

>> THE NEXT CASE UP IS BOARD OF TRUSTEES, JACKSONVILLE, V. CURTIS W. LEE. COUNSEL?

>> GOOD MORNING, YOUR HONORS, MAY IT PLEASE THE COURT, I'M ROBERT KLAUSNER, COUNSEL FOR THE BOARD OF TRUSTEES. THIS COURT'S DECISION WITH THE DHH SAID, QUOTE, IN LIGHT OF STATUTORY VAGUENESS AND LACK OF JUDICIAL GUIDANCE, UNQUOTE, UNCERTAINTY TO ONE'S LEGAL DECISION, THE QUESTION--

[INAUDIBLE]

WAS BOTH REASONABLE AND UNDERSTANDABLE.

A THIRD, FOURTH AND FIFTH DCAs HAVE APPLIED THAT--

>> THE PROBLEM-- LET'S GO, INSTEAD OF WORRYING RIGHT NOW ABOUT WHAT PHA SAYS BECAUSE WE GO ON IN THE NEXT SENTENCE AND SAY BUT THAT ONLY APPLIES IF THEY DON'T KNOW ABOUT THEIR AGENCY STATUS AND THEY SAY AN UNLAWFUL-- A REFUSAL IS ALWAYS AN UNLAWFUL REFUSAL, AND THEY APPROVE THE TWO DCA CASES. SO LET'S TALK ABOUT HERE YOU'RE SAYING ON BEHALF OF THE BOARD OF TRUSTEES THAT THERE SHOULD BE A GOOD FAITH REQUIREMENT.

IS THAT YOUR-- BEFORE ATTORNEYS' FEES ARE ASSESSED.

>> THAT IS CORRECT--

>> OKAY.

>> IF I MAY FINISH, WHAT THE LEGISLATURE DID IN 2007.

>> BUT LET'S GO TO A DIFFERENT STATUTE.

WHAT IS THE SIGNIFICANCE, IF ANY, IN 1984 OF THE LEGISLATURE CHANGING THE TERM "UNREASONABLE REFUSAL" WHICH PUTS REASONABLENESS AND, TO ME GOOD FAITH, TO UNLAWFUL?

DOES THAT HAVE ANY SIGNIFICANCE AS TO THOSE WHO DIFFERENT TERMS?

>> IT WOULD IF THE LEGISLATURE

HADN'T PUT "GOOD FAITH" AND "REASONABLE" BACK INTO THE STATUTE, AND I THINK IT'S IMPORTANT--

>> BUT IT'S NOT THE SAME STATUTE.

I MEAN, I THINK IF THE LEGISLATURE WANTS GOING FORWARD TO HAVE ATTORNEYS' FEES ONLY AWARDED IN A SMALL PERCENTAGE OF THE CASES WHERE THE PERSON SEEKING THE RECORDS PREVAIL, THEY CAN SOLVE THIS, CORRECT? BUT WE'RE REALLY LOOKING AT WHAT UNLAWFUL REFUSAL MEANS. AND WHAT YOU'RE SAYING IS WE'VE GOT TO INCLUDE GOOD FAITH BECAUSE THERE'S IN ANOTHER RELATED STATUTE THEY'VE ADDED GOOD FAITH.

>> AND I THINK YOUR HONOR HIT ON A VERY IMPORTANT POINT ABOUT UNLAWFUL REFUSAL.

THE TRIAL JUDGE AT THE FEE HEARING SAID THERE WAS NO UNLAWFUL REFUSAL TO--

>> HE NEVER USED THAT WORD. WHAT HE SAID WAS THERE'S NO QUESTION RIGHT NOW THAT WE'VE GOT AS THE LAW OF THE CASE THE TWO OF THE CHARGES THAT WERE IMPOSED WERE NOT PERMISSIBLE BY THE PUBLIC RECORDS LAW. THAT'S WHAT THE JUDGE FOUND.

>> CORRECT.

>> OKAY.

NOW, HE SAYS THAT IT WAS INADVERTENT, BUT IT WAS A CONSCIOUS DECISION, AND THE-- HOW YOU DECIDE WHETHER WHAT THE, I MEAN, WHAT THE BOARD WAS DOING WAS THIS WAS A GUY THAT WAS SORT OF BEING A PAIN IN THE NECK. I MEAN, HE WAS FILING LOTS OF REQUESTS, AND SOMEONE SAYS, WELL, WE'RE GOING TO MAKE SURE HE HAS TO PAY ALL THIS MONEY FIRST.

I MEAN, WE'RE NOT GOING TO GET INTO THE MOTIVATION OF THE

DEPARTMENT, I'M SORRY, THE BOARD
IN DECIDING WHY THEY WOULD
IMPOSE ADDITIONAL CHARGES THAT
THE LAW DOESN'T ALLOW.

AND THAT'S WHAT I'M CONCERNED
ABOUT, IS THAT IT PUTS INTO THE
TRIAL COURT ANOTHER LEVEL OF
TRYING TO DECIDE WHAT WAS IN THE
AGENCY'S MIND AT THE TIME THEY
DID NOT PRODUCE THE RECORDS THAT
THE JUDGE LATER FINDS SHOULD
HAVE BEEN PRODUCED?

>> YOU'RE NOT DOING THAT.

AND, YOU KNOW, THE COURT ALWAYS
SAYS YOU'RE SUPPOSED TO LOOK AT
STATUTES AS A WHOLE, NOT IN
ISOLATION.

AND WHAT'S IMPORTANT, WHY IS
IMPORTANT THAT THE 2007
AMENDMENT PUT THE WORDS "GOOD
FAITH" AND "REASONABLE" BACK
INTO THE STATUTE IS IT'S BECAUSE
119.12 JUDGES IS HOW YOU ACTED
UNDER 119.071C.

AND WHAT THE TRIAL JUDGE FOUND
EXPRESSLY IS THAT THE VIOLATIONS
IN THIS CASE, QUOTE, THE COURT
CANNOT FIND THAT THE VIOLATIONS
AMOUNTED TO AN UNLAWFUL REFUSAL.
THAT'S, IN FACT, WHY EVEN WEEKES
V. GOLDEN WHICH WAS A CASE THAT
THE FIRST DCA RELIED ON SENT THE
CASE BACK, SENT THE MATTER BACK
TO THE TRIAL COURT TO DETERMINE
THE ACTIVITY AND WHAT--

>> BUT WHEN THEY SAID THEY
COULDN'T FIND AN UNLAWFUL
REFUSAL BECAUSE THEY DIDN'T FIND
THE VIOLATION WAS WILLFUL,
KNOWINGLY OR DONE IN BAD FAITH.
IS THAT WHAT-- I MEAN, HE
EQUATED THAT WITH UNLAWFUL.

>> WHAT HE SAID--

>> THE TRIAL JUDGE.

>> I'M SORRY, I DIDN'T MEAN TO
INTERRUPT YOU.

YOUR HONOR, WHAT THE JUDGE FOUND
AND IT'S IMPORTANT, LET'S TALK
ABOUT, FIRST, WHETHER YOU HAVE
TO HAVE A CUSTODIAN SUPERVISING

RECORDS WHICH INCLUDE BOTH ORIGINALS AND COPIES. ACTUALLY, THE COURT FOUND WE WERE REASONABLE IN RELYING ON THE ONLY ADVICE THAT WAS OUT THERE FROM THE CHIEF LEGAL OFFICER OF THE STATE IN AGO2000-11 WHICH WE FOLLOWED, AND THE JUDGE DECIDED AFTER THE FACT, HE SAYS, I DISAGREE WITH THAT AND THEN RETROACTIVELY APPLIES THAT DECISION TO THE DETRIMENT OF THE BOARD. BUT HE SAYS IT WASN'T UNREASONABLE TO RELY ON THE ONLY ADVICE.

THE OTHER VIOLATION--

>> BUT WASN'T THAT AGO OPINION BASED ON THE FACT THAT THOSE WERE THE ORIGINAL DOCUMENTS, NOT COPIES?

AND IN THIS CASE WERE THEY COPIES?

>> SOME WERE COPIES AND SOME WERE ORIGINALS.

>> YEAH.

>> THE ONLY TESTIMONIES--

>> THIS RECORD SEEMS TO SUGGEST THEY WERE COPIES AND THERE WAS NO INDICATION THERE WERE ORIGINS.

>> THE ONLY TESTIMONY ON THAT FACT-- THAT'S WHY I ASKED YOU TO TAKE TRADITIONAL NOTICE OF THE MERITS OF THE PUBLIC RECORDS CASE.

THE ONLY TESTIMONY WAS FROM MR. KEANE WHO IS THE EXECUTIVE DIRECTOR OF THE FUND WHO SAID THERE WERE BOTH ORIGINS AND COPIES.

THERE WERE THOUSANDS OF DOCUMENTS.

AND 119.07 SAYS PUBLIC RECORDS SHALL BE REVIEWED UNDER THE SUPERVISION OF THE CUSTODIAN.

>> BUT AREN'T WE PAST THAT ISSUE?

BECAUSE I READ THE BRIEFS, I LOOKED AT ALL THIS, AND, I MEAN,

WE'RE NOT UNFAMILIAR WITH PEOPLE
FILING REQUESTS FOR RECORDS.
I MEAN, IT HAPPENS EVEN TO THE
COURTS.

BUT AREN'T-- ISN'T THAT ISSUE
PRECLUDED BECAUSE OF WHAT THE
TRIAL COURT HELD AND THE FIRST
DCA DECIDED?

THAT'S NOT A QUESTION FOR US TO
DECIDE TODAY, IS IT?

>> IT IS NOT, YOUR HONOR, BUT
I--

>> WE ACCEPT THAT.

I HEAR YOU.

[LAUGHTER]

I'M A LITTLE SURPRISED HOW WELL
THIS STUFF IS COMING TOGETHER.
SEEMS TO ME YOU OUGHT TO HAVE THE
ABILITY TO HAVE SOMEONE PRESENT
AS THINGS ARE GOING THROUGH.
I MEAN, RECORDS DISAPPEAR VERY
EASILY.

BUT WE'RE NOT THERE.

WE ARE ONLY DECIDING IF THAT FEE
COULD BE CHARGED ON STATUTE
WHICH WE HAVE TO OPERATE ON NOW
AS A MATTER OF LAW.

ISN'T THAT WHERE WE ARE?

>> YES, YOUR HONOR.

THE ONLY REASON I ADDRESSED IT
WAS IN RESPONSE TO JUSTICE
QUINCE'S QUESTION.

>> OKAY.

I JUST WANT TO BE SURE--

>> WE'RE NOT HERE TO RETRY THE
FIRST CASE.

DCA AFFIRMED IT WITHOUT OPINION.
BUT WHEN YOU CONSIDER WHY THE
WORDS "GOOD FAITH" AND
"REASONABLE" WERE PUT IN, YOU'RE
SUPPOSED TO MAKE A GOOD FAITH
EFFORT TO DO SOMETHING WHICH IS
FIND THE RECORDS IDENTIFIED.
IN THIS PARTICULAR CASE THERE
WERE THOUSANDS OF PAGES OF
RECORDS.

I WOULD ALSO ASK YOU TO KNOW
THAT WE'RE A POLICE AND FIRE
RETIREMENT SYSTEM.

ALL OF OUR RECORDS HAVE SOME

CONFIDENTIALITY ATTACHED TO THEM WHICH REQUIRES AN INDIVIDUAL VIEW WHETHER IT'S A COPY OR AB ORIGINAL OF EVERY RECORD TO DETERMINE IF THERE'S SOMETHING THAT'S CONFIDENTIAL YOU SHOULD 119.071 BECAUSE AS YOU KNOW CERTAIN PUBLIC OFFICERS AND OFFICIALS HAVE THEIR HOME ADDRESSES AND PERSONAL INFORMATION EXEMPTED FROM DISCLOSURE FOR PRIVACY. NOT PRIVACY, BUT FOR THEIR PROTECTION AND FOR THE PROTECTION OF THE PUBLIC.

>> IT DOES SOUND LIKE YOU'RE RELITIGATING THE UNDERLYING CASE, BECAUSE WHAT YOU'RE SAYING IS THEY HAD A JUSTIFICATION IN THIS CASE BECAUSE OF THE CONDUCT OF THE PLAINTIFF TO HAVE PUT EXTRA MEASURES IN PLACE. AND YET ON THE OTHER HAND, I UNDERSTAND WE'RE NOT REALLY LOOKING AT WHETHER THE PLAINTIFF ACTED IN GOOD FAITH OR THE, YOU KNOW, BOARD ACTED IN GOOD FAITH. BUT REALLY AS JUSTICE LEWIS SAYS, THAT VIOLATIONS WERE ESTABLISHED, THE LAW OF THE CASE, AND IF THERE ARE VIOLATIONS, DOES THAT AMOUNT TO AN UNLAWFUL REFUSAL? ISN'T THAT-- I MEAN, THAT'S-- SO YOU'RE GIVING US MORE INFORMATION ABOUT THE BACKGROUND OF THIS CASE, AND THAT'S NOT THE LEGAL ISSUE THAT'S IN FRONT OF US.

>> NO.
THE LEGAL ISSUE THAT'S IN FRONT OF YOU IS THE QUESTION OF WHETHER OR NOT THE GOOD FAITH REQUIREMENT THAT'S IN 119.07 IS CONSIDERED IN A 119.12 PROCEEDING.
IF THE LEGISLATURE WANTED TO MAKE THIS A STRICT LIABILITY STATUTE, IT COULD.
THE NEWS PRESS CASE AND THE

GHONS LESS CASE BOTH SAID, YOU KNOW, 119.12'S A PENALTY. BUT THERE IS A PENALTY PROVISION IN 119, IT'S IN 119.10. IT'S NOT IN THE C PROVISION. AND-- NOT BOTH, THE THIRD, THE FOURTH AND THE FIFTH DCAs CAME TO THE SAME CONCLUSION THAT WE DID, AND WE WOULD CERTAINLY HAVE BEEN GUIDED BY THAT JURISPRUDENCE THAT EXISTED BEFORE.

I MEAN, IF THE COURT'S REALLY INTENT ON ADOPTING THE FIRST DCA AND DISAPPROVING THE OTHERS AND SAYING THAT 119.12 IS, IN FACT, A STRICT LIABILITY STATUTE, I WOULD RESPECTFULLY SUGGEST THAT YOU WOULD, THAT YOU DO IN YOUR ORDER WHAT YOU DID IN BELL V. CITY OF MIAMI ABOUT 20 YEARS AGO WHEN YOU APPLIED THE OFFSET FOR WORKER'S COMPENSATION AND YOU SAID WE'RE NOT GOING TO LOOK BACKWARDS.

WE'RE ANNOUNCING A RULE OF LAW, AND THIS IS WHAT IT'S GOING TO BE FORWARD.

AS THE TRIAL JUDGE SAID, YOU KNOW, RELYING ON THE LAW THAT WAS OUT THERE WE ACTED IN WHAT WE THOUGHT WAS THE LAW AND WHAT THE ATTORNEY GENERAL THOUGHT WAS THE LAW.

AND ALL OF THAT ACTIVITY WAS FOUND TO BE OBJECTIVELY REASONED.

>> WELL, NOW AGAIN IT SOUNDS TO ME LIKE YOU'RE SAYING THAT THE RULE THAT WAS ANNOUNCED BY THE JUDGE THAT WAS AFFIRMED PCA BY THE FIRST DISTRICT SHOULD HAVE-- THAT RULE OF LAW SHOULD BE APPLIED PROSPECTIVELY.

I MEAN, THAT'S NOT, WE'RE NOT HERE TO DECIDE THE CORRECTNESS OF THAT RULE OF LAW.

AND SO GOING BACK TO THE ISSUE OF THE UNLAWFUL REFUSAL, I AGREE WITH YOU THAT THIS IS NOT SIMPLY

A PREVAILING PARTY'S ATTORNEYS FEES.

JUST BECAUSE THEY WIN AND GET THE DOCUMENTS, WE SEE-- WE'VE BEEN READING ABOUT CASES WHERE THERE ARE LAWYERS MAKING COTTAGE INDUSTRIES OF PUBLIC INTEREST REQUESTS.

I DON'T THINK SOMEONE CAN JUST FILE A LAWSUIT PREMATURELY WHEN-- AND GET ATTORNEYS' FEES. I THINK THERE HAS TO BE A FINDING THAT THE BASIS FOR THE REFUSAL WAS ACTUALLY IN VIOLATION OF THE LAW, THE PUBLIC RECORDS ACT.

AND THERE ARE MANY DISTRICT COURT OF APPEALS CASES THAT SAY, YOU KNOW, DELAY ITSELF IS NOT A GROUND FOR AN UNLAWFUL REFUSAL. SO I DON'T THINK THIS TRANSLATES INTO A STRICT LIABILITY CASE.

I THINK THE VIOLATION HAS-- THE REASON FOR NOT PRODUCING IT HAS TO BE ONE THAT THE LAW DID NOT PERMIT.

AND THAT IS NOT TO ME, IS A LITTLE, MAYBE WE'RE SPLITTING HAIRS.

I DON'T THINK IT IS STRICT LIABILITY STATUTE.

>> RESPECTFULLY, JUSTICE PARIENTE I DISAGREE WITH YOU FOR THIS REASON.

SOMEONE COULD MAKE A REQUEST FOR 100,000 PAGES AND YOU GET 99,999 AND MISS ONE THROUGH INADVERTENCE, OR GOOD FAITH IT IS DISCOVERED THEN YOU HAVE TO PAY FEES.

I DON'T THINK THE LAW WAS INTENDED AS PUNISHMENT.

>> THAT WOULDN'T BE UNLAWFUL REFUSAL.

IF THEY GO BACK TO SAY WHERE IS THE ONE, THAT IS NOT THIS CASE. I AGREE WOULD YOU THAT WOULDN'T BE AN UNLAWFUL REFUSAL.

THAT IS NOT THIS CASE.

>> NO.

THIS CASE IS ABOUT AN AGENCY
THAT PRODUCED THE RECORDS.
THIS WAS ALL ABOUT WHETHER YOU
HAVE TO PAY.

AND THERE IS NO DISPUTE, THAT
SOMEONE WHO MAKES EXTENSIVE
RECORDS REQUEST UNDER THE
STATUTE HAS TO PAY.

AND YOU HAVE, THIS COURT HAS
SAID SINCE 1905 IN THE
McMILLAN CASE WE BALANCE THE
ABILITY OF AN AGENCY TO RUN ITS
BUSINESS WITH THE PUBLIC'S RIGHT
TO KNOW THAT WHAT THAT BUSINESS
IS.

WHY IN PHH, THE QUESTION WHETHER
YOU'RE AN AGENCY OR NOT IS LESS
IMPORTANT THAN THE COURT
RECOGNIZED WHERE THERE IS NO
JUDICIAL GUIDANCE, WHICH THERE
ISN'T UNTIL TODAY, WHAT WILL
COME FROM TODAY, AND WHERE THE
LEGISLATION IS VAGUE, WHICH IT
CLEARLY IS, THAT, IT IS
UNDERSTANDABLE AND REASONABLE
THAT THERE MIGHT BE AN ERROR IN
ONE'S LEGAL POSITION.

AND THAT'S WHY, WITH REGARD TO
THE GOA CASE AND THE FIFTH DCA,
SHERIFF OF PALM BEACH COUNTY AND
CITY OF RIVIERA BEACH IN AUSTIN,
ALL THREE OF THOSE COURTS AND
KNIGHT RIDDER CASE, THE COURTS
CAME TO CONCLUSION YOU HAVE TO
LOOK AT REASONABLE OBJECTION
RESPONSE.

>> LET ME GO TO THE PAA CASE.
IN ESSENCE SCHWAB TO DETERMINE
THE POSSIBLE AGENCY STATUS IN
CHAPTER 119.

IN THE CONFLICT CASES CITED
WHICH WAS BRUNSON AND
SUN-SENTINEL, THERE WAS NO
UNCERTAINTY AS TO THE AGENCY'S
STATUS.

THUS ANY REFUSAL BY THE SCHOOL
BOARD WAS NOT LAWFUL AND
ATTORNEY FEES WERE PROPERLY
AWARDED.

I DON'T KNOW HOW, AT LEAST THE

FIRST, SO THE ISSUE, LOOKED TO ME, IF YOU READ BRUNSON AND SUN SENTINEL, THAT WHAT THEY WERE, WHAT THIS COURT WAS SAYING IS THAT IF YOU'RE NOT, THAT THERE WAS A NARROW EXCEPTION, IF YOU DIDN'T KNOW IF YOU WERE PROPERLY AN AGENCY OR NOT BUT OTHERWISE IF YOU DIDN'T PRODUCE THE RECORDS AND YOU WERE LAWFULLY REQUIRED TO, IT WAS AN UNLAWFUL REFUSAL.

THAT IS HOW, BUT AGAIN, I DON'T THINK WE NEED TO GO WHAT PHH SAID, BUT I THINK THAT YOU'RE ARGUING IT IS PRECEDENT FOR YOUR POSITION AND I'M JUST, DON'T SEE THAT IN READING PHH AND THE UNDERLYING CASES.

SO I THINK YOU'RE BETTER OFF STICKING WITH WHETHER UNDER THE STATUTE THIS IS AN UNLAWFUL REFUSAL.

>> AND I'M GLAD YOU MENTIONED THAT BECAUSE THE CASES RELIED ON NEWS PRESS AND GONZALEZ AND WEEKS VERSUS GOLDEN, WERE ALL DECIDED BEFORE THE LEGISLATURE AND ENACTED 2007-39, WHICH INSERTED WORDS GOOD FAITH AND REASONABLE.

THE LEGISLATURE WAS AWARE WHEN IT ENACTED THAT AND IT HAS BEEN AWARE SINCE THE THIRD, THE FOURTH AND FIFTH DCAs APPLIED THIS COURT'S RULING IN PHH IN THE MANNER THAT THEY DID, PARTICULARLY WITH REGARD TO THE SHERIFF'S OFFICE IN PALM BEACH COUNTY, CITY OF RIVIERA BEACH AND GREATER ORLANDO AVIATION AUTHORITY WHICH ARE ALL PUBLIC AGENCIES.

IF THE COURT THOUGHT IT WAS WRONG AND GETTING AWAY TO THEIR INTENT WHAT 119 MEANT, THEY KNOW HOW TO FIX THINGS OR ENACT THINGS ACROSS THE STREET AND THEY DIDN'T.

THAT SEND AS CLEAR A MESSAGES TO

WHAT 119.07 AS APPLIED MEANS IN A 119.12 PROCEEDING AND I SEE THAT I'M INTO PLY REBUTTAL TIME. UNLESS THERE'S A QUESTION I WOULD PREFER TO RESERVE THE REST OF THE TIME.

THANK YOU.

>> MAY IT PLEASE THE COURT. ROBERT DEES FOR THE RESPONDENT, CURTIS LEE.

THE -- ISSUE BEFORE THIS COURT, ON ONE HAND CRUCIAL TO FLORIDA CITIZENS ABILITY TO MAINTAIN GOVERNMENT TRANSPARENCY AND HOLD GOVERNMENT ACCOUNTABLE.

ON THE OTHER HAND IT'S VERY EASY AND STRAIGHTFORWARD TO RESOLVE IN THIS CASE.

THE ISSUE IS JUST WHETHER, AS THE FIRST DCA FOUND, IF A CITIZEN ESTABLISHES, FILES A CIVIL ACTION, SHOWS THAT AT A PUBLIC AGENCY, SOMEONE THAT IS CLEARLY A PUBLIC AGENCY VIOLATED THE PUBLIC RECORD ACT, THAT THAT PERSON IS ENTITLED TO BE REIMBURSED FOR THE ATTORNEY'S FEES IT COST THEM TO PROVE THE VIOLATION, OR, WHETHER THE TRIAL COURT WAS RIGHT THAT THE PERSON NOT ONLY HAS TO SHOW A VIOLATION OF THE PUBLIC RECORDS ACT, BUT THEY THEN HAVE TO GET INTO THE MIND OF THE PUBLIC OFFICIAL AND SHOW THAT THEY, THEIR, THEIR VIOLATION OF THE STATUTE WAS KNOWING, WILLFUL AND WITH MALICIOUS INTENT.

>> I WANT TO ASK A QUESTION ABOUT REFUSAL BECAUSE YOU HAVE UNLAWFUL.

THE LAST ARGUMENT THAT WAS MADE, AT LEAST ALLUDED TO, THIS WAS ACTUALLY NOT A REFUSAL.

THEY DIDN'T REFUSE TO PRODUCE THE RECORDS.

PUT CONDITIONS ON THAT THEY THOUGHT UNDER THE STATE OF THE LAW AT THE TIME WERE REASONABLE, PREPAYMENT, CERTAIN COSTS.

IS THERE ANY, THEY DIDN'T SAY THAT, THE STATUTE DOESN'T SAY FAILED TO PRODUCE RECORDS.

IT SAYS REFUSED TO.

SO, THERE HASN'T BEEN REALLY ANY DISCUSSION WHAT REFUSAL MEANS WITHIN THE SCOPE OF THIS ATTORNEY'S FEES STATUTE BUT IT IS CERTAINLY NOT SIMILAR TO 627.428 WHICH SAYS THAT IF THERE IS A JUDGMENT IN FAVOR OF AN INSURED, YOU RECOVER FEES.

SO, WHAT IS, TO GIVE MEANING, TO THE UNLAWFUL REFUSAL, WHAT DOES REFUSAL MEAN?

AND I DON'T SEE ANYONE THAT ACTUALLY SPENT MUCH TIME ON THAT ISSUE.

>> YEAH.

I DON'T THINK THE PARTIES SPENT TIME ON THAT IN THE BRIEFS BUT HERE, MY CLIENT WENT TO THE PENSION FUND AND SAID I WOULD LIKE TO SEE THESE RECORDS AND, BY I KNOW WE'RE NOT RETRYING ALL OF THAT, IT IS NOWHERE NEAR AS EXTENSIVE AS WAS STATED.

AND THEY SAY, OKAY, WELL YOU CAN'T SEE THEM UNLESS YOU SIGN THESE FORMS AGREEING TO PAY THESE VARIOUS CHARGES AND TRIAL COURT FOUND THAT THOSE CHARGES WERE NOT AUTHORIZED BY THE ACT.

>> CERTAIN CHARGES, CERTAIN CHARGES WERE.

THE, HE FOUND THE \$325 CHARGE WAS AUTHORIZED, RIGHT?

>> THAT'S TRUE, BUT THE TRIAL JUDGE DID FIND SPECIFICALLY IN HIS ORDER, AND WE'RE BACK NOW ON HIS ORIGINAL ORDER WHICH ISN'T REALLY BEFORE THE COURT, BUT, HE DID FIND THAT THESE OTHER FEES, WHICH HE FOUND WERE REASONABLE, DID NOT RENDER MOOT THESE OTHER CHARGES THAT HE SAID VIOLATED THE PUBLIC RECORDS ACT.

>> IF THEY HAD SAID IN THEIR LETTER, YOU WILL HAVE TO PAY \$35 AN HOUR IF WE, IF UPON

LOOKING AT THESE RECORDS WE FIND THIS IS GOING TO REQUIRE EXTENSIVE SUPERVISORY, SUPERVISION, WOULD THAT, THEY WOULDN'T HAVE VIOLATED THAT PROVISION, RIGHT?

IF THEY HAD SAID, IF WE, YOU'RE GOING TO HAVE TO PAY THE \$35 AN HOUR FOR EIGHT HOURS, FOR THE SUPERVISION IF WE FIND THAT IT REQUIRES EXTENSIVE SUPERVISION?

WOULD THAT HAVE BEEN THEN, WOULD THAT HAVE BEEN OKAY?

>> IT SOUNDS LIKE THAT WOULD PROBABLY BE OKAY.

>> THAT FOLLOWS THE STATUTE. IT DOES ALLOW FOR SUPERVISORY CHARGES IF IT IS ABOVE AND BEYOND.

SO THE ARGUMENT HERE WAS THAT THEY DIDN'T PUT IN, THAT WAS WHAT, I THINK MR. HE WAS TALKING ABOUT WHETHER THEY DIDN'T ADD THE CLAUSE OR WHETHER THERE WAS INTENT TO CHARGE \$35.

WE'RE NOT LOOKING AT MOTIVATIONS.

LOOKING AT THIS WHOLE THING THEY FELT THIS WAS A LITIGIOUS GUY. THEY WEREN'T HAPPY TO GO THROUGH ALL THIS.

>> I'M SURE THEY WEREN'T.

>> WE WEREN'T TOLD NOT TO LOOK AT MOTIVATION, BUT LOOKS LIKE THERE IS MOTIVATION BOTH SIDE PLAY THIS GAME IN A WAY WE SOMETIMES SEE ON ONE SIDE OR THE OTHER.

AND SO GOING BACK TO IT, IS THE REFUSAL BY SAYING, YOU'RE NOT GOING TO HAVE YOU LOOK AT ANYTHING UNTIL YOU PREPAY THESE CHARGES, IS THAT THE IS THAT THE ESSENCE WHAT THE VIOLATION IS?

>> YES.

>> SO REFUSAL REALLY DOESN'T HAVE ANYMORE MEANING, DID NOT PRODUCE THE UNLESS THEY COMPLIED WITH SOMETHING THAT WAS--

>> FOUND TO VIOLATE THE PUBLIC RECORDS ACT.
>> IN YOUR CASE YOU PREPAID UNDER PROTEST, RIGHT?
YOU PAID IT?
>> LATER WE PAID UNDER PROTEST.
>> AND RECEIVED THE DOCUMENTS?
>> YEAH I THINK WE DID.
THESE DOCUMENTS SPECIFICALLY, ALL THESE DOCUMENTS WERE THAT HE WENT TO GO LOOK AT, IT WAS NOT THE STACK, AGAIN, WE'RE SORT OF RETRYING T WAS NOT THE STACK THEY PUT TOGETHER.
>> THE DOCUMENTS WERE PRODUCED?
>> MONTHS LATER, YES.
>> AND THE AMOUNT, THE AMOUNTS WERE PAID UNDER PROTEST AND THEN LATER LITIGATED.
THAT IS HOW WE GOT HERE?
>> CORRECT.
>> BEING.
SO WHAT ABOUT A HYPOTHETICAL WHERE THE DOCUMENTS ARE PRODUCED, THE BILL IS PRESENTED BY THE PUBLIC AGENCY FOR, SAY \$1,000?
AND THAT AMOUNT IS PAID BUT, UNDER PROTEST FOR THE AMOUNT AND THE TRIAL COURT LATER DETERMINES, NO, NOT A THOUSAND. \$995 IS MORE APPROPRIATE, MORE REASONABLE.
\$5 OFF.
YOU LITIGATE THAT, DO YOU GET ATTORNEY'S FEES?
>> I DON'T THINK I WOULD LITIGATE THAT.
THAT IS NOT REASONABLE.
>> YOU MIGHT NOT.
THERE ARE THOSE WHO WOULD.
>> WELL THAT IS NOT THIS CASE.
>> WELL, WHAT ABOUT MY HYPOTHETICAL UNDER THE LAW?
>> WELL, I DON'T THINK THAT WOULD BE, THAT WOULDN'T BE REASONABLE.
>> UNDER YOUR ARGUMENT, UNDER YOUR ARGUMENT THAT LAWYER CAN SEIZE FEES, RIGHT?

>> IF THE, UNDER THE STATUTE, A CUSTODIAN OF RECORDS IS REQUIRED TO PRODUCE RECORDS UNDER A REASONABLE TIMES AND UNDER REASONABLE CONDITIONS.

I DOUBT WHETHER A TRIAL COURT WOULD FIND THAT THERE'S, WHATEVER, MINUSCULE PERCENTAGE DIFFERENCE THAT IS--

>> WE CAN ARGUE ABOUT WHAT THE TRIAL COURT MAY OR MAY HAVE DONE HERE.

THAT IS NOT THE ISSUE. THE ISSUE IS HOW THESE STATUTES WORK.

THE STATUTE PROVIDES FOR A SPECIAL SERVICE CHARGE TO BE REASONABLE AND IN THE HYPOTHETICAL I GAVE YOU, IF THE TRIAL COURT SAID, NO, IT IS \$5 LESS, AND THE AMOUNT IS LITIGATED, AND, PREVASE, AREN'T THEY ENTITLED TO ATTORNEY FEES UNDER YOUR ARGUMENT?

>> YOUR HONOR, IF, IF THE AGENCY IS FOUND TO HAVE VIOLATED THE PUBLIC RECORDS ACT, THEN THEY HAVE TO PAY ATTORNEY'S FEES.

>> SO THE ANSWER IS YES?

>> IF THEY VIOLATED THE PUBLIC RECORDS ACT, YES.

AND BUT THAT'S NOT AN ISSUE--

>> \$5 OFF, THAT \$5 OFF WOULD BE VIOLATION UNDER 119.07-4-D.

THAT IS WHAT YOU'RE ARGUING.

WE CAN ARGUE ABOUT WHETHER YOU'RE EXACTLY IN THE SAME POSTURE OR NOT BUT IT IS EXACT SAME ANALYSIS, ISN'T IT?

>> YOU'RE DEFINITELY PUSHING ME TO EXTREME THAT WE'RE NOT AT HERE.

>> THAT IS WHERE WE'RE GOING TO WIND UP WITH OTHER CASES.

>> WELL BUT THIS CASE IS NOT IN THAT POSTURE.

WE'RE NOT HERE WHETHER TO DETERMINE WHETHER IT WAS REASONABLE OR WHETHER THERE WAS A VIOLATION.

THAT HAS ALREADY BEEN FOUND AND THAT WAS A AFFIRMED, IT WAS PC'D BY THE FIRST DCA.

THAT THAT ISSUE IS NOT BEFORE THIS COURT.

THERE WAS, THE TRIAL COURT FOUND TWO VIOLATIONS OF THE PUBLIC RECORDS ACT AND THE TRIAL COURT SAID, EVEN THOUGH I FOUND THESE VIOLATIONS I'M GOING TO READ 119.12 AS SAYING THAT THERE'S A GOOD FAITH EXCEPTION AND SO, NOT ONLY DO YOU HAVE TO PROVE, WHICH I FOUND, THE TRIAL COURT FOUND, THAT THESE CHARGES WERE NOT REASONABLE, HE SAID THESE ARE UNREASONABLE UNDER THE PUBLIC RECORD ACT.

SO IN ADDITION, HE IS GIVING THEM A SECOND BITE AT THE APPLE TO SAY, NOT ONLY WERE YOU UNREASONABLE, BUT, YOU KNOW, NOW THE PLAINTIFF HAS TO SHOW THAT YOU'RE UNREASONABLENESS WAS IN BAD FAITH.

AND SO I THINK THAT'S STEP, IT IS BEYOND, IT IS A VERY SIMPLE STATUTE.

IT IS ONE SENTENCE.

>> BUT, THERE'S, THAT PROVISION IS PART OF A BIGGER SCHEME AND, ISN'T IT TRUE THAT WHEN WE'RE LOOKING AT A STATUTORY SCHEME LIKE THIS, WE MUST CONSIDER THE RELATIONSHIP BETWEEN ALL THE DIFFERENT PARTS?

WE CAN'T READ ONE PART OF IT IN TOTAL ISOLATION FROM THE REST OF THE STATUTORY SCHEME, ISN'T THAT A GENERAL PRINCIPLE OF LAW?

>> GENERALLY, YES, BUT I THINK YOU ALSO LOOK AT A STATUTORY SECTION AND YOU APPLY THE PLAIN MEANING OF THE WORDS AND YOU DON'T, I MEAN THEIR ARGUMENT HERE IS, WELL, THE LEGISLATURE, WHICH YOU KNOW CHANGED--

>> WHAT IS, OKAY.

WHAT IS THE PLAIN MEANING OF REFUSED?

I MEAN I THINK, ONE UNDERSTANDING OF REFUSE IS THAT THERE HAS TO BE SOME INTENTION, THERE IS AN ELEMENT OF INTENTION THERE.

IT'S NOT, IT'S NOT JUST A FAILURE TO COMPLY.

THERE IS A DECISION THAT I'M NOT GOING TO COMPLY.

THAT'S ONE WAY TO LOOK AT IT. ISN'T THAT TRUE?

>> I MEAN THE STATUTE SAYS UNLAWFULLY REFUSED.

>> I UNDERSTAND.

>> I THINK IT IS VERY SIMPLE. IF MY CLIENT GOES TO AN AGENCY, AND SAYS I WOULD LIKE TO SEE THIS RECORD PLEASE, AND THEY SAY, YOU CAN'T HAVE IT UNLESS YOU DO THIS, AND THIS IS FOUND TO VIOLATE THE PUBLIC RECORDS ACT, THEN THAT'S A REFUSAL.

>> I UNDERSTAND YOUR POSITION ON THAT.

LET ME ASK YOU ABOUT THIS.

LET'S GO BACK TO SECTION 119.07. NOW SECTION 119.07 SETS OUT THE BASIC OBLIGATION THAT CUSTODIANS OF PUBLIC RECORD HAVE UNDER THE PUBLIC RECORD LAW TO MAKE THEM AVAILABLE TO THE PUBLIC.

ISN'T THAT CORRECT?

>> GENERALLY, YES.

>> OKAY.

NOW, SECTION 119.07-1-C SAYS THAT A CUSTODIAN OF PUBLIC RECORDS AND HIS OR HER DESIGNEE MUST ACKNOWLEDGE REQUESTS TO INSPECT OR COPY RECORDS PROMPTLY, AND RESPOND TO SUCH REQUESTS IN GOOD FAITH.

NOW WHY IS THAT PROVISION OF THE LAW SOMETHING THAT SHOULD NOT BE TAKEN INTO ACCOUNT AT ALL IN OUR ANALYSIS OF THE ISSUE HERE ABOUT ATTORNEY'S FEES?

>> BECAUSE THAT IS NOT THE STATUTORY SECTION THAT THE TRIAL COURT FOUND WAS VIOLATED.

THAT IS 119.07-1-C.

THAT IS NOT WHAT WE ARGUED.
THE BASIS OF OUR CLAIM WAS
119.07-1-A, WHICH IS THE
REASONABLE CONDITIONS.

AND THAT IS WHAT THE TRIAL COURT
FOUND WAS VIOLATED.

THAT WAS NOT CHANGED.

>> BUT ISN'T ALL OF THAT
INCLUSIVE OF, UNDER THE HEADING
OF THE AGENCY'S RESPONSE TO THE
REQUEST?

WHAT WE'RE TALKING ABOUT HERE,
CONDITIONS THAT WERE A PART OF
THE AGENCY'S RESPONSE, BUT THE
LANGUAGE HERE IN C, WHICH I
DON'T THINK CAN BE ISOLATED FROM
1-A, 1-C, IS, IMPOSES THIS
OBLIGATION TO RESPOND TO SUCH
REQUESTS IN GOOD FAITH.

AND BASICALLY YOU'RE SAYING, IF
I UNDERSTAND YOUR POSITION, THAT
IS JUST TOTALLY IRRELEVANT, WE
DON'T EVEN CONSIDER THAT AS
WE'RE LOOKING AT WHAT, WHETHER
ATTORNEYS FEES SHOULD BE AWARDED
IN THIS PARTICULAR CASE?

>> NO, YOUR HONOR, I'M NOT
SAYING IT IS IRRELEVANT.
WHAT I'M SAYING IS, THEY'RE
TAKING A NEW PROVISION,
SUBSECTION C, WHICH I THINK,
GIVEN A FAIR READING--

>> WHEN YOU SAY NEW--

>> IN 2007.

>> IT WAS PUT IN 2007.

THERE IS NO QUESTION THAT THAT,
TO THE EXTENT, I MEAN THAT'S THE
LAW THAT WOULD APPLY IN THIS
CASE.

THE POST 2007 LAW APPLIES HERE?

>> CORRECT.

BUT I WOULD SUBMIT TO YOU THAT
THE LEGISLATURE PUTTING IN AN
ADDITIONAL REQUIREMENT THAT A
CUSTODIAN RESPOND PROMPTLY AND
IN GOOD FAITH, THAT IS SOMETHING
THAT, THAT WAS INTENDED TO MAKE
IT EASIER ON CITIZENS TO GET
RECORDS.

THEY'RE TWISTING THAT INTO

SOMETHING THAT IS REALLY A GAME-CHANGER, FOR PEOPLE'S ABILITY TO GET RECORDS. AND SAYING THAT THIS CHANGES 119.12 WHEN THAT HAS BEEN, YOU KNOW, FAIRLY CONSISTENTLY APPLIED.

THERE ARE OUTLIE, LIKE THE CONFLICT CASE BUT 119.07-C DIDN'T CHANGE A.

A IS WHAT WE WENT UNDER. A IS WHAT THE TRIAL COURT FOUND THE VIOLATION OF AND CERTAINLY NOTHING CHANGED 119.12.

I MEAN, IT SAYS, I MEAN LIKE TO JUST LOOK AT THIS FOR A MINUTE. THE STATUTE SAYS, IF A CIVIL ACTION IS FILED TO ENFORCE THE PROVISIONS OF THE CHAPTER AND THE COURT DETERMINES THAT THE AGENCY UNLAWFULLY REFUSED TO ALLOW A PUBLIC RECORD TO BE INSPECTED OR COPIED, THE COURT SHALL ASSESS ATTORNEY FEES. IT SAYS IF THE AGENCY UNLAWFULLY REFUSED.

THE CONVERSE OF THAT, WOULD BE IF THE AGENCY LAWFULLY REFUSED. AND AN AGENCY CAN ONLY LAWFULLY REFUSE ACCESS TO A RECORD IF THAT AGENCY IS CORRECT THAT AN EXEMPTION APPLIES, OR IF THE AGENCY IS CORRECT THAT A CERTAIN CHARGE IS JUSTIFIED AND ALLOWED BY THE PUBLIC RECORDS ACT. SO, IT IS EITHER LAWFUL OR UNLAWFUL.

HERE THE AGENCY WAS WRONG. THEY WERE NOT ALLOWED TO CHARGE THE CHARGES THAT THEY MADE, THE TRIAL COURT FOUND THAT, AND BECAUSE THEY UNLAWFULLY REFUSED, WE WERE ENTITLED TO AN AWARD OF FEES UNDER 119.12.

>> JUST A QUESTION.

I JUST WANT TO CLARIFY SOMETHING.

YOU HAD SAID, IN ANSWER TO JUSTICE POLSTON'S QUESTION, THAT THEY HAD PAID WHAT WAS REQUESTED

UNDER PROTEST.

MY REVIEW OF THE RECORD IS THAT THEY PAID THE \$326 CHARGE FOR MR. COHEE UNDER PROCESS BUT DID NOT PAY THE \$35 PER HOUR WHICH WAS ESTIMATED TO HAVE A TRAINED INDIVIDUAL PRESENT FOR THE EIGHT HOURS.

>> YES.

I MISSTATED THAT EARLIER.

YOU ARE CORRECT.

THAT WAS THE CHARGE FOR MR. COHEE TO PUT TOGETHER RECORDS THAT WE HAD NOT, WE HAD WITHDRAWN OUR REQUEST FOR BEFORE HE PUT THEM TOGETHER BUT--

>> YOU SEE WHAT WE'RE BALANCING HERE THOUGH, AND IT IS EXPRESSED IN THE QUESTIONING.

WE AGREE THERE IS A LEGITIMATE RIGHT TO PUBLIC RECORDS AND IT IS RECOGNIZED IN THE CONSTITUTION.

WHAT WE SEE, AND WE WOULD BE CONCERNED WITH AGENCIES WHO WOULD SAY, IF IT IS MR. LEE WAS SOMEBODY THAT WAS ABLE TO CONTINUE TO FIGHT BUT, YOU KNOW, A CITIZEN WHO GOES IN AND WANTS TO GET RECORDS AND THE, WE GOT, THE AGENCY SAYS, NO YOU GOT TO PAY \$500 FIRST.

WE WOULDN'T WANT TO SEE THAT. AND ON THE OTHER HAND WE HAVE THIS ISSUE OF DO PEOPLE, ARE THEY JUMPING TO GO, THERE IS CASH COW HERE.

I'M GOING TO FILE A LAWSUIT.

I WILL PLAY GOTCHA.

AND THEN, HOW, IN THAT, DO WE DEFINE UNLAWFUL REFUSAL TO TAKE SOMETHING THAT'S LEGITIMATELY A VIOLATION OF THE LAW VERSUS THE ONE WHERE JUSTICE, JUSTICE POLSTON SAID, NOW 99,000 PAGES PRODUCED AND NOT 99,000 AND ONE PAGE.

AND INSTEAD OF THE QUESTION, I WILL FILE LAWSUIT AND SEE IF I GET ATTORNEYS FEES.

>> YOUR HONOR, I UNDERSTAND
THOSE CONCERNS.

THAT IS NOT THIS CASE.

>> AND I AGREE WITH THAT.
IF WE DON'T PUT, IF WE SAY,
UNLAWFUL, IS MORE THAN JUST A
STRICT, IT HAS GOT TO BE MORE
THAN STRICT LIABILITY.

BECAUSE OTHERWISE, WOULD YOU
AGREE WITH THAT?

THAT THEY KNOW HOW TO WRITE A
TRICKS LIABILITY STATUTE, WHICH
IS 627.428, WHICH SAYS IF THERE
IS JUDGMENT IN YOUR FAVOR YOU
PREVAIL AND YOU GET ATTORNEYS
FEES?

THAT'S NOT WHAT THIS SAYS.
SO IT HAS GOT TO MEAN MORE THAN
JUST A STRICT LIABILITY.

>> WELL, I DON'T THINK IT IS
HELPFUL TO TRY TO ANALYZE IT
WITH TERM STRICT LIABILITY--

>> THAT IS YOUR CLIENTS'S
POSITION BUT IT IS HELPFUL IN
STATUTORY CONSTRUCTION WHEN YOU
SAY, WELL, THE LEGISLATURE KNOWS
HOW TO PUT A STRICT LIABILITY
STATUTE IN.

I DON'T KNOW, I MEAN I CAN'T SIT
HERE AND SAY I FIGURED THIS OUT
BUT THOSE ARE THE COMPETING
ISSUES.

WE HAVE THE PRESS THAT SAYS
THERE ARE A LOT OF AGENCIES THAT
ARE JERKING THE PRESS AROUND AND
THEY HAVE GOT TO FILE LAWSUITS.
WELL THE PRESS HAS GOT ATTORNEYS
TO DO IT.

BUT WE'RE WORRIED A CITIZEN THAT
IS LEGITIMATELY NOT ABLE TO GET
DOCUMENTS ON ONE HAND AND
THEREFORE FINDS AN ATTORNEY WHO
WILL FILE A LAWSUIT AND NEED TO
GET ATTORNEYS FEES.

FIRST A CITIZEN KNOWS AWAY I CAN
MAKE MYSELF MONEY.

SO HOW DO WE BALANCE THAT.

>> FIRST OFF, I DON'T KNOW THAT
THIS COURT NEED TO BALANCE THAT.
THAT MAY BE SOMETHING THAT THE

LEGISLATURE NEEDS TO ADDRESS.
I AGREE COMPLETELY WITH YOU.
THAT'S A PROBLEM.

I READ ABOUT THAT TOO.
MY FIRST REACTION ABOUT THAT
WAS, OH, NO.

THE WORST THING THAT CAN HAPPEN
TO LEGITIMATE PUBLIC RECORDS
REQUESTERS, HAVE PEOPLE LIKE
THIS, WHO ARE GOING TO RUIN IT
FOR US BECAUSE THERE WILL BE A
REACTION TO THAT BECAUSE IT IS
NOT RIGHT AND IT IS NOT FAIR.
BUT AGAIN, IT IS NOT THIS CASE.
AND I WERE ASK THE COURT NOT TO
NOT PAINT US WITH THAT BRUSH
BECAUSE, THAT IS NOT WHAT WE'RE
ABOUT.

>> BUT YOU DO UNDERSTAND,
WHATEVER DECISION IS MADE IS
GOING TO FLY TOMORROW ON WHOEVER
LOOKS FOR RECORDS THE DAY AFTER
THE OPINION IS RELEASED.

>> RIGHT.

AND YOU KNOW, I THINK THAT THE,
I MEAN I THINK THIS COURT'S PACE
IN PHH PRETTY MUCH ADDRESSES ALL
OF THESE ISSUES.

AND YOU KNOW, THIS COURT SAID,
THAT, IF YOU DON'T KNOW WHETHER
YOU'RE AN AGENCY OR NOT, THERE
IS A GOOD FAITH DETERMINATION
THAT HAS TO BE MADE BUT IF YOU
ARE AN AGENCY, IF THERE IS NO
QUESTION THEN, YOUR REFUSAL, IF
IT VIOLATES THE PUBLIC RECORDS
ACT WILL ALWAYS BE UNLAWFUL.

I SEE I'M OUT OF TIME.

THANK YOU.

WE WOULD ASK THE COURT TO AFFIRM
THE FIRST DISTRICT DISAPPROVE OF
THE NEJAME CASE AND AWARD OUR
ATTORNEY'S FEES IN THIS MATTER.

>> THANK YOU.

>> ONE THING THAT IS CLEAR TODAY
IS THAT IT'S NOT CLEAR AND ONE
OF THE REASONS WHY, IF AN HOLDER
OF RECORDS IS UNCLEAR AS TO THE
LEGAL BASIS AS TO WHETHER IT IS
AN AGENCY OR NOT, I DON'T SEE

ANY QUALITATIVE DIFFERENCE
WHETHER YOU'VE DETERMINED THAT
YOUR CONDITIONS ARE REASONABLE
OR NOT.

THAT IS WHY ALL THE CASES SAID
BEFORE YOU AWARD FEES, YOU SEND
IT BACK TO THE TRIAL COURT FOR
DETERMINATION.

THAT IS--

>> IF WE LOOK AT PHH, WHAT WE
DID WAS, THEY WERE UNCERTAIN OF
THEIR STATUS SO THEY FILED A DEC
ACTION.

THE AGENCY, COULD HAVE, EVEN AT
THE MOMENT THE LAWSUIT WAS
FILED, HAVE SAID, LISTEN, NOW
WE, YOU HAVE AN ATTORNEY, LET'S
WORK THIS OUT.

AND WE'RE NOT GOING TO CHARGE
THESE ADDITIONAL FEES.

AND THEN IF YOU HAD THE LAWSUIT
GO FORWARD, IT WOULD HAVE BEEN A
WHOLE, YOU KNOW, DIFFERENT
SITUATION BUT, CAN YOU, IF YOU
FELT LIKE THERE WAS, YOU, THE
AGENCY, THAT THERE WAS A
FRIVOLOUS REQUEST AND THAT THEY
JUMPED GUN AND FILED A LAWSUIT,
CAN YOU GO AHEAD AND, CAN THE
AGENCY DO A FRIVOLOUS LAWSUIT,
ATTORNEYS FEES?

DOES THAT APPLY FOR THEM WHERE
THEY DO, YOU KNOW, YOU HAVE 21
DAYS.

WE'RE GOING TO EITHER PAY OR--
IS THERE ANY OTHER REMEDY YOU
WOULD HAVE IN THE CASE OF A
LEGITIMATELY FRIVOLOUS REQUEST
WHERE SOMEONE JUMPED GUN AS A
WAY TO TRY TO GET ATTORNEYS
FEES?

>> NO.

THAT'S IS THE PROBLEM.

>> NOTHING EXISTS RIGHT NOW.

>> THAT'S IT.

AND THAT'S A PROBLEM.

YOU KNOW, WE'RE CONFUSED ABOUT
THE LAW.

EVERYBODY IN THEIR BRIEF SAID
THEY'RE CONFUSED ABOUT THE LAW.

AND TO SAY, OKAY, FEES HAVE TO BE PAID WHEN THERE IS A LEGITIMATE GOOD FAITH QUESTION ABOUT THE REASONABLENESS OF THE AGENCY'S ACTION, WHY WOULD THE WORD REASONABLE BE IN THERE IF WE WON'T HAVE A TRIAL JUDGE DETERMINE THAT?

WHAT IS QUOTE, REASONABLE IS A FACTUAL DETERMINATION.

THAT IS EXACTLY WHAT JUDGE DANIEL DID.

IT IS UNUSUAL THAT, AS OVERBURDENED AS ALL OF OUR COURTS ARE, WE HAD A CIRCUIT JUDGE THAT ACTUALLY HAD THE OPPORTUNITY OR TOOK THE OPPORTUNITY TO TELL YOU WHAT HE WAS THINKING, INSTEAD OF SAYING MOTION GRANTED, MOTION DENIED. BUT INSTEAD HE ANALYZED THE SITUATION AND SAID, YOU DIDN'T HAVE ANY GUIDANCE.

IN FACT THE ONLY GUIDANCE THERE WAS YOU RELIED ON IT AND I DECIDED THE ATTORNEY GENERAL'S WRONG.

AND TO AWARD FEES IN THAT CIRCUMSTANCE, WITHOUT THAT DETERMINATION, OF QUOTE, REASONABLENESS ON THE CONDITIONS, DOES TURN THIS INTO A STRICT LIABILITY STATUTE.

THIS ISN'T INSURANCE OR A DUI, OR WORKERS COMP, WHERE AS THE COURT OBSERVED TODAY THE LEGISLATURE KNOWS HOW TO WRITE THEM.

>> DO YOU WANT TO MAKE AN ARGUMENT ON THE OTHER ISSUE WHICH IS, LET'S ASSUME THAT WE AGREE THAT THERE SHOULD BE ATTORNEYS FEES MUCH AGAIN, WOULDN'T BE ATTORNEY FEES FOR THE WHOLE LITIGATION.

IT WOULD BE ATTORNEYS FEES IN CONNECTION WITH THOSE TWO ISSUES.

SO IT'S A MUCH NARROWER BASIS. THEY DON'T GET IT FROM

EVERYTHING THEY DID FROM THE TIME, WAY I SEE IT, ANYWAY. BUT WHAT ABOUT ATTORNEYS FEES FOR LITIGATING ATTORNEYS FEES? DO YOU WANT TO MAKE THE ARGUMENT THAT THE STATUTE DOES NOT PROVIDE FOR THOSE TYPES OF FEES, FORGETTING FEES ON FEES?

>>, IT DOES NOT.

THE CASE LAW DOESN'T.

AND BY THE WAY, WHAT THEY'RE LITIGATING ABOUT ARE THE FEES IN THE FIRST DISTRICT WHICH THEY DID NOT APPEAL OR SEEK REVIEW IN THIS COURT ON THAT.

RESPECTFULLY IT IS NOT BEFORE YOU.

THE JURISDICTION WHICH YOU TOOK WAS ON THE QUESTION OF THE ATTORNEY'S FEES--

>> ONCE WE HAVE THE CASE, DO WE NOT HAVE, ONCE WE HAVE THE CASE, DO WE NOT HAVE THE AUTHORIZATION AND THE JURISDICTION TO RESOLVE ISSUES IN THAT CASE?

>> WELL, I RESPECTFULLY, NO, I DON'T THINK YOU DO IF THE 30 DAYS RAN ON THE POINT AND THAT WASN'T AN ISSUE--

>> ARE YOU AWARE OF ANY CASE LAW THAT SAYS 30 DAYS RAN ON THE POINT?

>> I'M SORRY, I DIDN'T HEAR YOU?

>> DO YOU HAVE ANY CASE LAW THAT SUPPORTS YOUR ARGUMENT THIS COURT HAS NO JURISDICTION AFTER 30 DAYS RUN ON THE PARTICULAR APPOINTMENT, ON A PARTICULAR POINT OF LAW, IF THE COURT HAS ACCEPTED JURISDICTION IN THE CASE?

>> ONLY THAT, ONLY WITHOUT KNOWING THE NAMES, ONLY THAT ATTORNEYS FEES THEMSELVES ARE A SEPARATE APPEALABLE MATTER. TO THE EXTENT THAT IS SEPARATE APPEALABLE MOTION IN THE FIRST DISTRICT NO REVIEW WAS SOUGHT, THAT'S--

>> YOU'RE DRAWING A DISTINCTION

BETWEEN ATTORNEY FEES AND A SEPARATE JUDGMENT THAN A POINT OF LAW IN THE FINAL JUDGMENT.

>> YOU ARE CORRECT, SIR.

>> YES.

>> YOU ALWAYS HAVE ALL POINTS EVER LAW AVAILABLE TO YOU.

>> THIS WAS A, NOT A SEPARATE ORDERED APPEALED SEPARATELY. THIS WAS A MOTION IN THE FIRST DISTRICT TO GET ATTORNEY FEES FOR THE APPEAL.

IT WAS DENIED.

>> CORRECT.

>> THEY HAD AN APPEAL.

HOW WOULD, I MEAN IF YOU HAD AN APPEAL, OR FILED A PETITION, HOW WOULD THEY HAVE GOTTEN AN UNELABORATED DENIAL UP TO THIS POINT ON PETITION FOR DISCRETIONARY REVIEW?

>> THEY COULD HAVE ARGUED THAT THE DECISION BY THE FIRST DCA IN DENYING FEES--

>> THERE WAS NO DECISION.

IT WAS DENIAL AN OPINION.

IT WAS JUST A MOTION THAT WAS DENIED.

>> THEY COULD HAVE MOVED FOR REHEARING AND CITED OPINION, CITING DOWNS VERSUS AUSTIN. THIS IS WHAT YOU MEAN.

IF YOU DON'T GET AN OPINION, IT IS NOT RE VIEWABLE.

LIKE ANY AFFIRMATION WITHOUT OPINION IS NOT RE VIEWABLE.

I KNOW I'M PAST MY TIME.

WE ASKED YOU TO REVERSE AND ADOPT THE THIRD, FOURTH FIFTH.