

>> WHENEVER YOU'RE READY.
>> MAY IT PLEASE THE COURT.
I'M MY NAME IS GEORGE T. REEVES.
I REPRESENT THE PETITIONERS IN
THIS ACTION.
THE ISSUE IN CASE HOME VENUE
COMMON LAW APPLICABLE TO STATE
AND LOCAL GOVERNMENTS.
SUBDIVISIONS AND STATE AND LOCAL
GOVERNMENTS.
PARTICULARLY A CERTAIN EXCEPTION
IN THE CASE OF MADISON COUNTY
VERSUS GRICE.
THE HOME VENUE PROVISION STATES
A POLITICAL SUBDIVISION OR LOCAL
GOVERNMENT HAS PRIVILEGE
REQUIRED ONLY SUED IN THE COUNTY
WHERE ITS PRINCIPLE OFFICE IS
LOCATED.
>> LET ME MAKE SURE ABOUT
SOMETHING.
>> YES, MA'AM.
>> IS THERE, SIPS THAT THAT
GREECE CASE, IS THERE A SPECIFIC
STATUTE THAT INCORPORATES THE
HOME VENUE PRIVILEGE FOR
OFFICERS?
IS THAT LOCATED IN A SECTION OF
THE FLORIDA STATUTES?
>> THERE CERTAINLY NONE IN
768.28.
THE WAIVER OF SOVEREIGN IMMUNITY
CONCERNING TORTS.
AND I DON'T KNOW OF ANY OTHER
THAT WOULD BE APPLICABLE IN THIS
CASE OR OTHERWISE.
THERE MAY BE ONE IN SOME OTHER
CONTEXT BUT CERTAINLY NONE
APPLICABLE TO THIS CASE.
>> BASICALLY, SO WE UNDERSTAND
WHAT IS GOING ON HERE, THERE IS
A QUESTION, THERE MAY BE A
QUESTION OF JURISDICTION, BUT I
WANT TO GET TO ON THE MERIT,
YOU'VE GOT, YOU DON'T HAVE
TRADITIONAL CODEFENDANTS BECAUSE
WHEN YOU HAVE UNDER 768.289-A,
YOU EITHER GET TO HAVE THE
SHERIFF LIABLE VICARIOUSLY, OR
THE DEPUTY WHO WAS SPEEDING AND

REAR-ENDED YOUR CLIENT WAS DOING SO WANTONLY, THEN YOU GET A JUDGMENT AGAINST THAT PERSON WHICH IS FAR PROBABLY FROM YOUR POINT OF VIEW, PROBABLY WANT THE SHERIFF, I DON'T KNOW.

IF, WHAT THIS BASICALLY WOULD DO WITH THE FIRST DISTRICT'S OPINION IF THAT SHERIFF'S DEPUTY WAS DOWN IN MIAMI-DADE AND REAR-ENDED SOMEBODY WHERE THE ACCIDENT, THE WITNESSES, THE TREATING DOCTORS, EVERYBODY'S DOWN THERE, THAT YOU WOULD HAVE TO HAVE TWO LAWSUITS, ONE DOWN IN MIAMI-DADE AND THEN THE OTHER UP IN THE HOME COUNTY?

I MEAN IS THAT WHAT-- LET'S UNDERSTAND, THE PRACTICAL WHERE YOU WOULD BE REALLY ALLEGING TWO DIFFERENT, TWO DIFFERENT THEORIES WHICH ARE, IS NOT REALLY YOUR DOING, BECAUSE THE STATUTE REQUIRES YOU TO DO THAT.

>> RIGHT.

>> YOU HAVE AT LEAST ONE RESPONSIBLE PERSON.

>> THE DEFENDANT'S LIABILITY IS MUTUALLY EXCLUSIVE.

IF WE ARE ENTITLED TO A JUDGMENT AGAINST THE ONE WE'RE NOT ENTITLED TO A JUDGMENT AGAINST THE OTHER.

YES, UNDER THE FIRST DISTRICT'S OPINION, IF THE SAME DEPUTY HAD BEEN DRIVING IN MONROE COUNTY, THEN THERE WOULD BE THE PLAINTIFF WOULD HAVE THE CHOICE BRINGING THE LAWSUIT IN THE ONE COUNTY BUT IT COULD END UP WITH BRINGING TWO SEPARATE LAWSUITS AND THE TRIAL, UNDER THE FIRST DISTRICT'S OPINION, THE TRIAL COURT WOULD NOT HAVE THE DISCRETION TO HANDLE THAT.

>> YOU DON'T HAVE, IF THE FIRST DISTRICT'S OPINION IS UPHELD, YOU STILL CAN GET BOTH, IN THIS SITUATION, BOTH CODEFENDANTS IN ONE COUNTY?

>> THEORETICALLY I SUPPOSE WE CAN DISMISS THE LAWSUIT AND FILE THEM BOTH, REFILE IN COLUMBIA COUNTY, ASSUMING THE STATUTE HASN'T RUN.

>> IT WOULD BE TRANSFERRED, WOULDN'T IT?

ISN'T THAT-- WAS THERE A DISMISSAL?

>> NO, IT WASN'T DISMISSED. REMEMBER, THE TRIAL COURT, WE WON AT TRIAL COURT.

>> OKAY.

I WAS JUST TRYING TO FIGURE OUT THIS IDEA THAT IT'S REALLY, THAT IT'S A TORT ACTION WHERE THE HOME VENUE PRIVILEGE AND LIKE, SOMETHING WHERE IT IS REALLY A GOVERNMENT, YOU KNOW, WE'RE TALKING ABOUT TRADITIONAL GOVERNMENT.

>> A CIVIL RIGHTS ACTION.

>> ANY OF THOSE THINGS WHERE IT MAKES A LOT OF SENSE THAT YOU'RE ALLOWING AND SHOULD HAVE IN THEIR HOME COUNTY WHERE THEIR OFFICES ARE?

>> ABSOLUTELY.

THIS IS A CAR WRECK CASE AND DEPENDING, AND THE ONLY DIFFERENCE BETWEEN SUING THE TWO ENTITIES.

IF WE PROVE WILLFUL AND WANTON AT DEPUTY, THE LIABILITY ON THE DEPUTY.

IF WE DON'T IT IS ON THE SHERIFF.

>> THE FIFTH DISTRICT CASE NO ONE BROUGHT UP THIS 9-A, HAD LOTTERY, AUTOMOBILE ACCIDENT?

>> THE FACTS--

>> MAY NOT HAVE ASSERTED? DID THEY ASSERT IT.

>> THE FACTS IN THE FIFTH DISTRICT CASE ARE VIRTUALLY IDENTICAL.

STATE AGENCY, APPLIED HOME VENUE SHOULD HAVE BEEN TRIED IN LEON COUNTY.

IT WAS TRIED IN VOLUSIA COUNTY.

THEY RAISED HOME VENUE PROVISION
THE TRIAL COURT DENIED IT.
THERE WAS NO ARGUMENT AT LEAST
FROM THE REPORTED OPINION DOES
NOT LOOK WHETHER OR NOT, THAT
THIS PARTICULAR ISSUE WAS ARGUED
IN THAT CASE BUT THE FACTS
WERE--

>> THAT PARTICULAR ISSUE BEING
WHAT?

9-A?

>> ISSUE RAISED BY THE SHERIFF
IS THAT THE GRICE VERSUS MADISON
COUNTY CASE ONLY APPLIES WHERE
LIABILITY IS ALLEGED TO BE JOINT
AND SEVERABLE.

>> IF THAT PARTICULAR ISSUE
WASN'T LITIGATED IN THAT CASES,
HOW CAN THAT CASE BE A BASIS FOR
EXPRESS AND DIRECT CONFLICT?

>> BECAUSE THIS COURT HAS STATED
IN ITS CASES THAT WHERE THE
FACTS ARE EXACTLY THE SAME AS
THEY ARE IN THIS CASE THAT IT
CAN BE A BASIS FOR CONFLICT.
FURTHER MORE--

>> I THINK WE HAVE SAID THAT
WHERE THE ISSUE RELATED TO THE
FACTS IS, IS DECIDED.
HERE THESE ARE FACTS OVER THERE
FLOATING.

NOBODY CHALLENGED ANYTHING
RELATED, THERE WAS NO LEGAL
ISSUE RELATED TO THOSE
PARTICULAR FACT.

>> RESPECTFULLY, YOUR HONOR, I
DON'T THINK IT WAS THAT NARROW.
THIS IS THE HOME VENUE ISSUE.
THIS IS THE ISSUE SET OUT IN
MADISON COUNTY VERSUS GRICE.

>> THERE WAS NO JOINT TORTFEASOR
ISSUE.

>> WE CAN NOT TELL-- DETERMINE.

>> FROM DIRECT AND EXPRESS
CONFLICT DON'T WE HAVE TO LOOK
AT THE FACE OF THE OPINION?

>> I THINK YOU DO.

I THINK YOU CAN FIND THERE IS A,
THAT THE FACTS ARE EXACTLY THE
SAME, THEY CAN BE THE BASIS

BECAUSE-- AND, YOUR HONOR, THE PRACTICAL POINT OF COURSE CONFLICT JURISDICTION IS, IF THIS INSTANCE HAPPENS IN THE FIFTH, WILL IT BE TREATED THAN THIS INSTANCE IN THE FIRST?

>> THE POINT IS WE DON'T REALLY KNOW WHAT THE FIFTH WOULD DO ON THIS PARTICULAR QUESTION OF LAW BECAUSE IT WASN'T, IT WASN'T LITIGATED THERE.

THERE WAS NO, THERE WAS NO DECISION ON THE QUESTION THAT WE HAVE HERE.

BUT, I THINK WE'LL HAVE TO AGREE TO DISAGREE ON THAT.

>> YES, SIR.

>> LET ME ASK YOU ABOUT SOMETHING ELSE IF I MAY.

WHAT DO YOU SAY ABOUT THE PROVISION IN SECTION 768.28, SUBSECTION 1?

>> OKAY.

>> ARE YOU FAMILIAR WITH THAT GENERAL SECTION FILING WAIVER OF SOVEREIGN IMMUNITY.

IT IS A SENTENCE THAT SAYS THIS, ANY SUCH ACTION MAY BE BROUGHT IN THE COUNTY WHERE THE PROPERTY IN LITIGATION IS LOCATED.

THAT DOESN'T APPLY.

>> RIGHT.

>> WE HAVE NO PROPERTY IN LITIGATION.

OR IF THE AFFECTED AGENCY OR SUBDIVISION HAS AN OFFICE IN SUCH COUNTY FOR THE TRANSACTION OF ITS CUSTOMARY BUSINESS WHERE THE CAUSE OF ACTION ACCRUED.

>> YES.

>> WHAT DOES THAT MEAN?

>> IN OUR INTERPRETATION, AND WHAT I THINK THE ZITKE CASE SAID IN THE FIFTH DCA, THOSE ARE PERMISSIVE OTHER VENUES WHERE ACTIONS MAY BE BROUGHT.

THOSE ARE NOT LIMITATIONS.

LET ME TELL YOU WHY IT ISN'T A LIMITATION.

IF YOU NOTICE WHAT IS MISSING IN

THAT, IT MAY BE BROUGHT IN THE HOME COUNTY OF THE AGENCY.

THAT SECTION DOESN'T SAY IT MAY BE BROUGHT IN THE HOME COUNTY, IT GIVES OTHER HOME COUNTIES IT MAY BE BROUGHT IN.

THE MOST REVEALING PART OF THAT SENTENCE WHAT FALSE IN THE NEXT SENTENCE.

THERE THE LEGISLATURE DOES COMPLETELY TAKE UP THE ENTIRE ISSUE.

THEY SAY IN THE NEXT SENTENCE TALKING ABOUT THE STATE UNIVERSITY BOARD OF TRUSTEES, SHALL BE BROUGHT IN WHICH THE COUNTY IN WHICH THE UNIVERSITY'S MAIN CAMPUS IS LOCATED, OR GOES INTO THE SIMILAR LANGUAGE IN THE YOU QUOTED.

THE CASE IN THE FOURTH DCA CASE, READ SENTENCE MAY BE PERMISSIVE AND CREATING ADDITIONAL VENUES WHERE THE ACTION COULD BE BROUGHT.

WE THINK THAT IS THE FAIR READING OF THAT STATUTE, YOUR HONOR.

WE DON'T FEEL THAT RESTRICTIONS WHAT THE COURT DID IN GRICE.

WE WOULD FURTHER POINT OUT--

>> IS IT THAT LEGISLATIVE EXCEPTION IN THE HOME RULE COUNTY THAT APPLIES IN AUTOMOBILE CASES?

WHERE THE ACTION ACCRUED.

>> RIGHT.

>> THE TORT ACTION IN ADDITION TO THE HOME COUNTY, YOU CAN BRING THE ACTION IN THE COUNTY IF THERE IS AN OFFICE THERE? SO WHERE THE ACTION ACCRUED AND THERE IS AN OFFICE.

THAT IS AN ADDITIONAL EXCEPTION, CORRECT?

>> WELL, LET ME SAY IT THIS WAY.

>> WHETHER THEY'RE JOINT TORTFEASORS OR NOT YOU CAN BRING IT INTO THE COUNTY WHERE THE ACCIDENT ACCRUED.

>> VENUE IS CONTROLLED BY
CHAPTER 47.

>> ISN'T IT AN EXCEPTION TO THE
HOME RULE?

>> IT, OKAY THE SENTENCE THAT
WAS QUOTED BY JUSTICE CANADY IS
DECISIONAL EXCEPTION TO THE HOME
RULE PROVISION.

>> RIGHT.

>> IF I'M UNDERSTANDING THAT.
BUT FOR THE HOME RULE VENUE
PRIVILEGE YOU WOULD BE PROPER
WHERE WE BROUGHT THE ACTION IN
HAMILTON COUNTY.
THAT IS WHERE THE CAUSE OF
ACTION ACCRUED AND WHERE THE
AUTO ACCIDENT OCCURRED.
THIS COURT SAID HOME VENUE
PRIVILEGE WOULD YOU DRAW IT TO
COLUMBIA COUNTY, EXCEPT THERE IS
AN EXCEPTION TO THAT HOME VENUE
PRIVILEGE SET OUT IN MADISON
COUNTY VERSUS GRICE.

>> YOU WOULD AGREE THAT 1981
AMENDMENT DID ADDRESS THE HOME
VENUE PRIVILEGE IN THIS CONTEXT?

>> I WOULD AGREE IT ADDED
ADDITIONAL VENUES TO THE HOME
VENUE CONTEXT, YES, SIR.
I DON'T BELIEVE IT RESTRICTED
ANY.

>> I MEAN, AGAIN, AND I'M TRYING
TO FIGURE THIS OUT, WHERE THIS
ALL CAME FROM, AND IT IS UNLIKE,
SO UNLIKE THE LEGISLATURE NOT TO
HAVE GOTTEN THIS, SERIOUSLY
STRAIGHTENED OUT WHY YOU WANT TO
SUE IN ONE COUNT VERSUS THE
OTHER.
YOU HAVE THE GENERAL VENUE
STATUTE, 47.011.
CLEARLY THIS IS NOT MANIPULATION
BY THE PLAINTIFF TRYING TO BRING
IT SOMEPLACE.
THIS IS WHERE THE ACCIDENT SHE
WAS REAR-ENDED HERE.

>> ABSOLUTELY.

>> SO NOW WE GO BACK TO WHETHER
THERE IS ANYTHING IN 768.28 THAT
WOULD RESTRICT YOUR BRINGING IT

THERE AND THE WAY I READ IT DOES RESTRICT IT IF IT IS AGAINST THE STATE UNIVERSITY BOARD OF TRUSTEES.

>> ABSOLUTELY.

>> SHALL BE.

TO ME WE HAVE TO GO BACK TO GRICE WHICH USES JOINT TORTFEASOR AND CLEARLY YOU'VE GOT A SITUATION HERE WHERE ONE OR THE OTHER IS GOING TO BE LIABLE BUT THE ABSOLUTE, AND I'M JUST HERE TO ASK THE OTHER SIDE, THE ABSOLUTE REASON FOR EITHER HAVING A HOME VENUE PRIVILEGE OR, NOT, OR HAVING AN EXCEPTION, THIS CASE SEEMS TO ME TO BE CLASSIC, AND THAT'S, SO, GOING TO GRICE, DO YOU THINK GRICE WAS USING WORD TORTFEASOR AS A TERM OF ART OR WHERE YOU'RE REALLY SUING TWO PEOPLE THAT ARE INVOLVED IN AN ACCIDENT WHICH REALLY NEEDS TO BE BROUGHT, HAVE IT BE IN ONE PLACE?

>> RIGHT.

I DON'T THINK GRICE INTENDED THAT TERM JOINT TORTFEASOR TO BE RESTRICTIVE.

IN THAT CASE THE DEFENDANTS WERE IN FACT JOINT TORTFEASORS.

THE ISSUE IN GRICE THE COURT WENT AHEAD RECOGNIZED OF COURSE THAT THE HOME VENUE PRIVILEGE WAS TO SAFEGUARD THE PUBLIC TREASURY.

WE DON'T WANT THE PUBLIC ENTITIES TO SPEND MORE MONEY. IT IS BETTER FOR EVERYONE.

BUT THEN THEY RECOGNIZED THOSE BENEFICIAL PURPOSES ARE NOT ACHIEVED WHERE WE TAKE A LAWSUIT THAT SHOULD BE ONE LAWSUIT AND WE CREATE TWO LAWSUITS.

>> LET ME ASK YOU, IF WE TOOK, LET'S TAKE ONE MORE SITUATION. THE ACCOUNT OCCURS INSTEAD OF JUST BEING A REAR END BY A SHERIFF'S DEPUTY, SOMEBODY ELSE REAR-ENDED THE SHERIFF'S DEPUTY,

A PRIVATE CITIZEN.

>> RIGHT.

>> AND THEY ONLY CAN BE SUED,
THE ACCIDENT OCCURRED THERE.
THEY RESIDE IN THAT COUNTY.

>> RIGHT.

>> NOW IN THAT SITUATION WHERE
YOU ARE NOW LOOKING AT YOUR
SCENARIO, IF WE TAKE WHAT THE
FIRST DISTRICT SAID, THE PERSON
WOULD HAVE TO SUE THE
INDIVIDUAL, SAY IT WAS RECKLESS
AND DO THAT IN ONE PLACE BUT
THEN THEY COULDN'T, IF THEY GO
TO THE OTHER COUNTY WHERE THE
SHERIFF IS, THEY CAN'T BRING THE
OTHER PRIVATE TORTFEASOR ALONG,
RIGHT?

OR AM I MISSING SOMETHING ABOUT
HOW-- FAIRNESS, JUSTICE OF
TRYING TO MAKE THIS SENSE OF
THIS.

>> IF I'M UNDERSTANDING THE
SCENARIO RIGHT, LET'S ASSUME
THAT THE PRIVATE ENTITY AND THE
SHERIFF WERE JOINT, COULD BE
JOINTLY LIABLE.

FOR INSTANCE, IF YOU HAD LIKE A
POOL SHOT, ONE CAR HITS
SHERIFF'S CAR HE HITS THIS ONE,
NEGLIGENCE FOR EVERYONE THAT
WOULD BE JOINT.

I THINK UNDER GRICE I THINK
EVERYBODY AGREES THE TRIAL COURT
WOULD HAVE THE DISCRETION TO
LOOK AT IT, DECIDE WHAT IS
EQUITABLE, KEEP THE ENTIRE CASE,
MOVE IT, SPLIT IT UP, BUT THIS
COURT GRANTED THE TRIAL COURT
DISCRETION TO HANDLE THAT.

I DON'T THINK THERE IS ANY
QUESTION ABOUT THAT.

>> BECAUSE IT'S A SINGLE
ACCIDENT STILL, ARE YOU TELLING
ME THAT YOU COULD NOT BRING THIS
LAWSUIT AGAINST THE SHERIFF'S
DEPUTY IN THE COUNTY WHERE THE
SHERIFF'S OFFICE IS?

>> WELL, COUPLE OF ANSWERS
THERE.

>> BECAUSE AGAIN, IF IT HAS TO BE TWO SEPARATE LAWSUITS.

>> RIGHT.

>> NO FAULT OF THE PLAINTIFF, THEN THERE IS SOMETHING NONSENSICAL ABOUT WHAT IS GOING ON.

>> PRACTICALLY IN THIS CASE, OBVIOUSLY I CAN SUE A DEFENDANT IN ANY COUNTY IN THE STATE OF FLORIDA IF THEY AGREE.

I THINK PRACTICALLY THE DEFENDANT WOULD PROBABLY AGREE IN THIS CASE.

BUT IF WE'RE LOOKING AT LARGER ISSUE IF YOU HAD UNRELATED DEFENDANTS, COULD I BRING IT IN COLUMBIA COUNTY, I DON'T THINK I COULD.

I MEAN THAT IS THE ISSUE HERE. IT IS NOT PRESENT IN THIS CASE BECAUSE YOU HAVE A SHERIFF AND DEPUTY REPRESENTED BY SAME INSURANCE COMPANY.

THEY WILL HAVE A COORDINATED DEFENSE.

THEY WILL AGREE TO IT.

THE ISSUE ASSUMING THEY DON'T AGREE--

>> WE DON'T HAVE THAT IN THE RECORD THERE IS AN INSURANCE COMPANY HERE?

>> YES, MA'AM.

>> IT IS NOT IN THE RECORD?

>> I DON'T BELIEVE IT IS IN THE RECORD.

THIS IS VENUE MOTION.

YOU DON'T HAVE A COMPLETE RECORD.

>> WHEN GRICE WAS ISSUED IN 1983, IF THE COURT LOOKED AT BLACK'S LAW DICTIONARY TO DETERMINE WHAT JOINT TORTFEASOR MEANT, WHAT WOULD YOU HAVE FOUND?

>> WHAT YOU WOULD HAVE FOUND GRICE BEING WRITTEN DIFFERENTLY. IF THEY LOOKED AT JOINT TORTFEASOR T WOULD HAVE SAID VERY CLOSE TO WHAT MY OPPONENT

SAID.

BUT THE GRICE COURT HAS TOLD US
IT--

>> WAIT.

SO WOULD THERE HAVE BEEN ANY
OTHER AUTHORITY AVAILABLE THAT
WOULD HAVE SAID A JOINT
TORTFEASOR IS ANYTHING OTHER
THAN TWO OR MORE TORTFEASORS WHO
CONTRIBUTED TO THE CLAIMANT'S
INJURY AND JOINED AS DEFENDANTS?

>> YES, THAT AUTHORITY IS GRICE
VERSUS MADISON COUNTY BECAUSE IN
THAT CASE--

>> WHERE DOES IT SAY THAT?

>> ON PAGE 394 OF THE OPINION IT
GOES IN AND SETS OUT THE
BENEFICIAL PURPOSES DUE TO HOME,
TO ARISE DUE TO HOME VENUE
PRIVILEGE AND IT SAYS, AND I
QUOTE, THESE PRIVILEGES ARE NOT
FURTHERED WHEN A GOVERNMENTAL
DEFENDANT IS SUED AS A JOINT
TORTFEASOR.

IN SUCH CASES THE DISTRICT
COURTS IN ATTEMPTING TO FOLLOW
THE STATES OF CARLYLE SEVERANCE
OF LAWSUITS, ETCETERA.

IT GIVES EXAMPLES.

IT GIVES SIX EXAMPLES.

ONE OF THOSE ISN'T EVEN A TORT
CASE.

I'M NOT EVEN TALKING ABOUT
SEPARATE MUTUALLY EXCLUSIVE TORT
LIABILITY.

IT IS NOT EVEN A TORT CASE.

IT IS AN INVERSE CONDEMNATION
CASE.

>> WOULDN'T THAT SUGGEST THEY'RE
NOT TRYING TO IMPLY UNUSUAL
DEFINITION FOR TORTFEASOR THAT
HAD NEVER EXISTED IN LAW BEFORE
THE OPINION?

>> WHAT I THINK ITS IMPLYING
THEY'RE USING THE WORD JOINT
TORTFEASOR BECAUSE THAT HAPPENS
TO BE THE ARRANGEMENT OF THE
DEFENDANTS IN THAT CASE.

THEY'RE NOT SEEKING TO RESTRICT
THIS APPLICATION TO SITUATIONS

WHERE THE DEFENDANTS ARE NOT ALLEGED TO BE LIABLE IN SOME OTHER WAY.

THE BACKUP FOR THAT IS THE REASONING THEY GIVE FOR CREATING THE JOINT TORTFEASOR EXCEPTION. THEY SAY THAT, WHERE YOU TRY TWO CASES INSTEAD OF ONE THERE IS A DANGER OF THE PUBLIC TREASURY WILL BE--

>> IN GRICE THE GOVERNMENTAL ENTITY AND THE INDIVIDUAL WERE JOINT TORTFEASORS IN TRADITIONAL SENSE AS DEFINED BY BLACK'S LAW DICTIONARY THEN AND NOW, CORRECT?

>> CORRECT.

>> SO WHY WOULD THEY HAVE DECIDED AN ISSUE NOT BEFORE THEM AND TRIED TO EXPAND A DEFINITION BEYOND THE FACT THE OF THE CASE? IT JUST DOESN'T MAKE A LOT OF SENSE TO ME.

>> TO THE EXTENT YOU LIMIT THIS CAN ONLY APPLY TO THE EXACT FACTS OF THIS EXACT CASE YOU MAY BE RIGHT.

>> WHAT YOU'RE REALLY DOING IS ASKING US TO EXPAND GRICE BEYOND THE CONTEXT OF JOINT TORTFEASORS?

>> I'M ASKING YOU EXACT SAME REASONING THE COURT FOLLOWED IN GRICE.

>> THIS IS DIFFERENT FACTS IN GRICE.

GRICE WAS NOT ON POINT, CORRECT?

>> PERTINENT FACTS ARE EXACTLY THE SAME BECAUSE REMEMBER THIS COURT DIDN'T SAY WE FIND THERE IS SOME PROBLEM WITH JOINT AND SEVERAL LIABILITY WE WISH TO ADDRESS.

THIS COURT SAID WHERE YOU TAKE ONE LAWSUIT AND CREATE TWO, YOU'RE WASTING, YOU CAN WASTE PUBLIC RESOURCES AND THAT'S WHAT WE'RE FIXING.

THAT IS CERTAINLY NO DIFFERENT WHERE LIABILITY IS ARRANGED IN A

MUTUALLY EXCLUSIVE FASHION AS
OPPOSED TO JOINT AND SEVERAL.
IT IS STILL YOU'RE TRYING TO
DEAL WITH THE POSSIBLE WASTE OF
THE PUBLIC RESOURCES.

>> YOU'VE BEEN THROUGH YOUR--

>> THANK YOU, SIR.

>> GOOD MORNING, MR. CHIEF
JUSTICE, OTHER MEMBERS OF THE
COURT.

MY NAME IS JASON VAIL AND I'M
HERE FOR THE SHERIFF OF COLUMBIA
COUNTY.

THE CORE ISSUE IN THIS CASE
WHETHER THE VENUE PROVISION IN
768.28 CONTROLS THE OUT COME OF
THIS CASE.

AS JUSTICE PARIENTE'S QUESTION
FOCUSES IN ON, IN THIS
PARTICULAR PROVISION THE
LEGISLATURE IN ESSENCE HAS
CODIFIED THE HOME VENUE
PRIVILEGE.

>> ARE YOU LOOKING AT ONE?

>> SECTION ONE, YES.

>> HOW DO YOU THOUGH, LOOKING AT
MAY BE BROUGHT, WHICH, VERSUS
WHAT THEY SAY IN THE NEXT
SENTENCE AS YOUR OPPONENT POINTS
OUT ANY ACTION AGAINST THE STATE
UNIVERSITY BOARD OF TRUSTEES
SHALL BE BROUGHT?

HOW IS MAY, HOW DOES THAT MODIFY
47.011 WHICH ON PLIES GENERALLY?

>> I THINK THIS PARTICULAR
SENTENCE CAN ONLY BE UNDERSTOOD
IN THE CONTEXT WHICH THE
LEGISLATURE ACTED IN ADOPTING
THIS AMENDMENT.

>> BUT THEY DO KNOW THE
DIFFERENCE BECAUSE THEY USED IT
IN THE NEXT SENTENCE BETWEEN MAY
AND SHALL?

>> THAT SECOND SENTENCE WAS
ADOPTED YEARS AFTERWARDS.
THIS PARTICULAR SENTENCE WE'RE
CONCERNED ABOUT WAS ADOPTED IN
REACTION TO THE CARLISLE OPINION
WHICH CAME OUT IN 1977.
IN CARLISLE THIS OCCUR HELD

ADOPTION 728 DID NOT ABOLISH THE HOME VENUE STATUTE THE LEGISLATURE ADOPTED THIS AMENDMENT.

THE THRUST OF THIS AMENDMENT IS TO RECOGNIZE THE RECOGNIZE THE EXISTENCE OF HOME VENUE PRIVILEGE WHILE PROVIDING FOR SINGLE AND LIMITED EXEMPTION TO THAT HOME VENUE PRIVILEGE.

TO ONLY CASES THAT ACCRUE IN A NON-HOME COUNTY WHERE THE PUBLIC AGENCY DEFENDANT HAS AN OFFICE TO TRANSACT BUSINESS.

OTHERWISE THE SENTENCE MEANS REALLY-- IT IS INEXPLICABLE.

THE WORD MAY OF COURSE IS ALWAYS INTERPRETED BASED UPON ITS CONTEXT AND THIS PARTICULAR SENTENCE CAN ONLY BE UNDERSTOOD AND THE LEGISLATIVE INTENT CAN ONLY BE UNDERSTOOD IF IT IS, ONE LOOKS AT THE PROBLEM THAT THE LEGISLATURE WAS INTENDING TO ADDRESS.

NOW I WOULD LIKE TO ADDRESS--

>> LET ME ASK THIS QUESTION.

IF WE WERE TO EXPAND GRICE TO THE CODEFENDANT CONTEXT HERE BEYOND THE JOINT TORTFEASOR CONTEXT, WHAT WOULD PROHIBIT ANY POTENTIAL PLAINTIFF FROM AVOIDING THE HOME RULE PRIVILEGE BY ADDING A CODEFENDANT AND THEN DROPPING THE CODEFENDANT AFTER VENUE IS IN A DIFFERENT LOCATION?

>> IF GRICE HAS ANY VITALITY, SETTING ASIDE THE INTERACTION BETWEEN 768.28 VENUE PRIVILEGE AND GRICE OPINION, THAT WOULD BE A REAL POSSIBILITY, PARTICULARLY IN TORT CASES WHERE PUBLIC AGENCIES ARE INVOLVED.

IT'S A PRETTY COMMON PRACTICE FOR PLAINTIFFS TO REFLEXIVELY SUE AN INDIVIDUAL IN ALLEGED MALL LESS, WANTON, WILLFUL, WHATEVER THE INCAN STATIONS ARE NECESSARY TO GET THROUGH THE

SOVEREIGN IMMUNITY PROVISION IN
768.28-9.

THAT IS ALWAYS A POSSIBILITY.

>> IN THAT ONE, THEY'RE DOING
THAT BECAUSE UNDER 9-A THEY
DON'T KNOW WHAT, HOW, WHAT THE
DEFENSE IS GOING TO BE.

THE COUNTY MAY DEFEND AND THE
SHERIFF SAYING, IT IS NOT, HE
WASN'T ACTING WITHIN THE SCOPE.
HE HAD JUST LEFT, YOU KNOW, A
BAR AND HE WAS DRINKING AND HE
WAS NOT IN THE SCOPE OF HIS
EMPLOYMENT, AND SO IT IS NOT
DONE TO-- YOU DO IT, I GUESS,
BECAUSE YOU DON'T KNOW WHERE
IT'S GOING TO COME OUT BUT YOU
KNOW, WHAT WE'RE REALLY TALKING
ABOUT IS NOT ADDING A
CODEFENDANT TO TRY TO GET THE
THE ENTITY, BECAUSE IF YOU CAN
GET A CODEFENDANT THAT ACTUALLY
HAS MORE THAN \$100,000, YOU'RE
GOING TO BE LOOKING FOR THAT
CODEFENDANT.

IT IS THE ISSUE HERE THAT
EVERYTHING ABOUT THE CASE AROSE
IN THIS PARTICULAR COUNTY.

SO YOU'RE NOW, AGAIN, I GUESS,
TELL ME THE GEOGRAPHY.

ARE THEY ADJACENT COUNTIES?

>> THEY'RE ADJACENT COUNTIES.

>> THIS IS NOT ONE OF THESE LIKE
MY HYPOTHETICAL, MIAMI-DADE AND
UP TO HERE?

>> RIGHT.

>> SO THE ISSUE OF WHAT IS FROM
THE COUNTY'S POINT OF VIEW, THE
SHERIFF, WITH BEING DEFENDED BY
COUNSEL THAT I'M UNDERSTAND IS
INSURANCE COUNSEL, WHAT IS SO
IMPORTANT TO THEM?

ISN'T IT MORE EXPENSIVE IF YOU
HAVE TO GO OVER TO TAKE ALL THE
DEPOSITIONS OVER IN THE NEXT
COUNTY AND THE WITNESSES ARE
THERE?

CAN YOU EXPLAIN, BECAUSE YOU
WERE SAYING PUBLIC POLICY IS
WHAT I'M HEARING.

>> IT'S A MATTER OF PRINCIPLE,
YOUR HONOR.

>> IT IS WHAT?

>> A MATTER OF PRINCIPLE.

IN PART, WE HAVE THE RIGHT TO
CLAIM THE HOME VENUE PRIVILEGE
IN ANY CASE WHERE THERE IS NO
EXEMPTION.

>> NO, I THINK, I WAS JUST
RESPONDING TO YOU SAYING THIS
BEING MISUSED.

>> WELL, FOR EXAMPLE, I'VE DONE
LOTS OF THESE CASES, YOUR HONOR,
I WOULD THINK A REASONABLE
PREFILING INVESTIGATION WOULD
REVEAL THE BASIS TO MAKE A GOOD
FAITH CLAIM AGAINST AN
INDIVIDUAL AS OPPOSED TO THE
AGENCY.

IN THIS PARTICULAR CASE THE
INDIVIDUAL WAS ON HIS WAY TO
WORK IN HIS DUTY CAR WHEN HE HAD
THE ACCIDENT.

THAT WOULD SEEM TO ME TO, AND
THERE IS NOTHING IN THE RECORD
THAT WOULD SUGGEST THAT HE WAS
WILLFUL, WANTON, RECKLESS OTHER
THAN THE ALLEGATIONS MADE BY THE
PLAINTIFF.

SO HERE THERE WOULD BE A BASIS
FOR A CAUSE OF ACTION AGAINST
THE AGENCY, THE SHERIFF, BUT NOT
AGAINST THE INDIVIDUAL.

>> BUT AS A PRACTICAL MATTER THE
ACTION ABOUT WHAT HAPPENED, HOW
THEY WERE REAR-ENDED, THE
SHERIFF DOESN'T KNOW ANYTHING
ABOUT IT.

SO EVEN THOUGH THEY DON'T END UP
BEING IN THE LAWSUIT, THEY ARE
IN FACT THE, THEY'RE THE
WITNESS, THEY'RE THE, THE
INDIVIDUAL RESPONSIBLE FOR WHAT
HAPPENED.

>> WELL, YOUR HONOR, THERE WOULD
BE A TRAFFIC REPORT OF THE
ACCIDENT.

SO EVERYBODY WOULD KNOW EXACTLY
BASE BASICALLY WHAT HAPPENED.

>> THE TRAFFIC REPORT AND PERSON

WHO DID IT IS IN THE COUNTY
WHERE IT OCCURRED.

SO THEY HAVE TO GO, EVERYTHING
ENDS UP BEING DEPOSED IN ONE
COUNTY BUT YET THEY TRY TO BRING
THEM OVER FOR THE TRIAL?

>> THAT WOULD HAVE TO BE IF THE
CASE WAS TO BE TRIED IN THE HOME
COUNTY BUT THE HOME VENUE
PRIVILEGE DOES IMPOSE SOME
COSTS, AND THIS COURT HAS SAID
THAT THOSE COSTS CAN BE
ACCEPTABLE.

I MEAN THAT'S THE WHOLE BASIS
FOR THE GRICE OPINION.
THEY USED A BALANCING TEST WHO
SHOULD HAVE TO BEAR THE COSTS OF
THESE.

>> THAT IS REALLY THE ISSUE.
IF IT IS INCONVENIENT ALL AROUND
AND IT IS GOING TO COST MORE TO
TRY THE CASE, HOW IS IT, SINCE
YOU SAY YOU'VE BEEN INVOLVED, DO
THEY, IS THERE SOMETIMES WAIVER
OF WHAT YOU SAY IS THE
PRIVILEGE?

>> I PERSONALLY DON'T KNOW OF
ANY CASES THAT I HAVE BEEN
INVOLVED IN WHERE WE HAVE DONE
THAT WE TENDED TO STAND ON THE
HOME VENUE PRIVILEGE WHERE IT IS
POSSIBLE TO DO SO.
THE CLIENTS WANT US TO DO THAT,
SO WE DO.

>> LET ME ASK YOU THIS.
THE HARM OF NOT HAVING EVERYBODY
TOGETHER IN ONE PLACE IN ONE
SUIT IS OBVIOUS.
THE LAW GENERALLY PREFERS
JOINDER OF ALL PARTIES SO
EVERYTHING IS RESOLVED IN ONE
SUIT.

AND, IF WE WERE TO EXPAND THE
JOINT TORTFEASOR EXCEPTION, I
SAY THAT, BECAUSE I THINK IT IS
AN EXPANSION BEYOND GRICE, WHAT
IS THE HARM OF DOING THAT?
I PICKED THE EXAMPLE I PICKED
BECAUSE IT WAS THE ONE YOU HAD
BRIEFED BUT OTHER THAN THE

POTENTIAL FOR FORUM SHOPPING,
WHAT IS THE HARM?

>> YOUR HONOR, YOU DON'T HAVE TO
EXPAND THE GRICE EXCEPTION.

IN FACT I DON'T THINK YOU CAN.

>> I'M SORRY, I DIDN'T HEAR WHAT
YOU SAID.

YOU DON'T HAVE TO WHAT?

>> YOU DON'T HAVE TO EXPAND THE
GRICE EXCEPTION AND I DON'T
REALLY THINK THAT YOU CAN
BECAUSE I THINK THAT 768.2(1)
VENUE PROVISION CONTROLS VENUE
IN ALL CASES INVOLVING PUBLIC
AGENCIES.

>> YOU THINK IT SUPPLANTED THE
COMMON LAW?

>> I THINK IT HAS BUT ALSO IT
REPRESENTS THE LEGISLATURE'S--

>> THAT IS NOT VERY WELL
BRIEFED.

YOU SORT OF SAY IN SECTION THREE
OF YOUR BRIEF IT EXISTS, THAT
THE STATUTE EXISTS BUT THE
ARGUMENT THAT THAT STATUTE
SUPPLANTS THE COMMON LAW
EXCEPTION IN THIS AREA REALLY--

>> I DID SAY THAT IN THE BRIEF,
YOUR HONOR.

BUT BASICALLY, WHAT THE, AND
WHAT I DID SAY IN THE BRIEF IS
THAT THIS STATUTE REPRESENTS THE
LEGISLATURE'S, PART OF THE
LEGISLATURE'S LIMITED WAIVER OF
SOVEREIGN IMMUNITY.

IT SETS THE CONDITION FOR THAT
LIMITED WAIVERS AND THAT IS THE
EXCLUSIVE POWER OF THE
LEGISLATURE TO DO THAT.

SO THIS COURT REALLY DOESN'T
HAVE THE AUTHORITY.

IT RAISES SEPARATION OF POWERS
CONCERNS OF THE IF THIS COURT
STEPS IN AND STARTS ADOPTING
WAIVERS SUBSEQUENT TO THE
ADOPTION OF THIS AMENDMENT.

GRICE CASE IS KIND OF A ONE-OFF
OPINION, YOUR HONOR.

IT IS REALLY LIMITED TO ITS
FACTS.

IN THAT CASE THE CAUSE OF ACTION ACCRUED BEFORE THE EFFECTIVE DATE OF THIS STATUTE.

IN FACT THIS COURT WAS ADVISED TO THE EXISTENCE OF THIS STATUTE AND FULLY APPREHENDED IT DIDN'T APPLY IN THIS CASE AND THE SITKE COURT AND A LOT OF OTHER PEOPLE OUTSIDE OF THESE CHAMBERS--

>> LET ME GET YOU TO ANSWER MY QUESTION AND GO BACK TO THE POINT WHICH IS THE STATUTE. ASSUME THE STATUTE DOES NOT SUPPLANT THE COMMON LAW.

SO THEN WE'RE LOOKING AT THIS FROM A PUBLIC POLICY STANDPOINT. COMMON LAW DEVELOPS AND SHAPES. WHAT IS THE, WHAT IS, HOW WOULD YOU WEIGH THOSE, GETTING EVERYBODY TOGETHER IN ONE SUIT WHICH IS, WHICH IS EFFICIENT AND FAIR CERTAINLY TO THE PLAINTIFF VERSUS THE AGENCY BEING ABLE TO INSIST ON SUIT IN THE COUNTY NEXT DOOR?

WHICH, HOW WOULD YOU WEIGH THOSE IF WE'RE DECIDING WHETHER, IN MY VIEW TO EXPAND GRICE TO THIS CODEFENDANT SITUATION?

>> WELL TO GET BACK TO YOUR CODEFENDANT ISSUE, JUDGE, I WOULD, MR. JUSTICE, I WOULD CIRCLE BACK TO THE STATUTE BECAUSE IT DOESN'T LIMIT CASES TO JOINT TORTFEASORS.

PLAINTIFFS COULD SUE PUBLIC AGENCIES AS CODEFENDANTS.

>> THAT IS A DIFFERENT QUESTION, AND I WANT TO GET TO THAT, I WANT YOU TO HAVE TIME TO LOOK AT THAT, BUT IF THIS IS REALLY ADDRESSED AS COMMON LAW QUESTION EVERYTHING THEY TALK ABOUT IN GRICE, THE EXAMPLES THEY GIVE WOULD APPLY TO THIS SITUATION WHERE THERE IS VICARIOUS LIABILITY.

SO WHY, WHEN YOU'RE WEIGHING THE VENUE PRIVILEGE VERSUS THE EFFICIENCY AND FAIRNESS OF

HAVING EVERYTHING DECIDED WHERE
THE ACCIDENT OCCUR WHY--

>> IF YOU USE THE BALANCING TEST
IN GRICE AND IN SUN-SENTINEL,
WHICH LOOKS AT THE RELATIVE
IMPACT FISCALLY ON THE COURT
SYSTEM VERSUS THE LOCAL
GOVERNMENT, IN GRICE THEY FELT
THE BALANCE TIPPED IN FAVOR OF
THE COURT SYSTEM.

I BELIEVE IN PART BECAUSE, LARGE
PART, BECAUSE AT LEAST THE
CIRCUIT COURTS WERE FUNDED BY
LOCAL TAXPAYERS AT THE TIME.

BUT FROM 1998 ONWARDS, THE
CONSTITUTION REQUIRED THAT THE
LEGISLATURE TO FUND THE COURT
SYSTEM THROUGH STATE REVENUES.
SO THE BALANCE, I THINK, NOW,
TIPS IN FAVOR OF THE LOCAL
GOVERNMENTS BECAUSE THE BURDEN
OF MULTIDISTRICT LITIGATION
WOULD FALL, OR MULTICIRCUIT
LITIGATION WOULD FALL ON LOCAL
GOVERNMENTS MORE HEAVILY THAN
THE COURT SYSTEM.

THE GRICE DECISION DIDN'T LOOK
AT IMPACT ON THE LITIGANTS,
EXCUSE ME, ON PLAINTIFFS.

>> AS I UNDERSTAND THIS COMMON
LAW PRINCIPLE IT'S A PERMISSIVE
THING SO THE TRIAL JUDGE HAS
DISCRETION TO LOOK AT THE IMPACT
ON THE LITIGANTS?

>> AT THAT POINT, YES.
YOU'RE TALKING ABOUT WHETHER
THERE SHOULD BE ANOTHER
EXEMPTION.

THE TEST THIS COURT HISTORICALLY
APPLIED TO DETERMINE WHETHER IT
SHOULD HAVE SUCH AN EXEMPTION
LOOKED AT BALANCE OF ECONOMIC
IMPACT BETWEEN THE LOCAL
GOVERNMENT AND THE COURT SYSTEM
BECAUSE IT FOCUSED ON ECONOMIC
AND EFFICIENT GOVERNMENT WHICH
WAS SHORTHAND I THINK FOR IMPACT
OF THE LITIGATION.

>> IF YOU'RE LOOKING AT THE
ECONOMICS, HOW WOULD THIS CASE

PRACTICALLY TAKE PLACE IF IN FACT THE HOME VENUE PRIVILEGE IS IN EFFECT?

DOES THE TRIAL JUDGE THEN SAY, I'M TRANSFERRING THIS ENTIRE CASE TO COLUMBIA COUNTY OR, I'M TRANSFERRING PART OF THIS CASE TO COLUMBIA COUNTY?

WHAT HAPPENS AND DOES ONE GET TRIED BEFORE THE OTHER?

YOU COULD END UP WITH TWO DIFFERENT KINDS OF VERDICTS. HOW DOES THAT PRACTICALLY WORK?

>> I THINK THE BEST THING TO RECOMMEND TRIAL COURTS TRANSFER CASES TO HOME COUNTY.

>> I'M SORRY I'M STILL--

>> I'M SORRY, YOUR HONOR. I THINK THIS COURT SHOULD RECOMMEND TO THE TRIAL COURTS TO TRANSFER CASES IN THEIR ENTIRETY TO THE HOME COUNTY.

>> ARE THERE ANY OTHER PARTIES IN THE CASE THAT MAY HAVE SOME INTERESTS IN WHERE THE CASE PROCEEDS?

>> THERE ARE JUST TWO PLAINTIFFS AND TWO DEFENDANTS, YOUR HONOR.

>> WELL, YOU HAVE GOT ANOTHER DEFENDANT WHO LIVES IN A DIFFERENT COUNTY, RIGHT?

>> THE OFFICER, YES.

>> SO YOU HAVE GOT A DEFENDANT WHO HAS A VENUE PRIVILEGE IN A DIFFERENT COUNTY, CORRECT, UNDER FLORIDA STATUTES?

>> WELL, I SUPPOSE HE WOULD, YES, SIR.

>> WE'RE HAVING A RULE OF LAW THAT IS GOING TO APPLY IN ALL KINDS OF SITUATIONS.

I DON'T KNOW, WITH THE ALLEGATIONS THAT ARE HERE WE HAVE THIS PROBLEM IN OUR STATUTE WITH THIS WILLFUL AND WANTON STUFF THAT YOU HAVE TO COME UP WITH AGAINST AN INDIVIDUAL TO BE RESPONSIBLE, AND THEN THE GOVERNMENT ENTITY IS NOT. SO THERE IS SOME, THERE IS A

POSSIBILITY OF INHERENT CONFLICT
THERE, WHETHER IT IS RAISES ITS
HEAD OFTEN OR NOT.

I DON'T SUPPOSE IS REALLY THE
QUESTION.

THE STATUTE CREATES IT.

SO WHAT WE'RE SAYING IS, THAT
THE GOVERNMENT'S RIGHT TO VENUE
SHOULD BE SUPERIOR TO THE
CITIZENS IN FLORIDA WHO, A
POLICE OFFICER I QUESTIONED
WHETHER HE HAS THE SAME ECONOMIC
WHEREWITHAL THAT THE SHERIFF
DOES.

>> WELL--

>> THE ANSWER IS WE'LL STEP ON
THE LITTLE GUY AND LET THE
SHERIFF HAVE THE VENUE PRIVILEGE
THAT HE WANTS?

>> IN OUR CASE I DON'T THINK OUR
CLIENT, THE INDIVIDUAL POLICE
OFFICER, WOULD OBJECT TO
TRANSFER TO COLUMBIA COUNTY.

>> THAT WAS NOT THE QUESTION.
THE QUESTION IS DOES HE HAVE THE
RIGHT?

THE ANSWER YES HE DOES.

>> HE DOES THEORETICALLY HAVE
THE RIGHT, HOWEVER CASES GET
TRANSFERRED FOR NON-CONVENIENCE
ISSUES OVER OBJECTIONS OF
PARTIES ALL THE TIME.

>> THAT'S TRUE.

>> WE'RE NOT HERE, YOU SAID TO
JUSTICE, YOU'RE SAYING THIS
COULD BE TRANSFERRED.

I THOUGHT YOU WERE SEEKING TO
DISMISS IT?

IS THAT NOT WHAT THE MOTION WAS?

>> THAT WAS THE MOTION, YES,
YOUR HONOR.

>> NOW YOU'RE SAYING REALLY IT
IS A QUESTION OF FORUM
NON-CONVENIENCE?

BECAUSE THERE, CERTAINLY IF THEY
BRING IT IN A INCONVENIENT FORUM
THERE IS A WHOLE OTHER THING BUT
THERE IS NOTHING YOU'RE SAYING
THAT INDICATES WHERE THIS WAS
BROUGHT WAS SOMEHOW BROUGHT TO

MANIPULATE THE SYSTEM, IS THERE?

>> WELL, IF I WERE IN A TRIAL COURT I WOULD BE ARGUING THAT OUR CLIENT IS NOT, DID NOT ACT WILLFULLY AND MALICIOUSLY AND IS AN IMPROPER DEFENDANT IN THIS CASE, YOUR HONOR.

>> NOW IN YOUR REMAINING TIME I THINK THE REAL CRITICAL QUESTION, IT REALLY, I DON'T THINK IS.

DAVID: I'M NOT CLEAR ON IT, WHETHER THE STATUTE DOES SUPPLANT THE COMMON LAW IN THIS AREA.

WHAT IS YOUR BEST ARGUMENT THAT IT DOES?

>> I BELIEVE IT DOES ABSOLUTELY, YOUR HONOR.

>> WHY?

WHAT ARE THE LEGAL PRINCIPLES--

>> PROVIDES FOR A SINGLE SPECIFIC EXCEPTION TO THE HOME VENUE PROVISION.

THE LEGISLATURE, AND ANY RULE ADOPTED BY THIS COURT, FOR EXAMPLE THE APPLICATION OF THE JOINT TORTFEASOR EXCEPTION, WILL CONFLICT WITH THAT PARTICULAR STATUTE BECAUSE IT WOULD RENDER NULL AND VOID THE KEY PROVISION THAT THE AGENCY HAVE A BUSINESS OFFICE IN THE NON-HOME COUNTY. THAT IS VERY SPECIFIC, VERY SPECIFIC.

IN THAT REGARD, YOUR HONOR, TO THE EXTENT THERE IS A COMMON LAW EXCEPTION ADOPTED BY THIS COURT, THE STATUTE CONFLICTS WITH IT.

>> I'M STILL-- GO AHEAD.

>> I'M SORRY.

THAT, AS I LOOK AT THIS, THERE ARE BEEN ABOUT FOUR EXCEPTIONS TO THE HOME VENUE PRIVILEGE AND YOU'RE SAYING BY ENACTMENT OF THAT PORTION OF 768.28 THAT NONE OF THOSE EXCEPTIONS ARE NOW APPLICABLE?

>> NO, YOUR HONOR I'M NOT SAYING THAT.

WHAT I'M SAYING, HOWEVER IS THAT IN TORT CASES THERE WOULD, THAT PARTICULAR VENUE PRIVILEGE AND EXCEPTION IN 768.28 WOULD APPLY. NOT APPLY TO THE OTHER ONE LIKE FOR EXAMPLE, IN SUN-SENTINEL. THAT WASN'T A TORT ISSUE. THAT WAS A PUBLIC RECORDS ISSUE. THE LEGISLATURE HASN'T SPOKEN ON THAT.

>> LOOKS TO ME LIKE IT HAS BEEN GIVING THE PLAINTIFF WHO IS, ON SOVEREIGN IMMUNITY HERE, 9-A, PUTTING THE PLAINTIFF IN A VERY DIFFICULT POSITION.

ANOTHER PLACE THEY MAY BE ABLE TO SUE, NOT THAT IT WAS RESTRICTING WHERE THEY COULD SUE TO THAT COUNTY.

I MEAN I COULD ARGUE IT COMPLETELY OPPOSITE TO YOU, AGAIN, UNDERSTANDING SHALL WAS ADDED LATER BUT WE HAVE SAID OVER AND OVER IN STATUTORY CONSTRUCTION CASES THAT MAY AND SHALL MEAN TWO DIFFERENT THINGS. MAY BEING PERMISSIVE, SHALL MEAN MANDATORY.

>> YOU HAVE, YOUR HONOR, YOU ALSO SAID YOU HAVE TO LOOK AT THE CONTEXT TO LOOK AT WHAT MINING OF MAY MEANS. THAT IS WHAT I'M SUGGESTING YOU LOOK HERE.

LOOK AT CONDITIONS THAT IN IN EFFECT WHEN THE LEGISLATURE ADOPTED THIS PARTICULAR EXEMPTION.

FOR TORTS, FOR TORTS, YOUR HONOR.

AND THAT IS THEY WERE REACTING TO CARLISLE WHICH ADMITTED TO KNOW EXCEPTIONS IN THE FIELD OF TORTS.

THE LEGISLATURE ADOPTED A EXEMPTION, SPECIFIC AND TARGETED EXEMPTION.

ANY OTHER QUESTIONS?

THEN I THINK I HAVE DONE EVERYTHING I CAN DO.

>> REBUTTAL?
>> YES, YOUR HONOR.
VERY BRIEFLY.
IN RESPONSE TO WHAT JUSTICE
CANADY RAISED EARLIER THE CASE I
WAS SEARCHING FOR MCKEON VERSUS
WALL BURTON.
WE ADDRESS ON PAGE 30 OF THE
INITIAL BRIEF THE COURT HELD
WHERE SPECIFIC ISSUE WAS NOT
RAISED IN THE OPINION CONTRARY
WHERE CASES ARE VIRTUALLY
IDENTICAL AND HAVE
IRRECONCILABLE OUT COMES THAT
CAN CREATE CONFLICT
JURISDICTION.
WHAT WE ASSERT IS APPARENT IN
THIS CASE.
CONCERNING WHY WE HAD TO PLEAD
IT THIS WAY, WILLFUL AND WANTON
IS THE STANDARD.
IF THE DEPUTY ACTED WILLFULLY
AND WANTONLY HE IS LIABLE.
IF NOT THE SHERIFF IS LIABLE.
>> IF YOU HAD SUED THEM BOTH IN,
AGAIN, THE COUNTY IS--
>> IT IS IN HAMILTON.
THEY WANT TO GO TO COLUMBIA.
>> IF YOU HAD SUED THEM BOTH IN
THE OTHER COUNTY, COULD THE
DEPUTY MOVE TO DISMISS THAT OR
TO, IS IT PROPER?
>> HE COULD HAVE OBJECTED TO
VENUE AND FILED A MOTION TO
DISMISS, BECAUSE AT THAT POINT
WE ARE SUING HIM SAYING YOU'RE
AN INDIVIDUAL.
YOU HAVE ACTED WILLFULLY,
WANTONLY, YOU'RE OUT FROM UNDER
SOVEREIGN IMMUNITY IN 768.28.
AS AN INDIVIDUAL I DEMAND TO GO
BACK TO DOCTOR.
>> IS THERE TWO LAWYERS IN THE
CASE FOR CODEFENDANTS.
>> ONE INSURANCE COMPANY
REPRESENTING ON EVERY SIDE.
>> THEY WOULD HAVE DONE THE SAME
THING.
>> THAT'S RIGHT.
THIS CASE ISN'T THE ONE TO SET

THE POLICY ON BECAUSE THIS CASE IS THE ONE WHERE EVERYBODY IS REPRESENTED SAME AND THEY CAN STRATEGICALLY WAIVE OR NOT WAIVE VENUE.

THE QUESTION IS WHAT YOUR HONOR BROUGHT UP BEFORE, UNRELATED DEFENDANT, YOU WILL HAVE ISSUES THE LITTLE GUY MAY NOT GET HIS CHOICE OF VENUE BY RESPECTING THE SOVEREIGN'S RIGHT TO CHOOSE ITS OWN VENUE.

AND--

>> ARE THERE ANY WITNESSES IN HAMILTON COUNTY?

>> THE, IT IS IN HAMILTON. THEY WANT TO MOVE IT TO COLUMBIA.

>> ARE THERE ANY WITNESSES IN COLUMBIA TO THIS ACCIDENT.

>> I'M NOT AWARE OF ANY OTHER WITNESSES OTHER THAN THE PARTIES.

THIS WAS EARLY IN THE MORNING AND ALL THAT.

THERE MAY BE SOME, TO THE EXTENT THERE ARE ANY THEY WOULD BE IN HAMILTON COUNTY.

I SEE MY TIME ALL BUT EXPIRED UNLESS THERE IS ANY FURTHER QUESTIONS.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU, YOUR HONOR.

>> THE COURT IS IN RECESS FOR