

>> 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.  
YOU SHALL BE HEARD.  
GOD SAVE THE GREAT UNITED STATES  
AND THIS HONORABLE COURT.  
>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.  
>> GOOD MORNING.  
WELCOME TO THE FLORIDA SUPREME  
COURT.  
BEFORE WE BEGIN, LET ME JUST  
ANNOUNCE THAT BEFORE US ON THIS  
SIDE HERE WE HAVE MEMBERS OF A  
SEMINAR TODAY CALLED "PRACTICING  
BEFORE THE SUPREME COURT."  
THEY WILL BE HERE ALL DAY  
LEARNING ALL ABOUT HOW TO  
PRACTICE BEFORE US.  
WELCOME.  
THE FIRST CASE ON THE DOCKET IS  
SEARCY, DENNEY, SCAROLA VERSUS  
THE STATE OF FLORIDA.  
>> CAN YOU SPEAK INTO THE  
MICROPHONE?  
IT'S HARD FOR US TO HEAR.  
>> HOW ABOUT THAT?  
>> THANK YOU.  
>> OKAY.  
I'LL START AGAIN.  
MY NAME IS EDNA CARUSO.  
I'M HERE ON BEHALF OF THE  
APPELLANT AND THE FIRM, THE FIRM  
WHO GOT THE VERDICT IN THEIR  
FAVOR.  
>> I THOUGHT IT WAS A \$20  
MILLION VERDICT?  
WAS IT \$28 MILLION?  
>> OH.  
\$30.8 MILLION.  
>> OKAY.  
>> I'M SORRY.  
WE ARE HERE ON A CERTIFIED  
QUESTION FROM THE FOURTH  
DISTRICT COURT OF APPEAL IN  
REGARD TO WHETHER IT IS

CONSTITUTIONALLY PERMISSIBLE FOR THE LEGISLATURE TO LIMIT ATTORNEYS' FEES AND CLAIMS BILLS AFTER THE ENACTMENT OF 768.28 AND THE ADOPTION OF SENATE RULE 4.81(6).

>> LET ME ASK YOU SOMETHING JUST SO I CAN UNDERSTAND PROCEDURALLY HOW THIS TOOK PLACE.

AFTER THE VERDICT A CLAIMS BILL WAS FILED, CORRECT?

>> YES.

>> AND WAS THE CLAIMS BILL FILED BY THE ATTORNEYS WHO GOT THE VERDICT IN THE TRIAL COURT?

>> WELL, I DON'T THINK THE CLAIMS BILL CAN BE FILED --

>> WELL, HOW DID IT GET TO THE POINT OF A CLAIMS BILL?

>> WELL, SORRY.

>> HE CAN ANSWER THAT LATER.

>> I THINK THAT THEY HAVE TO GET A SENATOR TO SPONSOR THAT BILL OR A REPRESENTATIVE OF THE LEGISLATURE.

>> AT THE BEHEST OF THE LAWYERS WHO ACTUALLY REPRESENTED HER IN THE TRIAL.

>> YES.

>> AND THE CHILD IN THE TRIAL COURT.

>> YES.

>> ALL RIGHT.

GO ON WITH YOUR ARGUMENT.

>> OKAY.

SO WE SAY THE ANSWER TO THE CERTIFIED QUESTION IS NO.

IN THIS CASE, AS YOU KNOW, AARON'S CLAIMS BILL DIRECTED THE HOSPITAL DISTRICT TO PAY DOWN HIS EXCESS JUDGMENT BY \$15 MILLION AND THEN IT INCLUDED A PROVISION THAT ATTORNEYS' FEES, LOBBYISTS' FEES AND COSTS WERE LIMITED TO \$100,000.

AND THE FOURTH DISTRICT HELD THAT THAT WAS CONSTITUTIONAL AND BASED ON THIS COURT'S GAMBLE DECISION, WHICH IS A 30-YEAR-OLD DECISION, AND HELD THAT GAMBLE

APPLIED EVEN AFTER THE ENACTMENT OF 768.28.

>> LET ME JUST GO BACK OVER THE CIRCUMSTANCES.

THE ORIGINAL CASE, WAS THE SEARCY FIRM INVOLVED WITH THE CASE FROM THE BEGINNING?

>> YES.

>> AND THE CONTRACT WAS, ACCORDING TO THE LAW, WAS A 25% OF ANY VERDICT.

>> RIGHT.

>> IT WENT TO TRIAL?

>> YES.

>> AND DID IT GO ON APPEAL?

>> YES.

>> SO THERE WAS ALSO APPELLATE

-- WOULD THERE HAVE BEEN

APPELLATE ATTORNEYS?

BUT THEY COULDN'T EXCEED STILL 25%, CORRECT?

>> CORRECT.

>> BECAUSE THE STATUTE THAT THE LEGISLATURE PASSED AND ALSO THE STATUTE REQUIRED THE CLAIMANT OR THE PLAINTIFF TO ACTUALLY GO TO TRIAL.

YOU COULD NOT GO DIRECTLY TO GET A CLAIMS BILL.

IS THAT CORRECT?

>> NO.

NO.

YOU HAD TO -- IN ORDER TO PROCEED UNDER 768.28, THE CLAIMANT, AARON, HAD TO OBTAIN AN EXCESS JUDGMENT.

HE HAD TO OBTAIN A JUDGMENT AGAINST THE STATE.

ALL RIGHT.

AND IF IT WAS AN EXCESS JUDGMENT, HE COULD THEN FILE A CLAIMS BILL AGAINST -- WITH THE LEGISLATURE.

>> OKAY.

SO THAT'S -- I MEAN, THAT'S THE SCENARIO HERE.

THERE COULD BE OTHER SITUATIONS WHERE THE TORTFEASOR AS A PART OF THE STATE ENTITY AGREES AT THE OUTSET TO PAY -- AND THIS IS

A VERY CATASTROPHICALLY INJURED YOUNG MAN, TO PAY MONEY AND TO NEGOTIATE AND SAY THERE DOESN'T NEED TO BE AN ATTORNEY INVOLVED. WE'LL GIVE YOU \$15 MILLION OR WHATEVER BECAUSE WE RECOGNIZE WE'RE AT FAULT.

THAT'S NOT THIS CASE.

>> THAT'S NOT THIS CASE, BECAUSE THERE WAS NO SETTLEMENT.

YES.

>> LET ME JUST WALK YOU THROUGH THIS FOR A SECOND AS FAR AS THE SEPARATION OF POWERS ARGUMENT AND THAT SORT OF THING.

YOU AGREE THAT -- AND I'M SURE BOTH SIDES WOULD AGREE THAT THIS COURT OR NO ONE ELSE CAN DICTATE TO THE LEGISLATURE --

>> THAT NOBODY COULD WHAT?

>> COULD DICTATE TO THE LEGISLATURE THAT THEY HAVE TO GRANT A CLAIMS BILL.

THEY CAN JUST DENY IT.

>> ABSOLUTELY.

NO QUESTION.

>> STAY WITH ME.

>> ALL RIGHT.

>> THEY CAN JUST DENY IT.

>> YES.

>> AND IT'S OVER.

>> YES.

>> ALL RIGHT.

NO ONE CAN DICTATE TO THE LEGISLATURE HOW MUCH TO AWARD IN A CLAIM BILL, CORRECT?

>> THAT'S CORRECT.

>> SO IF YOU ASK FOR \$10 MILLION AND THEY GIVE YOU \$500,000, GAME OVER.

>> ABSOLUTELY.

>> CORRECT.

SO IN THIS INSTANCE HERE, THE ISSUE THAT WE'RE DEALING WITH IS THE LEGISLATURE'S DECISION TO DEDICATE THE BULK OF MOST OF THE CLAIM BILL TO THE CARE OF THIS YOUNG MAN.

>> THAT'S RIGHT.

>> OKAY?

AND IN DOING SO, THEY DECIDED THAT, OKAY, ONLY \$100,000 SHOULD GO IN ATTORNEYS' FEES.

>> MM-HMM.

>> SO IS IT YOUR POSITION THAT THE LEGISLATURE HAS SOMEHOW INTERFERED WITH THE CONTRACTUAL RELATIONSHIP BETWEEN SEARCY DENNEY AND THIS FAMILY WHO HIRED THEM TO REPRESENT THEM?

AND, IF SO, DOES THE LEGISLATURE HAVE THE AUTHORITY TO DO THAT, GIVEN THE FACT THAT THE CLAIM IS THAT WHATEVER THEY DO IS AN ACT OF GRACE ON THEIR PART THAT THEY DON'T HAVE TO DO.

>> I THINK THAT THEY CLEARLY CANNOT DO ANYTHING REGARDING ATTORNEYS' FEES.

NOW, THEY COULD UNDER GAMBLE, OKAY?

BUT ONCE 768.28 WAS PASSED, THEY'RE REGULATED BY THE STATUTE.

THE STATUTE SAYS THAT THE CLAIMS BILL GOES -- YOU KNOW, YOU GET AN EXCESS JUDGMENT.

YOU GO TO THE LEGISLATURE ON A CLAIMS BILL, AND THEY CAN DENY IT, THEY CAN GRANT IT IN WHOLE, IN PART.

WE DON'T DENY THAT.

WE HAVE NEVER COMPLAINED ABOUT THE \$15 MILLION THAT WERE GIVEN TO AARON.

WHAT --

[COMMENT OFF MIC]

>> AND THE LEGISLATURE HAS APPORTIONED HOW MUCH OF IT CAN GO FOR ATTORNEYS' FEES?

>> ANY CASE THAT'S BEEN ON APPEAL?

THAT IS AN APPELLATE DECISION?

NO.

I DON'T THINK SO.

NO.

>> BUT YOU DON'T -- I MEAN, THERE MAY HAVE BEEN -- BUT IT DIDN'T -- IT WASN'T APPEALED. IS THAT WHAT YOU'RE SAYING?

>> I HAVE NO IDEA.  
WE HAVEN'T FOUND ANY DECISIONS  
CONCERNING THAT.  
BUT I WANT TO GO BACK TO JUDGE  
LABARGA'S QUESTION, IF I COULD.  
UNDER THE STATUTE, OKAY, THEY  
CAN DETERMINE THE AMOUNT.  
THEY CAN DETERMINE TO DENY THE  
CLAIMS BILL.  
NO QUESTION.  
BUT WHAT THEY CANNOT DO UNDER  
THE STATUTE IS THEY HAVE NO  
AUTHORITY OVER ATTORNEYS' FEES.  
THERE'S NOTHING IN THE STATUTE  
THAT GIVES THEM ANY AUTHORITY  
OVER ATTORNEYS' FEES.  
WE HAVE SUBSECTION 8 UNDER THE  
STATUTE, WHICH SAYS NO ATTORNEY  
MAY CHARGE IN EXCESS OF 25%.  
NOW, THERE'S A DISPUTE OVER WHAT  
THAT MEANS, BUT THAT'S WHAT THE  
STATUTE --  
>> WHEN YOU SAY THE LEGISLATURE  
HAS NO AUTHORITY, THEY GET TO  
PASS LAWS.  
I MEAN, THEY'VE GOT THE  
AUTHORITY TO PASS LAWS.  
AND THIS IS -- THE CLAIMS BILL  
IS A LAW.  
>> WELL, --  
>> THE PASSAGE -- IT'S A BILL,  
AND IF IT'S PASSED, IT BECOMES A  
LAW.  
SO -- NOW, IT'S A PARTICULAR  
CATEGORY OF LAW, I UNDERSTAND.  
BUT BASICALLY IS YOUR ARGUMENT  
THAT THERE'S SOME KIND OF VESTED  
RIGHT THAT'S ASSOCIATED WITH  
THAT OTHER STATUTE?  
IS IT 768?  
>> WELL, WHAT I'M SAYING IS THAT  
SUBSECTION 8 SAYS WHAT THE  
ATTORNEYS' FEES ARE GOING TO BE.  
>> WELL, IT'S A CAP.  
>> NO.  
I BEG -- NO, YOUR HONOR.  
WE CLAIM IT'S NOT A CAP.  
768.28 WAS MODELED AFTER THE  
FEDERAL COURT CLAIMS ACT.  
>> WHAT DOES IT SAY?

WHAT DOES THE TEXT OF THE  
STATUTE SAY?

>> IT IS THAT THE ATTORNEYS' FEE  
STATUTE UNDER THE FEDERAL ACT IS

--

>> WAIT.

I'M ASKING WHAT THE TEXT OF THE  
STATE STATUTE SAYS.

YOU SAID IT'S NOT A CAP.

I'M ASKING WHAT IT SPECIFICALLY  
SAYS.

>> IT SAYS, NO ATTORNEY -- NO  
ATTORNEY MAY CHARGE, DEMAND,  
RECEIVE OR COLLECT FOR SERVICES  
RENDERED FEES IN EXCESS OF 25%  
OF ANY JUDGMENT OR SETTLEMENT.

>> SOUNDS LIKE A CAP TO ME.

>> NOW, THAT IS ESSENTIALLY  
IDENTICAL TO THE ATTORNEYS' FEES  
STATUTE IN THE FEDERAL TORT  
CLAIMS ACT, AFTER WHICH THIS  
PROVISION WAS MODELED, OKAY?  
I DON'T THINK THAT'S IN DISPUTE.  
IF YOU LOOK AT THE CASES THAT  
HAVE BEEN DECIDED UNDER THE  
FEDERAL TORT CLAIMS BILL, THEY  
SAY THAT THAT LANGUAGE  
REFERENCES THE CONTINGENCY FEE  
CONTRACT BETWEEN AN ATTORNEY AND  
HIS CLIENT AND THEY SAY THAT  
THAT LANGUAGE UNAMBIGUOUSLY  
ALLOWS THE ATTORNEY TO CHARGE UP  
TO 25% AND THAT ANY LESSER  
AMOUNT, THEY SAY, IS BETWEEN THE  
ATTORNEY AND HIS CLIENT AND NOT  
THE COURTS.

AND WE SAY NOT THE LEGISLATURE.  
AND I WANT TO READ TO YOU IN  
HERE A PORTION OF ONE OF THOSE  
CASES WE'VE CITED IN OUR BRIEF.  
THEY SAY THAT THE 25% ATTORNEYS'  
FEE PROVISION IN THE FEDERAL  
STATUTE AFTER WHICH THIS IS  
MODELED -- THIS IS THE JOE CASE,  
THAT ITS PURPOSE WAS TO ASSURE  
COMPETENT REPRESENTATION AND  
REASONABLE COMPENSATION IN  
MATTERS LITIGATED UNDER THE  
FEDERAL TORT CLAIMS ACT AND THAT  
IT WAS INTENDED TO ENCOURAGE

ATTORNEYS TO TAKE CLAIMS UNDER THAT ACT.

THIS IS A SET AMOUNT THAT THE LEGISLATURE, BY MODELING THIS ACT AFTER THE FEDERAL ACT, HAS DECIDED THAT ATTORNEYS ARE ENTITLED TO GET.

OKAY.

NOW, OBVIOUSLY THEY ARGUE, WELL, THE LEGISLATURE WANTED TO ENSURE THAT AARON GOT THE MAXIMUM AMOUNT.

WELL, THAT'S EXACTLY WHAT SUBSECTION 8 DOES.

IT ENSURES THAT -- IT MAKES SURE THAT THE CLAIMANT IS GOING TO GET 75%.

AND THE ATTORNEYS CAN GET 25%.

AND THEY SAY THAT IN THE FEDERAL CASES THAT THAT IS REASONABLE IN LIGHT OF THE ATTORNEYS' FEES CASES IN OTHER AREAS.

>> YOU WOULD AGREE THAT THE LEGISLATURE COULD HAVE -- BECAUSE IT'S IN SOVEREIGN IMMUNITY, COULD PASS A STATUTE THAT SAYS THE CONTRACT WON'T EXCEED 25%, BUT LIKE IN THE MEDICAL MALPRACTICE CONTEXT, IF THE AMOUNT OF THE JUDGMENT EXCEEDS \$5 MILLION, THAT THE FEE SHALL ONLY BE 20%.

COULD THEY DO THAT?

>> THEY COULD HAVE PASSED A STATUTE THAT SAID --

>> I THINK -- SO THE QUESTION IS -- THE WAY I SEE THE DISSENT IS THAT SUBSECTION 8-- THAT YOU'RE GOING TO GO TO COURT TO GET YOUR JUDGMENT BEFORE YOU HAVE A CLAIMS BILL, WHETHER THAT NEEDS TO BE READ IN PARA MATERIA WITH THE REST OF THE STATUTE.

BECAUSE OTHERWISE -- AND THIS WILL BE A QUESTION FOR MISS NORDBY-- YOU HAVE A SITUATION WHERE ATTORNEYS CAN GO DO ALL THIS WORK BECAUSE THE LEGISLATURE'S REQUIRED IT AND THEN BE LEFT WITH NOTHING.

>> ABSOLUTELY.  
IN THIS CASE, THE ATTORNEYS HAD  
A 25% CONTRACT PURSUANT TO  
SUBSECTION 8, OKAY?  
13 YEARS OF WORK.  
7,000 HOURS OF WORK.  
\$500,000 IN COSTS.  
AND THEY GET LESS THAN 1%.  
>> WHERE DO THE COSTS -- HOW  
WERE THE COSTS PAID?  
>> THE COSTS -- I THINK --  
>> I MEAN, THE COSTS WEREN'T  
FULLY REIMBURSED BY THE CLAIMS  
BILL?  
>> NO.  
NO.  
THEY JUST -- NO.  
NOT AT ALL.  
>> LET ME ASK YOU THIS.  
IF WE AGREE WITH YOU THAT IT WAS  
IMPROPER TO LIMIT THE AMOUNT OF  
ATTORNEYS' FEES, WHAT HAPPENS?  
I MEAN, DO YOU START OVER AND GO  
BACK TO THE LEGISLATURE FOR A  
CLAIMS BILL?  
OR DO YOU -- CAN THIS COURT SAY  
-- THEY SAID \$10 MILLION, I  
BELIEVE IT IS, AND THAT 25% OF  
THIS BELONGS TO THE LAWYER.  
OR -- I MEAN, DO WE HAVE THAT  
KIND OF AUTHORITY?  
AND WHERE DO WE GET IT?  
>> WELL, YOU HAVE THE -- WHAT  
HAPPENS IS THAT THE  
UNCONSTITUTIONAL PROVISION  
SHOULD BE STRICKEN AND SEVERED  
FROM THE REST OF THE CLAIMS  
BILL, WHICH SHOULD BE ENFORCED.  
>> BUT WE DON'T KNOW WHAT THE  
LEGISLATURE WOULD HAVE DONE.  
I MEAN, IF THEY WANTED TO GIVE  
THIS -- YOU KNOW, THIS  
SERIOUSLY-INJURED BOY THIS  
AMOUNT OF MONEY, WE DON'T KNOW  
WHAT THEY'D DO IF THEY KNEW THEY  
HAD TO REQUIRE -- OR APPORTION  
IT.  
I MEAN, THAT'S THE ARGUMENT ON  
THE OTHER SIDE.  
>> I KNOW, BUT THEY DID KNOW

THAT ATTORNEYS GET 25%.  
IF THEY HAD WANTED TO GIVE AARON  
\$14.9 MILLION, THEY COULD HAVE  
SIMPLY ORDERED OR DIRECTED THE  
HOSPITAL TO PAY HIM AN AMOUNT  
THAT MINUS 25% WOULD HAVE GIVEN  
HIM THAT.

OKAY?

THIS -- IN ORDER TO DEFEAT  
SEVERABILITY, IT IS THE DUTY OF  
THE STATE TO SHOW THAT THE  
LEGISLATURE WOULD NOT HAVE  
PASSED THIS CLAIMS BILL WITHOUT  
THAT \$100,000 FEE LIMIT AND THEY  
DIDN'T APPROVE THAT BELOW.

THEY WENT IN AND ARGUED TO THE  
GUARDIANSHIP JUDGE, WELL, THEY  
AGREED TO IT.

SENATOR THRASHER SAID THEY  
AGREED TO IT.

I DON'T KNOW IF THAT'S TRUE, BUT  
THAT'S WHAT HE SAID, AND THE  
JUDGE FOUND THAT THERE WAS NO  
AGREEMENT OR UNDERSTANDING UNDER  
THE ATTORNEYS' CONTRACT FOR THEM  
TO TAKE ANYTHING LESS THAN 25%.

AND THEN THEY TOLD THE JUDGE --

>> YOU'RE OUT OF TIME.

CAN YOU PLEASE GO AHEAD AND WRAP  
IT UP.

>> OKAY.

THANK YOU VERY MUCH.

>> YOU CAN WRAP IT UP.

>> PARDON ME?

>> YOU CAN WRAP UP WHATEVER YOU  
STARTED TO SAY.

>> OH.

WELL, --

>> BUT BEARING IN MIND YOU'RE  
OUT OF TIME.

>> I THINK THAT WHAT OUR  
ARGUMENT IS, ESSENTIALLY, IS  
THAT -- I MEAN, I THINK OUR  
BIGGEST ARGUMENT HERE IS  
IMPAIRMENT OF PREEXISTING  
ATTORNEYS' FEE CONTRACT.

AND THIS IS ABSOLUTELY GOING TO  
HAVE A CHILLING EFFECT IF IT'S  
UPHELD ON ATTORNEYS.

THEY'RE NOT GOING TO BE ABLE TO

TAKE CASES TO REPRESENT PEOPLE WHO CAN'T AFFORD TO PAY WHEN THEY NEED TO SUE A STATE ENTITY. AND THE STATUTE ABSOLUTELY SAYS WHAT IT SAYS.

AND IF WE LOOK TO THE CASES THAT INTERPRETED THE FEDERAL STATUTE AFTER IT WAS MODELED, THEN SUBSECTION 8 APPLIES TO ATTORNEYS' FEE CONTRACTS AND 25% AND NOT ANYTHING LESS.

I'LL STOP AT THAT.

>> THANK YOU.

>> GOOD MORNING.

AND MAY IT PLEASE THE COURT, I'M RACHEL NORDBY FROM THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE.

30 YEARS AGO, THIS COURT HELD THAT THE LEGISLATURE CAN LIMIT ATTORNEYS' FEES IN A CLAIM BILL REGARDLESS OF ANY CONTRACT.

GAMBLE REMAINS GOOD LAW AND APPLIES IN THIS CASE.

EVEN IF GAMBLE DID NOT CONTROL HERE, THEN THE LAW FIRM'S CHALLENGE WOULD STILL FAIL FOR TWO INDEPENDENT REASONS.

FIRST, THE UNDERLYING CONTRACT HERE EXPRESSLY ACKNOWLEDGED THAT THE FEES COULD BE LIMITED BY LAW, WHICH IS EXACTLY WHAT HAPPENED.

AND, SECOND, EVEN IF THIS COURT WERE TO FIND THE FEE PROVISION INVALID AND SEVER IT, THEN THE LAW FIRM WOULD ACTUALLY BE FORECLOSED FROM ANY RECOVERY BECAUSE THE REMAINING LANGUAGE OF THE CLAIM BILL WOULD DIRECT THE ENTIRE \$15 MILLION INTO THE PROTECTION OF A SPECIAL NEEDS TRUST.

>> LET ME ASK YOU A QUESTION THAT IT SEEMS BEYOND DISPUTE THAT THE LEGISLATURE IN GRANTING THESE SPECIAL CLAIMS BILLS HAS THE RIGHT AS A MATTER OF GRACE, MAY DO IT, MAY NOT DO IT. WE CAN ALL AGREE WITH THAT

BEGINNING POINT, CORRECT?

>> YES.

IT'S PURELY DISCRETIONARY.

>> BUT THE ISSUE IN THIS CASE IS REALLY ONCE THAT IS DONE, DOES THE LEGISLATURE HAVE JUST ALL POWER TO ATTACH ANY CONDITIONS WHATSOEVER TO THAT SPECIAL LEGISLATION?

>> NO.

WE ARE NOT ARGUING THAT THEY CAN DO ABSOLUTELY WHATEVER THEY WANT IN A CLAIMS BILL.

WHAT WE'RE ARGUING IS THAT --

>> IT'S NOT ABSOLUTE THEN.

>> IN TERMS OF SETTING ATTORNEYS' FEES LIMITS, THEY ABSOLUTELY DO HAVE THE DISCRETION.

>> YOU DO AGREE THEN THAT THERE CAN BE IMPOSED BY LAW LIMITATIONS ON THE EXERCISE OF THAT.

IS THAT --

>> THEY CAN DO -- THEY CAN SET ANY CONDITIONS THAT THEY IN THEIR DISCRETION FEEL IS APPROPRIATE.

NOW, CERTAINLY IF ONE OF THOSE CONDITIONS VIOLATED -- LIMITED THE CONSTITUTIONAL --

>> OKAY.

SO YOU DO THEN AGREE THAT IF THERE IS A CONSTITUTIONAL VALUE AT STAKE, THAT THE LEGISLATURE DOES NOT HAVE IN THAT GRACE THE POWER TO ORDER JUST ANYTHING.

>> YES.

IF THE LAW FIRM COULD IDENTIFY A CONSTITUTIONAL BASIS, A CONSTITUTIONAL RESTRICTION THAT IS BEING INFRINGED IN THIS CASE THAT THEY CAN'T -- THE ENTIRE THEORY OF THEIR CASE IS BASED ON THEM HAVING A CONTRACT RIGHT TO MONEY FROM THIS CLAIM BILL AND THEY SIMPLY CANNOT ESTABLISH ANY CONTRACTUAL RIGHT TO THIS CLAIM BILL MONEY.

AND WE KNOW THAT OVER 30 YEARS

--

>> SO YOU'RE SAYING THAT THE RIGHT TO EXISTING CONTRACTS IMPAIRMENT OF WHATEVER THOSE RIGHTS ARE, IS NOT A CONSTITUTIONALLY-PROTECTED RIGHT IN THE STATE OF FLORIDA.

>> IF THEY COULD IDENTIFY A CONTRACT RIGHT THAT WAS BEING IMPAIRED, THEN CERTAINLY. BUT THEY CAN'T HERE.

>> WELL, I UNDERSTAND YOU'RE MAKING THAT ARGUMENT.

>> THEY CAN'T HERE BECAUSE --

>> BUT YOU THEN WOULD AGREE THAT IF THERE IS A CONTRACTUAL RIGHT THAT IS VIOLATED BY SOME ACTION, THAT THERE IS A CONSTITUTIONAL VALUE AT STAKE.

>> YES, THAT THERE IS NO CONTRACTUAL RIGHT IN THIS CASE AND WE KNOW THAT FROM GAMBLE AND WE KNOW THAT BY THE ACTUAL TERMS OF THE UNDERLYING CONTRACT HERE, WHICH ACKNOWLEDGED THAT THE FEES COULD BE LIMITED BY LAW.

>> WELL, LET'S GO OVER THE GAMBLE CASE.

DO YOU AGREE THAT THAT OCCURRED BEFORE 768.28 WAS PASSED AS FAR AS REQUIRING CLAIMANTS WHO WERE SUING STATE ENTITIES TO GO TO COURT, NOT GO TO THE LEGISLATURE, GO TO COURT IN ORDER TO LITIGATE THE VALIDITY OF THEIR CLAIM?

>> YES.

THE CLAIMANT IN THE GAMBLE CASE, THE EVENTS ARISING OCCURRED BEFORE THE ENACTMENT OF 768.28.

>> AND THAT DOES SEEM TO BE SO HUGE, BECAUSE I GUESS -- AND WE'LL GO TO THE CONTRACT ISSUE. I'M HAVING A HARD TIME UNDERSTANDING HOW THE LEGISLATURE COULD SAY -- AGAIN, AND THIS IS THEIR INTENT -- THAT ON ONE HAND YOU CANNOT GET MONEY FROM A STATE AGENCY IN EXCESS OF THE \$200,000 UNLESS YOU GO TO

TRIAL.

AND TO GO TO TRIAL, YOU I GUESS  
-- PRESUMABLY THEY COULD --  
SOMEBODY COULD HAVE MONEY AND BE  
ABLE TO PAY \$500 AN HOUR, BUT  
YOU CAN HAVE A CONTINGENT FEE,  
BUT YOU CANNOT CHARGE.

YOU ATTORNEYS IN THE STATE OF  
FLORIDA CANNOT CHARGE MORE THAN  
25%, RIGHT?

>> THAT'S NOT WHAT 768.28 DID.  
IT PROVIDED A LIMITED WAIVER OF  
SOVEREIGN IMMUNITY FOR TORT  
ACTIONS PROVIDING THE OPTION TO  
PURSUE A JUDICIAL REMEDY BEFORE  
SEEKING A CLAIMS BILL.

CLAIMANTS ARE NOT REQUIRED TO  
HAVE A JUDGMENT IN HAND.

>> IT REQUIRES A JUDGMENT,  
DOESN'T IT?

>> IF THEY ELECT TO GO THROUGH  
THE JUDICIAL PROCESS AND SEEK A  
JUDICIAL REMEDY, BUT NO JUDGMENT  
IS REQUIRED TO GO TO YOUR  
REPRESENTATIVE AND ASK THEM TO  
SPONSOR A CLAIM BILL ON YOUR  
BEHALF.

>> I THOUGHT IT WAS JUST THE  
OPPOSITE.

I UNDERSTOOD THAT THE RULES WERE  
THAT YOU HAD TO EXHAUST ALL  
REMEDIES.

IS THAT NOT THE RULE?

>> BUT -- THAT'S THE CURRENT  
RULE, BUT THAT'S NOT BINDING.  
THAT IS A RULE THAT CAN BE  
WAIVED AT ANY TIME IF THE  
LEGISLATURE IN ITS DISCRETION  
OVER A PURELY LEGISLATIVE  
REMEDY.

AND THAT'S WHAT WE'RE TALKING  
ABOUT.

>> I WOULD SEE THAT AS A  
DIFFERENT CASE.

IN OTHER WORDS, THEY SEE THAT  
LEE MEMORIAL HOSPITAL HAS CAUSED  
BRAIN DAMAGE TO THIS BOY, WHO  
WAS, BY THE WAY, THIS WAS 1997.  
AND THEY REALIZE HOW HORRIBLY  
WRONG THIS HOSPITAL WAS.

AND THEY GO TO THE FAMILY AND  
THEY GO, WE ARE PREPARED TO PAY  
THE COST, THE MEDICAL COSTS, FOR  
LIFE.

BUT WE'LL GO AT IT THROUGH A  
CLAIMS BILL.

THAT'S NOT THIS CASE.

AND SO I GUESS I'M TRYING TO  
UNDERSTAND THE FACT THAT THERE  
COULD BE ANOTHER CASE WHERE IT  
IS FROM THE GET-GO -- THERE IS  
NO NEED TO GET AN ATTORNEY  
INVOLVED BECAUSE THEY'RE GOING  
TO PAY THE MAXIMUM COMPENSATION  
IN THIS CASE.

>> AGAIN, CLAIM BILLS ARE PURELY  
LEGISLATIVE REMEDIES.

AND THE LEGISLATURE HAS  
DISCRETION TO WAIVE ITS INTERNAL  
RULES OF PROCEDURE AT ANY TIME  
IF THEY FEEL THAT A CLAIMANT--  
THAT THEY WANT TO EXERCISE THEIR  
GRACE AND GRANT RELIEF TO A  
CLAIMANT.

YOU DON'T NEED A JUDGMENT IN  
HAND TO GO TO YOUR  
REPRESENTATIVE TO SEEK A CLAIM  
BILL.

>> WE ARE TALKING PAST EACH  
OTHER.

I NOTICE IN THE SPECIAL MASTER'S  
FINAL REPORT, IT SAYS THEY AGREE  
TO LIMIT ATTORNEYS' FEES TO 25%  
BUT THEY'RE REQUESTING AN  
ADDITIONAL 5%.

IN OTHER WORDS, THEY WANTED  
MORE.

THE SPECIAL MASTER SAYS I  
BELIEVE PAYING A SEPARATE AND  
ADDITIONAL FEE WOULD CREATE A  
PRECEDENT IN MANY SIMILAR  
REQUESTS.

THEREFORE, I RECOMMEND ALL  
ATTORNEYS' FEES BE LIMITED TO  
25% OF THE AWARD.

SOUNDS TO ME LIKE THE FACT OF  
THE 25% HAS BEEN PART OF THE  
PRECEDENT-- THAT THIS IS  
UNPRECEDENTED IN WHAT THE  
LEGISLATURE HAS DONE IN THE

CLAIMS BILL.

I MEAN, THEY WERE TRYING TO GET MORE, BUT THE SPECIAL MASTER SAID, NO, THEY SHOULD STICK TO 25%.

>> A COUPLE OF POINTS TO THAT. FIRST, THE LEGISLATURE'S NOT BOUND BY WHAT THE SPECIAL MASTER RECOMMENDS.

SECOND, JUSTICE QUINCE, EARLIER YOU HAD ASKED IF THERE ARE ANY OTHER CLAIM BILLS THAT PROVIDE A CAP ON ATTORNEYS' FEES THAT'S NOT 25%.

YES, THERE ARE TONS OF EXAMPLES IN THE LAWS OF FLORIDA GOING BACK YEARS WHERE THE LEGISLATURE HAS EXERCISED ITS DISCRETION AND DEVIATED DOWN.

AND THE CASE NOEL IS AN APPELLATE CASE ADDRESSING WHERE THE ATTORNEYS' FEES WERE REDUCED TO 13%.

AND THE FOURTH DCA APPLIED -- [COMMENT OFF MIC]

>> AND IT BRINGS UP AN ISSUE IN MY MIND AS TO WHETHER OR NOT THERE'S AN ACCESS TO COURTS ISSUE HERE BECAUSE WHAT LAW FIRM OR LAWYER IS GOING TO TAKE ONE OF THESE CASES WHEN THERE'S A STATE ENTITY INVOLVED AND THERE'S A POSSIBILITY THAT THEY PUT THOUSANDS OF HOURS WORTH OF WORK IN A CASE AND GET \$100,000 OUT OF IT?

NOT EVEN, NOT EVEN A \$500,000 THAT THEY EXPENDED IN COSTS.

I MEAN, SO IT SEEMS TO ME WE ARE PUTTING PLAINTIFFS IN A VERY -- WE WOULD BE PUTTING PLAINTIFFS IN A VERY PRECARIOUS POSITION AND THEY DON'T HAVE ACCESS TO LAWYERS WHO'S GOING TO TAKE THEIR CASES.

>> WELL, TO ESTABLISH AN ACCESS TO COURTS CLAIM, YOU HAVE TO ESTABLISH THAT THE LEGISLATURE -- UNDER THIS COURT'S PRECEDENT, YOU HAVE TO ESTABLISH THAT THE

LEGISLATURE, WHATEVER THEY'VE DONE, HAS ABOLISHED A PRE 1968 COMMON LAW OR STATUTORY CAUSE OF ACTION.

AND HERE THEY CAN'T EVEN ESTABLISH THAT BECAUSE YOU COULDN'T SUE THE STATE UNTIL JANUARY 1, 1975 AND THERE HAS NEVER BEEN A RECOGNIZED RIGHT TO RECEIVE CLAIM BILL MONEY.

IN THEIR REPLY BRIEF THEY ACKNOWLEDGE THAT THEY DON'T HAVE AN ACCESS TO COURTS CLAIM BECAUSE THEY AREN'T SAYING THIS IS A DENIAL OF ACCESS TO COURTS, JUST THAT IT MIGHT IN THE FUTURE HAVE SOME IMPACT.

I WANT TO TALK ABOUT THE CHILLING EFFECT THAT THEY RAISE. THE ANY CHILLING EFFECT WOULD HAVE BEEN TRIGGERED BY GAMBLE BECAUSE THIS COURT HELD THAT THE LEGISLATURE CAN LIMIT ATTORNEYS' FEES REGARDLESS OF ANY UNDERLYING CONTRACT.

AND IN RELIANCE ON THAT, THE LEGISLATURE HAS EXERCISED ITS DISCRETION.

THE NUMBER OF CLAIM BILLS DID NOT DROP DRAMATICALLY AFTER THE ENACTMENT OF GAMBLE.

>> IF THIS IS AN UNFETTERED RIGHT OF THE LEGISLATURE, THEN THEY COULD HAVE PASSED THIS CLAIMS BILL AND SAID ABSOLUTELY ZERO OF THIS AMOUNT COULD GO FOR ATTORNEYS' FEES.

>> YES.

IF THEY HAVE THE DISCRETION UNDER THE CONSTITUTION AS A LEGISLATIVE BODY VESTED WITH THE PURE DISCRETION OF A CLAIMS BILL, THEN IT DOESN'T MATTER. THEY COULD HAVE AWARDED 50% ATTORNEYS' FEES.

THEY COULD HAVE DEVIATED UP. THEY AREN'T BOUND BY 768.28.

NOW, I WANT TO --

>> DID GAMBLE ARISE -- I'M JUST LOOKING AT THE BRIEF.

A CAUSE OF ACTION THAT ACCRUED  
IN 19 -- BEFORE 1970?

>> YES.

>> SO, AGAIN, THERE WASN'T AN  
ACCESS TO COURT ISSUE BECAUSE  
THERE WAS NO SOVEREIGN IMMUNITY  
WAIVER.

SO IT LOOKS LIKE THAT CASE DEALT  
WITH CASES BEFORE THE ENACTMENT  
OF THIS CURRENT STATUTE.

IS THAT CORRECT?

>> IT WAS UNCLEAR WHEN THE CAUSE  
OF ACTION ACCRUED BECAUSE SHE  
WAS IN THE CUSTODY FOR SEVERAL  
YEARS AND IT ALL AROSE IN THAT  
TIME PERIOD.

SO THAT'S WHY --

>> THERE WAS NO STATUTE.

>> YES.

THERE WAS NO STATUTE AT THAT  
POINT.

>> OKAY.

>> SO, NOW, GETTING INTO THE  
TERMS OF THE CONTRACT, EVEN IF  
GAMBLE --

>> YOU SAID THE CONTRACT SAID  
THAT THEY WOULD BE -- FEES WOULD  
BE [INAUDIBLE] THE LAWYERS.

IS THAT WHAT YOU'RE TELLING ME?

>> THE CONTRACT SAID THAT -- IT  
ACKNOWLEDGED THAT IT COULD BE  
LIMITED BY LAW.

>> WHICH LAW WERE THEY REFERRING  
TO?

>> WELL, IT ACKNOWLEDGED BY LAW,  
BY ACT OF THE LEGISLATURE.

>> THE ONE THAT SAYS 25% OR LESS  
THAN 1%?

>> IT DIDN'T SAY ANY NUMBER.  
IT ACKNOWLEDGED THAT THE  
LEGISLATURE HAS THE DISCRETION.

>> SO AT THE TIME IT WAS WHICH  
LAW?

>> WELL, GAMBLE WAS THE LAW OF  
FLORIDA FOR 15 YEARS AT THE TIME  
OF THE CONTRACT.

BUT IT DIDN'T SPECIFY A LAW.

IT ACKNOWLEDGED THAT THE  
LEGISLATURE --

>> SO YOU'RE SAYING BECAUSE THEY

DIDN'T PUT 728 IN THERE THAT  
THEY AGREED TO 1%?

>> I'LL READ PARAGRAPH 4 FROM  
THE CONTRACT.

IT SAYS I UNDERSTAND FLORIDA LAW  
MAY LIMIT THE AMOUNT OF  
ATTORNEYS' FEES.

I UNDERSTAND THE FEES OWED SHALL  
BE THE AMOUNT PROVIDED BY LAW.  
AND THIS CONCEPT THAT IT COULD  
BE LIMITED BY LAW IS REAFFIRMED  
IN THE APPELLANT CONTRACT WHICH  
SAYS IF SOVEREIGN IMMUNITY  
APPLIES, THEN APPELLATE FEES  
WILL BE 5% IF APPROVED BY THE  
LEGISLATURE.

WHEN THEY WENT TO THE  
LEGISLATURE ASKING FOR 30%, THEY  
ACKNOWLEDGED THERE THAT THE  
LEGISLATURE HAS DISCRETION TO  
DEVIATE UPWARDS FROM 25%.  
SO THAT ACKNOWLEDGED THAT THE  
LEGISLATURE HAD THE DISCRETION  
AND COULD LIMIT IT BY LAW.

>> WELL, WAIT, WAIT.  
BECAUSE THEY SAID THAT THE  
LEGISLATURE COULD GIVE THEM  
MORE, THAT MEANS THAT THEY  
ACKNOWLEDGE THAT THEY COULD HAVE  
A CONTRACT THAT WOULD GIVE THEM  
NOTHING?

>> THEY ACKNOWLEDGED THAT THE  
LEGISLATURE HAD THE DISCRETION.  
THAT THEY COULD DEVIATE UP OR  
DOWN FROM 768.28.

>> COULD YOU ADDRESS THE  
SEVERABILITY ISSUE?

>> YES.  
IF THIS COURT WERE TO DETERMINE  
THE FEE LIMIT IS INVALID, THEN  
THE LAW FIRM IS FORECLOSED FROM  
ANY RECOVERY BECAUSE THE  
REMAINING LANGUAGE OF THE CLAIM  
BILL WOULD DIRECT THE ENTIRE \$15  
MILLION INTO THE PROTECTION OF  
THE SPECIAL TRUST.

THERE WOULD BE NO AUTHORITY TO  
AWARD ANY ATTORNEYS' FEES BEFORE  
IT ENTERED THE TRUST.

SO, NOW, --

>> THE PARTIES WENT TO THE TRUST PEOPLE ABOUT THE ATTORNEYS' FEES?

>> NO.

THE DISPUTED MONEY IS BEING HELD OUT OF THE TRUST.

IT'S NOT IN THE TRUST YET.

>> SO ONCE THE MONEY IS IN THE TRUST, DO THE ATTORNEYS HAVE THE AUTHORITY TO GO TO IT?

AND IF THIS COURT FINDS THAT THAT LIMITATION ON THE ATTORNEYS' FEES WAS IMPROPER, COULD THE ATTORNEYS THEN GO TO THE TRUST AND ARGUE FOR THE AMOUNT OF THEIR CONTRACT?

>> THE FEE PROVISION FOLLOWS THE MONEY EVEN ONCE IT GOES IN THE TRUST.

SO YOUR QUESTION IS IF WE STRIKE THE FEE LIMITATION?

>> YES.

>> THEN THAT WOULD BE GOVERNED BY THE TERMS OF THE TRUST AND THE TRUSTEE'S FIDUCIARY OBLIGATIONS TO THE BENEFICIARY. AND I THINK IT WOULD BE HARD TO IMAGINE ANY TRUSTEE AGREEING THAT IT'S IN THE BENEFICIARY'S BEST INTEREST TO GIVE AWAY A QUARTER OF THE TRUST PRINCIPAL.

>> IT WOULD BE IN THE BENEFICIARY'S BEST INTEREST BECAUSE THE BENEFICIARY COULD HAVE HAD NOTHING EXCEPT MAYBE -- DID THE HOSPITAL EVEN OFFER THE \$200,000 AT THE OUTSET?

>> YES.

THE HOSPITAL PAID THE \$200,000.

>> OKAY.

SO WITHOUT THE ATTORNEYS TAKING THIS CASE TO COURT, SPENDING I BELIEVE IT WAS A FIVE-WEEK TRIAL OR SOMETHING ON THIS CASE, THEY COULD HAVE HAD \$200,000 AS OPPOSED TO THE MILLIONS THAT WERE GIVEN TO THEM IN THE TRUST FUND, CORRECT?

AND SO WHY WOULDN'T -- I'M JUST TRYING TO CARRY THIS THROUGH.

WHY WOULDN'T THE TRUSTEE BELIEVE IT WAS IN THE BEST INTEREST TO AT LEAST PAY THE ATTORNEYS WHAT -- THEIR OUTLAY IN THIS CASE FOR GETTING THIS KIND OF RECOVERY FOR THIS YOUNG MAN?

>> WELL, AGAIN, THE ISSUE FOR THIS COURT IS THE MONEY BEFORE IT ENTERS THE TRUST.

ONCE IT'S IN THE TRUST IT'S GOVERNED BY THE TERMS OF THE TRUST AND THE TRUSTEE'S FIDUCIARY OBLIGATION.

>> BUT YOU BELIEVE THE TRUSTEE WOULD HAVE THAT AUTHORITY.

>> IT DEPENDS ON THE TERMS OF THE TRUST AND HOW THEY CARRY OUT THEIR FIDUCIARY OBLIGATIONS TO THE BENEFICIARY.

BUT, AGAIN, THAT'S COMPLETELY SEPARATE FROM WHAT'S AT ISSUE HERE BECAUSE THE DISPUTED MONEY HAS NOT ENTERED THE TRUST.

>> IF THE DISPUTE HERE IS RESOLVED IN FAVOR OF THE LAW FIRM, COULD THEY TAKE THAT NEXT STEP?

>> AGAIN, THAT'S GOVERNED BY THE TERMS OF THE TRUST AND I WOULDN'T WANT TO TAKE A POSITION ON THAT BECAUSE THAT'S COMPLETELY -- A VERY DIFFERENT ISSUE.

SO, AGAIN, BRIEFLY TOUCHING ON SOME POLICY CONSIDERATIONS, RULING IN THE LAW FIRM'S FAVOR WOULD POTENTIALLY DISCOURAGE THE LEGISLATURE IN THE FUTURE FROM ENACTING CLAIM BILLS.

>> WOULDN'T IT ALSO DISCOURAGE LAWYERS FROM TAKING CASES, THESE CATASTROPHIC CASES FROM PEOPLE WHO CAN'T AFFORD IT?

WOULD THAT NOT BE LIMITING ACCESS TO COURT?

AND WHY WOULD THE STATE HAVE AN INTEREST IN LIMITING ACCESS TO COURT?

>> IF THERE WAS GOING TO BE ANY CHILLING EFFECT, YOU WOULD HAVE

SEEN THAT WHEN GAMBLE WAS  
ISSUED.

>> GAMBLE PREDATED THE STATUTE,  
DID IT NOT?

>> WHEN THIS COURT --

>> DIDN'T THE STATUTE REORDER  
THE WHOLE GAME?

>> IT DIDN'T CHANGE THE  
ESSENTIAL NATURE OF WHAT A CLAIM  
BILL IS.

A CLAIM BILL TODAY IS THE SAME  
THING IT WAS BEFORE 1975 WHEN  
YOU COULD SUE THE STATE, BEFORE,  
BACK WHEN THEY ISSUED THE FIRST  
CLAIM BILL BACK WHEN THE STATE  
WAS A TERRITORY.

THEY ARE THE SAME.

THEY ARE PURELY LEGISLATIVE  
REMEDIES AND THE LEGISLATURE HAS  
DISCRETION OVER IT.

>> WASN'T THAT A PROPERTY  
RELIEF APPROPRIATION IN GAMBLE?

>> IN GAMBLE A PRIVATE RELIEF  
ACT IS THE SAME THING AS A CLAIM  
BILL AND GAMBLE USES BOTH TERMS  
INTERCHANGEABLY.

SO THAT ISN'T A DISTINCTION.

SO, AGAIN, FOR ALL THESE REASONS  
--

>> COULD I JUST -- A QUESTION ON  
THIS.

BECAUSE WE'RE TALKING ABOUT  
LEGISLATIVE POLICY AND  
LEGISLATIVE GRACE.

IT'S CLEAR TO ME THAT THERE ARE  
PEOPLE IN THE LEGISLATURE WHO  
WANTED TO GIVE THIS YOUNG MAN AS  
MUCH MONEY TO BE ABLE TO TAKE  
CARE OF HIS MEDICAL NEEDS.

BUT WHAT WAS THE -- WHAT'S THE  
PUBLIC POLICY SO WE CAN  
UNDERSTAND IT IF WE'RE GOING TO  
APPROVE THE FOURTH DISTRICT FOR  
SAYING THAT ATTORNEYS WHO WORKED  
TEN YEARS, GOT THIS \$30 MILLION  
VERDICT, EXPENDED \$500,000 IN  
COSTS, YOU KNOW, ONE OF THE  
LEADING ATTORNEYS IN THE STATE  
OF FLORIDA TO DO THIS, THAT IT  
IS IN THE PUBLIC INTEREST FOR

THEM TO GET NOT ONLY ZERO, BUT ACTUALLY TO NOT EVEN BE ABLE TO PAY THE COSTS?

WAS THERE ANY EXPRESSION IN THE BILL AS TO WHAT THE MOTIVATION WAS FOR THIS -- TO ME IT'S UNPRECEDENTED.

WHETHER THEY GAVE SCHLESINGER A MILLION.

WHAT ARE WE AFFIRMING?

YOU TELL PEOPLE TO GO TO COURT, TO GET A VERDICT, TO DO YOUR BEST, BUT THEN YOU TELL THOSE PEOPLE THAT THE ATTORNEYS THEY HIRED WILL BE LEFT NOT -- WITHOUT COMPENSATION.

IS THERE ANY STATEMENT WE CAN MAKE IN THAT OPINION AS TO WHAT THAT -- WHY THAT LEGISLATIVE GRACE WAS EXERCISED IN THAT WAY?

>> I MEAN, ONLY REASON WE CAN KNOW WHY IS BECAUSE THAT'S WHAT THE TWO CHAMBERS OF THE LEGISLATIVE BODY AGREED ON.

AGAIN, THE CLAIM BILL WHEN IT WAS ORIGINALLY FILED WAS IN VERY DIFFERENT FORM.

AND AS SOON AS AMENDMENTS STARTED TO GET MADE, IT GAINED TRACTION.

IT MOVED THROUGH THE PROCESS.

AND ALL WE CAN READ INTO IT IS THAT ON MARCH 7 IT WAS ENACTED AS A LAW BY BOTH CHAMBERS OF THE LEGISLATIVE BODY.

THAT'S WHAT WE KNOW.

SO, AGAIN, FOR ALL THESE REASONS, THE STATE RESPECTFULLY ASKS THIS COURT TO APPROVE THE DISTRICT COURT'S DECISION.

THANK YOU.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, AND THANK GOODNESS WE'RE FINALLY HERE TO CLARIFY SOMETHING I THINK THE STATE MISSPOKE. THE MONIES PAID UNDER THE CLAIMS BILL ARE PAID INTO THE GUARDIANSHIP OF THE CHILD SO THAT THE PORTION DUE TO THE

CHILD CAN THEN BE DISTRIBUTED INTO A SPECIAL NEEDS TRUST. THIS MATTER CAME ABOUT WHEN THAT MONEY WAS IN OUR GUARDIANSHIP ACCOUNT.

I FILED A PETITION FOR APPROVAL OF CLOSING STATEMENT WITH THE COURT SETTING FORTH EVERYTHING, AND THE COURT -- YOU'VE SEEN HIS ORDER.

HE SAID WHAT HAPPENED HERE IS TREMENDOUSLY UNFAIR, BUT IT'S NOT FOR ME TO STRAIGHTEN OUT. IT'S FOR THE FOURTH OR THE SUPREME COURT TO STRAIGHTEN OUT. AS YOU'VE SEEN, THE FOURTH HAS SAID IT'S FOR THE SUPREME COURT TO STRAIGHTEN OUT.

AND THIS IS WHERE THE BUCK STOPS.

>> WHAT ABOUT THE -- COULD YOU ADDRESS THE ISSUE OF YOUR CONTRACT AND THE PARTICULAR PHRASE THAT MISS NORDBY RELIES ON THAT SAYS --

>> YES, YOUR HONOR.

>> -- THAT IT'S PROVIDED BY LAW.

>> IF THE COURT LOOKS AT THE RECORD THAT WAS VETTED IN THE TRIAL BEFORE THE PROBATE COURT, WE FILED AFFIDAVITS BY THE CLIENTS AND BY ALL OF THE ATTORNEYS AND THE COURT FOUND THAT CLAUSE IN THIS CASE, IT WAS THE AGREEMENT UNANIMOUSLY OF ALL THE PARTIES, WAS IF THERE'S A CLAIMS BILL TO BE HANDLED, THE FEE WILL BE 25%.

THERE'S NO QUESTION IT'S BEEN FOUND, AND THAT'S A FINDING OF FACT BY THE TRIAL COURT BASED ON VIRTUALLY UNDISPUTED EVIDENCE.

>> YOU MEAN THAT THE FEE COULD NOT EXCEED 25%.

>> THE FEE THAT WE WERE CHARGING WAS 25%.

OUR FIRM.

>> BUT THERE COULD BE AN ADDITIONAL FEE FOR THE

LOBBYISTS?

I MEAN, I'M JUST TRYING TO UNDERSTAND -- I MEAN, I WOULD ASSUME THE INTENT WASN'T TO SAY IN THE LEGISLATURE --

>> YOUR HONOR, YES, YOUR HONOR. OUR FEE WAS 25%.

IF YOU LOOK AT 768.28, IT'S NOT SPECIFIC AS TO WHETHER VARIOUS LAW FIRMS WITH DIFFERENT FUNCTIONS CAN CHARGE FEES NOT EXCEEDING 25%.

WHAT WE DID IS BEFORE FILING THE LAWSUIT, WE AGREED-- SO THAT THERE WOULDN'T BE AN ISSUE, WE AGREED THAT WE WOULD INCLUDE NOT ONLY OUR 25%, BUT THE APPELLATE LAWYER'S FEES, THE LOBBYIST FEES, THE COSTS, EVERYTHING WITHIN THIS 25%.

WE AGREED --

>> AN ADDITIONAL \$500,000 IN COSTS, BUT THAT WOULD ALSO BE A PART OF THE 25?

>> THAT WOULD BE PART OF THE 25%, YOUR HONOR.

AND MAKE NO MISTAKE ABOUT IT.

WE'RE NOT HAPPY THAT THEY REDUCED THIS VERDICT BY 50%.

IT WAS SUCH A SOLID VERDICT THAT LEE MEMORIAL HEALTH SYSTEM DIDN'T EVEN CHALLENGE IT FOR BEING EXCESSIVE.

AND IF THEIR GOAL WAS TO GET AS MUCH TO AARON EDWARDS AS THEY COULD, THEY HAD A STRANGE WAY OF SHOWING IT BECAUSE THEY COULD HAVE AWARDED \$30.8 MILLION.

AND I DON'T THINK IT'S FOR THIS PROCEEDING OR WAS IT FOR THE TRIAL COURT TO DETERMINE THE BASIS FOR THIS CONFISCATORY LIMITATIONS ON FEES AND COSTS THAT SAYS WE DON'T EVEN GET THE COST OUT OF OUR POCKET BACK. AND WHAT MEAN-SPIRITED INTENTS ON THE PART OF SPEAKER CANNON OR THE RULES CHAIRMAN MIGHT HAVE BEEN, THAT'S NOT FOR US AND NOT FOR THIS COURT.

THE POINT IS WAS THAT INSERTION  
OF THAT LIMITATION  
UNCONSTITUTIONAL.

AND I SUBMIT THAT IT WAS, YOUR  
HONORS.

IN RESPONSE TO JUSTICE LABARGA'S  
COMMENT, I THINK THERE'S A  
LIMITATION ON WHAT THEY CAN  
PASS.

THEY CAN PASS A CLAIMS BILL.  
AND EVEN THOUGH WE WERE UNHAPPY  
WITH THE 15, WE KNEW THEY HAD  
THE RIGHT TO DO THAT.

THEY DID HAVE THE LEGISLATIVE  
GRACE TO GIVE US NONE OF OUR  
EXCESS, SOME OF OUR EXCESS OR  
ALL OF OUR EXCESS.

THEY DIDN'T HAVE THE RIGHT TO  
TACK ON UNCONSTITUTIONAL  
PROVISIONS.

AND WE HAD A CONTRACT.

WE HAD A VALID CONTRACT.

BACK IN 1998, MOST LAWYERS  
ALREADY DON'T WANT TO TAKE  
CLAIMS BILLS BECAUSE IT'S SO  
ONEROUS TO THE LAWYERS.

THAT'S WHY BILL FRATES REFERRED  
THIS CASE TO ME.

HE'S A GOOD LAWYER.

HE COULD HAVE HANDLED IT.

BUT HE DIDN'T WANT TO.

FRANKLY --

>> THE CONTRACTUAL PROVISION IN  
PARAGRAPH 4 THAT SHE READ IS  
FAIRLY BROADLY WRITTEN WHERE  
YOUR FIRM AGREES TO ANY  
REDUCTION OF THE FEES AS MAY BE  
PROVIDED BY LAW.

THERE'S NOT A SPECIFIC REFERENCE  
TO THE 25%, THE STATUTORY  
PROVISION.

IT'S MORE BROADLY WRITTEN.

>> THAT'S CORRECT, JUSTICE  
POLSTON.

AS I HAD JUST MENTIONED, THE  
STATE BROUGHT THAT UP.

WE LITIGATED THAT IN FRONT OF  
JUDGE COLON.

IN OUR MOTION WE PRESENTED  
EVIDENCE THAT THE EVIDENCE WAS

UNANIMOUS BY ALL THE PARTIES  
THAT --

>> BUT WAS IT HELD TO BE  
AMBIGUOUS FOR SOME REASON?  
WHY WAS EVIDENCE PRESENTED?

>> YES.

THE EVIDENCE WAS PRESENTED THAT  
THE LAWYER AND THE CLIENT TALKED  
AND THEY SAID THIS WILL INCLUDE  
A CLAIMS BILL PROVISION WHICH  
WOULD LIMIT THE FEES TO 25%, AND  
AS A SOVEREIGN ENTITY, WE AGREE  
TO A 25% FEE.

THE PROBATE JUDGE WHO WAS  
HEARING THIS MADE A SPECIFIC  
FINDING.

THE FEE WAS UNANIMOUSLY AGREED  
IN THE INSTANCE OF A CLAIMS BILL  
TO BE 25%.

GETTING BACK TO -- AND THAT  
THREW ME OFF TRACK.

I APOLOGIZE, YOUR HONORS.

>> I'M SORRY.

>> WE HAD A BINDING CONTRACT.  
I HAVE A BRAIN-INJURED CHILD.  
THAT'S WHY I TOOK THIS CASE.  
THIS IS A CATASTROPHICALLY  
INJURED CHILD.

THIS NEVER SHOULD HAVE HAPPENED.  
I KNEW WHEN I TOOK IT THAT I WAS  
GOING TO HAVE TO TRY THIS CASE,  
GO THROUGH APPEAL, GO TO CLAIMS  
BILL AND I HAD TO THREAD ALL OF  
THOSE NEEDLES IN ORDER TO MAKE  
HIM A RECOVERY.

AND I AGREED TO DO SO.

AND I AGREED THAT WE WOULD DO SO  
FOR A 25% FEE.

AND THAT WAS VALID UNDER THE  
LAW.

IT WAS BINDING.

WE ALL AGREED TO IT.

AND AFTER DOING ALL OF THAT WORK  
AND ALL OF THAT EFFORT AND  
FORWARDING ALL THOSE COSTS AND  
GETTING THE CLAIMS BILL PASSED,  
THEY TACKED ON AN  
UNCONSTITUTIONAL CONFISCATORY  
LIMITATION.

YOUR CASE OF MARTIN COUNTY SAYS

A FEE THAT IS SO LOW AS TO BE CONFISCATORY IS UNCONSTITUTIONAL AND THEY IMPAIRED OUR VALID CONTRACT.

OUR CLIENTS WANT US TO RECOVER THIS MONEY BECAUSE THEY KNOW THAT IF THIS CONFISCATORY LIMITATION IS ENTITLED TO STAND, NO SERIOUSLY-INJURED CHILD WILL EVER BE ABLE TO GET AN ATTORNEY AGAINST A GOVERNMENTAL ENTITY IN FLORIDA AGAIN.

AND YOU'VE HEARD THIS CASE. AND NOBODY CAN IMAGINE THAT IF THIS IS ALLOWED TO STAND, ANYBODY WITH A SERIOUS CLAIM THAT'S GOING TO REQUIRE A LOT OF WORK AND A LOT OF COST EXPENDITURE IS EVER GOING TO TAKE THAT CASE.

WE TOOK ALL OF THE RISKS THAT WERE THERE UNDER THE LAW, AND WE SUCCEEDED WITH THEM.

AND THEN THERE WAS A CONFISCATORY CLAIM.

THE LEGISLATURE CAN PASS LAWS, BUT WHEN THEY PASS ONE THAT WE IN GOOD FAITH RELIED UPON, IF THEY WANT TO CHANGE IT, DON'T THEY HAVE TO VOTE TO CHANGE IT RATHER THAN TO JUST DISREGARD IT AND DO SOMETHING THAT THE LAW NEVER CONTEMPLATED AND NEVER ALLOWED.

IT ALLOWED -- THAT LAW ALLOWED THE CLIENT AND THE ATTORNEY --  
>> MR. SEARCY, SORRY, BUT YOUR TIME IS UP.

I'VE GIVEN YOU AN EXTRA THREE MINUTES.

>> THANK YOU VERY MUCH FOR YOUR ATTENTION, YOUR HONORS.

MAY I GIVE YOU ONE QUOTE BEFORE I LEAVE?

>> OF COURSE.

>> BY SAMUEL CLEMENS.

HE HAD A WAY WITH WORDS.

"BLIND ADHERENCE TO WOODEN PRECEDENTS NEVER BROKE A CHAIN OR FREED A HUMAN SOUL."

THANK YOU, YOUR HONORS.  
>> THANK YOU.  
THANK YOU FOR YOUR ARGUMENTS.  
LET'S WAIT FOR EVERYBODY TO GO.  
SORRY ABOUT THE PHONE.  
I NEVER BRING THE PHONE TO  
COURT, EVER.  
AND I BRING IT ONE DAY AND THAT  
HAPPENS.