

WILL BE THE FLORIDA BAR VERSUS
CHARLES J. KANE.

>> WHENEVER YOU'RE READY.

TAKE YOUR TIME.

WHENEVER YOU'RE READY.

>> I'M READY.

THANK YOU.

MAY IT PLEASE THE COURT, CHIEF
JUSTICE LABARGA, ASSOCIATE
JUSTICES OF THE FLORIDA SUPREME
COURT, DAVID ROTHMAN AND JEANNE
MELENDEZ ON BEHALF OF THE
FLORIDA BAR AS SPECIAL COUNSEL
IN THIS AND THE NEXT TWO CASES.
I KNOW THIS COURT IS FAMILIAR
WITH THIS CASE AND THE FACTS
SUPPORTING THE LITIGATION THAT
OCCURRED IN THIS APPEAL THAT'S
NOW BEEN FILED.

THE BAR IS PETITIONING IN THIS
CASE AS TO MR. CHARLES KANE
SEEKING DISBARMENT FOLLOWING A
RECOMMENDATION BY THE REFEREE
FOR A THREE-YEAR SUSPENSION.

AS TO THE REMAINDER OF THE
REPORT OF REFEREE, THE BAR SEEKS
RATIFICATION FROM THIS COURT AS
TO THE ORDER THAT BEFORE BEING
READMITTED, MR. KANE WILL HAVE
TO MAKE GOOD ON THE CIVIL
JUDGMENT ENTERED BY JUDGE CROW.
I'D LIKE TO BEGIN BY FIRST
COMMENTING ON THE REMARKABLE JOB
THAT THE REFEREE DID IN THIS
CASE.

HE WAS PATIENT, THOUGHTFUL, VERY
HARD-WORKING, PERFECT
TEMPERAMENT AND DEALT WITH SOME
DIFFICULT, SOMEWHAT EMOTIONAL
ISSUES FOR 13 DAYS OF
EVIDENTIARY HEARINGS IN THIS
CASE.

I'D ALSO LIKE TO COMMEND
OPPOSING COUNSEL.

MR. KANE, BOTH MR. KANE'S AND
MR. LENTNER COULD NOT HAVE HAD
MORE SKILLED LAWYERS WORKING AS
HARD AS THEY DID FOR THEM.

THIS IS A CASE ABOUT GREED,

BETRAYAL, DECEIT AND DISHONESTY.
THE BAR'S POSITION IS CONSISTENT
WITH NOT ONE, NOT TWO, BUT THREE
COURT ORDERS AS TO MR. CHARLES
KANE, ALL FINDING ALMOST EXACTLY
THE SAME CONDUCT, ALL DECIDING
THAT MR. CHARLES KANE ACTED
SOLELY TO BENEFIT HIMSELF AND
HIS SON.

HE BETRAYED LAWYERS THAT HE AND
THE OTHER PERSONAL INJURY
PROTECTION LAWYERS BROUGHT INTO
THE CASE.

HE WAS DECEITFUL IN DEALING WITH
THOSE LAWYERS.

HE WAS DISHONEST TOWARD HIS OWN
CLIENTS.

HE TESTIFIED FALSELY.

AND THE BOTTOM LINE AS TO ALL
THREE BRINGS US HERE WITH REALLY
NO OTHER POSSIBLE RESULT BUT
DISBARMENT.

>> WHAT WAS THE -- BECAUSE I
KNOW WE'VE GOT THE SON.

WHAT WAS THE EXPLANATION OR HOW
DO YOU DISTINGUISH THE
DIFFERENCE IN THE RECOMMENDED
SANCTION BETWEEN FATHER AND SON?

>> THERE'S A COUPLE OF THINGS.

>> AND HOW WOULD YOU SAY THAT,
NO, THAT WAS -- IT MAY BE -- IF
DISBARMENT'S THE WORST, YOU GOT
TO TAKE THE WORST AND THEN GO
DOWN FROM THERE?

>> WELL, YOU DO THAT WITH
FOOTBALL, BASEBALL AND
BASKETBALL PLAYERS.

THE FIRST PERSON DRAFTED GETS
THE MOST MONEY AND THEN EVERYONE
GOES BACKWARDS.

>> BAD ANALOGY.

>> I THINK DISBARMENT IS A
LITTLE BIT DIFFERENT.

THE PROBLEM THAT WE HAD HERE --
AND IT'S NOT A SERIOUS PROBLEM
BECAUSE WE GOT ALL THE EVIDENCE
IN AND THIS COURT'S GOING TO
REVIEW IT -- IS IT'S ON THE
RECORD THAT THE REFEREE THOUGHT
EARLY ON THAT HE WOULD LIKE THE

BAR TO DISTINGUISH AND CREATE A HIERARCHY FOR THE THREE RESPONDENTS THAT WE TRIED TOGETHER.

AND WE THOUGHT ABOUT IT.

AND WE GAVE IT GREAT CONSIDERATION.

BUT AFTER ALL THE EVIDENCE, AND BUTTRESSED BY THE FACT THAT IN THIS CASE MR. CHARLES KANE ABSOLUTELY, ADAMANTLY DEFENDED HIS POSITION AND HAS BEEN DOING SO SINCE 2004 IN THE FACE OF AN ORDER BY JUDGE CROW, AN AFFIRMANCE BY THE FOURTH DCA, A BANKRUPTCY JUDGE WHOSE OPINION EXCORIATES CHARLES KANE, AN APPEAL TO THE DISTRICT COURT AFFIRMING THE BANKRUPTCY COURT, AN APPEAL TO THE 11TH CIRCUIT AFFIRMING THE BANKRUPTCY COURT, WHICH WAS AFFIRMED BY THE DISTRICT COURT, AND A PETITION FOR CERTIORARI TO THE U.S. SUPREME COURT ON THE BANKRUPTCY CASE.

THEN --

>> WE CAN'T HOLD SOMEONE AS IN VIOLATION OF A CODE SIMPLY BECAUSE THEY HAVE DEFENDED THEMSELVES.

>> ABSOLUTELY NOT.

>> OKAY.

>> BUT THERE'S CASE LAW TO SUPPORT WHEN EVERY COURT IN THE WORLD --

>> I UNDERSTAND, BUT YOU'RE MAKING THIS ARGUMENT AS, THOUGH, OKAY, THEY DEFENDED THEMSELVES AND THEREFORE THEY HAVE TO BE WRONG, WE HAVE TO TAKE MORE SEVERE ACTION.

>> NO.

>> THEY'RE ENTITLED TO DEFEND THEMSELVES JUST LIKE ANYONE ELSE.

>> ABSOLUTELY.

AND THEY DID DEFEND THEMSELVES, BUT THEY DID IT BY PRESENTING FALSE TESTIMONY.

THAT'S REALLY WHERE THE BIG
PROBLEM IS.

THEIR CONTENTION, JUSTICE
PARIENTE, REALLY, THEIR
CONTENTION, MR. KANE'S
CONTENTION IS THEY HAD NO
OBLIGATIONS TO THEIR CLIENTS.
NONE.

ZERO.

ZIP.

THEY HAD NO OBLIGATION TO TELL
THEIR CLIENTS.

THERE WERE \$5.5 MILLION IN FEES.
THEY DID NOT PAY A PENNY OF ANY
OF THAT FOR BAD FAITH, THAT THE
CLIENTS HAD TO RELEASE AS A
CLAIM TO GET THEIR PITTANCE.

>> ON THIS ONE, OKAY, SO THEY
GOT THIS -- THIS IS THE GREED
PART OF THIS, IS SOMEWHAT
ASTOUNDING TO ME, I THINK
ACTUALLY IN SOME WAYS WORSE THAN
THE CASES THAT WERE COMPARED.

HOW MUCH -- THEY GOT HOW MUCH IN
FEES?

>> THEY GOT A TOTAL OF \$5.5
MILLION, OF WHICH \$4.1 MILLION
THEY KEPT AS FEES SPLIT BETWEEN
THE TWO PARTNERS.

>> WHO DID THEY GIVE THE \$1
MILLION TO?

>> \$600,000 WENT TO THE CLIENTS,
THE TOTAL CLIENTS, FOR --

>> DID THEY GET CLOSING
STATEMENTS?

>> NO.

>> DID THE CLIENTS KNOW HOW MUCH
THE SETTLEMENT WAS?

>> NO.

>> WHAT WAS THE EXPLANATION--
BESIDES THE DECEPTION WITH THE
BAD FAITH LAWYERS, A BLATANT
DECEPTION, WHAT WAS THE POSSIBLE
EXPLANATION FOR KEEPING -- I
MEAN, -- ALL OF THE -- ALL OF
THE MONEY THAT WAS GARNERED?
I REMEMBER I HAD A PARTNER WHEN
I PRACTICED LAW THAT SAID IT'S
JUST TOO BAD WE GOT TO SHARE
THIS MONEY WITH THE CLIENTS.

BUT HE WAS KIDDING.

WHAT WAS THE EXPLANATION?

>> THEY WEREN'T KIDDING.

THE KANES WEREN'T KIDDING.

MR. CHARLES KANE'S EXPLANATION
WAS WE DIDN'T HAVE TO DO IT.

WE COULDN'T FIGURE OUT WHAT THE
CLAIM WAS.

MAYBE THE CLAIM WASN'T WORTH
ANYTHING, IGNORING, OF COURSE,
WE KNOW ALL THE FACTS ABOUT ALL
THE HARD WORK --

>> HOW IS THIS NOT AN EXCESSIVE
FEE CASE ON TOP OF EVERYTHING
ELSE?

>> WE DIDN'T ARGUE EXCESSIVE
FEE.

BUT IN ANSWER TO YOUR FIRST
QUESTION, YOU BRING UP A VERY
GOOD QUESTION.

THIS IS NOT THE BENLAY CASE
ALONE.

THIS IS MR. ST. LOUIS, WHO CUT A
SIDE DEAL BEHIND HIS CLIENT'S
BACK WITH THE DEFENDANTS IN THAT
CASE, GOT PAID MONEY, THEN DID
NOT TELL THE TRUTH ABOUT IT AND
WAS DISBARRED BY THIS COURT.

BUT ON TOP OF THAT -- AND THIS
DIRECTLY ADDRESSES YOUR QUESTION
ABOUT HOW DID THEY EXPLAIN WHAT
WAS GOING ON?

THIS IS THE ADORNO CASE.

THEY'RE SAYING WE HAVE NO
RESPONSIBILITY TO SHARE WITH
MONEY WITH THEM BECAUSE THEY
DIDN'T HAVE A BAD FAITH CLAIM IN
THE LITIGATION THAT WE FILED.

>> BUT IS IT CLEAR FROM THIS
RECORD THAT THE NEGOTIATIONS
WERE PROGRESSIVE, INCLUDED THESE
PIP CLIENTS, IN THEIR
NEGOTIATIONS FOR BAD FAITH?
IS THAT CLEAR?

>> 100% CLEAR.

EVERY JUDGE THAT HEARD THIS CASE
MADE THAT FINDING.

EVERY JUDGE THAT HEARD THIS CASE
WENT ONE STEP FARTHER AND SAID
IT WAS THEIR INTENT TO SHUT OUT

THEIR CLIENTS AND THAT'S WHY
THEY DID NOT EVER TELL THEM THAT
THEY HAD GOTTEN THIS \$5.5
MILLION, WHICH WAS PART OF A
\$14.5 MILLION SETTLEMENT --
>> NOW, THERE WERE SOME NAMED --
WASN'T THERE AN ACTUAL BAD FAITH
--

>> 36 PLAINTIFFS.

>> AND WHAT KIND OF MONEY DID
THEY GET?

>> THE FIRST TIME OR THE SECOND
TIME?

REMEMBER, THERE'S A MOU THAT WAS
FIRST NEGOTIATED AND SETTLED AND
THEY WERE SHUT OUT FROM THAT.

>> THE NAMED CLIENTS?

>> EVERYONE WAS SHUT OUT.

\$14.5 MILLION FOR THREE LAW
FIRMS.

THE KANES GOT \$5.5.

HERE'S YOUR MONEY.

SIGN HER.

GET RELEASES FROM YOUR 36
CLIENTS AND GET 80% RELEASES
FROM YOUR PIP CLIENTS.

AND YOU CAN KEEP YOUR MONEY.

BUT THEN, THEN YOU'LL REMEMBER,

BECAUSE YOU'VE HEARD THIS

BEFORE, WHEN THEY GOT THIS

WONDERFUL SETTLEMENT ON A

SUNDAY, THEY TROOPED OVER IN A

COUPLE OF DAYS -- BECAUSE THEY

SAID, YOU KNOW, I THINK THESE

THREE LAWYERS MAY BE A LITTLE

BIT UPSET WITH US, THE BAD FAITH

LAWYERS, AND MAYBE WE OUGHT TO

TELL THEM WHAT'S GOING ON.

SO THE SIX OF THEM -- BY THE

WAY, THIS IS ONE OF THE PROBLEMS

WITH THIS CASE I THINK THAT

FAVORS DISBARMENT.

IT DOESN'T WORK AGAINST THE BAR.

THEY'RE CLAIMING THAT THEY'RE

INDIVIDUALLY ACTING AND

THEREFORE YOU CAN'T JUDGE THEM

TOGETHER.

THE BAR DIDN'T PUT THEM

TOGETHER.

THEY PUT THEM TOGETHER.

>> DID BOTH OF THEM SIGN THAT

--

>> MOU?

>> NO.

THE LETTER TO THE CLIENTS.

>> YES.

NOT ONLY DID THEY SIGN THE
LETTER TO THE CLIENTS, THEY ALL
BROUGHT IN THE BAD FAITH
LAWYERS.

ALL SIX OF THEM BROUGHT IT IN.
THEY HAD MEETINGS.

THEY HAD DISCUSSIONS.

AT ONE POINT MR. STEWART MET
WITH CHARLES KANE PERSONALLY AT
HIS OFFICE RIGHT BEFORE THE
MEDIATION IN APRIL OF 2004, AND
BECAUSE ALL THE CLAIMS WERE
GOING TO BE NEGOTIATED TOGETHER
AT THAT MEDIATION, IT WAS AGREED
THAT THE 60% CONTINGENCY FEE FOR
THE BAD FAITH SETTLEMENT WOULD
GO UP TO 75%.

CHARLES KANE SIGNED THAT SHORTLY
BEFORE THE MEDIATION, SHORTLY
BEFORE THE MEDIATION.

AND AT THAT MEDIATION, \$3.5
MILLION WAS OFFERED FOR THE BAD
FAITH CASES.

AND REMEMBER, IN THE MOU,
CHARLES KANE AND THE OTHERS SHUT
OUT THEIR CLIENTS ENTIRELY AND
WERE GIVEN THE AUTHORITY TO DO
WHATEVER THEY WANTED WITH THAT
MONEY.

AND THEY DID.

THEY KEPT A VAST, SUBSTANTIAL
MAJORITY OF THAT MONEY FOR
THEMSELVES.

THEN THEY WERE TOLD IN THAT
MEETING WITH LARRY STEWART WHEN
THEY TOLD HIM, HERE, WE'RE GOING
TO GET \$14.5 MILLION
COLLECTIVELY, BUT WE'RE NOT
GOING TO TELL YOU THAT.

AND WE SETTLE THIS CASE BUT
WE'RE NOT GOING TO GIVE YOU A
COPY OF THE AGREEMENT.

WE MADE CERTAIN AGREEMENTS.

WE'RE NOT GOING TO TELL YOU WHAT

THOSE AGREEMENTS ARE.
BUT THERE WAS NO MONEY SET ASIDE
FOR BAD FAITH.

IF YOU DON'T PROVIDE MONEY FOR
THE BAD FAITH CASES, THAT'S AN
IMPROPER SETTLEMENT.

WELL, MAYBE THE LIGHT WENT ON.
BUT FOR WHATEVER REASON, THEY
WENT BACK AND THEY SET ASIDE --
AND THIS ANSWERS AN EARLIER
QUESTION -- \$1.7 MILLION FOR
THAT 37-PLAINTIFF CASE, WHICH IS
ONE-HALF OF WHAT LARRY STEWART
AND BILL HEARON WERE ABLE TO GET
OFFERED IN A MEDIATION WHICH WAS
REJECTED.

ONE-HALF.

AND THAT'S HOW THE FEES FOR THE
BAD FAITH LAWYERS, MR. HEARON
AND THE FATHER AND SON STEWARTS,
WAS CALCULATED.

>> CAN YOU EXPLAIN HOW IT WAS
THAT THEY WERE ABLE TO EXPLAIN
TO LARRY STEWART THAT THEY HAD
SETTLED ALL THESE CASES AND HE
WAS GETTING NOTHING?

>> I DIDN'T HEAR THE COURT'S
FIRST QUESTION.

>> HOW WERE THEY ABLE TO EXPLAIN
TO LARRY STEWART -- WHEN WAS THE
MEDIATION THAT LARRY STEWART HAD
PARTICIPATED IN WITH --

>> APRIL 16 OF 2004.

>> AND THEN WHEN WAS THE --

>> SECRET SETTLEMENT?

SECOND WEEK OF MAY OF 2004.

>> SO A MONTH LATER.

SO HOW WERE THEY ABLE TO EXPLAIN
TO LARRY STEWART HOW HE WAS
GETTING NO MONEY OUT OF THIS
SETTLEMENT?

>> THEY OFFERED HIM \$300,000 FOR
THE THREE LAW FIRMS AND DIDN'T
TELL HIM THAT THE THREE LAW
FIRMS ON THE OTHER SIDE WERE
GETTING \$14.5 MILLION.

MR. STEWART THREW THEM OUT.

THEY MADE NO EXPLANATION.

THEY JUST OFFERED TO HIM.

>> YOU'RE INTO YOUR REBUTTAL

TIME.

>> I'M SORRY?

>> YOU'RE INTO YOUR REBUTTAL TIME.

YOU'RE WELCOME TO CONTINUE.

>> NO.

I'LL WAIT FOR REBUTTAL.

THANK YOU, JUDGE.

>> MAY IT PLEASE THE COURT, SCOTT TOZIAN AND GWEN DANIEL ON BEHALF OF CHARLES KANE.

>> IS YOUR CLIENT HERE IN THE COURTROOM?

>> YES, MA'AM, HE IS.

THAT'S MR. KANE RIGHT THERE.

AND HIS SON IS RIGHT NEXT TO HIM.

AS YOU KNOW FROM THE FILING OF OUR BRIEFS, IT'S OUR POSITION THAT THE BAR'S MISCONDUCT IN THIS CASE IS SO EGREGIOUS THAT DISMISSAL IS WARRANTED.

AND IT'S BASED UPON THE COMPLAINANT, MR. STEWART'S ATTEMPT TO RIG THE PROCESS. AND WHAT HAPPENED WAS HE CONTROLLED THE BAR FROM THE VERY START.

AT ONE POINT, WE DEPOSED HIM AND HE SAID HE DIDN'T HAVE CONSISTENT CONTACT WITH THE FLORIDA BAR.

BUT WE EVENTUALLY GOT EMAILS THAT SHOWED 116 EMAILS BETWEEN MR. STEWART AND THE FLORIDA BAR IN A TWO-MONTH PERIOD.

>> I'M JUST CURIOUS ABOUT THAT. MR. ROTHMAN WAS RETAINED BY THE BAR TO PROSECUTE THE CASE?

>> AT MR. STEWART'S BEHEST. HE WROTE EMAILS TO THE BAR TELLING THEM TO HIRE SPECIAL COUNSEL.

>> SO THE FACT THAT A PERSON IN THE FORM OF LARRY STEWART WAS I GUESS ANGRY COULDN'T EVEN BEGIN TO DESCRIBE WHAT HE MUST HAVE FELT, AND OF COURSE IT WENT THROUGH WITH DAVID CROW.

IS THERE A DIFFERENCE BETWEEN

TRYING TO HELP THE BAR -- AND, AGAIN, YOU'VE BEEN DEALING WITH THE BAR AND THERE ARE A LOT OF FINE LAWYERS IN THE BAR, BUT WANTING TO MAKE SURE THAT THERE IS NO SCREW-UP IN THIS CASE, THAT ALL OF THE EVIDENCE IS GOING TO BE THERE.

I'M NOT SURE I'M SEEING WHERE THE MISCONDUCT WAS.

WAS THERE SOMETHING IN THE PROSECUTION THAT WAS FALSE?

>> OH, ABSOLUTELY.

I MEAN, MR. STEWART TESTIFIED FALSELY AT HIS DEPOSITION.

HE TESTIFIED FALSELY WHEN THE BAR WITHDREW HIM AS A WITNESS BECAUSE OF HIS FALSE TESTIMONY. HE THEN WITH THE HUBRIS THAT HE HAS FILED A MOTION TO INTERVENE AND FORCED HIMSELF -- I SAY FORCED.

THE REFEREE LET HIM COME IN. HE PRESENTED AN ALTERED DOCUMENT AT THAT MOTION TO INTERVENE.

>> DOES IT GO TO THE MERITS OF THE DISPUTE?

>> IT GOES TO HIS DENIAL OF WHAT HE DID --

>> MY QUESTION WAS DOES IT GO TO THE MERITS OF THE DISPUTE WITH THE LAWYERS WHO ARE SUBJECT TO THE GRIEVANCE?

I UNDERSTAND THAT YOU MAY WANT TO REPORT HIM TO THE BAR. YOU MAY THINK THAT HE'S ENGAGED IN SOMETHING THAT'S INAPPROPRIATE.

BUT I'M NOT SURE THAT I'VE SEEN PRINCIPLES OF LAW THAT UNLESS HE'S TAINTED THE DECISION PROCESS --

>> HE HAS.

>> WELL, WON'T YOU HIT THOSE? YOU'RE REALLY MAKING SOME PRETTY SERIOUS CHARGES, SO PLEASE GO TO THE MERITS.

THIS IS A VERY SERIOUS CASE.

>> AS YOU KNOW, I'VE DONE THIS FOR 35 YEARS.

>> I DO KNOW.
>> I'M NOT A NEWCOMER TO IT.
I DON'T THROW THESE ACCUSATIONS
AROUND LIGHTLY.
PAGE 2267 OF THE TRANSCRIPT,
MR. ROTHMAN SAYING I WANT
SOMETHING DONE ABOUT
MR. STEWART'S BEHAVIOR.
WHAT WOULD HE HAVE ME DO, DROP
THIS CASE BECAUSE I DON'T LIKE
MR. STEWART?
I DIDN'T USE HIM AS A WITNESS.
WHAT ELSE COULD I DO?
ACKNOWLEDGMENT FROM SPECIAL
COUNSEL THAT HE WAS UNTRUTHFUL
AT THAT TIME.
>> WELL, --
>> WAIT A MINUTE.
NOW, THAT KIND OF RHETORICAL
RETORT IS NOT A SUGGESTION
SOMEBODY HAS BEEN DISHONEST.
IT'S A RESPONSE TO YOUR
QUESTION.
WHAT AM I MISSING THERE?
>> THIS IS PAGE 149 OF THE
MOTION TO DISMISS.
WASN'T THIS COURT'S RULING THIS
MORNING DENYING THE MOTION TO
INTERVENE?
THAT'S MR. STEWART, SAID I WANT
TO BE PART OF THIS.
DOESN'T THAT INDICATE TO YOU ALL
THAT THE COURT WILL GIVE VERY
LITTLE CREDENCE TO ANYTHING THAT
MR. STEWART SAID?
THAT'S THE REFEREE.
>> DID HE TESTIFY AT THE
PROCEEDING?
>> I'M SORRY.
>> DID MR. STEWART TESTIFY AT
THE PROCEEDING?
>> DID HE TESTIFY?
>> YES.
>> AT THE MOTION TO INTERVENE
AND GAVE FALSE TESTIMONY.
>> ON THE MERITS.
>> NO.
>> WHY ON THE MERITS -- WHAT
DIFFERENCE DID WHAT YOU'RE
ASSERTING -- HOW WOULD THIS HAVE

CHANGED THE MERITS OF THE CASE
THAT WE'VE BEEN TALKING ABOUT
FOR THE LAST THREE OR FOUR CASES
AND THIS ONE?

>> HERE'S HOW.

JUDGE CROW SPECIFICALLY GAVE A
LOT OF CREDENCE TO WHAT
MR. STEWART SAID IN THE
UNDERLYING CASE, EVEN THOUGH
JUDGE CROW NEVER SAID THIS
LAWYER DID THIS, THIS LAWYER DID
THIS.

HE SAID SOME OF THE PIP LAWYERS
DID SOMETHING WRONG.

THAT'S FOR SOMEBODY ELSE TO SORT
OUT.

A LOT OF STUFF WAS DONE WRONG IS
THE ESSENCE OF WHAT JUDGE CROW
SAID.

SO HE LUMPED THEM ALL TOGETHER.
BUT HE GAVE MR. STEWART A LOT OF
CREDENCE.

MR. STEWART COMES IN HERE, HE
CREATES A FALSE AFFIDAVIT, WHICH
HE SENDS TO THE FLORIDA BAR, AND
HE SAYS THE EXPERT WANTS YOU TO
SEND IT TO HIM.

BECAUSE IT'S DISCOVERABLE, WE
SUGGEST THE FOLLOWING EMAIL.

>> BUT LET'S -- BECAUSE YOU'VE
GOT LIMITED -- YOU'RE ON THE
OTHER CASE.

HERE'S MY CONCERN.

IF LARRY STEWART IS A MEMBER OF
THE BAR, DID SOMETHING WRONG --

>> THERE'S NO QUESTION HE DID.

>> THAT'S A SEPARATE CASE.

THAT'S A CASE TO HAVE THE BAR
INVESTIGATE.

WHAT I THINK WE'RE ASKING HERE
IS IF HE DIDN'T TESTIFY AND IF
ALL OF WHAT -- THIS SETTLEMENT,
THE SECRET SETTLEMENT, THE MOU,
KEEPING MOST OF THE MONEY FOR
THEMSELVES, NOT GIVING THEM TO
THE CLIENTS, THE BANKRUPTCY,
EVERYTHING ELSE.

WHAT DOES THAT HAVE TO DO WITH
LARRY STEWART?

IT'S LIKE WE'RE TALKING ABOUT A

GUY, A LAWYER, THAT WAS CLEARLY MAD, AND WHETHER HE'S GOT HUBRIS OR WHATEVER, AND COULDN'T BELIEVE IT HAPPENED AND SO I'M NOT GOING TO LET THEM GET AWAY WITH IT.

BUT HOW IS THE BAR'S PROSECUTION OF YOUR CLIENT AND THE EVIDENCE THAT THEY PUT ON AT TRIAL THROUGH MR. ROTHMAN AFFECTED BY LARRY STEWART?

>> BECAUSE THE BAR SUBMITTED A FALSE AFFIDAVIT.

>> WHAT WAS THAT AFFIDAVIT?

>> IT WAS AN AFFIDAVIT THAT MR. STEWART PREPARED AND SENT TO THE BAR.

>> AS TO WHAT?

WHAT WAS THE SUBJECT?

>> IT WAS TO DEFEAT OUR MOTION FOR SUMMARY JUDGMENT.

IT WAS AN EXPERT EVIDENCE.

>> IS IT THE CASTORY AFFIDAVIT?

>> YES, YOUR HONOR.

>> WHAT DID IT HAVE TO DO WITH THE MERITS OF THE CASE IN TERMS OF THE SETTLEMENT, THE AGGREGATION?

>> I UNDERSTAND.

I'LL GET TO THAT IN JUST A SECOND.

IT'S THE FACT THAT THE SYSTEM HAS COMPLETELY BEEN ADULTERATED BY THIS.

YOU CAN'T HAVE PROSECUTORS WHO ARE GOING TO PRETEND THAT THEY PREPARE AN AFFIDAVIT AND THEN HAVE THE EXPERT PRETEND THAT THEY PREPARED IT AND SAY GOOD JOB AND THE BAR SAYS THANK YOU.

>> MR. TOZIAN, WE CANNOT HAVE LAWYERS IN THIS STATE MAKING DEALS, CUTTING OUT PEOPLE THAT THEY HAVE TAKEN AN OATH TO REPRESENT, TAKING ALL OF THE MONEY.

AND TO ME THAT IS WHAT WE ARE HERE ABOUT.

THE BAR MAY HAVE DONE SOMETHING INCORRECT.

MR. STEWART MAY HAVE DONE SOMETHING INCORRECT. BUT WE WANT TO KNOW IF THE RECORD DEMONSTRATES TO US, ANYWAY, AT LEAST TO ME, THAT YOUR CLIENTS CUT OUT ON THEIR CLIENTS IN THEIR DEALINGS WITH PROGRESSIVE INSURANCE. AND YOU TELL ME WHAT IN THIS RECORD IS NOT TRUE ABOUT WHAT THEY DID.

>> YES, MA'AM.

I CERTAINLY CAN.

THE KANES HAD NO BAD FAITH CASES.

OUT OF THE 36 BAD FAITH PLAINTIFFS IN THE GOLD COAST, THERE WERE 441 TOTAL DOCTORS. 36 OF THOSE DOCTORS WERE IN THE BAD FAITH CASE.

>> CAN I JUST STOP YOU THERE?

I READ THIS IN YOUR BRIEFS.

IF THEY HAD NO BAD FAITH CASES, HOW DID THEY END UP WITH \$5 MILLION IN THEIR POCKETS?

>> BECAUSE THEY HAD 1,000 CLAIMS FOR 230 DOCTORS THAT HAD BEEN PENDING FOR THREE OR FOUR YEARS. AND MR. STEWART INDICATED --

>> AND SO IF THEY GAVE ALL -- AND THEREFORE, HOW MUCH MONEY OUT OF \$5 MILLION WENT TO THEIR 1,000 CLIENTS?

>> GOOD QUESTION.

>> NOT ONLY IS IT A GOOD --

>> THE DOCTORS GOT PAID EVERY SINGLE PENNY OF EVERY ONE OF THE BILLS THEY WERE SEEKING TO RECOVER ON.

>> HOW MUCH MONEY?

>> HOW MUCH MONEY?

>> IT WAS ROUGHLY \$650,000 THAT THEY GOT.

>> AND UNDER WHAT THEORY DOES SOMEBODY THEN KEEP -- WHAT WAS THE FEE AGAIN?

BECAUSE I THINK EVERYONE HAS TO HEAR THIS.

\$4 MILLION FOR REPRESENTING -- WHAT DO THEY EVEN DO TO

REPRESENT THEIR CLIENTS?
>> THERE WERE THREE OR FOUR
YEARS OF LITIGATION.
PROGRESSIVE HIRED BOB JOSEPBURG,
A PERSON I HAPPEN TO THINK IS A
PRETTY FINE LAWYER, TO HAVE THE
KANES DISQUALIFIED.
THERE WERE MOTIONS FOR
DISQUALIFICATION, WHICH THE
KANES DEFEATED.
THEY WERE GETTING JUDGMENTS ON

--

>> AND THAT WAS WHAT THE -- WHEN
LARRY STEWART WENT TO MEDIATION,
THE MONTH BEFORE, THAT WAS ABOUT
WHAT THE KANES HAD DONE OR ABOUT
WHAT LARRY STEWART HAD DONE, HOW
HE HAD OBTAINED THE INNER
DOCUMENTS OF PROGRESSIVE AND
THEY KNEW THAT THE BAD FAITH
CLAIMS WERE ABOUT TO -- YOU
KNOW, ABOUT TO HIT.
THAT'S WHAT WAS HAPPENING.
THAT'S WHY PROGRESSIVE --
PROGRESSIVE SETTLED THIS BECAUSE
THEY WERE AFRAID OF THE KANES
AND WATSON AND ALL THESE OTHER
PEOPLE?

>> RESPECTFULLY, I THINK THEY
WERE AFRAID OF THE KANES.
THE KANES' REPUTATION DOWN IN
SOUTH FLORIDA ACCORDING TO THE
TESTIMONY OF FOUR JUDGES IS THEY
WERE THE VERY TOP OF THE LIST OF
PIP LAWYERS DOWN THERE.
OTHER PIP LAWYERS LOOK TO THEM.
AND THAT THEY WERE ETHICAL AND
THEIR ARGUMENTS WERE
WELL-REASONED.
SO THE ANSWER IS YES, THEY WERE
VERY WELL-RESPECTED.
DON'T LOSE SIGHT OF THE FACT
THAT THE BAR ENTERED INTO AN
AGREEMENT FOR 91 DAYS AND
SIX-MONTH SUSPENSIONS.
MR. FLASHER WAS THE ARCHITECT OF
THIS SECRET SETTLEMENT.
HE HAD ALL OF THE NUMBERS WORKED
OUT BEFORE THE KANES EVER KNEW
THAT.

HE MET SECRETLY WITH FRAN ANANIA.
HE SAID IT'S NOT NEGOTIABLE.
I'M GIVING YOU TO THIS LAW FIRM AND THIS LAW FIRM AND THIS LAW FIRM.
WHEN THEY MET ON THE DAY OF THE MEMORANDUM OF UNDERSTANDING, THE DIE WAS CAST.
REMEMBER, FLASHER HAD 19 CLIENTS IN THE BAD FAITH CASE AND THE KANES HAD NONE.
SO WHEN THE KANES TOOK THEIR MONEY, THESE FOLKS DIDN'T HAVE BAD FAITH CLAIMS.
AND I THINK THE FALLACY, WHAT THE BAR HAS PRESENTED TO YOU, IS EVERYBODY WHO HAS A PIP CASE HAS A BAD FAITH CASE.
>> DID IT HAVE TO BE RELEASED FOR BOTH CLAIMS?
>> THEY DID GET A RELEASE.
>> DID THEY INDICATE THEY WERE GIVING UP THEIR RIGHT TO --
>> YES.
>> DID THEY TELL THEM HOW MUCH THE SETTLEMENT WAS?
>> IT SOLD THEM WHAT THEY GOT FOR ALL THEIR BILLS.
>> NO.
THE QUESTION WAS WAS THERE A SETTLEMENT -- WAS THERE A CLOSING STATEMENT FOR THE CLIENTS, FOR THE 1,000 CLIENTS, THAT SHOWED WHAT THE AMOUNT OF ATTORNEYS' FEES WERE THAT THEY OBTAINED.
>> THERE WASN'T, NOT FOR ANY OF THE SIX LAWYERS.
>> BUT WE'RE TALKING ABOUT YOUR CLIENTS RIGHT NOW.
>> I UNDERSTAND, BUT --
>> IN MY VIEW, THEY'RE ALL -- YOU KNOW, IF SOMEONE GOT 91 DAYS, I DON'T EVEN UNDERSTAND THAT.
THIS IS -- YOU TALKED ABOUT DOING THIS FOR 30 YEARS.
THIS IS THE WORST CASE OF GREED AND DERELICT DUTIES AS A LAWYER

ADMITTED TO THE FLORIDA BAR THAT I HAVE SEEN.

WE'VE SEEN A LOT OF PRETTY BAD THINGS.

BUT THIS IS UP THERE.

AND THERE'S NO ALCOHOL OR DRUGS THAT EXPLAIN.

THIS WAS ALL INTENTIONAL.

SO I'M AGAIN TRYING TO UNDERSTAND HOW THE FACT THAT THEY DIDN'T HAVE ANY BAD FAITH CLIENTS MAKES THEIR TAKING A FEE OF \$4 MILLION LESS EGREGIOUS AND NOT TELLING THE CLIENTS ABOUT IT.

>> WE CITED A CASE IN OUR BRIEF WHERE A DISPUTE WITH AN INSURANCE COMPANY OVER \$600 MRI RESULTED IN A \$253,000 LEGAL FEE.

THE LAW IS CLEAR WHEN INSURANCE COMPANIES DECIDE TO STAND AND FIGHT, OFTEN THE FEES GREATLY OUTWEIGH WHAT THE RECOVERY IS. REMEMBER, THESE DOCTORS HIRED THE KANES SOLELY TO RECOVER PIP BILLS.

>> WOULD YOU ADDRESS IN CONJUNCTION WITH YOUR ARGUMENT, IT APPEARS THAT THERE WAS A MEDIATION AND A SUBSTANTIAL SUM OF MONEY WAS DISCUSSED.

I GUESS WE'RE BEYOND WHETHER THERE'S CONFIDENTIALITY IN THE MEDIATION AT THIS POINT. BUT THAT THERE WAS A SUBSTANTIAL SUM OF MONEY THAT WAS REJECTED AND THEN WITHIN A MONTH THERE WAS AN ACCEPTANCE OF A LESSER AMOUNT FOR THE CLIENTS?

>> ACCORDING TO THE TESTIMONY IN THE CASE, \$3.5 MILLION WAS OFFERED AT THIS MEDIATION.

>> RIGHT.

RIGHT.

>> THE KANES DID NOT ATTEND THAT MEDIATION.

>> BUT WASN'T THERE SOMETHING IN THE RECORD WHERE THE KANES KNEW ABOUT THIS MEDIATION AND IN FACT

CONGRATULATED THE LAWYERS WHO WERE THERE AND TELLING THEM WHAT A FINE JOB THEY DID.

>> THAT WAS NOT THE KANES CONGRATULATING THEM.

THE KANES WERE COMPLETELY OUT OF THE LOOP.

THEY ARE VERY, VERY DISINTERESTED IN THE BAD FAITH CASE.

CHARLES KANE --

>> UNTIL THEY GOT ALL THIS MONEY.

I MEAN, I DON'T KNOW HOW THAT MAKES IT BETTER FOR YOUR CLIENT. BUT PLEASE CONTINUE.

>> IT WAS PIP MONEY THEY GOT. IT WASN'T BAD FAITH MONEY.

>> DIDN'T CHARLES KANE MEET WITH LARRY STEWART IN PREPARATION FOR THE MEDIATION AND THE LAWYERS TO NEGOTIATE THE UNIVERSE OF BOTH PIP AND BAD FAITH?

DIDN'T YOUR CLIENT DO THAT?

>> THEY HAD THAT AUTHORITY TO DO THAT.

>> DID YOUR CLIENT ATTEND THE SETTLEMENT MEETING WITH PROGRESSIVE ON SUNDAY, MAY 16?

>> HE WAS.

>> WAS HE INVOLVED IN THE NEGOTIATIONS?

>> HE WAS INVOLVED IN THE PREPARATION OR THE AGREEMENT ON WHAT THE MEMORANDUM OF UNDERSTANDING SAID BASED ON THE NUMBERS THAT FRAN ANANIA HAD GIVEN TO FLASHER BEFOREHAND.

CAN I ANSWER YOUR QUESTION, SIR?

>> CERTAINLY, WHENEVER YOU GET TIME.

NO, NO, NO, NO.

MY COLLEAGUES HAVE QUESTIONS. THAT'S NO PROBLEM.

I HAVE NO PROBLEM WITH THAT. CERTAINLY.

>> THE \$3.5 MILLION WAS SUPPOSEDLY OFFERED AT THAT TIME. IT WAS REJECTED AND MR. STEWART SAID ALL BETS ARE OFF.

WE'RE GOING TO LITIGATE THE
CASE.

PROGRESSIVE'S LAWYER REACHED OUT
TO MR. FLASHER AND THEY GOT
TOGETHER AND DECIDED ON HOW MUCH
PROGRESSIVE WOULD GIVE TO THE
THREE LAW FIRMS.

AND EVERYBODY MET.

THEY DECIDED THAT THEY COULDN'T
DO IT THE WAY THEY DID IT.

MR. KANE RECOMMENDED THEY HIRE
ETHICS COUNSEL, WHO TOLD THEM
YOU NEED TO DIFFERENTIATE
BETWEEN BAD FAITH AND PIP.

THE KANES HAD VIRTUALLY NOTHING
TO DO WITH THE BAD FAITH CASE.
VIRTUALLY NOTHING TO DO WITH IT.

>> THANK YOU.

THANK YOU, SIR.

>> JUST A FEW THINGS.

I'M GOING TO READ A COUPLE OF
SHORT PASSAGES FROM THE
BANKRUPTCY DECISION AS IT
RELATES TO --

>> YOU WANT TO DEFEND THIS --
COULD YOU FIRST, JUST SO WE
EITHER PUT IT TO REST, THIS
ISSUE OF LARRY STEWART DIRECTING
THE PROSECUTION OF THIS CASE,
GETTING YOU INVOLVED, AND HOW
THAT -- HOW THE DEFENSE OF THAT
CLAIM THAT THIS SHOULD NOT BE
DISMISSED BASED ON THE BAR AND
LARRY STEWART'S MISCONDUCT?
BECAUSE THAT'S A PRETTY SERIOUS
CHARGE.

>> VERY SERIOUS AND WITHOUT
BACKUP.

I COMMEND THE DEFENSE IN WHAT IS
EFFECTIVELY AND I HATE TO USE
THE EXPRESSION HERE BECAUSE WE
JUST HEARD A REAL CAPITAL CASE.
THIS IS THE CAPITAL CASE OF
DISBARMENT CASES.

I TALKED TO BAR STAFF AT THE
TIME AND I DID MY RESEARCH.
WITH WHAT MR. KANE DID IN ALL OF
THESE CASES AND WITH THE
DECEPTION AND THE LENGTH OF TIME
AND THE FAILURE TO TAKE

RESPONSIBILITY AND THE FIGHTING AGAINST MAKING RESTITUTION, WE ASK FOR PERMANENT DISBARMENT. AN I DON'T TAKE THAT LIGHTLY. THIS IS THE FIRST CASE I'VE PROSECUTED FOR THE FLORIDA BAR AND IT MAY BE THE LAST.

I WAS IDENTIFIED AS SPECIAL COUNSEL, BUT I'M NOT SO SPECIAL. I WAS GETTING SOME OF THE SAME ATTACKS AS THE BAR WAS GETTING. WHEN THE MOTION TO DISMISS WAS FILED ON AUGUST 1, TEN DAYS BEFORE -- A LITTLE MORE THAN TEN DAYS.

17 DAYS BEFORE WE WERE READY TO START A LONG TRIAL, AND MR. STEWART WAS GOING TO BE MY KEY WITNESS.

HE WAS THE KEY WITNESS IN EVERY ASPECT OF THE CASE.

HE WAS THE ONE WHO EDUCATED ME. I KNEW HIM BY NAME.

I HAD NEVER MET HIM UNTIL I WAS ACTUALLY BROUGHT INTO THIS CASE AND I MET WITH HIM AT HIS OFFICE TO GO THROUGH SOME BOXES OF EVIDENCE.

AND THEN I WORKED WITH HIM ON A REGULAR BASIS AND HE EMAILED ME AND CALLED ME AS MUCH AS HE EMAILED AND CALLED THE BAR.

WE PUT TOGETHER OUR CASE.

WHEN THIS MOTION WAS FILED, THE MOTION TO DISMISS ON AUGUST 1, I WAS AWAY FOR THE WEEKEND.

I GOT IN ON A FRIDAY NIGHT.

BY THAT SATURDAY MORNING I WAS ON THE PHONE WITH TOP PEOPLE AT THE BAR.

I SAID THIS IS REALLY SERIOUS.

I NEED TO THINK THROUGH THIS.

AND RELATIVELY SHORTLY THEREAFTER WE FILED OUR RESPONSE.

AND FIVE WORKING DAYS BEFORE TRIAL, I THOUGHT THAT THE BAR DOES HAVE AN OBLIGATION FAR ABOVE ANY OTHER LAWYER TO DO THE RIGHT THING.

I NOT ONLY WITHDREW LARRY
STEWART.
MY KEY WITNESS.
I WITHDREW SAMMY CACCIATORE.
AND THEN I WITHDREW THE
AFFIDAVIT.
THIS CASE WAS THEN TRIED WITH
THE OTHER TWO VICTIMS IN THE
CASE TESTIFYING.
LARRY STEWART IS A VICTIM, A
VICTIM OF ACTIONS BY CHARLES
KANE.
WAS HE ANGRY?
ABSOLUTELY.
HE IS ONE OF THE FINEST LAWYERS
IN FLORIDA.
DID HE DO SOMETHING THAT'S
GRIEVABLE?
I'M NOT EVEN GOING TO GO THERE.
I DIDN'T HAVE TO.
THAT'S WHY I WITHDREW HIM AS A
WITNESS.
NOT BECAUSE I THOUGHT HE HAD
LIED, BUT I DIDN'T KNOW WHAT HAD
HAPPENED.
IT ALL HAPPENED IN LARGE PART
BEFORE I GOT INVOLVED IN THE
CASE, DAYS BEFORE I GOT INVOLVED
IN THE CASE, AND BECAUSE THE
EXCELLENT MOTION AND ALL THE
WORK DONE BY MR. TOZIAN AND
MISS DANIELS, IT CONFRONTED ME
WITH AN ETHICAL ISSUE.
AND I THINK I MADE THE RIGHT
CHOICE.
I WAS ASKED THE QUESTION, CAN
YOU WIN THIS CASE WITHOUT
MR. STEWART, WITHOUT
MR. CACCIATORE, AND MY RESPONSE
WAS I'M A TRIAL LAWYER.
I'VE BEEN DOING THIS FOR ALMOST
40 YEARS.
I CAN'T ANSWER THAT QUESTION.
I DON'T KNOW IF I'M GOING TO WIN
THE CASE.
BUT I'M SURE GOING TO TRY.
THE EVIDENCE IN THIS CASE IS
OVERWHELMING.
LET ME READ FROM JUDGE KIMBLE,
WHO WAS THE SECOND JUDGE TO HEAR

THE FACTS IN THIS CASE.

I'M QUOTING.

THE EVIDENCE ADMITTED AT TRIAL SHOWS OVERWHELMINGLY THAT THE PLAINTIFFS, THE PLAINTIFFS IN THIS CASE WERE THE BAD FAITH LAWYERS, THE DEFENDANTS, THE TWO KANES, THE OTHER PIP LAWYERS AND PROGRESSIVE TREATED THE PIP LITIGATION AND THE BAD FAITH LITIGATION AS INEXTRICABLY INTERTWINED.

IN SPITE OF THEIR PROTESTATIONS TO THE CONTRARY, THERE IS NO CREDIBLE EVIDENCE TO SUPPORT THE DEFENDANTS' CONTENTION THAT THE BAD FAITH LITIGATION SHOULD BE CONSIDERED INDEPENDENT OF THE PIP LITIGATION.

THE DEFENDANTS, THE TWO KANES, ' TESTIMONY ON THIS BASIC ISSUE WAS NOT BELIEVABLE.

AND AGAIN LATER.

>> I THINK YOU'RE OUT OF TIME. YOU'RE WAY OVER.

BUT YOU GO AHEAD AND FINISH.

>> LET ME JUST FINISH THIS ONE LAST THING.

I'D ASK THAT YOU READ THE REPORT.

>> YOU'LL BE ABLE TO TALK ABOUT IT IN THE OTHER KANE CASE.

>> I WILL CERTAINLY.

BY THE WAY, I THINK WHAT WE SHOULD HAVE DONE IN THIS CASE, I SHOULD HAVE TAKEN SOME TIME OFF FROM MY OTHER ARGUMENTS, PRESENTED THE WHOLE CASE AND BROKEN IT DOWN.

MY FAULT.

THE DEFENDANTS' TESTIMONY REGARD TO ANOTHER ASPECT WAS VIEWED AS NOT CREDIBLE.

FINALLY, FURTHER ON, IN LIGHT OF THE DEFENDANT'S SIGNIFICANT EXPERIENCE IN COMPLEX LITIGATION, THE COURT CONCLUDES THAT THEIR-- MEANING CHARLES AND HARLEY KANE-- THEIR TESTIMONY WAS NOT TRUTHFUL.

WHAT ELSE BUT DISBARMENT?
AND I'LL ADDRESS THE
PROPORTIONALTY DISCUSSION THAT
MR.TOZIAN BEGAN AT A LATER TIME
DURING MY PRESENTATION.
>> THANK YOU.
>> THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS
IN THIS CASE.
WE'RE IN RECESS FOR TEN MINUTES.
>> HE HAS A CROSS, DOESN'T HE?
>> DOES HE HAVE A CROSS?
>> WHAT'S THAT?
>> DOES HE HAVE A CROSS
ARGUMENT?
NO CROSS ARGUMENT?
>> IT'S ALL 15 MINUTES--
>> MAY I ASK THE COURT A
QUESTION?
>> WHAT.
>> IT SHOWS THAT I'M TO ARGUE
FIRST IN THE NEXT CASE, BUT I
REALLY, BY RIGHTS, I THINK
MS.DANIEL SHOULD HAVE THE RIGHT
TO ARGUE FIRST BECAUSE THEY WERE
THE PETITIONERS ON HARLEY KANE,
BECAUSE I WAS LISTED AT THE
PETITIONER, WHICH I'M NOT.
>> ALL RIGHT.
>> WOULD THAT BE FINE WITH THE
COURT?
>> THAT'S FINE.
>> ALL RISE.