COURSE OF THAT TEN
YEARS?

>> NO, SIR.
I MEAN, I KNOW SHE'S A BOARD
MEMBER.
SHE'S MY CLIENT.
BUT I'M NOT KNOWLEDGEABLE
ABOUT ANYTHING.
I HAVE NO SPECIFIC KNOWLEDGE
ABOUT ANYTHING THAT FAMRI HAS
DONE OR HASN'T DONE OTHER THAN

AS THIS CASE PROCEEDED.
NOW, ONE THING I WANT TO DO IS

>> SHE WAS A BOARD MEMBER?
SHE IS A BOARD MEMBER AND SHE
WAS YOUR CLIENT.

>> YES.

>> AREN'T YOU TRYING TO
THROUGH LITIGATION UNDERMINE
THE ACTIONS THAT SHE'S TAKEN
AS A BOARD MEMBER TO SAY THAT
THEY'RE INADEQUATE?

>> WELL, AT THIS POINT IN
TIME, YES.

>> YES?

>> YES.

>> WHY ISN'T THAT AN ABSOLUTE
CONFLICT?

>> BECAUSE ONCE I WITHDREW
PURSUANT TO THE RULES, I CAN
THEREAFTER IT'S WHICH IS
WHAT I DID.

THE RULES SAY THAT.

THE RULES SAY THAT IF YOU
DISCOVER A CONFLICT, THE
LAWYER IS INSTRUCTED TO
WITHDRAW.

AND THEN AT THAT POINT IN TIME
THE CLIENT BECOMES A FORMER
CLIENT.

>> I DON'T I DON'T KNOW
THAT YOU THAT THE RULE WAS
INTENDED FOR THIS SITUATION,
FOR YOU TO BE ABLE TO PICK AND
CHOOSE AND CHERRY PICK ONCE YOU
SEE YOU HAVE A CONFLICT.

I'LL CERTAINLY LOOK AT THAT.

BUT I DON'T THINK THAT
THAT'S HOW THINGS ARE ALLOWED,
THAT ALL OF A SUDDEN YOU
REALIZE, WELL, I'LL TAKE THE
ONE I LIKE AND I'LL JUST DUMP
THE OTHER ONE.

>> LET ME SPEAK TO THAT ISSUE,
BECAUSE THAT'S IMPORTANT,
BECAUSE THAT'S WHY THE 3rd
DISTRICT COURT OF APPEALS'
DISCUSSION OF THE LAZY OIL
CASE, ALL THAT INVOLVED A
CLASS ACTION YOU HAVE TO

UNDERSTAND HERE, I REPRESENTED
MISS†BLISSARD AND ANOTHER 300
PEOPLE.

AND DURING THE COURSE OF THAT
REPRESENTATION, I REPRESENTED
THEM ALL FOR TEN YEARS.

AND I'M NOT CHERRY PICKING
ANYTHING.

I MEAN, I HAVE THESE CLIENTS.
THEY'RE ALL MY CLIENTS.

AND THEN AT ONE POINT IN TIME
SHE CAME FORWARD AND SAID I
OBJECT TO THIS ANYTHING
WHICH COULD INVOLVE TAKING
MONEY AWAY FROM THE FUND.

>> AND THE RECORD SHOWS ALL
299 OTHER CLIENTS' CONSENT TO
THIS?

>> ABSOLUTELY.

I'VE NEVER THERE'S NO
OBJECTIONS EXCEPT FOR FIVE,
TWO OF WHICH ARE ARE THE
PEOPLE THAT I THINK WE'RE HERE
FOR, WHICH IS MISS†YOUNG AND
MISS†BLISSARD.

THEY HAVE COME UP WITH THREE
OTHERS.

BUT ALL THE REST OF THE
PEOPLE, NOBODY ELSE HAS
OBJECTED TO THIS.

NOW, LET ME TALK ABOUT WHETHER

>> I'M HAVING TROUBLE
UNDERSTANDING WHY IT'S STILL
NOT A RELATED MATTER.
BECAUSE BASICALLY WHAT YOU'RE
DOING THEM, YOU SAY YOU'RE
SUING THEM FOR THE TOBACCO
COMPANIES, SUING THE TOBACCO
COMPANIES FOR THEM, BUT NOW
YOU'RE CHANGING YOUR TARGET
AND GOING AFTER THIS FUND THAT
WAS CREATED IN THE FOR THE
CLASS ACTION RESULT THAT
SPAWNED ALL THIS.

IT JUST SEEMS TO ME THAT ALL
OF THIS IS INTERTWINED AND
YOU'VE AND I'M STRUGGLING
WITH UNDERSTANDING HOW IT'S
NOT RELATED, IT'S NOT A

RELATED MATTER.

HELP ME WITH THAT.

>> OKAY.

I WILL.

THE 3rd DISTRICT COURT OF APPEALS FOUND IT'S A DIFFERENT ISSUE AND IT REALLY IS.

>> WELL, WE'RE KIND OF BEYOND WE'RE LOOKING AT WHETHER THEY WERE RIGHT.

SO RELIANCE ON WHAT THEY SAID DOESN'T REALLY HELP.

IT HELPED ME INDEPENDENTLY UNDERSTAND WHY IT'S NOT RELATED.

>> BECAUSE, WELL, FIRST OF ALL, THE CASES AGAINST TOBACCO ARE JUST MEDICAL CAUSATION AND DAMAGES.

AND THE CASE NOW THAT'S BEFORE YOU IS TO ENFORCE A MANDATE IN RAMOS, WHICH WE CONTEND HAS NOT BEEN FOLLOWED.

BUT WHETHER OR NOT MONIES ARE ABLE WE'RE ABLE TO GET MONIES INTO THE HANDS OF THE FLIGHT ATTENDANTS IS NOT SOMETHING I HAVE ANY CONTROL OVER.

I DON'T HAVE A RIGHT TO A JURY TRIAL.

I DON'T HAVE A RIGHT TO CONVINCING ANYBODY OF THAT.

I WANT THE COURT TO UNDERSTAND, WHICH I THINK HAS BEEN OVERLOOKED, THIS IS A CLASS ACTION AND THERE IS ALTHOUGH THEY CONTEND THEY'RE NOT CLASS COUNSEL ANYMORE, THE CLASS WAS NEVER DECERTIFIED, CLASS COUNSEL WAS NEVER DISCHARGED AND THE VOLUNTARY OR THE DISMISSAL WITH PREJUDICE WAS NOT OF THE CLASS.

IT WAS OF THE CASE AGAINST TOBACCO.

THIS WAS A CLASS ACTION SETTLEMENT WHICH SET UP A FUND WHICH WAS SUPPOSED TO BE UNDER

THE DIRECT SUPERVISION OF THE COURT.

AND CLASS COUNSEL MADE THOSE REPRESENTATIONS IN ORDER TO GET THE CASE APPROVED AND THE REPRESENTATIONS WERE THAT THEY WOULD CONTINUE AND LET ME QUOTE FROM IT THAT THEY WOULD DO YOU HAVE OUR BRIEF, CHRIS?

THESE WERE THE REPRESENTATIONS THAT WERE MADE TO THE RAMOS COURT IN ORDER TO GET THEM TO APPROVE THE SETTLEMENT OF THIS CLASS, THAT THE FOUNDATION IS NOT A CHARITABLE FOUNDATION. THE FOUNDATION WILL BE COLLECTED AND SUPERVISED BY THE TRIAL COURT, NOT CLASS COUNSEL, AND JUST AS GUARDIANSHIPS PROCEED UNDER THE CONTINUING SUPERVISION OF THE DADE COUNTY CIRCUIT COURT, THE \$300 MILLION FLIGHT WILL BE UNDER THE JURISDICTION, GUIDANCE AND DIRECTION OF THE DADE COUNTY CIRCUIT COURT. NOW, THAT HAS GOT TO BE THE CASE BECAUSE THIS IS A CLASS ACTION THAT SET UP A FUND AND THE COURT HAS A CONTINUING JURISDICTION AND UNDER ITS EQUITABLE POWERS TO SUPERVISE THAT FUND.

NOW, IF I WERE TO EVER SUGGEST ANYTHING WHICH THREATENED THE FUND OR DID ANYTHING WHICH WAS WAS IN ANY WAY CONTRARY TO THE INTEREST OF THE CLASS, THE COURT IS THE FATHER OF THE CLASS, AND CLASS COUNSEL HAS GOT THE FIDUCIARY OBLIGATION. SO I DON'T HAVE ANY CONTROL OVER THAT.

NOW, IS THERE SOME SUGGESTION THAT WE WOULD LIKE TO TRANSFER FUNDS?

WAS THERE A TREMENDOUS AMOUNT OF EFFORT IN ORDER TO DO SO IN A WAY THAT WOULD PROTECT FAMRI

AND PROTECT EVERYTHING?
WE ALWAYS DID THAT.
IF YOU LOOK IN THE RECORD OF
645

>> I'M WONDERING, I'M
BEGINNING TO SEE THAT WE'RE
APPROACHING A PLAY ON WORDS
HERE, IT SEEMS.

AND MY CONCERN IS THAT YOU
KEEP SAYING WE'RE HERE TO
ENFORCE THE MANDATE.
DID THE UNDERLYING SETTLEMENT
PROVIDE FOR DOLLARS TO BE
DISTRIBUTED TO THE FLIGHT
ATTENDANTS DIRECTLY?

>> NO, SIR.

>> WELL, AGAIN, THEN, WHEN YOU
SAY I'M TRYING TO FIND A WAY
TO FORCE THEM TO PAY MY
CLIENTS FOR THEIR MEDICAL
CARE, THAT SEEMS TO SAY YOU
MAY USE WHATEVER WORDS, BUT IT
SEEMS TO BE SAYING I'M TRYING
TO MODIFY THE UNDERLYING
AGREEMENT.

>> NO.

NO.

YOUR HONOR, LET ME

>> OKAY.

PLEASE HELP ME UNDERSTAND
BECAUSE THAT'S WHAT IT SOUNDS
LIKE YOU'RE SAYING TO ME.

>> IN CLASS ACTION PRACTICE,
AS I'M SURE YOU KNOW, THE
PARTIES WILL ENTER INTO AN
AGREEMENT.

THE SETTLEMENT AGREEMENT
ENTERED INTO BETWEEN CLASS
COUNSEL AND THE DEFENDANTS IS
SUBJECT TO APPROVAL BY THE
TRIAL COURT.

UNLESS IT'S APPROVED FIRST
THERE'S A PRELIMINARY FAIRNESS
HEARING.

>> I UNDERSTAND ALL THAT.

>> OKAY.

BUT THEN ONCE THAT FAIR
ONCE THAT TRIAL COURT APPROVES
THE SETTLEMENT, THE SETTLEMENT
AGREEMENT ENTERED INTO BY THE

PARTIES IS OVERCOME BY WHAT IS APPROVED BY THE TRIAL COURT. THAT WENT UP TO THE 3rd DISTRICT COURT OF APPEAL IN RAMOS.

NOW, THE OPINION IS WHAT CONTROLS.

IT'S NOT THE SETTLEMENT THAT WAS ENTERED INTO BETWEEN THE CLASS COUNSEL AND THE DEFENDANTS.

IT'S NOT

>> YOU'RE SAYING IT'S DIFFERENT.

>> YES.

AND LET ME QUOTE TO YOU WHAT IT IS.

>> ALL RIGHT.

>> THE MEDICAL FOUNDATION WOULD PROVIDE TREATMENT TO MITIGATE DISEASES AFFECTING MANY CLASS MEMBERS.

AND WHAT WE'RE SAYING IS THEY NEVER DID THAT.

THEY NEVER PROVIDED ANY TREATMENT FOR OUR PEOPLE.

>> ARE YOU SAYING THAT THE 3rd DISTRICT'S OPINION MODIFIED THE AGREEMENT THAT HAD BEEN APPROVED BY THE TRIAL COURT?

>> YES, SIR.

ABSOLUTELY.

THERE'S NO QUESTION ABOUT THAT.

IT'S THE APPROVAL THAT CONTROLS, NOT THE SETTLEMENT ENTERED INTO BETWEEN THE PARTIES.

IT'S WHAT WAS APPROVED BY THE COURT.

>> THAT SEEMS A LITTLE ODD, MR. HUNTER, BECAUSE YOU'RE SUGGESTING THAT IN CLASS ACTION LITIGATION, THAT A SETTLEMENT CAN BE ENTERED INTO BY THE PARTIES AND THEN CHANGED BY THE COURT.

>> YES, SIR.

>> WITHOUT THE AGREEMENT OF THE PARTIES.

>> YES, SIR.
THEY APPEALED IT.
R.J. REYNOLDS APPEALED AND
THEY SAID THIS APPROVAL IN
RAMOS IS DIFFERENT THAN WHAT
WE ENTERED INTO.
THE TREATMENT.
WE DIDN'T AGREE TO PROVIDE
TREATMENT.
WE DIDN'T SAY THAT THESE FUNDS
COULD BE USED FOR TREATMENT.
AND THEIR MOTION WAS DENIED.
REHEARING WAS DENIED.
RAMOS IS WHAT WE'RE LIVING BY.
IT'S NOT WHAT THEY AGREED TO.
IT'S WHAT THE 3rd DISTRICT DID
IN RAMOS.
AND THEN WHAT WE'RE COMING
FORWARD TO AND SAYING IT NEVER
HAPPENED.
THIS WAS SUPPOSED TO BE A FUND
THAT WAS SUPERVISED BY THE
COURTS.
THE ONLY CLASS ACTION IN 21
YEARS OF DOING CLASS ACTION
WORK, IT'S THE ONLY FUND IN
THIS ANYWHERE NEAR THIS
SIZE WHICH HAS NEVER HAD COURT
SUPERVISION.
EVEN THOUGH ALL OF THE THINGS
WHICH GOT THE COURT TO THE
FOUNDATION IS NOT CHARITABLE.
THE FOUNDATION WILL BE
DIRECTED AND SUPERVISED BY THE
TRIAL COURT.
IT'S NEVER BEEN SUPERVISED.
>> WELL, THAT'S WAY BEYOND
WHAT WE'RE HERE TO TALK ABOUT.
>> I KNOW.
>> MAY I FINISH?
SO THE CLAIM THAT YOU'RE
ATTEMPTING TO ASSERT IS THAT
LAWYERS REPRESENTING MEMBERS
OF THAT CLASS DO HAVE A RIGHT
TO FILE AN ACTION AGAINST THE
ENTITY HOLDING THE FUNDS WHO
ENFORCE AND RECEIVE PROCEEDS
FROM THAT THAT ARE NOT BEING
DISTRIBUTED AND IT IS NOT A
CONFLICT TO DO THAT.

THAT'S WHAT YOU'RE SAYING.

>> YES, SIR.

YES, SIR.

>> IN SO MANY WORDS, THAT'S IT.

THAT'S THE SUM AND SUBSTANCE OF IT.

>> YES, SIR.

>> THEY'RE SAYING IT IS SO INTERRELATED AND INTERTWINED THAT WHEN YOU START REPRESENTING THOSE FOLKS, MAYBE THE TERMS OF THE SETTLEMENT I GUESS BECOME THE FOCUS HERE, BUT THAT IS THE CONFLICT.

THAT'S THE LEGAL ISSUE WE HAVE TO DECIDE RIGHT AT THAT POINT.

>> WELL, WHAT YES.

I MEAN, I THINK YOU HAVE TO REALIZE I'M NOT CONFLICTED BECAUSE I REPRESENT INDIVIDUAL PEOPLE.

NONE OF MY PEOPLE HAVE OBJECTED TO THIS.

NOBODY IN THIS CLASS HAS OBJECTED TO US TRYING TO ENFORCE YOU KNOW, WHETHER OR NOT ANY FUNDS ARE GOING TO GO TO FLIGHT ATTENDANTS, I MEAN

>> YOU HAVE WELL EXCEEDED YOUR TIME.

I'VE GIVEN YOU SUBSTANTIAL ADDITIONAL TIME FRANKLY BECAUSE I THINK THAT THIS IS PERHAPS A SERIOUS ADDITIONAL BAR DISCIPLINE ISSUE, FROM MY PERSPECTIVE.

THAT'S THE REASON WHY I WANTED TO HAVE THE OPPORTUNITY TO HEAR YOU EXPLAIN THIS WITH MORE TIME.

SO THAT'S THE REASON I ALLOWED IT TO GO ON.

REBUTTAL?

>> THANK YOU, JUSTICE.

>> I'M NOT GOING TO HAVE TIME TO SHOW TO YOU THAT YOU JUST HEARD AT LEAST 20 JUST FALSE

STATEMENTS THAT ARE AGAINST
THIS RECORD AND AGAINST WHAT
THEY KNOW TO BE THE CASE.

>> WELL, DO WE NEED AN
EVIDENTIARY HEARING THEN WITH
THE BAR COUNSEL SITTING THERE
TRYING TO FIGURE OUT WHO'S
TELLING THE TRUTH?

>> WELL, AT SOME POINT.
THAT'S NOT FOR THIS CASE.

>> LET ME UNPEEL THIS ONION
JUST A LITTLE BIT.

DO YOU AGREE OR DISAGREE THAT
THE 3rd DISTRICT ALTERED THE
UNDERLYING SETTLEMENT?

>> I COMPLETELY DISAGREE.
THE 3rd DISTRICT HAS SAID IN
THE FRENCH CASE THAT THEY
I'M SORRY.

>> THE OPPOSITION SAYS THAT'S
THE KEY HERE, IS THAT THE 3rd
DISTRICT ALTERED THAT TERM TO
REQUIRE THAT THERE BE FUNDS
AVAILABLE FOR TREATMENT.
AND SOMEBODY'S GOT TO BE ABLE
TO ENFORCE THAT TREATMENT
PROVISION AND THAT THERE'S NO
CONFLICT ON THEIR SIDE BECAUSE
THAT'S ALL THAT THEY'RE DOING
AND THAT'S JUST START RIGHT
THERE AND HELP ME.

MAYBE I'M TRYING TO PERCEIVE
IN MUCH TOO SIMPLE TERMS.

>> NO.

I THINK THAT THAT'S AN
APPROPRIATE WAY TO PROCEED.
I THINK THAT IS THEIR CLAIM
AND IT IS UTTERLY FALSE.
THE SETTLEMENT AGREEMENT
ITSELF SAYS IT CANNOT BE
MODIFIED AND IF IT IS EVER
MODIFIED BY ANY COURT IT
BECOMES NULL AND VOID.

>> THEY SAY THEY'RE NOT
MODIFYING IT.
THEY'RE SEEKING TO ENFORCE
JUST THE TREATMENT PROVISION
OF IT.

>> OKAY.

SO THE SETTLEMENT AGREEMENT

SAYS IT CAN'T BE DONE.
THE 3rd DISTRICT ITSELF HAS
SAID IN THE FRENCH CASE, WHICH
WE CITE IN OUR BRIEF, THAT THE
AGREEMENT WAS NOT MODIFIED.
WE APPROVED IT.
IT WAS NOT MODIFIED.
>> THE TREATMENT CLAUSE THAT
HE'S SUGGESTING IS IN RAMOS,
THAT'S WHERE WE'RE GOING TO
HAVE TO START READING THIS.
>> THERE IS NO TREATMENT
CLAUSE.
>> WAIT A MINUTE.
WAIT A MINUTE.
I'M JUST ABOUT WE'RE JUST
THE CHIEF JUSTICES HERE.
FILED A PETITION FOR
REHEARING.
DID TOBACCO FILE A PETITION
FOR REHEARING SAYING THAT
THERE WAS NO PROVISION FOR
TREATMENT OF ANY OF THE FLIGHT
ATTENDANTS IN THE CLASS
SETTLEMENT?
>> YES, THEY DID, AND THERE IS
NOT AND THEY WERE CORRECT.
MY POINT IS THE 3rd DISTRICT
DID NOT DO WHAT THEY'RE
SAYING.
IT DID NOT MODIFY IT TO
SUDDENLY REQUIRE MEDICAL
TREATMENT.
THEY DID REFER TO MEDICAL
TREATMENT.
WHAT THEY DID IS THEY JUST
SAID THIS FOUNDATION WILL
BENEFIT THE CLASS BECAUSE IT'S
PROCEEDING RESEARCH THAT IS
GOING TO LEAD TO TREATMENT AND
IT DOES PROVIDE SOME
TREATMENT.
THEY'VE HAD SCREENING CENTERS
SINCE 2002 IN SAN FRANCISCO
THAT FLIGHT ATTENDANTS CAN GO
TO AND GET SCREENED FOR THIS.
THE TAX LAWS PROHIBIT DIRECT
BENEFITS.
WE CAN'T GIVE THEM FREE
TREATMENT.

NOTHING IN RAMOS SAID WE WERE GOING TO BE DIRECTLY PROVIDING FREE TREATMENT.

WE'RE A RESEARCH FOUNDATION. WE PROVIDE RESEARCH THAT LEADS TO TREATMENT.

THAT BENEFITS EVERYBODY INDIRECTLY BENEFITS THEM AND THE WHOLE POINT OF RAMOS WAS EVEN IF IT DIDN'T BENEFIT THEM AT ALL, THE SETTLEMENT AGREEMENT IS STILL FAIR BECAUSE THE TOBACCO COMPANIES NEVER WOULD HAVE PAID ANYTHING TO THEM, THEY WERE ABOUT TO LOSE ALL OF THEIR CLAIMS.

ALL OF THESE CLAIMS ARE TIME BARRED AND YET THEY'VE GOT THIS BIG SETTLEMENT.

THAT'S WHAT RAMOS WAS ABOUT.

>> HE SAYS THERE'S NO CONFLICT BECAUSE THEY WITHDREW.

>> YOU CANNOT ESCAPE THAT IS BASED ON A BAR RULE.

YOU DON'T HAVE ANY WAY TO ANTICIPATE PEOPLE ARE GOING TO HAVE CONFLICTING INTERESTS.

SOMETHING HAPPENS, YOU WITHDRAW AND WHETHER YOU CAN STAY ON FOR ONE OR THE OTHER DEPENDS ON WHETHER IT'S SUBSTANTIALLY RELATED.

IT DOESN'T HAPPEN WHERE YOU CAUSE THE CONFLICT.

THEY KNEW IN 2010 THAT A LOT OF FLIGHT ATTENDANTS DID OPPOSE THIS.

WE'D GIVEN LETTERS FROM THEIR CLIENTS SAYING DON'T DO THIS.

BLISSARD SAYS, MR. HUNTER, YOU'RE MY LAWYER.

HOW CAN YOU DO THIS?

YOU SAY YOU'RE GOING TO FILE A PETITION CLAIMING ME OF MISCONDUCT?

HE DID IT ANYWAY.

NO CLIENT ASKED HIM TO DO THAT.

THIS ISN'T SOMETHING THAT CAME UP BECAUSE CLIENTS SAID I WANT

TO SUE OTHER CLIENTS.
HE DID.
HE WANTED TO THROW HIS CLIENT
UNDER THE BUS AND SUE HER.
AND HE DID.
HE FILED A PETITION AGAINST
THE VERY BOARD SHE'S ON SAYING
SHE MISMANAGED IT AND HE SAYS
THAT'S NOT A CONFLICT BECAUSE
WHEN SHE SAID YOU CAN'T SUE
ME, HE WITHDREW FROM HER CASE.
WE CAN'T DO THAT AS LAWYERS.
WE CAN'T DO THAT TO OUR
CLIENTS.
THAT'S ABSURD.
IT'S OBSCENE.
THIS NOTION THAT EVEN IF THE
SETTLEMENT AGREEMENT WAS
MODIFIED AND RAMOS MODIFIED IT
AND NOW THERE'S SOME NEW
MISSION FOR FAMRI, YES, THE
COURT RESERVED JURISDICTION TO
OVERSEE HOW THIS FUND WAS
ADMINISTERED AND IT DID THAT.
THE FUND WAS ADMINISTERED BY
THE CREATION OF FAMRI.
FAMRI DIDN'T EXIST AT THE TIME
OF THE SETTLEMENT AGREEMENT.
IT WAS CREATED.
THE COURT APPOINTED AN
ATTORNEY AD LITEM WHO CAME UP
WITH THE BEST WAY TO DO THE
FOUNDATION AND SAID HERE'S THE
BEST WAY TO DO IT, HERE'S THE
ARTICLES OF INCORPORATION AND
THE TRIAL COURT ENTERED AN
ORDER SAYING I HEREBY RELEASE
ALL RESTRICTIONS ON THE FUND.
SO THE COURT DID HAVE
JURISDICTION TO OVERSEE T. IT
DID.
IT DID ITS WORKS.
IT APPROVED FAMRI'S MISSION
STATEMENT, WHICH IS WHAT FAMRI
DOES.
AND IF A NONPROFIT IS NOT
DOING WHAT ITS MISSION
STATEMENT REQUIRES IT TO DO,
THE LAW SAYS IT'S NOT FOR SOME
COURT IN A CASE THAT'S BEEN

LONG DISMISSED THAT RELEASED
ITS JURISDICTION.
IT'S FOR THE ATTORNEY GENERAL
TO MAKE SURE THAT A NONPROFIT
IS DOING WHAT IT'S SUPPOSED TO
DO.
SO THE ATTORNEY GENERAL COULD
BRING A CLAIM LIKE THIS.
BUT THESE PEOPLE CANNOT DO
THAT.
MR. †MCGRAIN WAS PART OF THIS
TEAM.
AND LET ME JUST BE VERY CLEAR.
AT THE BEGINNING, GO BACK TO
2010 IN TIME.
EVERYBODY'S ON THE SAME SIDE,
OKAY?
THE BOARD OF FAMRI, THEY WANT
TO DO WHAT'S BEST FOR THE
FLIGHT ATTENDANTS.
ROSENBLATZ REPRESENTED THE
CLASS.
MILES MCGRAIN REPRESENTED A
GROUP OF THESE INDIVIDUALS.
THESE PEOPLE REPRESENTED MORE.
MR. †WEINSTEIN, MR. †PAGE, MR.
TROT, MR. †GROVER, THEY ALL
REPRESENTED.
ALL OF THEM WANTED WHAT'S BEST
FOR THE FLIGHT ATTENDANTS.
THEY ONLY BROUGHT TEN CASES TO
TRIAL OUT OF 3,000.
60,000 CLASS MEMBERS, 3,000
FILED LAWSUITS.
THAT'S IN THE RECORD.
IT'S VERY CLEAR.
OF THOSE 3,000 IN TEN YEARS
THEY ONLY BROUGHT TEN TO SUIT,
11.
THEY WON ONE.
GOT HALF A MILLION DOLLARS.
BUT IT WAS HARD.
IT WAS HARD AND THEY WANTED TO
COME UP WITH WAYS, WAS THERE
SOME WAY THAT FAMRI CAN USE
SOME OF THIS MONEY TO HELP.
THE FAMRI BOARD MEMBERS, THEY
WANTED TO HELP.
THESE LAWYERS SAID, HEY, CAN
YOU GET FAMRI TO ADVANCE THE

COSTS FOR OUR EXPERTS?
OR CAN WE RUN OUR EXPERTS
THROUGH FAMRI SO THEY GET
BETTER CREDENTIALS?

>> YOU MEAN EXPERTS SO THAT
THE LAWSUIT HAD A GREATER
CHANCE OF BEING SUCCESSFUL.

>> RIGHT.

SO THERE WERE ALL THESE THINGS
THAT FAMRI MIGHT BE ABLE TO DO
THAT WOULD HELP ALL THESE
FLIGHT ATTENDANTS.

EVERYBODY WANTED TO HELP THEM.
THEY ALL GOT TOGETHER AND SAID
HOW CAN WE DO IT.

WE HAVE SOME RESTRICTIONS.
WE HAVE THE SETTLEMENT
AGREEMENT, WHICH PLACES
RESTRICTIONS ON US.

AND WE'RE A NONPROFIT TAX
ORGANIZATION AND THAT
PROHIBITS US FROM FUNDING
LITIGATION, FROM DOING THINGS

I MEAN, THEY SAY THEY'RE
NOW FAULTING FAMRI FOR NOT
DEVELOPING SCIENCE THE WAY
THEY NEED IT.

THAT'S TOBACCO PLAYBOOK.
YOU DEVELOP SCIENCE THE WAY IT
DEVELOPS, NOT THE WAY YOU WANT
IT TO DEVELOP.

BUT, AT ANY RATE, MR. †MCGRAIN,
EVERYBODY ELSE WANTED TO COME
UP WITH A WAY TO DO THIS AND
BROUGHT IN THE TAX LAWYERS AND
EVERYBODY MET AND EXPLAINED TO
MISS †BLISSARD AND YOUNG AND
THE REST OF THE BOARD THAT THE
LAW SIMPLY DOES NOT ALLOW
THAT.

WE CAN'T DO THAT.

IF WE DO THAT, WHAT'S GOING TO
HAPPEN IS YOU'RE NOT GOING TO
GET THAT MONEY.

FAMRI WILL BE DISSOLVED.
AND THE MONEY WILL GO BACK TO
THE TOBACCO COMPANIES OR THE
STATE WILL MAKE IT GO TO
CHARITY OR SOMETHING ELSE.
IT'S NEVER GOING TO GO TO

THEM.

SO THAT'S WHY WHEN ALL THAT BECAME CLEAR, MR.†MCGRAIN TOLD THEM BEFORE THIS LAWSUIT WAS FILED, HE FILED A DETAILED AFFIDAVIT.

MR.†WEINSTEIN MOVED TO INTERVENE SAYING THE SAME THING.

YES, WE WANTED TO DO THIS, BUT WE COULDN'T.

AND NOW WE SEE IF WE DO IT, IT'S GOING TO UNDERMINE THE INTEREST OF ALL OF OUR CLIENTS.

MR.†MCGRAIN ALSO EXPLAINED IN GREAT DETAILED, CONFIRMED WHAT BLISSARD AND YOUNG SAID, THESE GENTLEMEN DID REPRESENT ME.

EVEN IF THEY DIDN'T FILE A LAWSUIT MR. HUNTER DID.

BUT EVEN AS TO MR.†GERSON,

THEY ALL REPRESENTED US

BECAUSE WE MET REGULARLY,

TALKED ABOUT THE CASES.

THEY ASKED FOR OUR HELP IN

THESE CASES AND WE WERE

HELPING THEM AND WE TOLD THEM

WE CAN'T DO WHAT THEY'RE

SAYING AND THEY'RE NOW SUING

US FOR.

SO THAT WAS CONFIDENTIAL

INFORMATION.

THESE LAWYERS HAVE CONFIRMED

IT.

>> CONFIDENTIAL INFORMATION

NOT ABOUT HOW DO YOU WIN

AGAINST A TOBACCO COMPANY FOR

SECONDHAND SMOKE, BUT

CONFIDENTIAL INFORMATION ABOUT

THE WORKINGS OF FAMRI AND

>> WELL, IT'S HOW CAN FAMRI

HELP THE INDIVIDUAL LITIGANTS.

>> AND YOU'RE SAYING DURING

THAT TIME THAT THEY WERE

REPRESENTING MISSION BLISSARD

OR ONE WAS, THAT SHE WAS ON

THE BOARD AND THAT THAT

THOSE WERE THE CONFIDENCES

THAT WERE SHARED.

>> THAT'S RIGHT.
THAT'S RIGHT.
YOU KNOW, AND THEY'RE TRYING
TO DISTANCE THESE, SAYING
THERE'S NO RELATIONSHIP
BETWEEN THESE LAWSUITS AND
THIS PETITION.
A, YOU DON'T HAVE TO GET
THERE.
THESE ARE CURRENT CONFLICTS.
THAT ONLY APPLIES IF THEY'RE
ALLOWED TO DUMP THEIR CLIENTS.
EVEN IF THEY'RE ALLOWED TO
DUMP THEIR CLIENTS, THIS
NOTION THAT THEY'RE UNRELATED
IS JUST ABSURD.
LOOK AT THE PETITION.
PAGES 8 AND 9 EXPLAIN ABOUT
THE LAWSUITS AND SAY THE
REASON WE'RE BRINGING THE
PETITIONS IS BECAUSE WE TRIED
THESE LAWSUITS AND WE HAVEN'T
BEEN ABLE TO AND FAMRI HASN'T
HELPED US.
THAT'S THE BASIS FOR THEIR
COMMUNICATIONS.
EVERYBODY WAS ON THE SAME TEAM
UNTIL IT BECAME APPARENT THIS
CAN'T BE DONE AND THESE PEOPLE
PUSHED IT ANYWAY.
YES, THEY HAD SOME OTHER
LAWYERS THAT HELPED THEM
INITIALLY.
THEY WERE DISQUALIFIED.
THOSE LAWYERS HAVEN'T
CHALLENGED THE
DISQUALIFICATION.
THEY RECOGNIZED THE
IMPROPRIETY HERE.
THEY'RE NOT HERE ARGUING ANY
OF THIS.
>>> NONE OF THESE CLIENTS,
THIS IDEA, WE HEARD OF
REPRESENTATION THAT ALL OF
THEIR CLIENTS, 200 -- ALL OF
THEM APPROVED THIS.
THAT'S NOT TRUE.
ONLY A SMALL NUMBER, SEVERAL
HUNDRED SIGNED THESE
ENGAGEMENT AGREEMENTS, THE

SOLICITATION LETTERS, BUT THE LETTERS WERE FULL OF LIES. THE SOLICITATION LETTER SAYS THE TEAM OF LAWYERS -- MR.†WEINSTEIN, MR.†PAGE -- HAS REACHED THE CONSENSUS THAT WE HAVE TO FILE THIS PETITION, AND WE WANT YOU TO AUTHORIZE THIS PETITION. THAT WAS A LIE. THEY'RE THE ONLY ONES WHO WANTED TO FILE THE PETITION. THE REST OF THE TEAM SAID YOU CAN'T DO THIS. DON'T DO THIS, THIS HURTS YOUR CLIENTS. THEY WEREN'T SEEKING AUTHORIZATION TO FILE A PETITION, THEY ALREADY FILED A PETITION. THEY'RE ASKING FOR IT TO BE FILED. THEY SAY OTHER CRAZY THINGS LIKE FAMRI CAN'T MEET -- THE SETTLEMENT CAN'T MEET -- ITS OBJECTIVES CAN'T BE MET BECAUSE THERE'S BEEN A BAN ON SMOKING ON FLIGHTS. THEY PUT THAT IN THE LETTER. IT REQUIRES THE TOBACCO COMPANIES TO JOIN WITH US IN LOBBYING CONGRESS TO REMOVE THAT. SO THAT WAS THE PURPOSE OF THE SETTLEMENT AGREEMENT. TO SAY THAT WAS DEFEATED BY IT, THAT'S CRAZY. THEY DID USE THE INFORMATION THAT THEY GATHERED. IT'S RIGHT HERE IN THIS PETITION. THEY USED THE INFORMATION THAT FAMRI REFUSES TO PROVIDE FUNDING THAT WAS CONFIDENTIAL THAT WAS GIVEN. IT SHOULDN'T BE OUT IN THE OPEN. YES, THEY SENT THEM TO THEIR CLIENTS, LONNIE BLIZZARD, ATTACHED IT TO THEIR

AFFIDAVIT.

AS SOON AS THEY SAW SHE HAD GIVEN THEM UP, THEY DROPPED HER.

MR. GERSON SAID, WELL, I DIDN'T REPRESENT THESE PEOPLE.

MS. SPURGEON IS IN THE RECORD, FILED SOMETHING SAYING SHE ABSOLUTELY OBJECTED, AND HE SAID HE DIDN'T REPRESENT HER, EVEN THOUGH HE FILED HER LAWSUIT. HE'S TELLING YOU HE NEVER REPRESENTED HER BECAUSE HE JUST DID THAT AS AN ACCOMMODATION BECAUSE THE STATUTE OF LIMITATIONS WAS ABOUT TO APPLY.

HE SAID HE DIDN'T REPRESENT PEOPLE.

HE SAID I ONLY HAD CASUAL CONVERSATION AT FAMRI EVENTS.

THAT'S A LIE!

THAT'S A LIE!

THE TRIAL COURT FOUND THAT WAS A LIE.

TO THE EXTENT THE AFFIDAVIT SAID WHAT IT'S SAYING NOW, THE TRIAL COURT HAD LETTERS FROM THE LAWYERS THAT IT WAS A LOT MORE THAN THAT, WE TALKED ABOUT ALL OF THESE THINGS.

>> NO ONE FOUND ANYTHING. IT SAID YOU HAVE COMPETING AFFIDAVITS.

>> WE DID HAVE FINDINGS. THE TRIAL COURT SAID, DO YOU HAVE EVIDENCE?

HE FOUND THEY CURRENTLY REPRESENT THESE PEOPLE. WHEN HE'S SAYING I DON'T REPRESENT THEM AND NEVER GAVE CONFIDENTIAL INFORMATION, EVERYBODY ELSE SAYS, YES, HE DID.

AND THE TRIAL COURT SAID, YES, YOU DO, THAT'S A FINDING, AND THERE'S NO BASIS

ON CERT REVIEW TO FIND THAT
WAS IMPROPER.

>> YOU CAN SUM UP PRETTY
QUICKLY.

>> CERTAINLY.

I THINK THAT THE COURT FULLY
UNDERSTANDS THESE ISSUES.

I THINK THAT THIS CASE
PRESENTS THE COURT WITH AN
IMPORTANT OPPORTUNITY, ASIDE
FROM THE IMPROPRIETIES IN
THIS CASE FOR THE WHOLE
FLORIDA BAR TO ADDRESS THIS
IDEA.

WE PROVIDED A LOT OF CASES IN
OUR BRIEF FROM OTHER
JURISDICTIONS THAT SAY A
LAWYER CAN'T DROP ITS CLIENTS
LIKE HOT POTATOES TO AVOID
THE CURRENT CLIENT CONFLICT.

>> YOU THINK THAT HAS
SOMETHING CLEAR IN THIS
STATE?

>> THE 3RD DISTRICT DIDN'T
THINK SO.

WE ARGUED UNTIL WE WERE RED
IN THE FACE.

THERE ARE FEDERAL OPINIONS
FROM ALL OVER.

THERE'S FEDERAL DISTRICT
COURTS IN FLORIDA THAT SAID
THAT.

IT WOULD SEEM TO BE OBVIOUS,
BUT I THINK THE BAR COULD USE
A REMINDER.

>> THANK YOU FOR YOUR
ARGUMENTS.